

Stanford Law School

Comparative Legal Histories Workshop: Colonial/Postcolonial India and Mandatory Palestine/Israel

Stanford Law School
Faculty Lounge
June 6, 2011

Description

In recent years, an impressive body of scholarship has emerged on colonial legal history. Some of this work has focused on Indian and Israeli legal history. While both contemporary Indian and Israeli law are in some senses a product of English law, many additional legal sources, including religious and customary law, have played a significant role in shaping the corpus of law in both countries. This history has yielded complex pluralistic legal orders which faced, and still face, similar problems, including the ongoing effects of the British colonial legacy and postcolonial partition, tensions between secularism and religion, and also the desire to absorb universalizing western culture while maintaining some elements of tradition.

The goal of our workshop is to bring together a group of legal historians interested in comparative colonial histories who are studying different aspects of the history of Indian and Israeli law. The workshop will be a one-day informal gathering that would combine a discussion of trends in comparative colonial legal history with an opportunity for participants to present their research projects. Our objective is to create a forum where legal historians who may not necessarily be in dialogue with one another can interact, exchange ideas, and perhaps even begin collaborative research projects.

The workshop is organized by Assaf Likhovski (Tel Aviv University) Renisa Mawani (UBC) and Mitra Sharafi (UW Law School). It is funded by the David Berg Institute for Law and History at Tel Aviv University, the Institute for Legal Studies, University of Wisconsin Law School, and the Department of Sociology at the University of British Columbia, and hosted by Stanford Law School.

Program

08:00 – Minibus will pick-up participants from the Westin St. Francis in San Francisco. We will meet at the front desk at 07:45.

09:00-10:00 Breakfast at the Faculty Lounge, Stanford Law School.

10:00-11:00 - **Introductory Session: Indian and Israeli Legal History**

Co-Chairs: Marc Galanter (Wisconsin) & Ron Harris (Tel Aviv)

Reading materials:

India: Rajeev Dhavan, "The Indian Subcontinent: An Overview of Indian Law," in Stanley N. Katz, ed., *The Oxford International Encyclopedia of Legal History* (Oxford: Oxford University Press, 2009, online edition accessed on 3 Jan. 2011).

Israel: Ron Harris, Alexandre Kedar, Pnina Lahav & Assaf Likhovski, "Israeli Legal History: Past and Present," in Ron Harris et al. eds., *The History of Law in a Multicultural Society: Israel 1917-1967* (Dartmouth UK: Ashgate, 2002), pp. 1-26.

Comparative Legal History: Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1600* (Cambridge: Cambridge University Press, 2002), pp. 127-166.

11:00-11:15 - Break

11:15-12:15 – **Transnational Movements and Transplantations**

Renisa Mawani (UBC), **Between Colonial India and the Diaspora: Racial Circuits of Legality across the Pacific**

James Jaffe (Wisconsin), **Justice, Fairness, and Empire: Informal Dispute Resolution in England and Colonial India, 1780-1850**

Assaf Likhovski (Tel Aviv), **The Universal and the Particular in Income Tax Legislation in Mandatory Palestine**

12:15-12:30 - Break

12:30-13:50 - **Crime and Criminal Law and Procedure**

Binyamin Blum (Stanford), **Rules of Colonial Difference: The Fate of the Indian Codes in Mandate Palestine**

Yoram Shachar (IDC Herzliya), **Raj, Mandate and State: The influence of the Indian Penal Code on the Criminal Law of Israel**

Elizabeth Kolsky (Villanova), **The Law of the Colonial Frontier and the State of Exception: British India's North-West Frontier**

Mitra Sharafi (Wisconsin), **Medical Jurisprudence in British India**

13:50-14:30 - Lunch

14:30-15:30 – **Family and Religious Law**

Chandra Mallampali (Westmont College), **Escaping the Grip of Personal Law in Colonial India**

Ashwini Tambe (Toronto), **Girlhood in the Law in Modern India**

Daphne Barak-Erez (Tel Aviv), **Symbolic Constitutionalism: On Sacred Cows and Abominable Pigs**

15:30-15:45 - Break

15:45-16:45– **Markets, Corporations, Trusts**

Ritu Birla (Toronto), **The Nomos of the Globe: Legal Worlds of Capital**

Ron Harris (Tel Aviv), **On the Transplantation of British Company Law in Post-Ottoman Palestine and in the Empire in General**

