

■ International

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Mandatory Constitutions

Kann eine demokratische Staatsführung von außen erzwungen, und kann ein solcher Zwang gerechtfertigt werden? Der folgende Beitrag untersucht diese Frage anhand der Erfahrungen der USA auf den Philippinen und in Kuba, wo die Amerikaner mit teilweise missionarisch anmutendem Eifer eine Demokratie aufzubauen versuchten. Auch die Situation nach dem Zusammenbruch des Osmanischen Reiches – deren „Regelung“ möglicherweise die Weichenstellung für die heutige Lage im Nahen Osten bedeutete – wird beleuchtet.

A. Introduction

Under what circumstance, if any, is it appropriate to employ force to impose a democratic constitution on a nation whose people have not sought that form of government? Given the

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growing number of virtually ungoverned or grievously misgoverned regions in the world, the question is one of increasing immediacy. The United States is perhaps the only nation with relevant experience. This is a brief account of its efforts to impose constitutions on Cuba and the Philippines, and of the first consideration of its possible involvement in establishing constitutional government in the Middle East.

The difficulty that is both obvious and often ignored is the troubled relationship between politics and culture and the role of law in connecting the two. Wolf Lepenies has explained some of the misfortunes of German history as partially the result of Germans' inclination to disconnect culture from politics, and give too little attention to the latter.¹ Some of the misfortunes of American history might be explained as a counterexample of a people so obsessed with their revered political rhetoric that they neglect to perceive its relationship to the culture it expresses. The invasion of Iraq in 2003 appears to be a direct result of the flawed thinking of "neo-conservative" Americans who proclaim that all world shares an innate desire for the American form of government and all will welcome foreign intervention to achieve it.² Cited as one example supporting this premise is the experience of Germany since 1945.³

The neo-cons who control the present American government were by no means the first Americans to make the mistake of sanctifying their political notions. Generations of American school children have memorized the proclamations of Jefferson's Declaration of Independence. And its evangelical spirit has echoed in scores of presidential addresses over the ensuing centuries.⁴ A belief in the universality of American political ideas was restated in 2006 at the annual meeting of the American Bar Association by a Justice of the nation's Supreme Court.⁵ Seldom have any American leaders taken notice of the cultural origins of their political rhetoric, or the absence of similar cultural conditions among those to whom they sometimes address their transnational political advice.

America's first attempt to impose constitutional democracy at gunpoint came in 1812 when the United States attempted to liberate Canada by military force. It was defeated in that effort by a few Canadian soldiers and the Royal Navy.⁶ The most memorable rhetoric ever associated with such an American missionary venture was uttered in 1917 by President Wilson who announced a "war to end wars" by making the whole world "safe for democracy."⁷ To be sure, similar self-congratulating proclamations accompanied most colonial ventures of European empires; Spain, for example, sought to make the world safe for God.

There have been wiser heads counseling against such endeavors. John Milton, still celebrated for his poetry if not his politics, cautioned his fellow members of Parliament: that they ought not to invest in imperial ventures that would cause "England to forget her precedence of teaching nations how to live."⁸ Milton's words were repeated in 1899 by James Bradley Thayer, the most eminent American constitutional lawyer of his day, who urged America to teach the world by example rather than by force of arms.⁹ And in 1908 Professor Woodrow Wilson observed that Americans ought more clearly than anyone to recognize the cultural sources of their politics, given their national experiences in failed efforts to transform indigenous cultures in North America, or to reconstruct the

South after the Civil War, or to impose their politics on foreign lands, as they were then trying to do.¹⁰

But neither Milton nor Thayer were persuasive to their contemporaries. And President Wilson had by 1917 forgotten the wisdom he had himself expressed in 1908. Thayer's repetition of Milton's advice to British imperialists was uttered at the time of America's first great imperial venture, when it presumed to fill the shoes of the viceroys of Spain. That experience commenced in 1898 and foretold events in the Middle East in very recent times. It appears that the contemporary neo-cons had quite forgotten it.

B. Cuba

The war with Spain evoking Thayer's recollection of Milton's wisdom, was occasioned by a revolution raging on the island of Cuba for the last quarter of the 19th century. It was maintained on behalf of peasants and slaves, with much Jeffersonian rhetoric.¹¹ Some of its Cuban advocates escaped mayhem by residing in the United States. William Randolph Hearst's and other newspapers provided horrifying accounts of the many brutalities perpetrated in Spanish concentration camps on the impoverished revolutionaries and their kin. Among the responses, if Hearst's journalists can be believed, was that of 600 Sioux Indian braves who offered to gather every Spanish scalp on the island.¹² Feeling pressed by the anger of many Americans, President McKinley announced in December 1897 that American patience with Spain's governance of Cuba was "not infinite." In February, the press somehow acquired and published a letter written by the Spanish Ambassador to the United States to his superiors in Madrid commenting on McKinley's speech and describing the President as "weak and a bidder for the admiration of the crowd." This led to the resignation of the Ambassador and heightened pressure on McKinley.¹³ And on February 15, the battleship *Maine* exploded while on a peaceful visit to Havana. Many seamen died in the explosion. The Navy could not explain the cause, and it was rumored that it was the result of a deliberate act by Spain. A more likely possibility is that it was done by Cubans hoping to provoke intervention. Still more likely is that the explosion was caused by someone's negligence. The cause was never determined.

