

UNEXCEPTIONAL FOR ONCE: AUSTERITY AND FOOD RATIONING IN ISRAEL, 1939–1959

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I. INTRODUCTION

Of all the hardships that human societies have endured over history, food shortage stirs some of the strongest emotions.¹ Many an older Israeli will often relate the woeful tale of how the State of Israel, soon after its establishment, desperately poor and reeling from a grueling War of Independence, absorbed an enormous influx of newcomers with a food pantry and little hard cash. Israel had to institute an emergency rationing plan for the distribution of food, as well as many other goods and commodities. Emergency legislation was put in place and tough enforcement methods were utilized to make the austerity scheme effective. People remember rationing cards and coupons, police searches of cars and buses for food, black marketers only occasionally brought to justice, and being hungry and severely malnourished. Finally, many recall the humbling, if not humiliating, sense of social unfairness associated with knowing that the rich and privileged were able to feed themselves and their families better than the general population.²

While the physical conditions in nascent Israel were indeed arduous and the legal administration was tough and heavy-handed, what is noteworthy is that this experience was not at all unique to Israel. Indeed, in the mid-twentieth century, during the beginning of Israel's establishment, arduous physical, legal and political conditions were extremely pervasive experiences among most nations of the world—including the richest and most developed ones.³ The United States, for example, experienced a

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¹ In recent months, one of the dominant global economic concerns has been the rise of food prices. Billions of poor people around the world, who lack access to proper housing, education and medical treatment, may now be exposed to hunger. See, e.g., Marc Lacey, *Across Globe, Empty Bellies Bring Rising Anger*, N.Y. TIMES, Apr. 18, 2008, at A1; see also Nevin S. Scrimshaw, *The Value of Contemporary Food and Nutrition Studies for Historians*, 14 J. INTERDISC. HIST. 529, 529–34 (1983).

² See NOAH LUCAS, *THE MODERN HISTORY OF ISRAEL* 273–75, 306, 328, 341, 371 (Praeger Publishers 1975).

³ Ironically, Western nations now face major health concerns from obese populations: the population is enjoying too great a caloric intake while practicing too little physical exercise in their daily life. See Jay Zagorsky, *Health and Wealth: The Late-20th Century Obesity Epidemic in the U.S.*, 3 ECON. & HUMAN BIOLOGY 296, 296–313 (2005); Maria L. Loureiro & Rodolfo M. Nayga, Jr., *International Dimensions*

period of hardship beginning in 1929 when the New York Stock Exchange collapsed, plunging the nation into a depression which continued through both the Second World War (1939–1945) and a decade afterwards, as the world economy began its slow recovery.

Over half a century has now passed; the witnesses to the mid-twentieth century's troubled times are growing old and silent, and Israel is now getting ready to celebrate sixty years of independence.⁴ For posterity's sake, one must recall and record the age of austerity: the tough facts of life and the harsh legal instruments that were used to regulate supplies. The aim of this Article is to place the Israeli experience within a wider and more global perspective, demonstrating how widespread and universal the experiences of food rationing and legal rationing devices set for its implementation were. To elaborate on a famous saying, "if misery loves company," then in the middle of the twentieth century "misery had company enough."⁵

The standard narrative of Israeli history focuses on the tough post-independence years of austerity, known as the *Zena*,⁶ as a unique, isolated Israeli experience. The young Jewish State overcame huge obstacles, beating unfavorable odds: it first survived the War⁷ and then, gradually, set up an economy that could feed, house and educate its people.⁸ In this Article I wish to expand the classic account of Israel's first decade on three fronts.

First, I suggest that during the entire period between 1939 to 1959, residents of Palestine (later, Israel) were subjected to one, essentially uninterrupted, legal regime of austerity, which included food rationing. This was established by the British mandatory authorities in Palestine in 1939 and then continued virtually unchanged in the State of Israel until 1959. Second, the mandatory legal regulatory scheme put in place in Palestine was part of the food control scheme also put into effect throughout the entire British empire. Sets of similar emergency regulations emanated from London at the eve of World War II and were effectuated in British holdings. Third, emergency legal measures concerning food supply were an almost universal experience, not unique to Israel, during and after World War II, and find their origins in the troubled experience of World War I.

of Obesity and Overweight Related Problems: An Economics Perspective, 87 AM. J. AGRIC. ECON. 1147, 1147–53 (2005); Gaetan Lafortune, *Weighty Problem*, OECD OBSERVER, July 2003, available at <http://www.oecdobserver.org/news/fullstory.php/aid/1046>.

⁴ And the Israeli economy has significantly improved. See *infra* note 195.

⁵ The exact quote being: "If misery loves company, misery has company enough" (Henry David Thoreau). *Misery Loves Company*, ANSWERS.COM, <http://www.answers.com/topic/misery-loves-company-1>.

⁶ The different derivations of this word mean in Hebrew "modesty," "humility," "austerity" or "frugality."

⁷ Similarly, the military odds for Israel's survival looked ominous, as official CIA reports indicated. See Central Intelligence Agency, *The Consequences of the Partition of Palestine* (ORE 55), Nov. 28, 1947, available at http://www.zionism-israel.com/hdoc/CIA_Consequences_Partition_Palestine_1947.htm.

⁸ For a classic account of Israel's first decade, see ALEX RUBNER, *THE ECONOMY OF ISRAEL: A CRITICAL ACCOUNT OF THE FIRST TEN YEARS 20* (Frank Cass & Co. Ltd. 1960) (noting that the Minister in Charge of the austerity plan was at first "received like an economic saviour because he accomplished the apparently impossible"). See also PAUL RIVLIN, *THE ISRAELI ECONOMY 2–8* (Westview Press 1992).

In this Article, I hope to place the Israeli legal and social experience in a wider context by reminding the contemporary reader of the near universal experience of hardship during and following World War I.

II. THE STANDARD NARRATIVE AND BEYOND

The standard historical account of the austerity regime in early 1950s Israel is quite familiar and relatively uncontroversial. Less than one year after its foundation, the young State of Israel found itself under exceptional pressure and near financial collapse. Since it declared independence on May 14, 1948, Israel has faced a double challenge—military and civilian. As the grueling War of Independence came to its slow end by July 1949, with separate armistice agreements signed with most Arab nations, the country's recovery was further slowed by an enormous influx of immigrants. It was widely understood that the government would have to declare an economic emergency situation in the country.⁹

Consequently, in early 1949, Israel's first elected government began the preparations for the institution of an austerity regime to address immigrant absorption and Israel's dire economic conditions. In April 1949, in a formal statement read before the Knesset, Israel's 120-member parliament, the government declared its intention to ration food, clothing and all essential provisions, and to severely punish black marketers. The Ministry of Rationing and Provision was set up, headed by esteemed lawyer Dr. Bernard (Dov) Joseph, who was governor of Jerusalem during the strenuous time of Arab hostilities that culminated in the city's blockade.

Upon inception, Israel's Jewish population totaled approximately 665,000.¹⁰ In under a year, over 210,000 Jews from over fifty countries immigrated to Israel. This enormous influx of immigrants included not only Holocaust refugees and Jews from Arab countries, but also Jews from North and South America, Asia, Africa, and Europe. In his statement to the Knesset, Prime Minister Ben-Gurion described the dire economic condition of the country and presented his conclusion: the cost of living must be reduced. While Ben-Gurion's socialist government hoped to avoid upsetting the standard of living of the working masses of Israeli society, the government announced the establishment of an austerity regime.

Given the time pressures and the familiarity with the British austerity scheme enforced before Israel's establishment, the government chose to

⁹ Cf. Menachem Z. Rosensaft & Joana D. Rosensaft, *The Early History of German-Jewish Reparations*, 25 *FORDHAM INT'L L.J.* 1, 23 (2001) ("Israel simply did not have the resources to finance the absorption of close to 500,000 Jewish victims of Nazi persecution on its own. The assistance provided by emergency loans from the United States and several Western European countries was only temporary in nature. Thus, a major financial infusion of any kind, whether from Germany or elsewhere, was highly desirable. 'By 1951 Israel's imports were exceeding its exports by five times, and the lack of raw materials and electric power created prolonged factory work stoppages. With the Israeli pound collapsing, even veteran citizens had become dependent on food parcels sent by relatives overseas. This was the crisis that impelled the Israeli government to look to Germany for help'").

¹⁰ When the British Mandate began in 1922, the population of Palestine was 752,000, of whom 97,000 (12.9%) were Jews. In 1944, the population was 1,740,000, of whom 554,000 (32.6%) were Jews. The population of the territory that became Israel was, in May 1948, 787,000, of whom 665,000 (84.5%) were Jews. Current figures are a population of about seven million, of whom 76% are Jews. Sir Clarmont Skrine, *Economic Development in Israel*, 117 *GEOGRAPHIC J.* 307, 308 (1951); CBS, *Statistical Abstract of Israel 2006*, available at http://www1.cbs.gov.il/shnaton57/st02_01.pdf.

continue the use of the mandatory emergency legislation of 1939. Gradually, as the economic situation improved and the emergency scheme's failings began to outweigh its benefits, public pressure brought about the dissolution of the austerity regime. The Rationing and Provision Ministry was disbanded in late 1950, and the responsibility for rationing was transferred to other government ministries. From 1952 on, the austerity regime was gradually rolled back. By 1959 the Israeli government decided to formally end the austerity regime entirely.¹¹

For citizens of the young State of Israel, the austerity scheme was a highly unpleasant experience. At the time, most Israelis were new immigrants. In addition to dangerous and unstable security conditions, new immigrants' absorption was further burdened by the continuous shortage of basic provisions, by the stringent action taken by the government to enforce the austerity regime (searching vehicles and confiscating 'contraband' provisions was routine) and by the inherent unfairness of knowing that more food was available to those living in farming areas or the better-off who were able to afford black-market prices than to the rest.

However, readers would be quick and correct to observe that in the middle third of the 20th century, this scenario was not unique to Israel.¹² On the contrary, food rationing was the post World War II experience for many nations.

III. FOOD RATIONING: THE EARLY EXPERIENCE

*Scarcity of means to satisfy ends of varying importance is an almost ubiquitous condition of human behavior.*¹³

A. TIMES OF EMERGENCY

Times of emergency require swift, purposeful decision making and implementing often extreme measures which might not be imaginable in so-called normal times. Governing in times of emergency is particularly challenging in a democracy, as many of the deliberative processes and administrative procedures which secure democratic ideals, such as civil rights and liberties, may be swept aside to make way for efficient solutions to urgent problems.

All nations have had to consider the possibility of an emergency disrupting routine life, and governments have made legal and constitutional provisions for such an eventuality. It is suggested that modern emergency powers are based, for the most part, on the Roman law dictatorship model.

¹¹ Much of this introductory section is based on IMMIGRANTS AND TRANSIT CAMPS, 1948–1952 (Mordachai Naor ed., Yad Ben-Zvi 1987) (in Hebrew). For discussion of a later international crisis from the Israeli perspective, see JoAnn Fagot Aviel, *Effects of the World Food and Fuel Crisis on Israeli Policy-Making*, 31 W. POL. Q. 317, 317–33 (1978).

¹² This is unlike other unique characteristics of Israel and its historical predicament. For example, until recently, Israel was the only Western democracy under constant threat of major terror attacks. It is also one of the few Western nations maintaining mandatory conscription and the only one mandating women to enlist.

¹³ The writer continues: "Here, then, is the unity of subject of Economic Science, the forms assumed by human behaviour in disposing of scarce means." LIONEL ROBBINS, AN ESSAY ON THE NATURE & SIGNIFICANCE OF ECONOMIC SCIENCE 15 (MacMillan & Co., Ltd. 2d ed. 1945), available at <http://www.mises.org/books/robbinsessay2.pdf>.

Under this model, in cases of crisis, the Roman Senate could direct the consuls to appoint a dictator for a period of up to six months. “The dictator was authorized to suspend rights and legal processes and to marshal military and other forces to deal with the threat of invasion or insurrection for the purpose of resolving the threat to the republic. When he finished this job he was expected to step down, his orders were terminated and their legal effects ended, and the status quo ante was to be restored. In these respects the purpose of the dictator was fundamentally conservative.”¹⁴

In times of emergency—war, natural disaster, terror attacks or stock market collapse—governmental powers of regulation are typically expanded, and a ‘market failure’ situation often arises. For at least an interim period, normally self-reliant and functionally independent citizens have to rely on government aid to provide their necessities. A recent example of this phenomenon happened in the aftermath of Hurricane Katrina.¹⁵ Historical examples include World War II and the post-independence struggle of Israel.¹⁶ Indeed, even economists agree that where resources become scarce, it is better if the government ration the provisions out, rather than allowing a state of nature to prevail. Thomas Hobbes famously warned that under the state of nature, “the life of man . . . [is] solitary, poor, nasty, brutish, and short.”¹⁷

From a public policy, economics, or legal standpoint, it is quite easy to justify the need for government regulation of essential supplies—especially of food—during times of severe shortages. But in a democracy, it takes talent, grace and luck to make it work, because austerity measures require high levels of citizen compliance and are almost impossible to police.

In Israel, the austerity regime was effective, as the citizenry viewed it as necessary, and although it was unpopular, it enjoyed public support. However, as economic times improved, public support dwindled and then withered, and the austerity plan all but collapsed under its own weight, with the legal measures taken having little or no effect. Concerning food regulation, one commentator observed that:

The promise of enhanced legitimacy or straightforward functioning that can be achieved by the state’s claiming some of the old responsibilities of paternalism is tempting and even politically imperative, but the possibility of unforeseen consequences is foreboding. . . . Food regulations are a miracle if successful and a catastrophe if not, entailing complicated

¹⁴ John Ferejohn & Pasquale Pasquino, *The Law of Exception: A Typology of Emergency Powers*, 2 INT’L J. CONST. L. 210, 212 (2004). See also Oren Gross, *The Normless and Exceptionless Exception: Carl Schmitt’s Theory of Emergency Powers and the “Norm-Exception” Dichotomy*, 21 CARDOZO L. REV. 1825, 1825–68 (2001); Oren Gross, *Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?*, 112 YALE L.J. 1011, 1011–134 (2003).

¹⁵ “The response to the drowning of New Orleans has been a failure on every level.” Editorial, *Nowhere to Turn for Shelter*, N.Y. TIMES, Jan. 19, 2007, at A22. The rebuilding of the Louisiana coast is slowly being carried out with both public and private contributions. See also *Hurricane Katrina*, WIKIPEDIA, http://en.wikipedia.org/wiki/Hurricane_Katrina.

¹⁶ The reports of economic historians clearly support the Israeli government’s view on the grim economic conditions of nascent Israel. See Nachum T. Gross, *Israeli Economic Policies, 1948–1951: Problems of Evaluation*, 50 J. ECON. HIST. 67, 67–83 (1990). See also NACHUM T. GROSS, NOT BY SPIRIT ALONE: STUDIES IN THE ECONOMIC HISTORY OF MODERN PALESTINE AND ISRAEL (Hebrew Univ. Magnes Press 1999).