Adam Hofri-Winogradow (Hebrew University), **Zionist Settlers and the English Private Trust in Mandate Palestine**

16:45-17:00 - Break

17:00-18:00 - **Law and the Postcolonial State**

Rohit De (Princeton), **A Republic of Writs: Litigious Citizens, the Nehruvian State and the Rule of Law in India**

Alexandre (Sandy) Kedar (Haifa), **The British, Indian and Pakistani sources of the Israeli Absentee Property Act of 1950**

Yifat Holzman-Gazit (College of Management, Rishon Lezion), **Israel's Land Expropriation Law and the Legacy of the Colonial Land Acquisition Ordinance**

18:00-18:30 - **Concluding Remarks**

18:30 Minibus will take participants back to the Westin St. Francis, stopping on the way at San Francisco Airport (SFO). Participants who are going to the airport after the workshop can bring their luggage and store it at the law school. Please remember to pick it up and bring it to the Faculty Lounge at 17:30 (the facilities staff at the law school leave at 18:00).

General Information:

1. Each speaker will have **ten minutes** to present an outline of her or his project, followed by ten minutes for questions and comments.

2. The workshop's website can be found at <http://www.law.tau.ac.il/Eng/?CategoryID=430>. The website contains the reading materials for the first session and also a list of some secondary sources on the legal history of Mandatory Palestine and Israel.

3. Reading materials on South Asian legal history can be found at:

A. <http://hosted.law.wisc.edu/wordpress/sharafi/#> (Mitra Sharafi's South Asian Legal History Resources webpage, see especially the "bibliography" section).

B. <http://www.soci.ubc.ca/index.php?id=13495> (Renisa Mawani's bibliography on Law and the South Asian Diaspora).

C. <http://marcgalanter.net/Documents/indianlaw.htm> (Marc Galanter's website).

4. Administrative information:

A. Administrative Organizer at Stanford:

Patricia "Pat" Adan
Stanford Law School
559 Nathan Abbott Way
Stanford CA 94305-8610
Tel: (650) 723-5173
Fax: (650) 725-0253
Email: padan@stanford.edu

B. Assaf Likhovski (cell) +972-546-779555 or Mitra Sharafi (cell) 608-354-9141.

The Abstracts

I. Transnational Movements and Transplantations

Renisa Mawani (University of British Columbia, Dept. of Sociology, renisa@interchange.ubc.ca), **Between Colonial India and the Diaspora: Racial Circuits of Legality across the Pacific**

This project traces the entangled histories of late-nineteenth and early-twentieth-century colonial India and the Indian diaspora. Focused on the 1914 journey of the *Komagata Maru*, a Japanese steam-ship carrying 376 labourers from Punjab, the larger research of which this is a part draws from archival records in Canada, London, India, Malaysia, and Hong Kong, and approaches the ship's route as a transnational journey at the high mark of British imperialism. Specifically, my interest lies in tracking the circuits of people, law, legality, and racial truths between India, Malaysia, Hong Kong, and Canada. The specific paper that I will discuss at the workshop will address a small aspect of this work and is inspired by questions I addressed in my recent book, *Colonial Proximities* (2009). This book explores the dynamic encounters between aboriginal peoples, Chinese migrants, people of mixed-race ancestry, and Europeans, and how these encounters were narrated and documented through legal struggles over liquor, prostitution, and cannery labour. Extending my interest in indigenous/ non-European contacts, this paper tracks the specters of Indigeneity that were mobilized both by Canadian authorities and by British Indian subjects in struggles over Indian migration and imperial inclusion/ exclusion. While the *Komagata Maru*'s arrival was depicted as potentially endangering the legal status of aboriginal peoples in Canada, the ship's supporters in Lahore asserted their own conceptions of Indigeneity through the figure of the African. This was a claim to their racial superiority, legal sophistication, and as evidence of their readiness to join the wider imperial polity. By tracing the racial circuits of legality and Indigeneity that were mobilized on both sides of the Pacific and that moved between India, Hong Kong, Malaysia, and Canada, this paper asks how global histories might unsettle our prevailing conceptions of racial-legal force beyond the familiar binaries of national/ global, metropole/ colony, native/ white.