¹ THE SEDUCTION OF CULTURE IN GERMAN HISTORY (2006).

² Statement of the Project for the New American Century (1997) <http://www.newamericancentury.org/statementofprinciples.htm>.

³ E.g., James Dobbins, *Nation-Building: The Inescapable Responsibility of the World's Only Superpower*, 27 RAND REVIEW 17 (2003).

⁴ And see ROBERT KAGAN, OF PARADISE AND POWER: AMERICA AND EUROPE IN THE NEW WORLD ORDER (2004).

⁵ See http://www.abavideo.org/ABA374/audio_video.php.

⁶ DONALD R. HICKEY, THE WAR OF 1812: A FORGOTTEN CONFLICT (1989).

⁷ Address to the United States Senate, January 23, 1917, 40 WILSON PAPER 533 (Arthur S. Lonk 3ed 1985).

⁸ PETER LEVI, EDEN RENEWED: THE PUBLIC AND PRIVATE LIFE OF JOHN MILTON (1996).

⁹ *Our New Possessions*, 12 HARV. L. REV. 464.

¹⁰ CONSTITUTIONAL GOVERNMENT IN THE UNITED STATES 52-53 (1908).

¹¹ See SLAVES, SUGAR AND COLONIAL SOCIETY: TRAVEL ACCOUNTS OF CUBA 1801-1899 (Louis A. Perez Jr. ed., 1992).

¹² G. J. A. O'TOOLE, THE SPANISH WAR: AN AMERICAN EPIC - 1898 at 165 (1984).

¹³ ROBERT DALLEK, 1898: MCKINLEY'S DECISION, THE UNITED STATES DECLARES WAR ON SPAIN (1969).

But Congress demanded action. McKinley complied by serving an ultimatum on Spain demanding liberation of Cuba. When that was not forthcoming, war was declared by Congress.¹⁴ Its resolution recognizing a Republic of Cuba as "the true and lawful government of that island" was approved by a vote of 67 to 21. The "splendid little war" against Spain lasted only 118 days. It resulted in very few casualties. Cuba was occupied by the United States Army, the concentration camps were opened, and a government was established under the command of General Leonard Wood, a medical doctor.¹⁵ His administration rid Havana of yellow fever, built sewers, paved streets, and turned parks into gardens. It whipped people for defecating in the streets. By such means, it greatly relieved the squalor that the Spanish Empire had been powerless to reduce. By 1902, Havana may have been the healthiest city in the western hemisphere. The occupation government also erected over 3000 school buildings throughout the island, creating a challenge to the government of the forthcoming republic to find teachers to staff them.

But in 1901, to prod the establishment of a democratic republic, Senator Orville Platt attached a rider to the military appropriations bill directing the War Department to secure the agreement of the Republic of Cuba (when established) to the condition that the United States would have an obligation to intervene if and when democratic self-government on the island failed.¹⁶ The Platt Amendment was forced into the Cuban Constitution of 1902 and into the treaty between the United States and Cuba.

Thus, at the behest of the Senate, the new Cuban constitution contained a provision very similar to the provision of the Constitution of the United States guaranteeing all its member states a republican form of government. The guarantor in both constitutions was the United States. On its face, this was a serious affront to the right to self-government. On the other hand, in 1902 it was evident that a republic serving people who had so recently and for so long been deeply divided by class and by religion was inherently very unstable.

The Platt Amendment had the unwelcome effect on Cuban domestic politics specifically foreseen by its critics: it begot the disorder that it had been intended to prevent.¹⁷ A government of religious conservatives was elected in 1902 and re-elected in 1906. But the religious liberals questioned the vote count in the re-election. The result was violent disorder and the resignation of the government. Apparently the conservatives wanted the United States military to return to suppress the disorder, while the liberals wanted them to return to conduct an honest election. Both sides were thus seeking the return of the United States Marines. Only days before this outbreak of violence, Secretary of State Elihu Root concluded a tour of Latin America proclaiming that "[w]e wish for no victories but those of peace; for no territory except our own, for no sovereignty except the sovereignty over ourselves."¹⁸ It was more than a little embarrassing when the Marines so soon returned to resolve the chaos in Cuba.

Cuba would be fully liberated a second time in 1908. And again in 1912, 1917, and 1920. The Platt Amendment to the Cuban constitution was at last abrogated in 1934.¹⁹ But that did little to assure constitutional democracy and legal rights on the island. Iron rule would soon be imposed by a fascist dictator, Fulgencio Batista, and a few decades later by a communist dictator, Fidel Castro. For the remainder of the

20th century, Cubans seeking democracy and individual rights would have to come to the United States to find them.