¹⁷ THOMAS HOBBS, LEVIATHAN, ch. XIII, para. 9 (1651).

justifications to divert the public reaction: onto scapegoats if negative and in one's own direction if positive.¹⁸

B. EMERGENCY REGULATION

While a crisis may justify emergency regulation, at least for a certain time, the very idea of government regulation is constantly under attack and review, and in need of legal, economic, and public justification.¹⁹ Eminent historian A. J. P. Taylor went so far as to claim that “[u]ntil August 1914 a sensible law-abiding Englishman could pass through life and hardly notice the existence of the state, beyond the post office and the policeman.”²⁰ This is most likely an exaggeration, as even prior to the Great War there were clear signs of the rising “administrative state.”²¹

Moreover, if there is a single area where public sensitivity regarding government regulation is at its zenith, it is with food. It is a complex phenomenon: in a multicultural pluralist society, we expect government to respect private preferences regarding dietary habits; yet, public opinion may be outraged about the practices of the food industry and its perceived cruelty towards animals, and demand regulation, even if it may infringe on the dietary habits of some.²² Similarly, we expect the government to ensure that food supply be plentiful and affordable, but also hygienic and non-injurious to our health.²³ A cutting edge question of medico-legal policy now under deliberation is the potential regulation of fattening—and therefore tasty but unhealthy—foods.²⁴

The legal regulation of food has a long history and a long list of wide-ranging rationales. The first statute in British history regulating the production and sale of food was the 1266 Assize of Bread and Ale.

¹⁸ Jane I. Guyer, “Toiling Ingenuity”: *Food Regulation in Britain and Nigeria*, 20 AM. ETHNOLOGIST 797, 801 (1993).

¹⁹ See STEPHEN BREYER, *REGULATION AND ITS REFORM* (Harvard Univ. Press 1982). See also Bernadette Meyler, *Economic Emergency and the Rule of Law*, 56 DEPAUL L. REV. 539, 539–67 (2007).

²⁰ A. J. P. Taylor, *English History: 1914–1915*, in 15 THE OXFORD HISTORY OF ENGLAND 1, 1 (George Clark ed., Oxford Univ. Press 1965).

²¹ “The state schoolteacher, the national insurance officer, the labour exchange, the sanitary and factory inspectors, with their necessary companion the tax collector, were among the outward and visible signs of this change.” SIR WILLIAM WADE & CHRISTOPHER FORSYTH, *ADMINISTRATIVE LAW* 3 (Oxford Univ. Press 9th ed. 2004).

²² Consider the campaigns for the banning of whale hunting. See Michael Bhargava, *Of Otters and Orcas: Marine Mammals and Legal Regimes in the North Pacific*, 32 ECOLOGY L.Q. 939, 952–53 (2005); Anne M. Creason, *Culture Clash: The Influence of Indigenous Cultures on the International Whaling Regime*, 35 CAL. W. INT’L L.J. 83 (2004). See also *Halal and Kosher Slaughter ‘Must End’*, BBC NEWS, June 10, 2003, <http://news.bbc.co.uk/1/hi/uk/2977086.stm> (on a similar controversy over the method of animal slaughter used by Jews and Muslims).

²³ One prime example concerns the dilemma over the use of genetically modified foods. Do they secure bigger crops, longer shelf-lives, and better nutritional values? Or are they potentially harmful, if not in the short term, then in the long term? The difference in opinion between European and American regulators is most telling. See Judith E. Beach, *No “Killer Tomatoes”: Easing Federal Regulation of Genetically Engineered Plants*, 53 FOOD & DRUG L.J. 181 (1998); Matthew Rich, *The Debate over Genetically Modified Crops in the United States: Reassessment of Notions of Harm, Difference, and Choice*, 54 CASE W. RES. L. REV. 889 (2004); *New Developments in European Regulation of Genetically Modified Crops*, 24 BIOTECHNOLOGY L. REP. 183, 183–84 (2005).

²⁴ See, e.g., Brooke Courtney, *Is Obesity Really the Next Tobacco? Lessons Learned from Tobacco for Obesity Litigation*, 15 ANNALS HEALTH L. 61 (2006); Sarah Taylor Roller et al., *Obesity, Food Marketing and Consumer Litigation: Threat or Opportunity?*, 61 FOOD & DRUG L.J. 419 (2006); Rogan Kersh & James A. Morone, *Obesity, Courts, and the New Politics of Public Health*, 30 J. HEALTH POL. POL’Y & L. 839 (2005).

Officially in effect until its repeal in 1863, this statute set standards of quality, measurement, and pricing for British bakers and brewers.²⁵ In 17th century pre-Industrial England, the Mercantilists²⁶ advocated for

extensive price fixing over the most basic goods, particularly food, based on the prices of inputs, resulting in a set of “fair” prices. Very little of this was new. Control over prices and the factors of production was the rule of the day under the medieval order pre-dating mercantilism, as was the focus on collective rather than individual well-being.²⁷

In modern times, we find ever more extensive food, including alcohol and drugs, regulation, often based on various moral and public health concerns.²⁸ This Article, however, concerns the specific cross between food regulation and emergency measures, mostly in Britain and its colonies and dominions, which, from 1920 to 1948, included Palestine.²⁹

C. WORLD WAR I: EXPERIENCES

As food supplies are among the weakest links in any emergency situation, is it not surprising that the issue was the subject of regulation well before World War II. In fact, food regulation can be traced back to World War I, when both warring sides, struggling to come to terms with unexpected food shortages, fumbled their efforts to establish a working austerity regime.

“It is conceivable,” wrote one commentator in 1918, “that preparations might be made in peace time to permit of complete control of a nation’s food supply in the event of war. In fact, however, not even Germany had made such preparations.”³⁰ Rather, the work of German regulators was an “improvisation based on entirely inadequate information to meet a rapidly

²⁵ The price of corn was fixed in every part of the country by the local magistrates and remained in effect for a year, unless there was an appreciable change in the price of corn. The profit of which the baker was entitled was minutely defined by law. See Alan S. C. Ross, *The Assize of Bread*, 9 ECON. HIST. REV. 332, 332–42 (1965); Guyer, *supra* note 18, at 802. See also *Assize of Bread and Ale*, WIKIPEDIA, http://en.wikipedia.org/wiki/Assize_of_Bread_and_Ale.

²⁶ Mercantilism was a socio-economic policy that advocated the control of the economy in order to further national interests, yet emphasized collective, rather than individual, wealth. “The primary microeconomic objective was to assure that everyone would have enough to get by, but mercantilist preoccupation with scarcity meant that no one should have much more than what was needed to survive. The result was that not only profit but also free competition was discouraged, for while competition might maximize supply, it would result in prices too low for craftsmen to live on. Mercantilists sought a balance that would lead to full employment for the maximum number of people who could be reasonably well-sustained.” Thomas B. Nachbar, *Monopoly, Mercantilism, and the Politics of Regulation*, 91 VA. L. REV. 1313, 1318–19 (2005).

²⁷ *Id.* at 1319 (“The innovation of mercantilism was to shift the locus of control from the local to the national level[.]”).

²⁸ In the United States, the first stage in the evolution of food and drug regulation was the 1905 Pure Food and Drugs Act. For a good introduction to that Act, see Elaine T. Byszewski, *What’s in the Wine? A History of FDA’s Role*, 57 FOOD & DRUG L.J. 545 (2002). Food regulation in England began as early as 1850. See Peter Burton Hutt, *The Importance of Analytical Chemistry to Food and Drug Regulation*, 38 VAND. L. REV. 479 (1985). Are health reasons a constitutionally valid reason for State authorities to regulate working conditions in the baking industry? The question was at the basis of the contentious *Lochner* decision and its progeny. See *Lochner v. New York*, 198 U.S. 45 (1905); David J. Seipp, Symposium: *Lochner* Centennial Conference, *Introduction*, 85 B.U. L. REV. 671 (2005).

²⁹ For more details, see *British Mandate of Palestine*, WIKIPEDIA, http://en.wikipedia.org/wiki/British_Mandate_of_Palestine.

³⁰ H. McKinnon Wood, *Methods of Food Control in War-Time*, 18 J. COMP. LEGIS. & INT’L L. 100, 100 (1918).

changing situation whose developments could not be foreseen.”³¹ The result, in Germany, was:

[A] multiplicity of emergency food legislative enactments through the mazes of which, in any country, only an expert can hope to pick his way with certainty. In July 1917 it was calculated that there were then in force in Germany 892 separate emergency laws, proclamations, and orders, relating solely to food, issued by the Imperial Government alone; . . . [t]he food legislation of other countries is hardly less complex.³²

Matters were hardly better in England. Another commentator wrote:

It is popularly believed that on the outbreak of the First World War Great Britain held in readiness a carefully planned scheme of emergency powers which required only the formal sanction of Parliament to become operative law. The facts do not support this position. That war, especially in its earlier stages, was a period of groping for answers to the difficult questions posed by war emergency.

The period of groping commenced with the issuance of a proclamation following a meeting of the Privy Council on August 4, 1914. The proclamation, which probably was intended to extend a cloak of legality over military and governmental action during the first days of war, asserted the King’s “undoubted prerogative and the duty of all Our loyal subjects acting in Our behalf in times of imminent national danger to take all such measures as may be necessary for securing the public safety and the defence of Our Realm.” . . .

On the afternoon of August 7, 1914, the Home Secretary, “coming into the House without a draft of the Bill, with only half a sheet of notes in my hand,” asked the Commons to give the government the Defence of the Realm Act (DORA). This was a hurriedly devised translation of martial rule and prerogative concepts into statutory provisions. It was the cornerstone of the edifice of war powers subsequently erected by the government.³³

A contemporary critic noted how the act “was passed through the House of Commons with lightning speed, without a word of protest, in that spirit of decision and confidence which has marked the war measures of this Parliament.”³⁴

The Defence of the Realm Act, or DORA,³⁵ as it was called, was used to control civilian and military behavior, regulating alcohol consumption and food supplies. Starting in October 1915, the British government attempted to reduce alcohol consumption through an order limiting

³¹ *Id.*

³² *Id.* Wood’s article also discusses other continental European countries.

³³ Cornelius P. Cotter, *Constitutionalizing Emergency Powers: The British Experience*, 5 STAN. L. REV. 382, 383–84 (1953) (noting some earlier emergency legislation). See also J. Hurstfield, *The Control of British Raw Material Supplies, 1919–1939*, 14 ECON. HIST. REV. 1, 1-2 (1944) (“The measures of control imposed during the first World War were, naturally, not the results of any general plan of requirements and supply, but were born of scarcity and improvisation. The progressive tightening up of control was, therefore, the direct result of shortages which in the first place were met by the treatment of isolated difficulties, but which ultimately called for the general direction of supply, distribution and use.”).

³⁴ Harold M. Bowman, *Martial Law and the English Constitution*, 15 MICH. L. REV. 93, 93 (1916).

³⁵ Soon replaced by the Defence of the Realm Consolidation Act (1914).

purchase to personal consumption and reducing alcohol sales hours to lunch and dinner times (i.e., noon to 2:30 pm and 6:30 to 9:30 pm).

Measures regulating food supply came much later. As the war began, wrote one commentator, “[i]t was thought unnecessary to change the existing system of feeding the nation. Our own, Allied, or neutral shipping brought to our ports our foreign purchases of bread, meat and feeding-stuffs. At home, farmers continued to produce our milk and their normal proportion of wheat and of fresh beef and mutton. It is true that trade was now and then disturbed by enemy cruisers, mines and submarines.”³⁶

In the early stages of the war this was indeed the case. In the first five months of the war, the British Empire lost 100 ships of 252,738 gross tons; of these, only three were destroyed by submarines. In an effort to halt the flow of supplies to Britain the German navy then introduced unrestricted submarine warfare, and, by the end of 1916, its U-Boats were destroying an average of 300,000 shipping tons per month. In February 1917 alone, the German Navy sank 230 ships bringing food and other supplies to Britain, and, in the following month, a record 507,001 tons of shipping was lost as a result of the U-Boat campaign. However, Britain was successful at increasing food production, and the wheat harvest of 1917 was the best in its history, thanks in great part to a significant increase in arable areas of England and Wales. But overall, food supplies were dwindling: for years Britain had imported much of her food supply and now relied on the Royal Navy to get staples through.

It was not until a year into the war that the government began patriotic calls for conservation. By 1916 food queues were common and a source of alarm to many. That year’s poor harvest made necessary the adoption of more severe measures.³⁷ In particular, potatoes were in short supply and sugar was difficult to get. Weekly sugar consumption fell from 1.49 lb in 1914 to 0.93 lb in 1918, and weekly butchers’ meat consumption similarly dropped from an average of 2.36 to 1.53 lb a week during this period.

At the end of 1917 people began to fear that the country was running out of food. Panic buying led to shortages, and so, in January 1918, the Ministry of Food decided to introduce rationing. Sugar was the first to be rationed and this was later followed by butchers’ meat. The idea of rationing food was to guarantee supplies, not to reduce consumption. This was successful, and official figures showed that the intake of calories almost kept up to the pre-war level.³⁸

Indeed, the food controls of World War I and the threat of industrial unrest also marked the emergence of state concern with the composition of

³⁶ LORD ERNLE, *ENGLISH FARMING: PAST AND PRESENT*, ch. 19 (Sir A. D. Hall ed., Longmans, Green & Co., Ltd. 5th ed. 1936) (1912).

³⁷ J. LEE THOMPSON, *POLITICIANS, THE PRESS, AND PROPAGANDA: LORD NORTHCLIFFE AND THE GREAT WAR, 1914–1919* 99 (Kent State Univ. Press 1999).

³⁸ *Id.* at 20. See also *Defense of the Realm Act*, SPARTACUS EDUCATIONAL, <http://www.spartacus.schoolnet.co.uk/FWWdora.htm>; *Rationing*, SPARTACUS EDUCATIONAL, <http://www.spartacus.schoolnet.co.uk/FWWrationing.htm>; R. J. Hammond, *British Food Supplies, 1914–1939*, 16 *ECON. HIST. REV.* 1, 1–14 (1946); Peter Craddock-Adams, *The Home Front in World War One*, BBC, http://www.bbc.co.uk/history/trail/wars_conflict/home_front/the_home_front_05.shtml (detailing the participation of women in agriculture).

the national diet: the rationed diet was thought of, conservatively, as a ‘basal diet’, a ‘peasant diet’, linked to the demands of manual work.³⁹

Although the real work of food control in England only began in 1917, by the latter part of 1918, eighty-five percent of all food consumed by civilians in Britain was bought from abroad or from the domestic producer and sold by the Ministry of Food. The London Times called the Ministry of Food “the greatest trading organisation the world has ever seen,” with representatives in every food-producing country in the world from which supplies were obtainable.⁴⁰

Finally, another familiar element of austerity regimes appeared late in World War I: tough criminal action taken by the government against food distributors for ‘profiteering’ and ‘favoritism’. In 1918–1919 the government prosecuted over 50,000 offenses against food orders, mainly of dealers charged with raising prices, adulterating or selling outside the official channels.⁴¹

D. WORLD WAR I: LESSONS

After the war, food rationing came to its end in Britain in 1919–1920 and price controls in 1920.⁴² The experience of World War I made clear that legally regulating and physically enforcing food rationing is both vital and highly complex. Furthermore, World War I provided a valuable experience in setting up the emergency mechanisms required for price and profit control. Clearly, provisions should have been made should food rationing ever have needed to be reestablished, as was to happen come 1939. Unfortunately, too little had been preserved and prepared in the inter-war years, and as a result, once the war broke, emergency legislation had to be very rapidly enacted to meet popular demands.⁴³

What I find most intriguing is that by 1918 the full depth of the social, legal and economic ramifications of food rationing had been fully

³⁹ The biological sciences contributed to the calculation of per capita caloric requirements, while the social sciences contributed to the extrapolation of need from prewar consumption patterns. “The ‘basal diet’ guaranteed to the citizen during wartime was justified in terms of basic rights, of justice under duress, in an elaboration and extension of an entire political culture of the state as the protector of basic uniform standards.” Guyer, *supra* note 18, at 803. Basal Metabolic Rate (BMR) is the amount of energy expended while at rest in a neutrally temperate environment, in the post-absorptive state (meaning that the digestive system is inactive, which requires about twelve hours of fasting in humans). A more common and closely related measurement, used under less strict conditions, is Resting Metabolic Rate (RMR). See *Basal Metabolic Rate*, WIKIPEDIA, http://en.wikipedia.org/wiki/Basal_metabolic_rate.