James Jaffe (University of Wisconsin-Whitewater, Dept. of History, jaffej@uww.edu), **Justice, Fairness, and Empire: Informal Dispute Resolution in England and Colonial India, 1780-1850**

This project examines the impact of the transnational transference of informal dispute resolution practices and, concomitantly, comparative ideals of justice, between England and early colonial India. It does so through the historical analysis of the attempts of the East India Company to adapt, combine, and often conflate the arbitration practices of late eighteenth and early nineteenth-century England with the so-called "panchayat system" of in the colonial Bombay Presidency. In contrast to the received interpretation of the role and functioning of dispute resolution during the colonial period, this project argues that the attempt to translate and adapt English law to colonial India became an essential

forum for the contested construction of what later came to be viewed as an indigenous form of Indian arbitration, the *panchayat*.

As is true today, arbitration and *panchayats* in the eighteenth and nineteenth centuries were seen as potentially important remedies to the high costs and extensive delays in the formal legal system. During the early colonizing period, British officials in India viewed the *panchayat* as analogous to Western-style arbitration and attempted to incorporate the former into their newly-created system of justice. This study aims to analyze this process, illustrate the ideological and juridical complications involved in attempting such a project, and to identify shared and competing concepts of justice and fairness. The project is based upon a variety of sources, including individual case studies, quantitative data analysis, and the archival records of the East India Company, and adopts interdisciplinary perspectives drawn from legal studies, South Asian history, and the political philosophy of justice and fairness.

Assaf Likhovski (Tel Aviv University Faculty of Law, likhovsk@post.tau.ac.il), **The Universal and the Particular in Income Tax Legislation in Mandatory Palestine**

My project examines the transplantation of income taxation to Palestine in the 1930s and 1940s. Two aspects of the process of transplantation will be discussed. First, the way in which British officials conceived tax law, and local society and the attempt to fit tax law to local conditions. In a recently published article of mine, I argued that one has to distinguish between two different British approaches: While the lawyers involved in the enactment of income taxation, in Palestine and in the Colonial Office in London, made relatively little effort to adapt it to local conditions, tax administrators involved in the initial debate about the imposition of income taxation in Palestine in the 1930s, and in the application of the specific rules of the Ordinance after it was enacted in the 1940s were more sensitive to local conditions often arguing that there was a need to adapt the law to the specific social and economic conditions of Palestine. Second, I analyze the impact of the experience gained in other British territories on income tax legislation in Palestine. British officials sometimes referred to other British territories (most notably India, Iraq and Tanganyika) in drafting and applying the Palestine Income Tax Act. However, the use of lessons learnt in other colonial contexts was haphazard (depending on the experience of the particular official in question) and was also sometimes based on the assumption that all colonial contexts and taxpayers were similar. The ultimate picture that emerges from the history of income tax legislation in Palestine is that there was no clear and consistent British policy regarding the transplantation of income taxation. Different British officials viewed income taxation as either universal (and therefore easily transplantable) or not depending on their professional background (lawyers vs. administrators), on their previous experience in other British territories and on preconceived notions about the nature of the colonial subjects and colonial societies

II. Crime and Criminal Law and Procedure

Binyamin Blum (Stanford Law School, blum@stanford.edu), **Rules of Colonial Difference: The Fate of the Indian Codes in Mandate Palestine**

In 1932 Palestine's newly appointed Attorney General Harry Trusted took on the task of codifying the territory's procedural and criminal laws. Trusted's proposed codes were closely fashioned after the Indian evidence, criminal and procedural codes of the 1860s and 1870s, to which he introduced only minor modifications. Trusted's proposals were rejected by Palestine's judiciary, mainly Chief Justice McDonnell, who regarded the codes as utterly inappropriate for local conditions due to the social and political circumstances that rendered Palestine unique. In McDonnell's opinion, Palestine was best governed through existing Ottoman procedures, which were to be modified cautiously and only when absolutely necessary. Furthermore, according to McDonnell it was the judiciary, rather than the legislature/executive, that was best situated to determine when deviations from Ottoman procedures were required.