C. The Philippines

It was not clear to most Americans why the United States had liberated the Philippines in 1898. There had been no popular clamor in the United States about the brutalities of the Spanish Empire in that venue. There were rebels there, but American journalists had not discovered them. The United States Navy's small Pacific fleet paid a visit to Manila Bay and sank the Spanish fleet it found anchored there.²⁰ German warships were present to observe their feat. A few Marines went ashore and found no resistors seeking to maintain the government of the Viceroy.

The gentle President McKinley acknowledged that he had been deeply troubled by the issues of imperialism and had prayed for wisdom in deciding what to do with the Philippines. His prayer, he told a religious group, had been answered by God, who advised him that America could not honorably return the Philippines to Spain, nor could it allow Germany to take them, and it was therefore a moral duty of the United States to govern and protect the islands and prepare the people for self-governance.²¹ Others supported this decision, but over the vigorous protest of many anti-imperialists.²²

The debate was soon suppressed by the deeds of Emilio Aguinaldo y Famy. Aguinaldo had been leading a Filipino revolution against Spain, and in 1899 redirected his militancy against the United States.²³ For seven years, a war raged, roughly on the scale of the better remembered Viet Nam venture. Thousands of American soldiers died, and hundreds of thousands of Filipinos. War crimes were commonplace on both sides. For example, an American officer ordered his men to kill every male over ten years old who could be found on the island of Samar. Fortunately, that command was not obeyed. The general was court-martialed and told not to do it again.²⁴

Because of the continuing insurrection, no election was held in the Philippines until 1907. President McKinley picked as the first American "viceroy" William Howard Taft, who would later become President. As Governor of the Philippines, Taft was chair of a seven-member governing commis-

¹⁴ 55th Cong. Ch. 189; 30 Stat. 364.

¹⁵ See WHITNEY T. PERKINS, *CONSTRAINT OF EMPIRE: THE UNITED STATES AND CARIBBEAN INTERVENTIONS* 6-11 (1981).

¹⁶ EDWARD S. KAPLAN, *UNITED STATES IMPERIALISM IN LATIN AMERICA: BRYAN'S CHALLENGES AND CONTRIBUTIONS, 1900-1920* at 12 (1998).

¹⁷ PERKINS, note 15, at 12-15.

¹⁸ Janice Hepworth, *A Policy of "Practical Altruism"*, 3 J. OF INTER-AMERICAN STUDIES 413 (1961).

¹⁹ See LUIS E. AGUILAR, *CUBA 1933: PROLOGUE TO REVOLUTION* (1972).

²⁰ ROBERT CONROY, *THE BATTLE OF MANILA BAY: THE SPANISH AMERICAN WAR IN THE PHILIPPINES* (1968).

²¹ 2 CHARLES S. OLCOTT, *THE LIFE OF WILLIAM MCKINLEY* 109-111 (1916).

²² On the German threat, see O'Toole, *supra* note 12, at 191-192, 223, 364-366. An account of the criticism is ROBERT L. BEISNER, *TWELVE AGAINST EMPIRE: THE ANTI-IMPERIALISTS: 1898-1900* (1968).

²³ Accounts are: DAVID H. BAIN, *SITTING IN DARKNESS: AMERICANS IN THE PHILIPPINES* (1984); STUART C. MILLER, *BENEVOLENT ASSIMILATION: THE AMERICAN CONQUEST OF THE PHILIPPINES: 1899-1903* (1982).

²⁴ EDMUND MORRIS, *THEODORE REX* 98-101 (2001).

sion appointed by the President.²⁵ That commission remained in place for thirty years as the Executive branch of the territorial government. Secretary of State Root drafted its directive. His orders were to establish the rule of law and individual freedom. The Filipinos would be required to accept these principles "for the sake of their liberty and happiness." Yet, the Commission

should bear in mind that the government they are establishing is designed not for our satisfaction, but for the happiness, peace, and prosperity of the people of the Philippine Islands, and the measures adopted should be made to conform to their customs, their habits, and even their prejudices.²⁶

In 1901, the Supreme Court of the Philippines was established to replace the *Audencia* previously established by the Spanish Empire. The *Audencia* of Manila had sometimes exercised authority as the executive and sometimes served as a legal advisor to the Viceroy, when there was one. The *Audencias* when sitting as courts had been subject to appellate review by a court sitting in Madrid, and so it was expected that the Supreme Court of the Philippines was likewise subjected to appellate review by the Supreme Court of the United States.