⁴⁰ E. F. Wise, *The History of the Ministry of Food*, 39 *ECON. J.* 566, 567 (1929).

⁴¹ Guyer, *supra* note 18, at 803. The term profiteering “is disturbingly imprecise and nearly as pejorative as the term *military-industrial complex*. . . . Nevertheless, *profiteering* deserves a definition. It may be defined as a gain in economic well-being obtained as a result of military conflict. The gain is usually monetary, but it may also come in the form of appreciated stock prices or payment in kind, such as the acquisition of government facilities. The assets are usually acquired during wartime, but the term *wartime* presents definitional problems of its own.” STUART D. BRANDES, *WARHOGS: A HISTORY OF WAR PROFITS IN AMERICA* 6–7 (Univ. Press of Ky. 1997). For more insight on World War I food shortages and profiteering, see Anthony James Coles, *The Moral Economy of the Crowd: Some Twentieth-Century Food Riots*, 18 *J. BRIT. STUD.* 157, 160–61 (1978).

⁴² CHARLES LOCH MOWAT, *BRITAIN BETWEEN THE WARS, 1918–1940* 28–29 (Univ. of Chi. Press 1955). Cf. Wood, *supra* note 30, at 110 (“[Food control] could only have been tolerated as a war measure; its continuance as part of the peace organisation of national life is unthinkable.”).

⁴³ Neil Rollings, *Whitehall and the Control of Prices and Profits in a Major War, 1919–1939*, 44 *HIST. J.* 517 (2001). See WILLIAM C. MULLENDORE, *HISTORY OF THE UNITED STATES FOOD ADMINISTRATION, 1917–1919* (Stanford Univ. Press 1941) (for the American story).

understood, and the schemes for austerity schemes had been fully formulated and fleshed out. The lesson had been fully learned, if not remembered. Let me provide two examples.

One example concerns the use of the most visible feature of austerity measures: the rationing coupons. By 1918, observed H. McKinnon Wood, there was already widespread international experience with the coupon system, or the ‘ticket system’ as he calls it.⁴⁴ Indeed,

[t]here is in principle no great mystery about the ticket system, which is the chief outward and visible sign of food control. It is a device for securing an automatic check upon distribution and consumption. Nothing could be more futile than an attempt to ration an article without such a check. The pressure upon a rationing system, the tendency to evasion of regulations contrary to all normal practice even by patriotic and law-abiding persons, cannot be exaggerated. Legally the food ticket is a licence to its holder to buy up to a fixed maximum—sometimes at a particular shop only.⁴⁵

Another example is that while the process of supplying food is complex, even in peacetime,⁴⁶ the essential factors for effectively exercising food rationing in wartime were already in place in Britain and continental Europe: (1) the need for a national effort to reserve food materials for human consumption (which may require extreme measures such as full control over the movement of foods and their import and export); and (2) the need for control of food prices and the banning of profiteering. The chief methods of direct attack upon profiteering were the controlled licensing of dealers and the prohibitions on horizontal dealing. Regulators may need to set minimum prices (to promote production) or maximum prices (to the consumer), and both may require a government subsidy and a network of effective official agencies to carry them out at the central and regional levels.⁴⁷

IV. THE WORLD WAR II EXPERIENCE

A. INTRODUCTION

Appointed head of the American Food Administration by President Wilson after the United States entered World War I in April 1917, Herbert Hoover reputedly stated that “food will win the war”.⁴⁸ By the Second World War, it became clear that “food will win the war and write the

⁴⁴ The coupon system “has been found sufficient for bread in Germany, Sweden, Switzerland, Holland, Denmark, Norway, and Italy, and France is now [in 1918] adopting the same method.” Wood, *supra* note 30, at 109.

⁴⁵ *Id.* at 108.

⁴⁶ Wood freely admits that “[u]nder normal conditions a nation is fed by a process whose details no one person understands.” *Id.* at 101.

⁴⁷ *See id.*

⁴⁸ *Herber Hoover*, WIKIPEDIA, http://en.wikipedia.org/wiki/Herbert_Hoover. This was a common slogan used to encourage farmers, ranchers and homemakers in America to produce more food and to conserve essential commodities. *See also* Chauncey Depew Snow, *Our Statistics of Foreign Commerce and the War*, 16 PUBL’N OF THE AM. STAT. ASS’N 175 (1918); Gerald W. Thomas, *Food Will Win the War—And Shape the Peace that Follows*, AIR GROUP 4, <http://www.airgroup4.com/food.htm>.

peace”⁴⁹ as “few people expected World War II could be fought without widespread famine, or that the peace could be written except in the midst of a world of hungry men.”⁵⁰ And so, sadly, it was. War, destruction, and the disruption of international trade necessarily brought about food shortages and were followed by widespread famine and disease. These phenomena that occurred in most free, occupied, and neutral nations of the world were closely monitored in real-time, to the extent possible.⁵¹ But wartime estimates were not necessarily accurate: some proved overly optimistic, others overly respectful of the enemy.

“We cannot starve Japan out,” wrote a concerned American commentator in 1943, because it has large stocks of food, able to draw “upon her empire in Korea and Formosa” and to steal “what she wishes from China.”⁵² Germany, he added, “cannot be starved out. She had prepared for this war scientifically and that means that German agriculture and food industries were mobilized years ago.”⁵³ “The United Kingdom,” he concludes, “can be starved out,” and “[i]t is up to us to prevent that.”⁵⁴ Luckily, these assessments proved inaccurate.

The League of Nations, the United Nation’s antecedent, published annual reports titled “Wartime Rationing and Consumption.” These reports gave a general description of food rationing systems and the consumption of other goods. The 1943 report divided nations into four categories according to the calories available to people and those calories’ nutritional values. Few nations were able to supply at prewar levels. The report’s conclusion was that:

In the United Kingdom and the neutral nations (except Spain) the food rations were generally more favorable than in Germany. The British appear actually to have raised their nutritional level despite significant shifts in food habits.

In the Americas and the British Dominions food rationing has been used mainly as a means of making price controls more effective.⁵⁵

The report “Food, Famine, and Relief, 1940-1946”, published by the League of Nations in 1946, shortly before its official dissolution, also distinguished between two types of food rationing: “German-type rationing” and “rationing of the Anglo-American type”.⁵⁶ The latter approach was applied in countries which were able to maintain their vital

⁴⁹ *Hunger*, TIME, Jul. 12, 1941, available at <http://www.time.com/time/magazine/article/0,9171,765774-1,00.html> (quotation attributed to the Secretary of Agriculture, Claude Wickard, in 1940).

⁵⁰ Mordecai Ezekiel, Book Review, 27 REV. ECON. & STAT. 145, 145 (1945).

⁵¹ Thus, readers were informed in 1943 that in Greece, the official cost of living index rose by 155% and that prices in free China in February 1942 “are said to have been about twenty-nine times as high as in the summer of 1937.” G. .D. A. MacDougall, *World Economy Survey, 1941-1942*, 53 ECON. J. 280, 282 (1943).

⁵² T. Swann Harding, *Food, Agriculture, and the War*, 21 SOC. FORCES 94, 94 (1943) [hereinafter Harding, *Food, Agriculture, and the War*].

⁵³ *Id.* (“Germany will not make the mistakes of last time. She entered the war with huge stock piles, she adopted rationing quickly, she had continued to rationalize her agriculture and food industry, she has now taken over all of western Europe which she manages with customary thoroughness to aid herself.”).

⁵⁴ *Id.*

⁵⁵ Ronald L. Mighell, Book Review, 39 J. AM. STAT. ASS’N 403, 404 (1944) (reviewing LEAGUE OF NATIONS, FOOD RATIONING AND SUPPLY, 1943-44 (League of Nations Publ’n 1944)).

⁵⁶ LEAGUE OF NATIONS, FOOD, FAMINE AND RELIEF, 1940-1946 1-4 (League of Nations Publ’n 1946).

world market connections and were therefore only selectively affected by shortages: “The Americas, New Zealand and Australia, originally surplus producers of food, did not suffer from general shortages during the war. If these countries rationed some foods, the reasons were different from those applying to Europe.”⁵⁷

Yet, the general humanitarian catastrophe that began in the late 1930s, continued well after the end of military campaign, and, with it, food rationing and austerity regimes. The following section surveys the wartime experience of mainland Britain, the United States, and various other nations and contains a summary and overview. In Part V, I examine the British-colonial experience, including that of Mandatory Palestine.

B. WORLD WAR II BRITAIN

As the winds of war gathered again over Europe, questions arose: should Britain expand its crops or trust the navy’s ability to defend vital transportation links? Should Britain pursue a protectionist or a laissez-faire agricultural policy? Without much enthusiasm, the British government established the Food (Defence Plans) Department within the Board of Trade in December 1936, but only in April 1938 “when the international situation looked threatening and the wheat market depressed by fears of a new surplus, did the government make its wheat purchase, having just previously secured reserves of sugar and whale oil (for margarine and soap).”⁵⁸ The purchases were legalized by the subsequent passage of the Essential Commodities (Reserves) Act of 1938.⁵⁹ Even more significantly was the preparation of plans to establish food control as soon as war broke out: vital information was gathered and qualified personnel recruited.⁶⁰ Senior Economist William Beveridge, who had served as the permanent secretary at the Ministry of the Food at the end of World War I, was brought in to chair a committee on rationing. His committee’s recommendations were that at the outbreak of war the Ministry of Food should quickly be reconstituted, a system of national registration should be established, and the paperwork of rationing should be ready to be printed. “Within four months of the war starting, the scheme was in operation.”⁶¹ One of the prime features of Britain’s war economy was price control. As one commentator observed, in Britain, “rationing and price control are . . . so much part and parcel of the same process that to talk about them separately would seem . . . about as salubrious as separating Siamese twins.”⁶²

The objectives of price control included: “the maintenance of morale; the preclusion of wartime economic disorganization; the minimization of

⁵⁷ *Id.* at 64; Jakob Tanner, *Incorporating Knowledge and the Making of the Consumer: Nutritional Science and Food Habits in the USA, Germany, and Switzerland (1930s to 50s)* (manuscript at 8–9), available at <http://www.consume.bbk.ac.uk/ZIF%20Conference/Tanner.doc>.

⁵⁸ Hammond, *supra* note 38, at 12.

⁵⁹ *Id.*; Guyer, *supra* note 18, at 803.

⁶⁰ Hammond, *supra* note 38, at 12.

⁶¹ PETER HENNESSY, *NEVER AGAIN: BRITAIN, 1945–1951* 46 (Pantheon Books 1993). See also William Beveridge, WIKIPEDIA, http://en.wikipedia.org/wiki/William_Beveridge.

⁶² Dexter M. Keezer, *Observations on Rationing and Price Control in Great Britain*, 33 AM. ECON. REV. 264, 269 (1943).

post-war economic maladjustments; economy in government expenditure; and the prevention of unjust enrichment or impoverishment of different classes of the community.”⁶³ Price control was achieved through various means: fiscal policy, propaganda, subsidy, legislation and administrative regulation. The administration of price control was carried out by three agencies: (a) the Ministry of Supply, which determined the price of industrial raw materials for war and civilian manufacture; (b) the Ministry of Food, which administered the price of food, including animal feed; and (c) the Board of Trade, which administered the price of consumer goods other than food and prices charged by certain service industries.⁶⁴ Each agency was awarded comprehensive powers by statute. The major sources of power were the Emergency Powers (Defence) Act of 1939 and Regulation 55, which was issued pursuant thereto. These empowered a “competent authority” under the Act:

1. **To set maximum prices or specific prices.**
2. **To prohibit or limit acquisition, disposition, production, use or delivery of a controlled commodity, by general or special direction or by licensing.**
3. **To requisition supplies.**
4. **To purchase, or contract to purchase, including the power to establish itself as sole purchaser.**
5. **To sell commodities or contract for their fabrication.**
6. **To examine documents and require returns.**
7. **To license imports or exports (with the Board of Trade).**
8. **To alter tariffs (with the Board of Trade).**
9. **To levy charges (with the Treasury).**
10. **To establish and disperse pooling funds.**
11. **To pay subsidies.**⁶⁵

The Ministry of Food, the agency of greatest interest to us in this Article, was created by Order in Council on September 6, 1939, issued pursuant to the Ministers of the Crown (Emergency Appointments) Act of 1939. The new Ministry absorbed the Food (Defence Plans) Department created in 1936, and, as a “competent authority,” enjoyed the extensive powers provided by Regulation 55.⁶⁶ With these extensive emergency powers at hand, the Ministry could carry out its responsibility to insure an

⁶³ James S. Earley & William S. B. Lacy, *British Wartime Control of Prices*, 9 LAW & CONTEMP. PROBS. 160, 160 (1942).

⁶⁴ *Id.* at 161.

⁶⁵ *Id.* at 161–62.