Trusted's 1932 proposals were neither the first nor the last occasion when the Indian codes, which were transplanted in much of Britain's African colonies, were debated and ultimately rejected as inappropriate for Palestine. Similar initiatives were put forth by the Colonial Office during the early days of the British Mandate in 1922, but were dismissed by Palestine's then Attorney General, Norman Bentwich on various grounds. And although legal procedures in both India and Palestine were often aimed at addressing the similar challenges of the Orient, such as the prevalence of perjury, the solutions adopted in India were considered ill-suited for the circumstances of Palestine. My purpose is to examine the precise reasons *why* Palestine, and to some degree Iraq, were perceived as distinct in their procedural requirements not only from England but from other colonies. In so doing, I also seek to challenge the distinction, prevalent in colonial legal history, between procedural and substantive law: it is often stipulated that whereas the former was Anglicized quickly and comprehensively, the latter was modified more cautiously and gradually. I ask whether legal procedures were in fact perceived as easily transferable and potentially universal or were instead regarded as culturally specific, predicated on particular notions of justice, dispute resolution and social structure.

In an attempt to shed light on these debates I also look beyond the formal reasons offered by officials in their support or opposition to the transplantation of colonial codes. I look to the identity of the actors, their institutional interests as well as their personal biographies and prior colonial career. For example, I place Chief Justice McDonnell's opposition to the Indian codes, and to the Anglicization and codification of Palestine's law more generally, against the background of his involvement in the Irish Home Rule Movement. I argue that far from a "die-hard conservative" and imperialist, as some contemporaries described him, McDonnell believed that "institutions... imposed by a conquering country, never [earn] that measure of respect bred partly of pride which attaches itself to the self-sown customs and processes of nations."

Yoram Shachar (IDC School of Law Herzliya, Shachar@idc.ac.il), **Raj, Mandate and State: The influence of the Indian Penal Code on the Criminal Law of Israel**

The Indian Penal Code of 1860 has left an influence on Israeli Criminal Law. Originally drafted under the British Mandate in 1936, the Israeli Penal Code is mainly based on an 1897 Queensland model that was marched under British rule from one colony to another, mainly in Africa. Before reaching Palestine, the Queensland model was modified in Cyprus to include a number of offences copied verbatim from the Indian Code, and the modifications remained intact under Mandate and Israeli law. I intend to discuss the tensions between the Indian and Queensland influences, mainly in the context of Homicide Offences. The theoretical approach I propose to use draws on the polemics of Transplantation vs. Irritation in the migration of legal texts and on the literature on colonial legislation.

Elizabeth Kolsky (Dept. of History, Villanova University, elizabeth.kolsky@villanova.edu), **The Law of the Colonial Frontier and the State of Exception: British India's North-West Frontier**

I am currently working issues related to crime and control on the north-west frontier of colonial India and on questions relating to the law of the colonial frontier more generally. According to conventional wisdom, the British empire achieved territorial dominance over the Indian subcontinent with the conquest of Punjab in 1849. However, imperial stability at the northwestern and northeastern boundaries of British India remained tenuous right up until independence in 1947. Alternately using the carrots of accommodation and conciliation and the sticks of repression and control, the colonial state continuously struggled to secure dominance on its vulnerable borderlands.

British administrators across the spectrum of political opinion believed that the security of India depended upon the security of its frontier. The logic and rhetoric that defined frontier policy rested on the assumption that exceptional circumstances demanded exceptional treatment. At the heart of my research is a fundamental question: what does this space of exception reveal, if anything, about the core nature of colonial control? I explore this question by examining the formation and implementation of legislation on the northwestern frontier of British India.

In the late nineteenth century, a series of special laws were passed to protect British civil and military officers and to promote imperial interests in the frontier districts. The Frontier Murderous Outrages Regulation (1867) and the Frontier Crimes Regulation (1872), which were both designed to suppress violent crime (especially murder), afforded the state extraordinary powers to try and punish alleged criminals. Such powers included summary execution upon sentencing (denying defendants the right to appeal and dismissing the requirement in the ordinary criminal law that a capital case be confirmed by a higher tribunal), collective punishment (fining and confining entire families and villages found to harbor or sympathize with alleged criminals), and preventive jurisdiction (taking security from or arresting persons suspected of being about to commit certain crimes). The passage of both of these laws coincided with crises of imperial

authority elsewhere in the empire, including the Morant Bay Rebellion in Jamaica (1865) and the Fenian movement in Ireland.

In this project, I am interested in mapping a regional legal history of India's north-west frontier that charts connections to other imperial locales. I look forward to interacting with other members of the workshop who are interested in the law and politics of the colonial frontier.