Privately, Taft described the ruling class *caciques*, "as ambitious as Satan and quite as unscrupulous," and the peasant *taos* as "utterly unfit: for self-government."²⁷ The cacique families were generally descendants of Spanish dons. They maintained feudal estates that were increasingly prosperous as a result of the sugar quota guaranteeing their owners profitable exports to the American market. As Taft observed, American efforts "to uplift the ignorant" got little sympathy from *caciques*. Many practiced extortion and embezzlement, habits that had been tolerated for centuries by viceroys from Madrid. Filipino judges shamelessly punished innocent rivals and exonerated their kinsmen and friends of obvious guilt, often falsely attributing their corrupt decisions to orders from American officers.²⁸

As in Cuba, differences of class were reinforced by racial and ethnic differences. The *caciques*, while descendants of *dons*, were generally *mestizo* of indigenous and Chinese origins. The *taos* whom they held in peonage were members of numerous ethnic groups who spoke in as many as eighty different languages or dialects sufficiently distinct to preclude communication among them. Also, religious differences were keenly felt. One American from long experience observed that

[N]on-Christian tribes have two things in common -- their unwillingness to accept the Christian faith and their hatred of the several Filipino peoples who profess it. Their animosity is readily understood when it is remembered that their ancestors and they themselves have suffered grievous wrongs at the hands of the Filipinos.²⁹

Indeed, the Moros, who were Muslims, spoke their own language and were matriarchal in their sexual mores, were deeply offended if described as Filipinos, a tribe whom they reviled. Ethnic groups on the large southern island of Mindanao felt no connection to those of Luzon, the large northern island. In 1906, there was a new civil war in the South waged by people having no connection to Aguinaldo, and requiring yet another dispatch of American military forces.³⁰

When former Professor Wilson was elected to the presidency in 1912, many Filipinos expected a transfer of sovereignty to themselves, for many Democratic legislators had professed to favor such a transfer. But he was advised against it. It was reported that the Filipino elite had "little community of interest and little sympathy" with the people, and that it would be necessary to broaden the political base before sovereignty could be relinquished to a government in democratic form. Wilson had himself earlier proclaimed that the Filipinos "are children and we are men in these deep matters of government and justice."³¹

Wilson appointed Francis Burton Harrison as Governor General of the Philippines. Arriving in Manila in 1913, he was soon genuinely enamored of Filipinos. He brought word that America would surrender sovereignty and that "[e]very step we take will be taken with a view to the ultimate independence of the islands." He promptly began to replace American administrators appointed by Taft with Filipinos; the number of Americans in the government was diminished from three thousand to six hundred. Indeed, Harrison proceeded at a pace somewhat frightening to those who shared concerns about Filipino readiness or who feared the aggressiveness of the Empire of Japan. Manuel Quezon, the leader of the nationalists expressed concern about the loss of the American administrators and their replacement by self-seeking natives whose notions of public service were based on their observations of the conduct of the corrupt Spanish viceroys. Congress nevertheless ratified President Wilson's promise of future independence in 1916. Decades later, Harrison would return to advise the Filipino government, be named the first honorary citizen of the Republic of the Philippines, and be buried in Manila.

In 1915, Robert Lansing was designated Secretary of State. He proposed to transfer the Philippines to Japan, partly as a means of calming the Japanese appetite for expansion on the continent of Asia, and partly because he regarded continuing American involvement in the Philippines as a signal of imperial ambitions evoking mistrust on the part of other nations, especially Japan, a nation he regarded as a much more attractive market for American goods than the Philippines.³² And he regarded the democratization of Philippine society improbable at best.

Americans present in the Philippines were keenly interested in education. Their aim in establishing public education in the Islands was the same as that of the early advocates of public education in America: they believed that literacy and a measure of sophistication was a prerequisite to democratic citizenship. Quite reasonably, they perceived that educated Filipinos would be more likely to find their own way to democratic

²⁵ 1 HENRY F. PRINGLE, *THE LIFE AND TIMES OF WILLIAM HOWARD TAFT* 159-256 (1939).

²⁶ 1 PHILIP C. JESSUP, *ELIHU ROOT* 356 (1938).

²⁷ Quoted by STANLEY KARNOW, *IN OUR IMAGE: AMERICA'S EMPIRE IN THE PHILIPPINES* 231 (1989).

²⁸ KATHERINE MAYO, *THE ISLES OF FEAR: THE TRUTH ABOUT THE PHILIPPINES* 10-15 (1925).

²⁹ DEAN C. WORCESTER, *THE PHILIPPINES PAST AND PRESENT* 660-661 (1914).

³⁰ EDMUND MORRIS, *THEODORE REX* 457-459 (2001).

³¹ KARNOW, *supra* note 27, at 243.

³² BURTON F. BEERS, *VAIN ENDEAVOR: ROBERT LANSING'S ATTEMPTS TO END THE AMERICAN-JAPANESE RIVALRY* 109 (1962).

traditions. Thousands of American schoolteachers spent their careers in the Philippines. Necessarily, this effort had the secondary consequence of disseminating the English language throughout the archipelago.

In 1910, an American-style law school was established at the University of the Philippines. The founding dean was George Malcolm, a former Clerk to the Supreme Court of Michigan.³³ Other law schools were also established, and Malcolm's College of Law was admitted to membership in the Association of American Law Schools so that its faculty could be socialized to American law professors' presumably correct sense of their roles. Also among the American law teachers to serve in the Philippine government was Eugene Gilmore from the University of Wisconsin.³⁴ Gilmore spent a semester at the University of the Philippines in 1917. He was popular with the Filipino students and was successful in enlarging the curriculum and reorganizing the law library. This led in 1922 to his appointment as Vice-Governor General to oversee education, public health and sanitation, and quarantines. Under Gilmore's direction, the public school system of the Philippines was greatly expanded (both in geographical reach and enrollment figures) and the public health system much improved.