⁶⁶ *Id.* at 163 (describing these as the powers “to regulate or prohibit the production, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition, use or consumption of foods and animal feed. The Ministry has power to demand complete access to the books, records, and the premises of any company; it may purchase abroad, process foodstuffs itself, and fix prices and margins at any stage of production and distribution. To implement the above powers, the Ministry of Food is authorized to grant or refuse licenses.”).

adequate and reliable supply of essential food, and to distribute them on an equitable basis, and at as reasonable a price as possible.⁶⁷

This sounds simple enough in principle. Yet food rationing was a massive administrative undertaking. As Rationing Orders reveal, the Minister of Food made extensive use of the powers conferred upon him under Regulation 55 of the 1939 Defence Regulations. Already in late 1939 the Minister established the rationing of bacon, meat of all sorts, butter, and sugar, ordering that “a person shall not obtain or attempt to obtain, or supply or offer or attempt to supply any rationed food for household consumption, or any rationed food for the purposes of any establishment”⁶⁸ except under the authority of the Minister. The British Ministry of Food, serving a population of about 45 million, employed in 1942 a paid staff which fluctuated seasonally between 39,000 and 46,000. Of these, about 7000 worked in the national headquarters (located in Wales, 250 miles from London), 4000 on the staffs of eighteen field divisions and 30,000 in about 1400 local food offices.⁶⁹

Wide ranging policies were carried out to achieve price control. These included: (1) *profit control*: profits were restricted to a “reasonable level” above a price set by the Ministries of Supply, Food, Shipping, and Transport; however, few criminal charges were brought against profiteers, and there was persistent complaint of under-enforcement of the law; (2) *control over supply*: the Ministries of Food and Supply purchased large supplies of various commodities needed for the war economy; by becoming, in effect, the sole procurer for most of the essential foods and raw materials for industry, the ministries were able to control British price structure; (3) *control over distribution*: this included control of commodities in various stages of distribution, licensing of dealers and specific transactions, and the supervision of distribution by means of priority and rationing; (4) *price control through priority, allocation and rationing*: use of the demand-controlling measures, in addition to conserving scarce goods and services for the war efforts, has helped the British authorities to stabilize the price structures. The Ministry of Food “has possessed unlimited power to use . . . consumer rationing in its control of food prices. It has exercised this power through the rationing of ‘essential’ foods (meats, butter, margarine, other fats, sugar, tea, milk, eggs, cheese, and marmalades).”⁷⁰

⁶⁷ *Id.* See also *Minister of Food*, WIKIPEDIA, http://en.wikipedia.org/wiki/Minister_of_Food.

⁶⁸ The Rationing Order, 1939, Stat. R. & O. No. 1856, para. 2. Things would only get worse. See INA ZWEINIGER-BARGIELOWSKA, *AUSTERITY IN BRITAIN: RATIONING, CONTROLS, AND CONSUMPTION, 1939–1955* (Oxford Univ. Press 2000).

⁶⁹ Keezer, *supra* note 62, at 265 (comparing the British and U.S. experiences with price control and food rationing). In the present Article, I do not address the American regime. It was said, at the time, that “[n]o federal agency, is it safe to say, has ever faced a task of greater magnitude than that now being undertaken by the Office of Price Administration. Just in number of people whom it affects it goes beyond anything any other federal administrative body has done. . . . [T]he OPA is ubiquitous.” John W. Willis, *The Literature of OPA: Administrative Techniques in Wartime*, 42 MICH. L. REV. 235, 235 (1943). See also Earley & Lacey, *supra* note 63, at 163–65. (the administrative structure of the ministry).

⁷⁰ Earley & Lacey, *supra* note 63, at 171. For a more complex and detailed explanation, see *id.* at 166–72, concluding that “British experience indicates unmistakably that the control of raw materials and food prices alone is insufficient for effective stabilization of the price structure.” *Id.* at 172.

Scientific wartime food management was aimed at stabilizing the nation's diet at "the lowest safe point. It must be just adequate for all classes of consumers, depending upon the importance and intensity of their war activities, and that is all."⁷¹ Or so the theory went. Yet, in this war too, stories of profiteering, the black market for food, and the failure of criminal control over the food market all recur.⁷²

Finally, it is noteworthy that the end of World War II in 1945 did not bring an immediate end to the rationing regime—not in Britain, not in its colonies, and certainly not in the extensive former enemy lands now under Allied control, be it Germany, Japan or Greece.⁷³ It is worth bearing in mind that across Europe, food shortages persisted for several years after the war and that rationing had to be retained in several countries as late as 1952, seven years after the war.⁷⁴ While the United States benefited from wartime agricultural efforts, emerging from the war with a large agricultural surplus available for export, Europe, in contrast, failed to reach prewar output levels until 1951.⁷⁵

The Israeli austerity regime of the early 1950s then was not alone. As they say, misery loves company. But first, let me elaborate a little on the Second World War experience of other nations before returning to Britain and her colonies, including the Mandate over Palestine.

C. 'THE REST OF THE WORLD'—AN OVERVIEW

As World War II progressed, food shortages and the correlating emergency legal measures began to appear on all warring sides and in territories self-governing or occupied. Here are some examples.⁷⁶

Even neutral Sweden suffered during World War II: from an essentially self-supporting nation in terms of food production, it turned deficient "in feed concentrates for dairy cattle, fats and oils for margarine manufacture,

⁷¹ T. Swann Harding, *The Science of Food Management in War and Peace*, 21 SOC. FORCES 413, 413 (1943) [hereinafter Harding, *Science of Food Management*].

⁷² ROBERT MACKAY, *HALF THE BATTLE: CIVILIAN MORALE IN BRITAIN DURING THE SECOND WORLD WAR* (Manchester University Press 2002).

⁷³ See W. F. Crick, *Britain's Post-War Economic Policy, 1945–50*, 17 CAN. J. ECON. & POL. SCI. 39, 41 (1951) (observing that five years after the end of the war, a very large volume of trading in foodstuffs and raw materials is still conducted by government ministries, especially the Ministry of Food—meaning that "the operations of the ministries can no longer be regarded as 'emergency arrangements,' designed to maintain essential supplies in a time of shortage and to ensure, through rationing and subsidies with price control, 'fair shares' in distribution"). See also ATHANASIOS LYKOGIANNIS, *BRITAIN AND THE GREEK ECONOMIC CRISIS, 1944–1947: FROM LIBERATION TO THE TRUMAN DOCTRINE* 92 (Univ. of Mo. Press 2002). On the military regime in occupied Germany, see Robert W. Carden, *Before Bizonia: Britain's Economic Dilemma in Germany, 1945–46*, 14 J. CONTEMP. HIST. 535 (1979). On the preparations for food distribution in the Post-War world, see J.M. Clark, *General Aspects of Price Control and Rationing in the Transition Period*, 35 AM. ECON. REV. 152, 160–62 (1945).

⁷⁴ P. LAMARTINE YATES, *FOOD, LAND AND MANPOWER IN WESTERN EUROPE* 57 (Macmillan & Co., Ltd. 1960).

⁷⁵ John Komlos, Book Review, 47 J. ECON. HIST. 998, 998 (1987) (reviewing *AGRICULTURE AND FOOD SUPPLY IN THE SECOND WORLD WAR* (Bernd Martin & Alan S. Milward eds., Scripta Mercaturae Verlag 1985)).

⁷⁶ Food rationing in the U.S.S.R. is of particular interest but would require a very extensive discussion. This is mostly because food rationing existed not only during world wars, but also in the interim periods. See E. M. Chossudovsky, *Rationing in the U.S.S.R.*, 8 REV. ECON. STUD. 143, 143–165 (1941). See also Peter Gatrell & Mark Harrison, *The Russian and Soviet Economies in the Two World Wars: A Comparative View*, 46 ECON. HIST. REV. 425, 438–49 (1993).

commercial fertilizer, coffee, cacao, tobacco, tropical fruits and fibers.”⁷⁷ More severe shortages were avoided since the government “foresightedly undertook adjustment to wartime conditions before the war arrived.”⁷⁸ Since 1938, stocks of vital materials such as bread grains, oil cake, fertilizer, fuel, and oil were increased, and a “scientific rationing system was introduced not only to reduce the consumption of certain products, but also to prevent hoarding and to ensure an equitable distribution of available supplies.”⁷⁹ Measures included limitations on the use of grain for brewing and an order for the addition of barely to wheat and rye in flour. The results were a twenty percent decline between 1939 and 1941 in dairy and cattle production and an increase of over thirty percent in food costs.⁸⁰

In occupied France, food rationing started on October 1, 1940, five months after the German occupation, and it involved a card system and rations depending on age, trade, and state of health. Most foods were restricted, and the remainder simply became scarce. In the big cities there existed a black market, and people living in the country were able to supplement rations with their own farm work. Estimate of average daily calorie consumption of Paris adults, taking into account all available food sources, is estimated to have been less than 1800 calories.⁸¹

In Japan, rationing of nearly every commodity took place between 1937, the start of the Sino Japanese War, and 1941. Shortly after war began, strict controls were introduced over the distribution of rice because of rice shortages.⁸² However, the first introduction of a rationing system for commodities in general daily life came much later when the rationing of sugar and matches was introduced in late 1939 and enforced in 1940. While individual consumers had met few direct restrictions up to that time on retail purchases of food, clothing and other articles, wholesale distribution of the most important commodities had already been placed under control and several of the large cities had adopted local rationing of certain commodities. In addition to the direct regulation of production and consumption, taxes were introduced to curb consumption. The sugar excise tax was increased by up to fifty percent in 1939 and by a further twenty percent in 1940, yet it failed to curb Japanese demand. Stronger measures

⁷⁷ Harding, *Food, Agriculture, and the War*, *supra* note 52, at 95.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 96. For a comparison with another neutral state, Switzerland, see Jakob Tanner, *The Rationing System, Food Policy, and Nutritional Science During the Second World War: A Comparative View of Switzerland*, in *CHANGING FOOD HABITS: CASE STUDIES FROM AFRICA, SOUTH AMERICA AND EUROPE* 211, 211–42 (Carola Lentz ed., Harwood Academic Publishers 1999).

⁸¹ Ramon F. Minoli, *Food Rationing and Mortality in Paris, 1940–1941*, 20 *MILBANK MEM’L FUND Q.* 213, 213–220 (1942). See also *German Occupation of France During World War II*, WIKIPEDIA, http://en.wikipedia.org/wiki/German_occupation_of_France_during_World_War_II.

⁸² Erich Pauer, *A New Order for Japanese Society: Planned Economy, Neighbourhood Associations and Food Distribution in Japanese Cities in the Second World War*, in *JAPAN’S WAR ECONOMY* 85, 89–90 (Erich Pauer ed., Routledge 1999). But this fact was not obvious to all. One observer remarked in 1942 that “[w]ith the conquest of Burma, Thailand and French Indo-China completed, Japan now controls 95% of the world’s rice supply which normally enters international trade. . . . [Japan] has a surplus of 9 billion pounds of rice on her hands to dispose of annually. What will she do with it?” Fred J. Rossiter, *Japan’s New Rice Problem*, 11 *FAR E. SURV.* 141, 141 (1942). See also Harding, *Food, Agriculture, and the War*, *supra* note 52, at 94.

were required. The sugar allowance was set at about 0.36 kg per person per month, about a third of the ration in England and Germany.⁸³

As the government took firmer control over the distribution and rationing of goods, a huge bureaucratic machine was established to manage the distribution system. “The distribution system . . . was supervised by the Ministries of Commerce and Industry and of Agriculture, together with the equivalent departments in the prefectural and city governments, and the control associations.”⁸⁴ However, planning and economic controls were not always successful; “[t]he wartime economy faced a rampant black market, confusion resulting from rationing and a shortage of daily necessities . . . [which] became increasingly severe as the war intensified.”⁸⁵ Even after the war, a continued, significant food deficit raised concerns over the nation’s ability to feed its population.⁸⁶

D. AMERICA’S WORLD WAR II EXPERIENCE

In May of 1943, six months after the United States entered the War, some commentators were sounding off the alarm. “It is now time for Americans to learn a great deal more about the rationale of rationing. For a period of tightness is at hand. Even food, of which we have always had such abundance, will grow relatively scarce.”⁸⁷ However, T. Swann Harding’s concern of potential food shortages happily proved somewhat exaggerated, as was his concern over America’s preparedness for such an eventuality.⁸⁸

One facet of this preparation concerns the pre-war years. As a society, a polity, the United States has had to deal with issues of deep poverty, hunger, unemployment and the role of government in preventing malnourishment in the tough depression years following the 1929 crash of the capital market.⁸⁹ The federal government created programs to donate food surpluses to those in need.⁹⁰

⁸³ Elizabeth Jorgensen, *Sugar Rationing Made Nationwide in Japan*, 9 FAR E. SURV. 289, 289 (1940). That said, Japanese sugar consumption was well below Western standards even before the War. In 1935 the annual U.S. per capita consumption was 104 lbs., and the Japanese consumption was under 32 lbs. *Id.* See also Miriam S. Farley, *Japan Experiments with Rationing*, 9 FAR E. SURV. 203, 203–04 (1940).

⁸⁴ Pauer, *supra* note 82, at 89.

⁸⁵ Nakamura Takafusa, *The Japanese War Economy as a ‘Planned Economy,’ in JAPAN’S WAR ECONOMY*, *supra* note 82, at 9, 20. Cf. Pauer, *supra* note 82, at 94 (“The food situation rapidly worsened during the Pacific War. The lack of labour in agriculture, import difficulties, the rationing system and its bloated bureaucracy, price controls and price fixing were all important reasons for the lack of staple commodities on the official market.”).

⁸⁶ See C. A. F., 120 THE GEOGRAPHICAL J. 504, 504–05 (1954) (reviewing EDWARD A. AKERMAN, *JAPAN’S NATURAL RESOURCES* (Univ. of Chi. Press 1953)). Similarly, “the lack of industrial raw materials still remains acute.” *Id.* at 505.

⁸⁷ Harding, *Science of Food Management*, *supra* note 71, at 413 (as a result of the demands of the armed forces, the needs of America’s allies and occupied civilians). See also C. Arnold Anderson, *Food Rationing and Morale*, 8 AM. SOC. REV. 23, 23–33 (1943).

⁸⁸ Cf. Henry Parkman, Jr., *The Local Rationing Board in Massachusetts*, 2 PUB. ADMIN. REV. 195, 195 (1942) (“The local rationing board (now the war price and rationing board) is a phenomenon new to American life and yet has its roots deep in American tradition.”). See generally Tanner, *supra* note 57.

⁸⁹ See Emanuel B. Halper, *Supermarket Use and Exclusive Clauses*, 30 HOFSTRA L. REV. 297, 315 (2001) (“American consumers were having a hard time in 1930. Consumer income plummeted. Most consumers had very little disposable income, and too many consumers had no income at all. In February, 2000 people were queuing up on bread lines in New York City, and the city of Milwaukee established a soup kitchen. . . . Malnutrition and mental illness were on the rise. Although food prices declined by 17% that year, many people were hungry when they went to bed at night. Hunger marches

Coming to power in 1933, President Franklin D. Roosevelt was fully aware of the crushing economic condition which had rendered “one third of a nation ill-housed, ill-clad, [and] ill-nourished,”⁹¹ and the need for government to step in and change the bleak condition—hence his activist policies which contrasted with his predecessor Hoover’s ‘do nothing’ attitude.⁹²

A second facet concerns the mechanisms for the rationing of consumer goods that were established as “[a]n integral part of the Federal Government’s regulation of the American economy during the . . . [Second World] war”⁹³ even before the United States became a direct party of the war. “Already in 1940, the National Research Council established a Food and Nutrition Board and a Committee on Food Habits.”⁹⁴ In functional terms, the task of rationing was “delegated through the War Production Board (WPB) chiefly to the Office of Price Administration (OPA).”⁹⁵ The chief rationing technique devised appears familiar enough, although it was adapted more closely to American form:⁹⁶ “The simplest form of compulsory rationing is the card system, which was used by OPA in the temporary gasoline program. Upon a transfer the consumer must present his card which is stamped by the dealer[.]”⁹⁷ But the regulations set up seem less harsh and draconian than those devised in Europe, as befits the less severe conditions in America.