Mitra Sharafi (University of Wisconsin Law School & History Dept, sharafi@wisc.edu),
Medical Jurisprudence in British India

I am starting a new project that uses medical jurisprudence in British India to explore conceptions of truth and trust in empire. As Elizabeth Kolsky points out, the use of medical jurisprudence in colonial India was fêted because it allowed courts to rely less upon the testimony of South Asian witnesses. Medical evidence was a perceived answer to the problems of perjury and mistrust between colonizer and colonized in the courtroom. The use of medical evidence in court also performed a dual function in the imperial pedagogical project. By simultaneously promoting the rule of law *and* western science, medical jurisprudence fit neatly into the larger “civilizing mission” that justified British rule. Through an examination of medico-legal treatises, case law, and legislation (in English), along with vernacular sources (in Gujarati), the project explores the ways in which medical jurisprudence fell short of fulfilling these expectations in India. The project will focus on western India (particularly Bombay) during the later colonial period.

My research interests connect colonial India and mandate Palestine in several ways. Given my interest in ethno-religious minorities in the British Empire, the comparison of the Zoroastrian and Jewish legal experiences is a rich one. I am also interested in the themes of legal pluralism and religious law in empire. I hope we can compare the personal law system in colonial India and mandate Palestine during the workshop. Finally, mobility and the circulation of legal personnel and ideas through the Anglosphere interests me greatly. I have written on and created online databases pertaining to students at the Inns of Court in London during the colonial period (<http://hosted.law.wisc.edu/wordpress/sharafi/south-asian-law-students-at-the-inns-of-court/>), and have recently published an article on forum shopping in colonial Eurasian divorce suits as part of a *Law and History Review* forum (with Rohit De, Elizabeth Kolsky and Chandra Mallampalli). I am also particularly interested in the role of the Judicial Committee of the Privy Council in the consolidation of an empire of common law. The cross-fertilization resulting from the citation of trans-imperial precedent and the replication of legislation (usually developed in India and exported to other territories) are themes I hope to explore in greater depth during the workshop.

III. Family and Religious Law

Chandra Mallampali (Westmont College, Dept. of History, mallampa@westmont.edu),
Escaping the Grip of Personal Law in Colonial India

As they implemented their system of law in India, the British recognized different personal laws for different religious “communities.” What began as an attempt to conserve local traditions and respect religious differences gradually evolved into a system that militated against local customs. This essay describes attempts of Indian litigants, mostly women, to contest the “laws of their religion” by claiming to practice customs at variance with those laws. Proving custom provided for a time a means of interrogating abstract and gendered notions of Hindu, Muslim, Sikh or Christian identity. “Proof of custom” cases represent a more dialogical view of colonialism whereby courts solicited and carefully considered ethnographic evidence supplied by witnesses. By examining a series of such cases, this essay traces a shift from a dialogical to a more rigid and hegemonic deployment of personal laws. This transition offers a unique lens into currents of South Asian historiography centered upon the issue of colonial intrusiveness. It also documents resistance to Orientalist notions of an India fundamentally constituted by religious communities.

Ashwini Tambe (University of Toronto, Women and Gender Studies’ Institute and Dept of History, a.tambe@utoronto.ca), **Girlhood in the Law in Modern India**

The notion that childhood is a modern abstraction has fairly widespread scholarly acceptance. Historians have traced the shifting constructions of childhood and varying markers of adulthood. Anthropology has long studied transitions to adulthood. Nonetheless, there have been relatively few attempts to theorize childhood in the context of South Asia. While valuable scholarship exists on policy problems such as child labour, son-preference and female infanticide, the category of the child is typically taken for granted. Modern India is a particularly intriguing context in which to pose questions on childhood and girlhood in particular. The legal age of marriage rose from 14 years in 1929 to 18 years in 1978, and opportunities for female access to education and paid work dramatically increased in this same period. My current project explores how the boundaries between girlhood and adulthood have been formalized in the twentieth century. I attend to the interplay of customary law, colonial law and international conventions, and to the disjuncture between laws in the realm of marriage, commercial sex, statutory rape and child labour.