Other American lawyers served in the Filipino judiciary. During its early decades, a majority of the members of the highest court were Americans. The American members served to introduce the Filipinos to the Anglo-American doctrine of precedent and to the principle of judicial review of legislation. Published opinions of the highest court became customary, and judge-made law in the American tradition was superimposed on the Roman system brought to the Philippines by the Spanish. Also, much of the text of the Constitution of the United States bearing on individual rights was perpetuated in the Philippine Constitution.³⁵

These missionaries generally underestimated the difficulty of their mission. Some supposed that because Filipinos were predominantly Christian and had supported Aguinaldo as American colonists had supported George Washington, that their political impulses were not unlike those of Americans, and that a veneer of literacy enabling them to read and appreciate the Declaration of Independence, and a little legal training, could enable them to share a republic. This optimism overlooked the acute mistrust resulting from divisions of ethnicity and class that pervaded the Island populations. The tribal impulse was as great an impediment to self-government among Filipinos as among the native population on the continent of North America when migrations from Europe began. Conceivably, it was worse because it was reinforced by the topography of an archipelago, and by the policy of divisiveness pursued for three centuries by Spanish viceroys. The mutual trust on which stable institutions of self-government depend was absent among Filipinos and could not be provided externally, at least not without a much larger investment than the United States was willing or able to make.

Also overlooked by the optimists was the authoritarian aspect of religion in the Philippines, whether Catholic or Muslim, a characteristic reflecting and reinforcing cultural traits of domination still common throughout Asia that seem to be associated with the cultivation of rice as the staple food, an activity calling for a high degree of social and political organization.³⁶ Whatever the source of the hierarchical impulse,

when the Filipinos drafted a constitution in 1935, they created a very powerful executive empowered to suspend its provisions. Manuel Quezon, the first President of the Commonwealth, could say at his inauguration: "The good of the state, not the good of the individual, must prevail."³⁷ Those peasants enabled to read these words would have recognized them as a threat to the interests of the disenfranchised, as indeed they proved to be.

Finally, the land reform needed if the Philippines were to become a stable democracy was not achieved. In 1946, when the Republic was at last proclaimed, there were still millions of feudal peasants. The importance of land reform was not overlooked, and a brief effort in that direction was made.³⁸ It was, however, politically impossible because the American regime in the islands depended on the support of the *caciques*, and because such a relocation of economic power is anathema to many Americans. On that account of that failure, when the United States relinquished power, there was an active Communist movement among the peasants on Mindanao that had been raging there since 1930.³⁹

American-style democracy thus proved to be a fig leaf for the continuing control of an hegemonic elite. Its secondary result was the oppressive rule of Ferdinand Marcos established in the 1960s and enduring for two decades. American political evangelism had effected social change that was skin deep. American firms making markets in the Philippines were well served because Filipino *caciques* quickly learned to buy and use American goods. In the second half of the century, Filipinos would strive on their own to establish stable democratic law and America was often their model, but whether they were at the century's end closer to the goal of the evangelists is uncertain. It remains still a deeply divided society united in the sentiment that United States Marines are not welcome there. There was a moment of irony in 2003 when President Bush cited the Philippines as a model for what America can do for Iraq⁴⁰ and other nations lucky enough to be subjected to American rule sustained for forty years or so.

D. The Ottoman Empire, 1919

A difficult issue facing those assembled at Versailles was the disposition of the territories governed in 1914 and for the previous 461 years by the Ottoman Sultan. Seljuk Turks had gained control of Constantinople in 1453. It had been since 455 the seat of what remained of the Roman Empire – Byzan-

³³ Malcolm recorded his experience as an educator in *Changes in the College of Law*, 4 PHILIPPINE L. J. 13, 13-15 (1914).

³⁴ Paul D. Carrington & Erika King, *The Wisconsin Idea*, 48 J. LEG. ED. 297 (1997).

³⁵ JOSEPH RALSTON HAYDEN, *THE PHILIPPINES: A STUDY IN NATIONAL DEVELOPMENT* (1942).

³⁶ See FERNAND BRAUDEL, *THE STRUCTURES OF EVERYDAY LIFE: THE LIMITS OF THE POSSIBLE* (Siân Reynolds trans., 1981).

³⁷ KARNOW, *supra* note 26, at 255.

³⁸ TONY SMITH, *AMERICA'S MISSION: THE UNITED STATES AND THE WORLDWIDE STRUGGLE FOR DEMOCRACY IN THE TWENTIETH CENTURY* 55-57 (1994).

³⁹ It is apparently still raging. See Manila Standard Today, August 24, 2006, available at http://www.manilastandardtoday.com/?page=news04_aug24_2006.