Finally, infinitely more limited and milder than in Europe, some regulation of food took place in the United States, after it joined the War. First on the list of food products to be rationed was sugar: on May 5, 1942, OPA issued a ration coupon book to each civilian consumer, and OPA

massed in Washington to petition President Hoover for guaranteed employment at a minimum wage. The trend was downhill. Economic conditions were deteriorating. The average U.S. weekly wage fell to seventeen dollars between 1929 and 1932—a decrease of more than one-third. By 1932, 28% of American households . . . had no employed family member.”) Cf. US Census Bureau, Poverty: 2006 Highlights, <http://www.census.gov/hhes/www/poverty/poverty06/pov06hi.html> (last visited Aug. 31, 2008) (note that the official poverty rate in 2006 was 12.3 percent, placing 36.5 million people in poverty).

⁹⁰ See Jessica A. Cohen, *Ten Years of Leftovers with Many Hungry Still Left Over: A Decade of Donations Under the Bill Emerson Good Samaritan Food Donation Act*, 5 SEATTLE J. SOC. JUST. 455, 469 (2006) (“For example, President Herbert Hoover created the Federal Farm Board, whose duties included distributing wheat surpluses to the unemployed through the Red Cross, while an outcome of President Franklin D. Roosevelt’s New Deal was federal surplus commodity distribution.”).

⁹¹ Franklin D. Roosevelt, Second Inaugural Address (Jan. 20, 1937), available at http://avalon.law.yale.edu/20th_century/froos2.asp.

⁹² See Emanuel B. Halper, *Supermarket Use and Exclusive Clauses, Part Five—The Supermarket Business Model is Completed as the Supers Adapt to World War II Conditions*, 42 REAL PROP. PROB. & TR. J. 113, 116 (2007) (“Somebody had to do something creative, and President Herbert Hoover was not about to be that somebody”). See Tanner, *supra* note 57.

⁹³ John P. Apicella, Note, *Rationing of Consumer Goods*, 42 COLUM. L. REV. 1170, 1170 (1942).

⁹⁴ Tanner, *supra* note 57 (manuscript at 14). The task of the former was to advise the administration on nutrition problems in relation to national defense, while the latter tried to apply anthropological methods to problems of food distribution and preparations.

⁹⁵ Apicella, *supra* note 93, at 1170. See generally Willis, *supra* note 69, at 235 (“No federal agency, it is safe to say, has ever faced a task of greater magnitude than now being undertaken by the Office of Price Administration. Just in the number of people whom it affects it goes beyond anything any other federal administrative body has done. . . . [t]he OPA is ubiquitous. . . . The OPA is probably the most prolific agency in Washington.”).

⁹⁶ See Anderson, *supra* note 87, at 23 (“A rationing system manifests the typical characteristics of a social invention. . . . In the United States we are now putting together a rationing system out of elements indigenous to our own culture and on the basis of European models.”).

⁹⁷ Apicella, *supra* note 93, at 1171.

ration boards were established in every county of the United States. “Thirty thousand volunteers were entrusted with the extensive record-keeping chores with which the ration boards were charged.”⁹⁸ Sugar supplies were meager until early 1945 and Americans adapted to the shortage in various ways. “Consumers shifted to sugar substitutes[.] . . . They baked less, they canned fewer preserves, and they bought more baked goods.”⁹⁹

Coffee rationing started on November 29, 1942, setting a quota of one pound of coffee per person over sixteen for each ration period.¹⁰⁰ Then, in December 1942, after the mid-term elections, the federal government announced the institution of a new rationing system for meat, fish, cheese and other processed food. Under the new system—which became effective March 1, 1943—new rations books were issued.¹⁰¹ The novelty was that while the old coupons entitled the consumer the right to buy a certain amount of a rationed product, the new coupons were more like a currency, as they were allocated different values, and consumers needed to hand in a specific number of ration points to purchase rationed goods. OPA regulated the supplies of rationed products by varying the number of points needed to buy it.¹⁰² There were also limitations on merchants and vendors. For example, there were limits on the inventory of rationing products, and merchants were required to open special ration coupon bank accounts and provide ration point information to consumers.¹⁰³ A shortage of canned food began shortly after Pearl Harbor was attacked; however, this was not the result of a food shortage, but “a lack of raw materials for the cans, of which tin and steel were the most significant.”¹⁰⁴ Rationing and shortages were relatively well received:

Most consumers endured wartime hardships honestly and cheerfully despite the . . . need to cope with long lines at retail establishments. . . . A noticeable minority of consumers were neither patient nor cooperative, and a big batch of them were downright antisocial. Some consumers hoarded food, and some stole food. Other consumers whose appetites exceeded their patriotism bought whatever they wanted to eat on the black

⁹⁸ Halper, *supra*, note 92, at 123 (“To qualify for a ration coupon book, a consumer had to register with a ration board[.] . . . In addition to the consumer registrants, 500,000 retailers, all industrial and institutional sugar users, and all sugar wholesalers and refiners were required to register also.”). See also Reuben Oppenheimer, *The War Price and Rationing Boards: An Experiment in Decentralization*, 43 COLUM. L. REV. 147 (1943).

⁹⁹ See Halper, *supra* note 92, at 124.

¹⁰⁰ The length of this period varied in accordance with the nation’s coffee inventory, import volume, and seasonal demand, lasting on average over a month. This ratio was better than the feared quote of one cup per person per day, but the public detested coffee rationing and possibly expressed its view in the ballot box in the 1942 elections, cutting back on the Democratic majorities in both houses. OPA administrator Leon Henderson paid the price and was replaced. See *id.* at 126–28.

¹⁰¹ See Samuel Herman, *The Food Stamp Plan: Termination*, 16 J. BUS. U. OF CHI. 173, 173 (1943) (“The Food Stamp Plan, perhaps the most characteristic and clearly one of the most important New Deal programs, ended March 1, 1943. It passed from the scene as food shortage, food rationing, and black markets appeared.”).

¹⁰² However, coupons were not fully the equivalent of cash money for various reasons—including the fact that they were only valid for a limited prescribed period of time. Halper, *supra*, note 92, at 134–35.

¹⁰³ See *id.* at 135–37. “Supermarkets . . . taught their customers how to cope with rationing’s complex rules and what food products weren’t subject to rationing at all. Customers were urged to plan meals around pasta, beans, and cereal—good food that wasn’t subject to rationings.” *Id.* at 137.

¹⁰⁴ *Id.* at 138.

market. Shoplifting increased. Merchants grumbled about the shoplifters' audacity.¹⁰⁵

The key achievements of the American war experience lie in the administrative achievement, less in the depth of the hardship it imposed. Despite the efforts of OPA, "Pearl Harbor found the United States with no rationing plans, no rationing organization, and no real appreciation of the indispensability of rationing in a genuine all-out war effort."¹⁰⁶ Sixteen months later, America had thirteen major rationing programs, operating through 5,600 rationing boards. "A nation-wide system of ration banking was working well."¹⁰⁷

V. THE BRITISH EMPIRE: PALESTINE AND BEYOND

A. WORLD WAR II AND THE BRITISH COLONIES

In 1939, the 45 million residents of Britain were but the tiny core of a vast empire of colonies, dominions and protectorates. The Second World War represents the final days of imperial glory for Britain, which would come to lose many of its holdings in the years following the war.¹⁰⁸ For the time being though, on entering the World War, having the empire was a blessing, for the most part.

For on the one hand, Britain could avail itself, in true colonial fashion, of the enormous natural and human resources of its empire. As it turns out, "[d]uring the war, the British empire was mobilized on an unprecedented scale."¹⁰⁹ British Allied forces included large imperial contingencies. Indeed, and of particular interest to the residents of Palestine, "[p]erhaps the most valuable military contribution of the colonial empire to the war effort was its provision of the military labour force upon which imperial troops fighting in the Middle East and southern Europe depended."¹¹⁰ Britain similarly made use of the natural resources—crops, minerals, etc.—and the production capacities of the colonies, to the best interest of Britain and the Empire.¹¹¹

¹⁰⁵ *Id.* at 165.

¹⁰⁶ Paul M. O'Leary, *Wartime Rationing and Governmental Organization*, 39 AM. POL. SCI. REV. 1089, 1089 (1945).

¹⁰⁷ This being "an amazing achievement in a country so little prepared for anything as radically new and different as rationing has been to the American people. Much of the credit must go to the people themselves . . ." *Id.* at 1090.

¹⁰⁸ See ANTHONY CLAYTON, *THE BRITISH EMPIRE AS SUPERPOWER, 1919–39* (The Univ. of Ga. Press 1986) (discussing the costs and benefits for Britain of maintaining military rule on a global scale in the interwar years. Maintaining the Empire was a diplomatic and strategic advantage to Britain when it went to war in 1939); WENDY WEBSTER, *ENGLISHNESS AND EMPIRE 1939–1965* (Oxford Univ. Press 2005) (discussing England's postwar transition from imperial to post-imperial nation). See also Fleet Air Arm Archive, *British Empire, Dominion, Commonwealth Countries and the FAA 1939–1945*, <http://www.fleetairarmarchive.net/CommonwealthCountries/Index.htm> (last visited Sept. 5, 2008).

¹⁰⁹ Ashley Jackson, *Supplying War: The High Commission Territories' Military-Logistical Contribution in the Second World War*, 66 J. MIL. HIST. 719, 719 (2002) (examining the role of African territories in providing military labor for the British Army during the Second World War).

¹¹⁰ *Id.* at 722. "The British army that fought these battles was a truly imperial army, comprising Indian, New Zealand, Australian, British, and South African infantry and armoured divisions (as well as Poles, Greeks, and Free French)." *Id.* at 723. See Ronald W. Davis, *Jewish Military Recruitment in Palestine, 1940–1943*, 8 J. PALESTINE STUD. 55 (1979) (military contribution of Jews from Palestine).

¹¹¹ See Allister Hinds, *Colonial Policy and Nigerian Cotton Exports, 1939–1951*, 29 INT'L J. AFR. HIST. STUD. 25, 25–46 (1996); Ayodeji Olukoj, "Buy British, Sell Foreign": *External Trade Control*

On the other hand, Britain had to defend impossibly long lines of supply, and was under a feudal/imperial commitment to both physically defend its territories and supply its populous during the trying times of the World War. Thus, while the colonies had known British food regulation well before the War,¹¹² they also enjoyed, in theory at least, colonial support during famine and other disasters. Research suggests that the British colonial record is mixed, as the “colonial economy was . . . axiomatically biased towards extraction.”¹¹³

The difficulty of managing the war economies of the colonies and territories, especially during World War II, was enormous, and often had familiar and unhappy results. For example, the British had to deal with social upheavals in Nigeria as a result of salt scarcity, salt being a necessary item for every person’s diet.¹¹⁴ The British government resorted to rationing, to make sure that all regions had at least some quantity of salt. Toyin Falola observed, “Rationing became the most desperate solution to distribute virtually all scarce items, from matches to cement.”¹¹⁵ It was also complicated to carry out; it was difficult to ensure fairness of distribution, and there were times when the salt supply was reduced to naught. Extreme measures included the prohibition of the movement of more than two pounds of salt between two towns without government permit, and the authorization of police to check luggage and ask for permits to carry or trade in salt.¹¹⁶ Moreover, “[r]ationing revealed the difficulties of state intervention. After distributing salt to approved agents, it was hard for government to control the sale to the general public. Profiteering and hoarding were rampant. . . . [R]ationing did not work well in practice.”¹¹⁷ The Nigerian experience, though extreme, represents in many ways the war experience of other British colonies, including Mandatory Palestine.

B. EMERGENCY MEASURES IN COLONIES AND TERRITORIES

As war drew nearer it became clear that legal infrastructure would need to be put in place for wartime emergency regulation in all territories under British rule, including Palestine. Bear in mind that many of the British possessions—including Palestine—were not directly involved in warfare with Germany, Japan and their allies, and became part of the anti-Nazi alliance only through their colonial association.¹¹⁸

Policies in Nigeria During World War II and Its Aftermath, 1939–1950, 35 INT’L J. AFR. HIST. STUD. 363, 383 (2002) (concluding that while British “control schemes did serve the interests of the government, they imposed a heavy burden on most colonial subjects”).

¹¹² See Guyer, *supra* note 18, at 805 (the Nigerian colonial experience).

¹¹³ Gregory H. Maddox, *Njaa: Food Shortages and Famines in Tanzania Between the Wars*, 19 INT’L J. AFR. HIST. STUD. 17, 33 (1986). See Marilyn Little, *Colonial Policy and Subsistence in Tanganyika 1925–1945*, 81 GEOGRAPHICAL REV. 375, 375–88 (1991) (concluding that colonial efforts to shift local agriculture from subsistence to export resulted in food shortages and chronic malnutrition). See also P. Ady, *Colonial Industrialisation and British Employment*, 11 REV. ECON. STUD. 42, 42–51 (1943).

¹¹⁴ See Toyin Falola, “Salt is Gold”: *The Management of Salt Scarcity in Nigeria During World War II*, 26 CAN. J. AFR. STUD. 412, 412–36 (1992).

¹¹⁵ *Id.* at 422.

¹¹⁶ *Id.* at 424.

¹¹⁷ *Id.* at 431.

¹¹⁸ In pure theory, British colonies could have chosen to remain neutral, as Andorra, Egypt and many other nations did. See *Participants in World War II*, WIKIPEDIA, http://en.wikipedia.org/wiki/Participants_in_World_War_II.

In 1939, as Britain braced itself for war, the legal framework of emergency powers that would be needed throughout the empire during the trying times ahead was being prepared. Domestic legislation was drawn for Britain and war legislation was prepared for the entire empire. It was deemed “essential that legislation which is intended to confer extraordinary powers on the Executive to deal with an emergency should both be legally effective and be capable of prompt application.”¹¹⁹

The first step in colonial preparation was an Order made by His Majesty King George VI in Council on March 9, 1939, called the Emergency Powers Order in Council, 1939. This Order would go into force once a British governor of any British colony, protectorate, or mandated territory decided there was a period of emergency. Once operative, this Order superseded all the existing Orders in Council on the subject,¹²⁰ providing the governor with extensive powers.

Yet British authorities realized that they should provide even more extensive legal coverage in Britain and in the colonies. They did so in the Emergency Powers (Defence) Act, 1939. “The Act received the Royal Assent on August 24, and the following day the Emergency Powers (Colonial Defence) Order in Council, 1939 was made, extending the Act to the colonial dependencies.”¹²¹ This Order empowered the governor of any territory in the colonial empire to make “Defence Regulations” for the territory, equivalent to that passed by His Majesty in Council in Britain.

These were massive powers, permitting a Governor to “make such regulations as appear to him to be necessary or expedient for securing the public safety, the defence of the territory, the maintenance of public order and the efficient prosecution of any war in which His Majesty may be engaged, and for maintaining supplies and services essential to the life of the community.”¹²² The Order in Council applying the Act was telegraphed immediately to all the colonies, so that their governors could make regulations some days before the war broke out.¹²³ And the governors rose to the challenge across the Empire¹²⁴ and, of course, in Palestine.¹²⁵

C. WORLD WAR II IN PALESTINE

It seems fair to state that in terms of both physical protection and provisions, Palestine fared relatively well during World War II. The large

¹¹⁹ W. L. Dale, *War Legislation in the Colonial Empire*, 22 J. COMP. LEGIS. & INT’L L. 1, 1 (1940).