⁴⁰ David E. Sanger, *Bush Cites Philippines as Model in Rebuilding Iraq*, NEW YORK TIMES, October 19, 2003, at 1.

tium, the progenitor of the tradition of Roman civil law.⁴¹ The Turks made it the capital of a Turkish empire that included the valleys of the Danube, Tigris and Nile Rivers and much of the shores of the Black and Mediterranean Seas, reaching to the gates of Venice and Vienna and to the Straits of Gibraltar, and into Spain. Thus, for almost 1500 years, the city was often the seat of the wealthiest and most powerful nation on earth. However, by 1914 the Sultan's dominion no longer extended across the Balkans or Africa, but was limited to the eastern shore of the Mediterranean, Mesopotamia and the Arabian Peninsula.⁴²

The Empire, with occasional exceptions, had long been a place of religious and ethnic tolerance for almost every variation on Christian and Moslem faiths, more tolerant indeed than European empires. In the 19th century, as their empire was driven out of Europe, much of the Muslim population of Europe retreated into the shrinking Ottoman territory and the Sultan began to posture as a religious leader to Islam. In 1893 the disintegration of the empire was marked by a genocidal war mounted by Moslem Turks against their Christian Greek and Armenian neighbors, an extermination that the Sultan could not or would not control.⁴³ There was, however, no persecution at that time of the one hundred thousand Jews residing among the Arab population of Palestine or of the Roman Catholic minority in Lebanon, for they were not regarded as a threat to the Empire as the Greeks and Armenians were.

The Empire's participation in the World War was an act of desperation by a very weak government, and by the time of the assembly at Versailles, the Sultan no longer governed outside his palace. Indeed, there was in 1919 a brutal struggle between Turks and the Greek population inhabiting the Mediterranean coast. With the encouragement of France and Great Britain, given over the vigorous protest of Winston Churchill, Greece in 1920 invaded Turkey and claimed the coastal provinces.⁴⁴ "Turkey is no more," Lloyd George exulted. In pursuit of that end, the Greek army reached the gates of Ankara in central Asia Minor, where, however, they were defeated by a makeshift Turkish army led by Mustapha Kemal. They and their fellow Greeks were driven back to the coastal islands, and a new, secular Republic of Turkey emerged to govern Asia Minor and its newly homogeneous population.

While the Ottoman Empire was thus disintegrating, there emerged a Zionist Movement aiming to establish a Jewish homeland in Palestine.⁴⁵ Zionism had first become a significant political force in the early years of the 20th century. In part, it was a response to the rise of nationalism as a pervasive spirit in most of the world outside the confines of European empires. But Zionism had roots in Biblical texts promising that the Son of God would return if the Jews did. More than a few English Protestants had envisioned such a return and lent support to the Zionist idea. The Movement gained strength among European and American Jews in the 1880s when the Czar sponsored pogroms against his Jewish subjects. A need appeared for a Jewish homeland as a sanctuary for those unwelcome in Eastern Europe where their ancestors had lived longer than history could record.⁴⁶

Zionism was, however, disapproved by many Jewish persons in Europe, America, and elsewhere, who favored greater assimilation into the societies in which they lived, and who feared that the creation of a homeland would magnify the

mistrust of those who saw them as members of a great worldwide Jewish conspiracy and disloyal to the communities in which they resided.

A refugee from Russia to England, Chaim Weizmann,⁴⁷ was the articulate champion of the Zionist idea in England. In 1916, the British wartime government, at the suggestion of Weizmann and his followers, published the Balfour Declaration, proclaiming that it "viewed with favor" the aspiration of Zionist Jews to establish a homeland in Palestine.⁴⁸ It was surely a factor encouraging this utterance that Britain was at the time at war with the Sultan whose territory it threatened, and with Germany and Austria, where there were millions of Jews loyal to their local monarchs whose sympathies might be deflected if they were caused to regard Britain as the champion of a Jewish homeland for the victims of the pogroms. It was also a factor that many of the English pacifists were Jewish, and the Declaration might elevate their enthusiasm for the questionable war being waged in the trenches in France.

In the course of the war, the British supported a successful revolt against the Turks by Arabs in the southern region of the Ottoman Empire. That revolt had been led by Prince Feisal with the help of the legendary British officer, Lawrence of Arabia. The British Army then in 1917 invaded the center of the Ottoman territory, marching north from Suez through Jerusalem to take Damascus in Syria. Thus, as the parties assembled at Versailles, Britain was in possession of the putative Jewish homeland, an area populated by Arabic-speaking groups long ruled by Turks.⁴⁹

By the time of the assembly at Versailles, the British were having second thoughts about their relation to Palestine. Both Sir Arthur Balfour, the Foreign Minister and author of the Declaration, and Field Marshall Sir Henry Wilson argued that the resources of the British Empire were already spread far too thin. In light of the loss of a generation of young men in the trenches, Britain would do well indeed to hold Egypt and India, and should attempt no more than that. Palestine had no military or economic value. Prime Minister Lloyd George therefore, although not himself in favor of the idea, tentatively asked if the United States might be willing to step in and take responsibility for bringing peace and order to the Holy Land.⁵⁰ Colonel Edward House, Wilson's unofficial advisor, mindful of the recent American experiences with Aginaldo and Pancho Villa (a Mexican revolutionary who had successfully resisted President Wilson's effort to sup-

⁴¹ See JOHN JULIUS NORWICH, *BYZANTIUM: THE EARLY CENTURIES* (1989); MICHAEL ANGOLD, *THE BYZANTINE EMPIRE, 1024-1204: A POLITICAL HISTORY* (1984).

⁴² DAVID FROMKIN *A PLACE TO END ALL PEACE: THE FALL OF THE OTTOMAN EMPIRE AND THE CREATION OF THE MIDDLE EAST* (1989).

⁴³ *Id.* 431-434, 540-547.

⁴⁴ NICHOL POPE & HUGH POPE, *TURKEY UNVEILED: A HISTORY OF MODERN TURKEY* 36-69 (1997).

⁴⁵ DAVID VITAL, *THE ORIGINS OF ZIONISM* (1974); DAVID VITAL, *A PEOPLE APART: THE JEWS IN EUROPE 1789-1939* (1999).

⁴⁶ BEN HALPERN, *A CLASH OF HEROES: BRANDEIS, WEIZMANN AND AMERICAN ZIONISM* 40-41 (1987).

⁴⁷ JEHUDA REINHARZ, *CHAIM WEIZMANN: THE MAKING OF A STATESMAN* (1993).

⁴⁸ LEONARD STEIN, *THE BALFOUR DECLARATION* (1961).

⁴⁹ TOM SEGEV, *ONE PALESTINE COMPLETE: JEWS AND ARABS UNDER THE BRITISH MANDATE* (1999).

⁵⁰ *Id.* 118-119.

press his forces), advised George that the United States was unsuited to imperial responsibilities such as he suggested.

Ambassador Henry Morgenthau,⁵¹ an observant Jew but an anti-Zionist,⁵² went to Versailles with an American plan for the Middle East. He was a native of Germany brought to New York by his parents. Morgenthau found himself heavily involved in the issue of Armenia. The attacks of the Sultan's Moslem subjects on the Armenians with whom they had lived in peace for half a millennium until 1894 erupted again in 1915.⁵³ Morgenthau was distressed beyond measure over the reports he received from American observers of the slaughter, over the indifference of the Sultan's government as much as by its inability to prevent it, and over the unwillingness of the German Ambassador to join him in bringing pressure to bear on the Sultan.

Embittered by his experience with the Ottoman government, but sharing the evangelical spirit of many American lawyers, Morgenthau went to Versailles with President Wilson to propose that the Ottoman Empire be converted into a federation of ethnically-centered but heterogeneous democratic states that would have included Arabia, Armenia, Kurdistan, Mesopotamia, Lebanon, Palestine, Syria, and Turkey. It would be the role of their federal government, not unlike that established in Philadelphia in 1787, to maintain order among these entities and conduct foreign affairs. His plan was warmly supported by Protestant religious groups desiring unfettered access to the Holy Land and by Armenians who had relocated and organized to defend themselves. His plan was opposed by Zionists for the reason that it disregarded their ambition to control a nation to be erected around Jerusalem, an ambition Morgenthau deemed imprudent.

Another American at Versailles was Howard Bliss, a founder of the American University in Beirut.⁵⁴ He came on his own ticket on behalf of those interested in Protestant missions in the Ottoman region. He urged that the people of the region be asked what solution they preferred. He was supported in this recommendation by Prince Feisal. President Wilson had himself at the outset protested against secret agreements made between Britain and France dividing the Ottoman territories to be conquered and, in light of his own former positions and declarations, he could hardly disagree with the proposal.

An effort was made to establish a commission including French and British members to conduct the factual inquiry. Neither Clemenceau nor Lloyd George could oppose the idea of such a survey although both thought the idea "childish."⁵⁵ They lent no support to the effort, and thought to divide the Arabian part of the Ottoman Empire between themselves (the relationship between them became so estranged over the issue of Syria that Clemenceau at one point challenged Lloyd George to a duel!).

When British and French cooperation was not forthcoming, President Wilson appointed two notable Americans to seek out the sentiments of those residing in the Ottoman territories.⁵⁶ Henry Churchill King was the President of Oberlin College, Charles Crane a valve manufacturer who had early "decided to make an art and science of traveling" and had made many trips to the Near East over a period of many years. Both had connections to Protestant missionary programs.

No decision was reached at Versailles regarding the disposition of Ottoman territory except that the matter should be placed on the agenda of the new League of Nations, who could be expected to designate allied powers to accept temporary "mandates" over specified areas. But in March 1920, at San Remo, while Wilson lay stricken, Britain and France agreed without awaiting the King-Crane Report to a division of the territory. They agreed that the monarchy of Feisal would be recognized as the independent government of the Arabian Peninsula not previously subjected to British "protection," and that France would receive the mandate to govern Lebanon and Syria, with Britain remaining in Mesopotamia (Iraq) and Palestine. These mandates would be continued until each region was ready for self-rule, however long that might take. It was also agreed that the terms of the Balfour Declaration would be incorporated into a peace treaty with the Sultan. This last was done in the Treaty of Sèvres signed in August 1920, but the Sultan was soon overthrown by a revolution, requiring that a new treaty be made in 1923 with his successors led by President Mustapha Kemal.