¹²⁰ Except the orders in force in Palestine. *Id.* at 1–2.

¹²¹ *Id.* at 2.

¹²² *Id.* at 3.

¹²³ *Id.* at 3–4.

¹²⁴ See F. M. Goadby, *Review of Legislation, West Indies*, 23 J. COMP. LEGIS. & INT’L L. 158, 158–59 (1941) (emergency measures were passed in the British holdings in the West Indies: a defence force was established in the Bahamas; emergency powers were authorized for the supply and distribution of food, water, fuel, etc. in Barbados; and the government of Jamaica was given emergency powers to secure the public safety and defence of the Island).

¹²⁵ Other commonwealth nations followed suit. For example, shortly after the outbreak of the Second World War in September 1939, the Australian government instituted a Prices Commission. Under the National Security Act, 1939–40, the Commission was invested with extensive powers, and a nationwide organization of Deputy-Commissioners, Advisers, Investigation Officers and Inspectors was instituted. See E. Ronald Walker & R. J. Linford, *War-Time Price Control and Price Movements in an Open Economy: Australia 1914–20 and 1939–40*, 24 REV. ECON. & STAT. 75, 75 (1942).

Jewish community of the land saw, with grave concern, the Nazi drive into the Middle East from both sides of the Mediterranean—from Greece in the northeast, and from Libya in the southwest—and breathed a sigh of relief when the Allied forces repelled the German offensive on both fronts, saving Palestine Jews the misfortune of their six-million European brethren.¹²⁶ Similarly, while there were shortages in essential goods and provisions in Palestine, there was neither famine nor mass starvation.¹²⁷

As part of the imperial network of emergency legislation, special measures were passed in abundance in Palestine (as elsewhere) in preparation for the War. The Emergency Powers (Colonial Defence) Order in Council, 1939 was applied, in full, in Palestine, and published in the official Gazette as the law of the land.¹²⁸ The British High Commissioners of Palestine made extensive use of the emergency powers at their disposal regulating foods and much else.¹²⁹ The emergency legislation was closely modeled on the British legislation, and all necessary measures were taken to control the supply (import/export) of vital commodities, curb prices and control distribution, resorting to rationing if necessary.¹³⁰

The Food and Essential Commodities (Control) Ordinance, 1939 was widely used for the regulation of the price and consumption of foods. Section 4 of the Ordinance allowed the Controller of Supplies to regularly set out detailed orders prescribing maximum wholesale and retail prices, and have them published as law in the official Gazette. The Controller of Supplies, Colonel Heron, used the powers vested in him, inter alia, in the Food and Essential Commodities (Rationing) Rules, 1942 where he declared sugar, rice, wheat, flour and grains, and bread to each be

¹²⁶ Both Jewish and Arab communities of Palestine provided a large number of volunteers to the war effort. See Davis, *supra* note 110, at 55–76. Writing in 1948, Sir Alan Cunningham (1887–1983), High Commissioner of Palestine from 1945 to 1948, observed that “the Jews in Palestine have increased from 84,000 in 1922 to 640,000 in 1948. Furthermore, we must remind the Jews that every Jew brought to Palestine during the last twelve years, up to the termination of the Mandate, was brought in under the protection of British bayonets, and was protected against Hitler through the same agency. I wonder if many Jews in Palestine ask themselves what would have happened in that country had we not barred the way to Palestine in face of the German southward drive of 1941?” Sir Alan Cunningham, *Palestine—The Last Days of the Mandate*, 24 INT’L AFFAIRS 481, 482 (1948). Indeed, the tough question remains whether the Jewish community of Palestine made sufficient efforts to rescue Jews from occupied Europe. On this, see DINA PORAT, *THE BLUE AND YELLOW STARS OF DAVID: THE ZIONIST LEADERSHIP IN PALESTINE AND THE HOLOCAUST, 1939–1945* (Harvard Univ. Press 1990).

¹²⁷ E.g., HA’MASHKIF, Feb. 19, 1947 (noting that the provision of oils to Palestine was quite orderly during the war, because raw materials could be imported from relatively near sources: India provided peanuts, Africa provided copra, and Egypt and Sudan provided cotton seeds). The mandatory government, however, taxed its imports, raising prices by up to fifty percent. Oil consumption was set at twenty seven grams per diem, while the ration in England was forty four grams at the time.

¹²⁸ Emergency Powers (Colonial Defence) Order in Council, 1939, THE PALESTINE GAZETTE, No. 914, supp. 2, at 656 (Aug. 26, 1939). “The drafts, too, were published in the *Official Gazette* in the three official languages, English, Hebrew and Arabic.” Norman Bentwich, *The Legal System of Israel*, 13 INT’L & COMP. L.Q. 236, 239 (1963).

¹²⁹ The emergency legislation of 1939 was considerable. “On the eve of the war, a Banking Emergency Ordinance (No. 33), an Essential Commodities (Reserves) Ordinance (No. 35), and Food and Essential Commodities (Control) Ordinance (No. 34) were enacted. There followed, on September 5, a Trading with the Enemy Ordinance (No. 36) and others provoked by the war, such as the Import, Export and Customs (Defence) Ordinance (No. 51) and the Patent, Designs, Copyright and Trade Marks (Emergency) Ordinance (No. 56). Defence Regulation under the Emergency Powers (Colonial Defence) Order in Council, 1939, and Emergency Powers (Defence) Act, 1939, have been issued.” F. M. Goadby, *Review of Legislation, Palestine*, 23 J. COMP. LEG. & INT’L L. 165, 167 (1941).

¹³⁰ See Falola, *supra* note 114, at 414–15.

considered a “Rationed Commodity.”¹³¹ In March 1942, the ordinance was replaced by the Food Control Ordinance, No. 4 of 1942, regulating *any* article of foodstuff, at the discretion of the Food Controller appointed by the High Commissioner.¹³² Rules made by the Controller in April 1943 lasted until the “book of points coupons” and a rationing system was introduced.¹³³

D. AFTER THE WAR: BRITAIN AND HER PROTECTORATES

Victory Day in Europe came in the spring of 1945 and was greeted with enthusiasm and joy.¹³⁴ The war was over and normalcy would soon return. Such optimism was premature for residents of Britain and her empire.¹³⁵ Indeed, while the public was ready and eager to resume consumption, the rationing machine continued on, and even exacerbated. In February 1946, cuts were announced in the bacon, poultry and egg rations, fuelling what one historian described as a housewives’ revolt.¹³⁶ The worst, however, was yet to come. As Peter Hennessy observed:

An especially sharp blow to public morale came in the summer of 1946 when bread was rationed. It hadn’t happened in the war. It lasted two years and almost everybody, including the official historian of the Ministry of Food, now thinks it was unnecessary. . . . It was, however, introduced for remarkably altruistic reasons—to help alleviate famine in Asia and defeated Germany[.] . . . There was, however, a genuine feeding problem in the first two years after the war.¹³⁷

However, many English were not feeling charitable towards their continental brethren,¹³⁸ and the abrupt termination of the American Lend-Lease support scheme for Britain shortly after V-J day did not help matters either.¹³⁹ Only several years later, under the Labor government of the late

¹³¹ See Food and Essential Commodities (Control) Ordinance, 1939, THE PALESTINE GAZETTE, No. 1163, supp. 2, at 156 (Jan. 15, 1942).

¹³² The ordinance defines foodstuff as “every article or animal used for food and any article used for drink by man . . . but does not include water which has not been aerated.” Food Control Ordinance, No. 4 of 1942, THE PALESTINE GAZETTE, No. 1178, supp. 1, at 5–6 (Mar. 19, 1942).

¹³³ Food Control (Points Restriction) Rules, 1943, THE PALESTINE GAZETTE, No. 1263, supp. 2, at 399 (Apr. 29, 1943).

¹³⁴ Victory in Europe (VE) Day is celebrated on May 7th in Europe and May 8th in the Soviet Union. These are the dates when the Allied Forces accepted the unconditional surrender of the armed forces of Nazi Germany.

¹³⁵ “Over the next few months there began to grow a pervasive sense of disenchantment that the fruits of peace were proving so unboundful.” DAVID KYNASTON, *AUSTERITY BRITAIN: 1945–51* 104 (Bloomsbury Publ’g 2007).

¹³⁶ *Id.* at 106.

¹³⁷ Hennessy, *supra* note 61, at 276 (“Throughout 1946 the extraction rate of flour from the wheat increased until it reached 85 per cent, darkening an already grey loaf.”). The South African soccer team visiting England was popular as they “brought over a good deal of tinned food as a gesture of sympathy for the ration situation.” *Id.* at 308. See also KYNASTON, *supra* note 135, at 107 (discussing a British Medical Association report about the availability of food to families that suggested a significant deterioration).

¹³⁸ KYNASTON, *supra* note 135, at 106–8.

¹³⁹ In September 1944, Franklin D. Roosevelt promised Winston Churchill six billion dollars in lend-lease aid for the period following the defeat of Germany and Japan to assist in the reconstruction of the British economy. But on August 21, 1945, President Harry S. Truman suddenly ordered the immediate termination of the lend-lease scheme leaving Britain “with staggering debts, without means of external assistance.” George C. Herring, Jr., *The United States and British Bankruptcy, 1944–1945: Responsibilities Deferred*, 86 POL. SCI. Q. 260, 260 (1971). See also John H. Ferguson, *The Anglo-*

1940s, was food “de-rationed”: bread, potatoes and preserves in 1948, and milk and soap in 1950.¹⁴⁰ Reacting to balance of payments constraints, the Conservative government that took office in 1951 implemented a new wave of economic measures. These included cuts in imports of unrationed foods. The government, however, avoided outright rationing. From 1952–1954, all remaining rationing schemes were terminated, as were many controls of distribution, import and manufacture of food. Price controls were also reduced through the 1950s.¹⁴¹ Formal termination of food rationing occurred in the summer of 1954.¹⁴²

Late in the war, the international community—headed by the future winning World War Allies—already recognized the need for a concerted world-wide post-war reconstruction effort. In 1943 the foundations were laid for what would become the United Nations Relief and Rehabilitation Administration (“UNRRA”) and the United Nations Food and Agriculture Organization (“FAO”). The former was established to administer postwar relief; the latter was established with the objective of eliminating hunger and improving nutrition and standards of living by increasing agricultural productivity. The FAO was expected to provide education and technical assistance for agricultural development throughout the world. The driving force behind the FAO and its first Director General (1945–1948), Lord Boyd Orr, also established the International Emergency Food Council¹⁴³—which was later dissolved into the FAO¹⁴⁴—to alleviate post-war starvation. Boyd Orr received the 1949 Nobel Peace Prize for his work.¹⁴⁵ The Food Council was a major coordinating body, whose decisions influenced, inter alia, food provisions to mandatory Palestine. These agencies provided much needed food,¹⁴⁶ but food was short. A report stated that “while 38 million metric tons of bread grain imports would be needed by the deficit countries during 1948, only 29 million metric tons would be available for export from the surplus producing countries unless extraordinary new efforts were to be made.”¹⁴⁷

American Financial Agreement and Our Foreign Economic Policy, 55 YALE L.J. 1140 (1946). See also *Lend-Lease*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Lend-Lease>.

¹⁴⁰ Points rationing ended that same year. See ZWEINIGER-BARGIELOWSKA, *supra* note 68, at 26–28.

¹⁴¹ In 1954, only twenty percent of food expenditure was still price controlled; the number was under ten percent by 1958. *Id.* at 29. See also *id.* at 86–87.

¹⁴² *Id.* at 234.

¹⁴³ *Joint Statement with the Prime Ministers of Great Britain and Canada Announcing Creation of the International Emergency Food Council, June 29, 1946*, THE AMERICAN PRESIDENCY PROJECT, <http://www.presidency.ucsb.edu/ws/print.php?pid=12433>.

¹⁴⁴ Report of the First Session of Council of FAO, Nov. 4–11, 1947, *Merger of the International Emergency Food Council with FAO*, available at <http://www.fao.org/docrep/meeting/007/AC924E/AC924E05.htm>.

¹⁴⁵ Gunnar Jahn, Chairman of the Nobel Committee, Speech Presenting the 1949 Nobel Peace Prize Recipient Lord Boyd Orr (Dec. 10, 1949), available at http://nobelprize.org/nobel_prizes/peace/laureates/1949/press.html.

¹⁴⁶ UNRRA’s Director General, Major General Rooks, reported that by June 30, 1947, the agency had “‘held the line’ against starvation and economic chaos by the delivery of nearly three billion dollars of supplies, totaling 25 million long tons, to some 17 countries.” Summary of Activities, *United Nations Relief and Rehabilitation Administration*, 1 INT’L ORG. 555, 555 (1947).

¹⁴⁷ Summary of Activities, *Third Session of the FAO Conference*, 2 INT’L ORG. 119, 119 (1948). See also Francis A. Linville, *International Action with Respect to Materials Shortages*, 11 AM. J. ECON. & SOC. 315–26 (1952).

E. AFTER THE WAR: PALESTINE

As in Britain itself, food conditions for the residents of Palestine actually deteriorated after the war, compared to the time of the war itself, and as with Britain itself, there is plenty of documentary evidence reflecting civilian discomfort.

The objective difficulties of the period notwithstanding, the major Jewish newspapers of Israel were constantly complaining in the late 1940s of government inefficiency and indifference toward the local population and its needs. Yet their accounts make for a sobering read today. In October 1946 the optimistic news was that provisions of sugar, rice, Portuguese fish, Australian cheese and golden syrup were on their way and that the rice ration for both adults and children would be 400 grams.¹⁴⁸

Reports focused on inequities of food importation: the British authority imported non-kosher Australian cheese, which many Jews were unable to eat, but it also imported butter, which most Arabs did not wish as part of their diet. There were complaints that the British government gave Arab merchants monopoly over meat importation although ninety percent of demand came from the Jewish community. There were also complaints of the steadily deteriorating quality of bread, a result of deepening world grain shortage.¹⁴⁹

A major story that made news for weeks was that of a ship bearing 6000 tons of Philippine copra (i.e., dried coconut oil). Apparently, supplies of edible oils and soaps—in the land of olive oil, milk, and honey—had dwindled so badly that the authorities had to convince London to divert a ship to the port of Haifa.¹⁵⁰ But in March 1947, diversion of a copra shipment from Palestine to England halted oil production in the country entirely. Margarine, it was announced, would be provided to hospitals and other social institutions alone. The British authorities were blamed since they retained the monopoly on importation of raw materials.¹⁵¹ This was merely one incident among many, but it reflects the limited success of the British authorities in winning food quotas for Palestine.¹⁵² The Biblical land of milk and honey¹⁵³ lay hungry, unable to support its meager population. Finally, profiteering in food products had resumed “and the black market blooms,” wrote one newspaper, “as in the good-old-days of the war.”¹⁵⁴

¹⁴⁸ *Food News*, THE PALESTINE POST, Oct. 1, 1946.