The King-Crane Report was nevertheless filed with the United States Department of State in July 1920. By that time, President Wilson was too disabled to read it. It was not published until 1922. Despite its lack of influence at the time, its observations are of interest. Based on conversations at many mosques and hundreds of petitions, King-Crane reported that most of the people of Mesopotamia (Iraq) perceived that they could not without help maintain a government of their own because they were too divided into hostile sects and tribes. They certainly did not welcome a return of the Turks, who manifested no ambition to return, but who were confident of their abilities to manage affairs in Asia Minor.

Also, there was nearly universal hostility among Arabs to the creation of a Jewish homeland in Palestine. Because of the Balfour Declaration, most Arabs wanted no part in the British Empire. The only persons in the Ottoman territories who welcomed British rule were many of the 100,000 Jewish people of Palestine who were attracted to Britain by the Balfour Declaration. The population of Mesopotamia, being remote from Palestine, cared less about the Balfour policy and thought British rule preferable to self-rule, or rule by Turkey or France.

Arabic-speaking people apparently did not admire the French. Feisal foretold that Syrians would prefer death to a French mandate because rule in the French Empire was deemed oppressive, not least because imperial subjects were required to learn French. The only groups who favored French rule were a few Catholics found mostly in Lebanon.

Astonishingly, it was reported that most persons living in Arabia, Armenia, Lebanon, Palestine, and Syria preferred to

⁵¹ HENRY MORGENTHAU, *AMBASSADOR MORGENTHAU'S STORY* (1926).

⁵² BARBARA TUCHMAN, *BIBLE AND SWORD: ENGLAND AND PALESTINE FROM THE BRONZE AGE TO BALFOUR* 216-217 (1956); HALPERN, *op.cit.* n. 46 at 192-183.

⁵³ FREDERICK DAVIS GREEN, *ARMENIAN MASSACRES OR THE SWORD OF MOHAMMED* (1896); G. S. GRABER, *CARAVANS TO OBLIVION: THE ARMENIAN GENOCIDE, 1915* (1996).

⁵⁴ SEGEV, n. 49, at 120-121.

⁵⁵ FROMKIN, n. 42, at 396-397.

⁵⁶ HARRY N. HOWARD, *THE KING-CRANE COMMISSION: AN AMERICAN INQUIRY INTO THE MIDDLE EAST* (1963).

be in the custody of the United States, so that America could do for them what it had allegedly done or was doing for the Philippines. They may also have sensed that a nation committed to Jeffersonian principles of self-government would find it difficult to impose massive immigration on a subordinate people who did not welcome it, as the Balfour Declaration committed the British to doing. King-Crane agreed:

To subject [the Arab people] to unlimited Jewish immigration, and to steady financial and social pressure to surrender their land would be a gross violation of the principle of "free acceptance" [set forth by President Wilson in his Fourteen Points] and of the peoples' rights, though it kept within the forms of the law.⁵⁷

This was a categorical rejection of the Zionist premise that the Holy Land belonged not to the millions of Arabs who lived there but to the millions of Jews who revered it. It was also an expression of Jeffersonian principles. Although the Commissioners claimed to have commenced their work in favor of the Zionist idea, they reported that the facts on the ground were preclusive, for neither Christians nor Moslems trusted the Jews as impartial guardians of holy places. A zone near the holy sites might wisely be reserved for Jewish residents, but primary reliance should be placed on absolute freedom of religion to be practiced throughout the region.

The Report concluded that at least Syria, Palestine, and Lebanon, in keeping with the wishes of their citizens should not be separated but should be governed, as Ambassador Morgenthau proposed, as a single federation with a monarch and a parliament, preferably under the mandate of the United States, but if that was not available, then of Britain. The fed-

eration would guarantee freedom of religion and a republican form of government in each of its member states. Anticipating American resistance to the burden of such an imperial responsibility, the Report further concluded that American optimism was needed to destroy the "cynicism and disillusionment" rampant in the region. The United States itself might be saved from "a disastrous reaction" against its "generally high aims in the war" if it would involve itself in Near Eastern affairs. While the costs might indeed be heavy:

America might well spend millions to insure relations of peace and good will among nations, rather than the billions required for another war, sure to come if the present cynical selfishness and lack of good will are not checked.⁵⁸

The American people, after tasting the brutality of war from 1898 to 1906 and 1917 to 1918 and experiencing the disappointment of the unpromising peace crafted at Versailles, were in no mood to consider the possibility. Nor so far as appears was the British Empire then in possession of the territory.

I leave it to the reader to consider whether perhaps King-Crane was right and their critics wrong. Or to suggest with benefit of hindsight what other steps should have been taken in 1920 with the remnants of the Ottoman Empire. ■

⁵⁷ Id. 235.

⁵⁸ Id. 238.