¹⁴⁹ *No Barley for the Bread: Effect of World Cereal Shortage*, THE PALESTINE POST, Nov. 14, 1946; *Beef Shortage Is Acute: Slaughter of Cattle Is Stopped*, THE PALESTINE POST, Aug. 15, 1947; *Beef Again—But Costs More: Adequate Supplies for Holidays*, THE PALESTINE POST, Aug. 28, 1947.

¹⁵⁰ The *Palestine Post* reported dramatically that this happened after strenuous efforts by the Palestine authorities and that, as a result, the cost-of-living index may be expected to drop. *Oil, Margarine, Soap Again*, THE PALESTINE POST, Oct. 3, 1946.

¹⁵¹ Although at this time—March 1947—the British government apparently agreed to allow some private importation of raw materials for the oil industry. See HA'BOCKER, Mar. 19, 1947.

¹⁵² *Haaretz* (Hebrew Daily Newspaper) reported in November 5, 1946 that the authorities were trying to set the following import quotas: ca. 1500 tons of Australian butter, ca. 800 tons of Kraft cheese, ca. 1000 tons of canned milk, and ca. 1500 tons of milk-powder.

¹⁵³ “But I have said unto you, Ye shall inherit their land, and I will give it unto you to possess it, a land that floweth with milk and honey; I am the LORD your God, which have separated you from other people.” *Leviticus* 20:24. See also *Exodus* 3:8, 17.

¹⁵⁴ *Profiteering in Foodstuffs Resumes*, DAVAR, Nov. 4, 1946.

One daily newspaper reported that the British government's Food Inspector stated that he had secured food supply in 1946 for 2,212,162 persons, while, according to the official statistics, the population of the land was only 1,887,214 at the end of 1945. This would represent a population growth of 15.5% in a single year, and the paper believed that it was merely a scam to create a black market. Moreover, food rationing on the basis of personal quotas applied to 900,000 persons (mostly Jews). The rest (about 1.3 million, mostly Arabs) received rations through their dignitaries, and the potential for black marketeering was ripe. Finally, the Food Inspector reported that he was unable to convince the International Emergency Food Council to increase the sugar supply level for Palestine above the 1943–1945 rations, despite the increased population of the land.¹⁵⁵

Needless to say the British Mandate authorities took serious legal measures against the flourishing black market for sugar, soap and oils, butter and flour. Police inspections and raids, searches and seizures of contraband merchandise, and even criminal trials all took place, but to no avail.

VI. THE ISRAELI EXPERIENCE

A. ON INDEPENDENCE EVE

In late 1917, British General Edmund Allenby and his troops conquered Palestine, ending four centuries of Ottoman-Turk rule.¹⁵⁶ Thus began thirty-one years of British rule over the territory, which were legitimated in 1922, when the Council of the League of Nations mandated Palestine to the British monarch.¹⁵⁷ The British brought with them law and order, colonial style, and left an indelible impression on Israeli legal history.¹⁵⁸ From a British perspective, its rule over Palestine was not a happy affair. Peter Hennessy describes Palestine as “one of the great poisoned chalices in world politics” which “brought nothing but grief to policy-makers in the Colonial and Foreign Offices as they tried to reconcile the irreconcilable—Jewish aspirations for a national home (heightened by Nazi persecution in Europe after 1933) and the resentment of Palestinian Arabs displaced by Jewish immigration.”¹⁵⁹ Nor was there much joy at the end of the affair. “Unlike most British colonies where the transfer of power to the sovereign governments of the new states of the Commonwealth proceeded in an orderly fashion, step by step, the administration of Palestine was instructed not to hand over any local executive organs to the

¹⁵⁵ *Food Supply for 2.2 Million Persons: The Food Inspector's Report Attests to Failures in the Supply of Primary Provisions and the Rise in the Cost of Living*, HA'BOCKER, Oct. 8, 1947.

¹⁵⁶ See Edmund Allenby, WIKIPEDIA,

http://en.wikipedia.org/wiki/Edmund_Allenby,_1st_Viscount_Allenby.

¹⁵⁷ Yoram Shachar, *The Dialectics of Zionism and Democracy in the Law of Mandatory Palestine*, in *THE HISTORY OF LAW IN A MULTI-CULTURAL SOCIETY: ISRAEL 1917–1967* 95, 95 (Ron Harris et al. eds., Ashgate 2002). See also *British Mandate of Palestine*, WIKIPEDIA,

http://en.wikipedia.org/wiki/British_Mandate_of_Palestine.

¹⁵⁸ See Assaf Likhovski, *In Our Image: Colonial Discourse and the Anglicization of the Law of Mandatory Palestine*, 29 *ISR. L. REV.* 291 (1995).

¹⁵⁹ Hennessy, *supra* note 61, at 238.

Provisional State Council[.]”¹⁶⁰ On November 29, 1947 the United Nation’s General Assembly adopted a resolution on the future government of Palestine, holding that “[t]he Mandate for Palestine shall terminate as soon as possible but in any case not later than 1 August 1948”¹⁶¹ and that two independent states—the one Arab, the other Jewish—“shall come into existence in Palestine two months after the evacuation of the armed forces of the mandatory Power has been completed but in any case not later than 1 October 1948.”¹⁶² The scheme was accepted by the Jewish side and rejected by the Arab side. A War of Independence would follow and it would reach full intensity once the British forces left Israel. The British authorities announced that they would leave May 15, 1948. On May 14, David Ben-Gurion proclaimed Israel an independent state. Yet the six month interim period was grueling. The British could have used this time to help in the delivery of the new states. Most accounts suggest that the British actually used the period to intentionally disrupt all working services before their departure, so as to leave chaos behind them. This would explain why weeks before the end of the Mandate, the Government refused to grant import licenses for many goods and made no provision for a continued supply of food from the Combined Food Board and the International Emergency Food Council. Moreover, postal communications were cut, and, as large American and British companies refused to maintain services to the Lydda international airport, air traffic was throttled.¹⁶³ Indeed, one month before Israel’s birth, a UN commission reported on these conditions to the Security Council, bringing to its attention that “a serious food shortage, with the threat of starvation, is imminent in Palestine.”¹⁶⁴

This was the sendoff from the power that obtained its mandate upon the promise to use its best endeavors to facilitate the achievement of a national home for the Jewish people in Palestine.¹⁶⁵ It was yet another debilitating

¹⁶⁰ RUBNER, *supra* note 8, at 18.

¹⁶¹ G.A. Res. 181 (II), at pt. I(A), ¶ 1, U.N. Doc. A/RES/181(II)(A+B) (Nov. 29, 1947).

¹⁶² *Id.* at pt. I(A), ¶ 3.

¹⁶³ There was other disruptive action: “[I]nternal travel and travel onward to the neighboring countries was discontinued by the British directors of the Palestine Railways, the administration of which was wound up. In March, all British shipping lines were ordered not to call at Haifa. The oil refinery in Haifa was closed down early in April and the flow along the pipeline from Kirkuk was diverted—thus cutting off Israel from its petrol supply until the sovereign Israeli Government issued a decree in June [1948] reopening the refinery without the consent of the British owners.” RUBNER, *supra* note 8, at 18.

¹⁶⁴ U.N. Palestine Comm’n, *Second Special Report to the Security Council: The Food Situation in Palestine*, ¶ 1, U.N. Doc. S/720 (Apr. 14, 1948). The commission concluded that “emergency shipments are necessary to prevent starvation in Palestine towards the end of May and will do nothing to relieve the serious shortages of other products including meat, oils and fats, sugar and rice. Steps are, therefore, also urgently necessary to secure supplies to Palestine of all these products during the next few months[.]” *Id.* ¶ 21.

¹⁶⁵ “His Majesty’s Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.” Letter from Arthur James Balfour to Lord Rothschild (the “Balfour Declaration”) (Nov. 2, 1917), available at http://avalon.law.yale.edu/20th_century/balfour.asp. This is further encased in the League of Nations’ mandate over Palestine. The Palestine Mandate, available at http://avalon.law.yale.edu/20th_century/palmanda.asp. See also Muhsin Yusuf, *The Partition of Palestine—An Arab Perspective*, 9 PALESTINE-ISRAEL J. 39 (2002) (arguing that the Jewish “conquering” of Palestine can be viewed in the Western tradition of the Crusades and imperialism); cf. the Indian-Pakistani independence experience.

factor for the seemingly impossible task of setting up a Jewish state, as prescribed by the United Nations resolution. How did Israel deal with these adversities? In the final section of this Article, we turn to the Israeli experience, detailing the factual and legal conditions that led to post-independence austerity measures.

B. POST INDEPENDENCE MEASURES: STABILIZATION THROUGH CONTINUITY

In November 1947, the United Nations voted in favor of the partition plan, terminating the British Mandate of Palestine and permitting the establishment of two independent nations—one Jewish, the other Arab.¹⁶⁶ The battle for independence began, and the odds for the Jewish side did not look very good.¹⁶⁷ As noted, food conditions in the waning days of the mandate were troubling and known to all. Like the UN commission, the Jewish press warned that the British government has significantly reduced the stocks of essential foodstuffs and raw materials in the country.¹⁶⁸ Hunger was the least of the Jews' troubles. Their Arab neighbors resisted, through arms and economic measures, the UN resolution.¹⁶⁹ The intermediary period passed. On the eve of the British evacuation of the land, Friday, May 14, 1948, David Ben-Gurion declared the State of Israel an independent state. The British Mandate came to its official end and the Israeli War for Independence to its official start.¹⁷⁰ The war itself was fought against overwhelming forces; yet, against the odds, the young state survived, barely, only to be inundated by an influx of refugees and immigrants.

What would be the legal ramifications of Israeli independence? Many suggestions were raised, calling for the creation of not only an independent, but a unique, *sui generis*, legal system. As one can intuit, the possibility of a historical return to Jewish law was raised but then, reality set in.¹⁷¹ Israel's Proclamation of Independence, May 14, 1948, called for the election of a Constituent Assembly to prepare a constitution for the State of Israel. General elections for the Assembly were held on January 25, 1949.

¹⁶⁶ *United Nations Participation Plan for Palestine*, WIKIPEDIA, http://en.wikipedia.org/wiki/1947_UN_Partition_Plan.

¹⁶⁷ On the eve of the UN vote, the CIA submitted an assessment—now declassified—to President Truman titled “The Consequences of the Partition of Palestine.” Thomas W. Lippman, *The View from 1947: The CIA and the Partition of Palestine*, 61 MIDDLE E. J. 17, 17–28 (2007).

¹⁶⁸ *Without Stocks of Food and Raw Materials: Since the ‘Military Conditions’ Period, the Government Has Trimmed the Stock of Essential Foodstuffs*, HA’BOCKER, Oct. 28, 1947.

¹⁶⁹ See *Fish, Flowers, Papers Arrive*, THE PALESTINE POST, Dec. 5, 1947 (“The food situation in Jerusalem deteriorated yesterday, the third and last day of the Arab strike.”). See also Gershon Meron, *Economic Repercussions of Arab Policy Toward Israel*, 27 J. EDUC. SOC. 353, 353–59 (1954) (demonstrating that the Arab economic boycott of Jews in Palestine, and later, the State of Israel, has a long pedigree).

¹⁷⁰ See Norman Bentwich, *Survey of Decisions, Israel*, 1 INT’L & COMP. L. Q. 275 (1952).

¹⁷¹ Norman Bentwich, *The Legal System of Israel*, 13 INT’L & COMP. L. Q. 236, 236 (1964) (“Many expected that the legal system of Palestine under the British mandate, and now of Israel, would be Mosaic, derived from the Bible Old Testament and the Talmud. In fact, it was not that, but rather a mosaic, a pattern made up of many legal pebbles: Ottoman, Moslem, French, Jewish and, above all, English. It is the English habit to leave as a permanent legacy of British rule her system of law.”). See also Y. Dror, *Book Review*, 69 HARV. L. REV. 981, 981–84 (1956) (reviewing EMANUEL RACKMAN, *ISRAEL’S EMERGING CONSTITUTION, 1948–1951* (Columbia Univ. Press 1955)); Assaf Likhovski, *The Invention of “Hebrew Law” in Mandatory Palestine*, 46 AM. J. COMP. L. 339, 339–73 (1998).

On February 16, 1949, after meeting only six times, the Assembly adopted the Transition Law, through which the Assembly renamed itself the "First Knesset." From May 14, 1948 to March 10, 1949, Israel was governed by the Provisional Council of Government; on the latter date, the Knesset approved the first regular government.¹⁷²

As first order of business, the Provisional Council of State enacted the Law and Administration Ordinance, no. 1 of 5708-1948.¹⁷³ It provided, in relevant parts, as follows:

Section 11.

The law which existed in Palestine on the 5th Iyar, 5708 (14th May, 1948) shall remain in force, insofar as there is nothing therein repugnant to this Ordinance or to the other laws which may be enacted by or on behalf of the Provisional Council of State, and subject to such modifications as may result from the establishment of the State and its authorities.

Section 12.

(a) Any privilege granted by law to the British Crown, British officials or British subjects, is hereby declared to be null and void.

(b) Any provision in the law whereunder approval or consent of any of the Secretaries of State of the King of England is required or which imposes a duty to do anything in pursuance of his directions, is hereby declared to be null and void.

(c) Any power assigned by the law to judges, officers or members of the Police Force by reason of their being British, shall henceforth vest in judges, officers or members of the Police Force who are holders of the same office or rank in the State of Israel.

[Section 13. Repealed *specific enactments* like the one limiting Jewish immigration]

Section 14.

(a) Any power vested under the law in the King of England or in any of his Secretaries of State, and any power vested under the law in the High Commissioner, the High Commissioner in Council, or the Government of Palestine, shall henceforth vest in the Provisional Government, unless such power has been vested in the Provisional Council of State by any of its Ordinances.

(b) Any power vested under the law in British consuls, British consular officers or British passport control officers, shall henceforth vest in consuls and officers to be appointed for that purpose by the Provisional Government.¹⁷⁴

The legal principle adopted was of a familiar trait of common law: stability and restraint. The new nation proclaimed sovereignty while

¹⁷² Oscar Kraines, *Israel: The Emergence of a Polity—Part I*, 6 W. POL. Q. 518, 524–26 (1953) (providing rich background information about the Israeli political system).

¹⁷³ Law & Administration Ordinance, 5708-1948, 1 LSI 7 (1948) (Isr.).

¹⁷⁴ *Id.*

maintaining continuity in law and government from the previous regime, to the extent possible.¹⁷⁵ Legal historians suggest that legal continuity was adopted perhaps because other alternatives—such as adopting Jewish or Continental law—were not viable, or because of the vested interest of the legal profession in the existing legal order.¹⁷⁶ War conditions, lack of preparation for legal change in the years preceding independence, and respect of common law traditions of continuity also played a role.

C. CAN THE MANDATORY EMERGENCY REGULATIONS STAND?

Shortly after Israeli independence, the question was raised: should the British emergency measures not expressly revoked by the Law and Administration Ordinance remain good law? More specifically, should the extensive emergency regulations, undemocratically legislated during wartime, remain in force, despite the suffering they had spelled on the Jewish residents of mandatory Palestine? Petitions were brought before the Israeli Supreme Court arguing that such measure be revoked under section 11 of the Law and Administration Ordinance as “repugnant to this Ordinance or to the other laws . . . and subject to such modifications as may result from the establishment of the State and its authorities.” The argument was that such draconian measures could not be sustained in the virtuous democracy that Israel aspired to become. The legal answer came in two iconic cases that came before the Israeli Supreme Court.

In one, a private individual challenged the decision of the Acting District Commissioner of Tel Aviv, as the competent authority under the Defence Regulations of 1939, made pursuant to the (English) Emergency Powers (Defence) Act, 1939, to requisition a flat in Tel Aviv for the benefit of the Attorney-General. Denying the petition, the Supreme Court held that the Defence Regulations of 1939 were valid in the time of the Mandate and were still in force in the State of Israel by virtue of section 11 of the Law and Administration Ordinance, 1948. The Court further held that the ‘modifications’ referred to in section 11 were confined to technical, not substantive modifications, and that the competent authority acted fairly and reasonably, given the circumstances.¹⁷⁷ A second case had a similar fact pattern and was similarly dismissed by the Supreme Court.¹⁷⁸

¹⁷⁵ This policy was shared by other colonies upon gaining independence, and was probably most prudent as “[t]he State of Israel . . . was born from chaos and confronted at once with war. . . . The chaos at the end of the mandate was unbelievable. Thirty years of patient constructive work under the mandate were destroyed. . . . Everything had to be improvised by amateurs in a hurry.” Edwin Samuel, *The Administrative Problems of a New State—Israel 1948–1951*, 11 PUB. ADMIN. REV. 229 (1951) (also speaking of the formation of the Israeli public administration and civil service).

¹⁷⁶ See Ron Harris et al., *Israeli Legal History: Past and Present*, in THE HISTORY OF LAW IN A MULTICULTURAL SOCIETY: ISRAEL 1917–1967, *supra* note 157, at 1, 14 (concluding that continuity meant “not only that Mandatory legislation and judge-made law remained in force, but also that a linkage was maintained between the local and the English system for the purpose of interpretation and filling gaps; and, more generally, that the basic features of the Israeli legal system retained their common-law characterizes” (emphasis added)). See also Assaf Likhovski, *Between “Mandate” and “State”: Re-Thinking the Periodization of Israeli Legal History*, 19 J. ISRAELI HIST. 39, 39–68 (1998).

¹⁷⁷ See HCJ 5/48 Leon v. Acting District Commissioner of Tel Aviv [1948] 1 P.D. 58, available at www.court.gov.il.

¹⁷⁸ See HCJ 10/48 Zeev v. Acting District Commissioner of Tel Aviv [1948] 1 P.D. 85, available at www.court.gov.il.

Thus, within a few months of independence, it became abundantly clear that as long as the economic and security emergency remained, the government of the young State of Israel could continue using the stern British emergency regulations; and so it did.¹⁷⁹

D. AUSTERITY MEASURES IN ISRAEL

The newly established State of Israel, in dire economic condition, was soon further burdened by a deluge of Jewish immigrants—mostly refugees—from all over the world. Wrecked after a tough War of Independence, the country suffered acute shortages of all essential goods and supplies, most notably food and housing. I find that in dealing with the crisis, the Israeli government chose to apply tested (if unpopular) British mandatory emergency legislation. In doing so, the Israeli government enforced much the same austerity regime established by the English in both the homeland and the colonies.¹⁸⁰ The results were much the same: an initial success in curbing price and demand during war-time, followed by gradual erosion in the policy's effectiveness and public compliance, futile criminal measures carried out by the police and the courts, and finally, the formal dissolution of the legal edifice of the austerity regime.¹⁸¹

It was already during the first days following independence that the Israeli provisional government appointed a Controller of Foods. Acting under the Mandatory Food Control Ordinance, No. 4 of 1942,¹⁸² the Israeli Controller published decrees limiting the sale of foods: one decree, of July 21, 1948, lists a great many foodstuffs as “controlled articles” under the ordinance,¹⁸³ while another, of July 30, 1948, severely limited the sale of eggs, fruits, vegetables and chicken.¹⁸⁴

As noted earlier, a mere month after the new Government was sworn in, on April 26, 1949, it sent Bernard (Dov) Joseph, Minister for Rationing and Provision, to the Knesset to present its austerity plan. The plan was aimed at securing the public a “rational and humble” food menu and supply of clothing, footwear, furniture, and household items, at fixed minimal prices. The plan, explained the Minister, called for the establishment of an austerity regime, a reduction in the cost of living and an effort to use local produce while saving foreign currency.¹⁸⁵ The government worked out with nutritional experts a balanced diet of 2700–2800 calories; these figures, the minister claimed, were almost as high as those set in 1944 England, and above the European average. The food would be fairly distributed to all the

¹⁷⁹ Some of the British mandatory emergency measures are still in effect in Israel and those territories which were part of the mandate. See Allison M. Fahrenkopf, *A Legal Analysis of Israel's Deportation of Palestinians from the Occupied Territories*, 8 B.U. INT'L L.J. 125, 141–43 (1990); Adam Mizock, *The Legality of the Fifty-Two Year State of Emergency in Israel*, 7 U.C. DAVIS J. INT'L L. & POL'Y 223 (2001); Claude Klein, *On the Three Floors of a Legislative Building: Israel's Legal Arsenal in Its Struggle Against Terrorism*, 27 CARDOZO L. REV. 2223 (2006).

¹⁸⁰ For a similar conclusion, see Orit Rozin, *The Austerity Policy and the Rule of Law: Relations Between Government and Public in Fledgling Israel*, 4 J. MOD. JEW. STUD. 273, 274 (2005).

¹⁸¹ See *id.*

¹⁸² Originally published in THE PALESTINE GAZETTE, No. 1178, supp. 1, at 5 (Mar. 19, 1942).

¹⁸³ The Decree was published in the OFFICIAL GAZETTE, No. 10, supp. 2, at 37. The list included a wide array of foods and animal feed.

¹⁸⁴ The Decree was published in the OFFICIAL GAZETTE, No. 13, supp. 2, at 46–47.

¹⁸⁵ Bernard (Dov) Joseph, Speech Before the Knesset, 1 DK 397, 401 (Apr. 26, 1948).

population, with particular care given to the special needs of children, the sick, pregnant women, and lactating mothers. The rationing was to be carried out as follows: consumers would be issued ration-books with coupons. The Ministry of Rationing and Provision would require licensing for importing and would also prescribe the entire sales-chain leading from the importer to the individual holding her coupon in hand.¹⁸⁶

The execution of the austerity plan relied on the British emergency legislation, especially the Emergency Powers (Defence) Act, 1939, and the Defence Regulation, 1939, promulgated under the Act. Initially, the rationing scheme was set only on foodstuffs, and it proved effective. Most Israelis enjoyed a 'food basket' handed out monthly through coupons: 4 kilos of potatoes; 50 grams of beetroot; 5 eggs per child and 2 per adult; 100 grams of coffee; 50 grams of tea; 250 grams of chicken meat; etc. But people began seeking ways around rationing. For example, Tel Aviv doctors were four times more likely to proclaim a person ill (and in need of improved nutrition) than their tough Jerusalem colleagues.¹⁸⁷

Moreover, the black market was back in vogue, and so were the legal measures intended to fight it. In 1941, the British established municipal tribunals where public officials, such as the mayor, sat in trial of profiteers. In February 1948, the leaders of the Jewish establishment in Palestine also passed anti-profiteering regulations, which were of mostly civic-moralistic value, as the British still ruled the land. In August 1948, the Israeli provisional government established new anti-profiteering courts, composed of members including a professional judge and two public representatives appointed by the Minister of Justice. This tribunal was to have extensive powers. In 1951, the Knesset passed an act to fight profiteering, which established a tribunal next to existing courts of first-tier and courts of appeal (known in Israel as Magistrates' Courts and Courts of Appeal). The tribunal was to sit in three judge-panels, headed by one professional judge of the relevant court who was joined by two public representatives appointed by the Minister of Justice.¹⁸⁸

Police raids occurred regularly. Buses were searched, shops were closed down, and contraband supplies were confiscated but to no avail. By February 1950, about 5000 charges were brought against delinquents. About forty percent were tried and most were fined. Only seventy people were jailed.¹⁸⁹

As time progressed, there was a growing public understanding that the market leaks permitting the black market could not be sealed. Agriculture Minister Pinchas Lavon argued that perhaps eighty to ninety percent of foods were fairly distributed at fixed prices, but he also admitted that there

¹⁸⁶ See *id.* The population was reportedly divided into three categories: single, families, and heads of households. Hotels and restaurants would not be subject to rationing in an effort to maintain tourism. Three types of ration-books were being prepared—for babies (up to 1 year), for youth (up to 18) and for adults. See HA'BOCKER, June 1, 1949. See also Federal Drug Administration, *Counting Calories*, <http://www.fda.gov/fdac/graphics/foodlabelspecial/pg44.pdf> (for current recommended daily caloric intake).

¹⁸⁷ See IMMIGRANTS AND TRANSIT CAMPS, *supra* note 11.

¹⁸⁸ *Anti-Profiteering Tribunals Established*, HA'ARETZ, Aug. 31, 1948; Act for the Prevention of Profiteering (Adjudication), 5711-1951, S.H. 40.

¹⁸⁹ See IMMIGRANTS AND TRANSIT CAMPS, *supra* note 11.

were leaks: food packages from abroad, smuggling from across the borders, and inefficiencies of the rationing system which permitted a black market. *Maariv* Hebrew daily was unimpressed with the partial admission, citing additional reasons for the black market ranging from widespread cheating and scheming by both manufacturers and salespeople, to the possible “family visits” to the many agricultural communities in Israel.¹⁹⁰ Reported the *Jerusalem Post*:

Searches of vehicles by Economic Police on roads leading into Tel Aviv on Thursday and Friday revealed 200 kilograms of cucumbers, 600 eggs, 800 kilos of assorted vegetables and fruit, as well as a large number of slaughtered chickens. Several arrests were made and a number of vehicles were impounded. . . .

Huge Backlog

About 400 files are now awaiting hearings before the Tel Aviv Anti-Profitteering Court. About 30 cases refer to offences allegedly committed in 1949. An average of only one case per day is being heard by the court. The delay in hearing cases is caused by the fact that only one magistrate and two members of the public have been detailed to the court. The magistrate, moreover, is often called upon to serve in the Magistrate’s Court on routine cases.

Virginia Hoards

Hundreds of packages of Virginia type cigarettes that had “gone underground” as a result of the present shortage were frozen by police in Jerusalem after two searches on Friday. Three hundred and five packages of “Nelson” and 189 of “Strand Special” were found in a buffet in Jaffa Road following a complaint that the owner had refused to sell. Twenty-seven packages of “Nelson” were found in a Mahne Yehuda kiosk after a similar complaint was filed.¹⁹¹

Starting in 1952, rationing was gradually modified and eased. Initially used to ensure equitable distribution of meager supplies, it turned into a vehicle for price control. The list of controlled commodities shrank: in the early 1950s it included liquid detergents, noodles, and vegetable conserves; by 1958 it was down to eleven products (sugar, jam, oil, margarine, coffee, chocolate, cocoa-powder, rice, imported cheese, and meats). In early 1959, the Israeli government decided to officially bring the age of austerity to a close. By that time, rationing was effectively long forgotten, a nostalgic tale of hardship during Israel’s formative years.¹⁹²

VII. CONCLUDING REMARKS

Post-independence years were remarkably tough on Israel. There was great optimism in the re-born Jewish State but it was hampered by the trials of war and a deep economic crisis. There were severe shortages in all basic goods. Government response was vigorous and somewhat effective, but it

¹⁹⁰ See *Seven Sources to the Black Market—and Only One Can Be Sealed*, MAARIV, September 12, 1951.

¹⁹¹ *Black Market Goods Found in Vehicles*, THE JERUSALEM POST, September 16, 1951.

¹⁹² See Rozin, *supra* note 180, at 274; IMMIGRANTS AND TRANSIT CAMPS, *supra* note 11.

severely curtailed civil rights and limited personal choices and the workings of the economy. In the words of Charles Dickens:

It was the best of times, it was the worst of times, . . . it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair[.]¹⁹³

Sixty year later, Israel has not reached a viable peace with its neighbors but at least the extreme economic hardships of the early years are mostly a thing of the past. The age of austerity is a matter of bitter-sweet nostalgia, not of current events.¹⁹⁴ While Israel's security conditions are dissimilar to any Western nation and remain a serious concern, its economy has significantly evolved since its foundation.¹⁹⁵ Israel has been drawn into the OECD fold,¹⁹⁶ and away from its economically beleaguered immediate neighbors.

Yet I believe there is more to rationing than memories. The physical hardships which now "have blended into fond memories"¹⁹⁷ are part of a common legal-historical heritage reflecting the experience of most of the worlds' nations during the mid twentieth century. Furthermore, it turns out that the similar difficulties in the supply of food and other essential commodities were dealt with by most nations by using very similar regulatory systems. Israel, as a graduate of the British mandate scheme, shared a direct common experience with Britain and the Commonwealth nations. Yet even after independence, Israel chose to use the British legal infrastructure for going through the austerity years.

These lessons are worth remembering, even as we hope that contemporary shortages in food and other vital commodities do not require us to reapply austerity measures in the twenty-first century.

¹⁹³ CHARLES DICKENS, *A TALE OF TWO CITIES* 3 (Wordsworth Editions Ltd. 1993) (1859).

¹⁹⁴ For contrary conclusions, see *Poverty Report Shows Poor Are Working, and Staying in Poverty* (Haaretz.com daily feature Feb. 19, 2008), available at <http://www.haaretz.com/hasen/spages/956401.html>. See also Moti Bassok, *Bank of Israel Report: One in Four Israelis Over the Age of 65 Is Poor*, HAARETZ.COM, Mar. 23, 2008, <https://www.haaretz.co.il/hasen/spages/967029.html>.

¹⁹⁵ *Miracles and Mirages: A Strong Economy Built on Weak Fundamentals*, THE ECONOMIST, Apr. 3, 2008 ("For a country with so many wars, Israel still has an economy with the power to astonish. Having taken a beating during the *intifada*, GDP growth per person has stayed above 3% for the past four years, well above the rich-country average . . . despite the costs of the 2005 Gaza pull-out and the 2006 Lebanon war").

¹⁹⁶ Israel was formally invited to join the Organization for Economic Co-Operation and Development in May 2007. See *Israel Invited to Join the OECD*, YNET, May 16, 2007, <http://www.ynet.co.il/english/articles/0,7340,L-3400955,00.html>; Organization for Economic Co-Operation and Development, *Chair's Summary of the OECD Council at Ministerial Level, Paris, 15-16 May 2007—Innovation: Advancing the OECD Agenda for Growth and Equity*, May 16, 2007, http://www.oecd.org/document/22/0,2340,en_2649_201185_38604566_1_1_1_1,00.html.

¹⁹⁷ See *On Home Front, the Effects of War Were Felt in the Kitchen*, OAKLAND TRIB., May 30, 2007. See also *Food Rationing Fresh in Memory*, W. MORNING NEWS (U.K.), Nov. 16, 2004, at 8; Jackie Burrell, *Food for Victory*, SAN MATEO COUNTY TIMES, May 30, 2007.