I come to this research focus out of questions that emerged in my previous research on sexual relations in western India. My monograph *Codes of Misconduct* (University of Minnesota Press, 2009) examined the relationship between laws on prostitution and their enforcement in Bombay, 1860-1947. While conducting archival research for this book, I came across intriguing differences between the age of consent standards in prostitution laws and marriage laws, which raised tantalizing questions about how notions of childhood in general, and girlhood in particular, were constructed. In 2009, I published an article in the *Journal of the History of Childhood and Youth* juxtaposing age of consent laws for marital and non-marital sex in the 1920s, also tracing the role that internationalist discourses played in shaping the direction of Indian laws. My article on the debates at the League of Nations about the role of climate in shaping age of consent laws will soon appear in *Theory, Culture and Society*. My contributions to the workshop will draw on material from these linked projects.

Daphne Barak-Erez (Tel Aviv University Faculty of Law, barakerz@post.tau.ac.il), **Symbolic Constitutionalism: On Sacred Cows and Abominable Pigs**

My project discusses the significance of symbols within constitutional law by analyzing the role of laws introducing traditional national symbols into two legal systems characterized by a mixture of secular and traditional traits—India and Israel. Specifically, it focuses on the legal prohibition on cattle slaughter in India and on pig growing and pork trading in Israel, animals considered “key symbols” in their respective cultures – from the early days of independence until today.

Changes in the social and political context emerged as crucial for the legal regulation of these symbols as well as for its durability. Despite the similarities in their starting points, the Indian and the Israeli systems have ultimately taken divergent courses, reflecting differences in their respective contexts and underlying tensions. Whereas Indian cattle slaughter prohibitions expanded with the constitutional backing of the Indian Supreme Court, pig-related prohibitions in Israel declined, again with the constitutional backing of the Israeli Supreme Court.

I explain this difference by placing these symbols in a wider social context. Cattle slaughter in India has long been a consistent source of tension with the Muslim community. The basic strain that led to the original legislation, then, remains just as powerful, encouraging the preservation and expansion of laws forbidding cattle slaughter. By contrast, pig prohibitions in Jewish culture developed in the context of persecutions by Greco-Roman rulers and later on in Christian Europe. The “other” against whom this prohibition developed, however, is no longer part of public life in Israel. In addition, the Muslim community in Israel is equally averse to pigs. As time passed the importance of pig prohibitions for Israeli secular Jews within the context of their national identity declined, shifting to the level of a strain between secular and religious Jews. Many secular Israelis indeed view the pressure for pig-related legal prohibitions more as a symbol of religious coercion than as a national symbol of identification.

IV. Markets, Corporations, Trusts

Ritu Birla (Department of History, University of Toronto, r.birla@utoronto.ca), **The Nomos of the Globe: Legal Worlds of Capital**

In my recent book, I have charted law as a key terrain for the study of what I've called "market governance," which refers to both the institutionalization of an abstract space "the market" or "the economy" as an object of governance, and as a model for social relations. The study drew attention to political economy as a discourse of governance, the central theme in Foucault's theorizing of governmentality, and addressed the role of law in it. Empirically, it highlighted foundational features of modern market organization—limited liability, the trust, speculation and gambling for example—as central to the genealogy of capitalist modernity and its public/private distinction, a

genealogy made legible, I argued, through the study of the British Indian colonial formation. The tensions and translations attending the institutionalization of forms of contract law after codification in British India could be illuminated especially through what legislators considered a persistent problem—the customary, kinship-based market organization and practice that structured indigenous or vernacular capitalism. Extending these interventions, the presentation will first draw attention to some strategies by which legal historians might pursue relationship between commerce and conquest. Secondly, it will highlight current work in which I have posed the tensions between contract and customary practice as a site for elaborating postcolonial approaches to law, temporality and performativity. Finally, bringing recent studies on the history of the *lex mercatoria* to this theoretical frame, the presentation will highlight some new channels and archives I am pursuing for a current project on law, capital and globality. Considering law's role as medium for the capitalist rewriting of the social and of community, especially of what nineteenth and early twentieth century jurists referred to as "corporate life," it seeks to pose new perspectives for genealogies of the global and the "international."

Ron Harris (Tel Aviv University Faculty of Law, harrisr@post.tau.ac.il), **On the Transplantation of British Company Law in Post-Ottoman Palestine and in the Empire in General**

I will discuss the transplantation and harmonization of company law legislation in the British Empire in the early 20th century and in Palestine in particular. My research project describes the displacement of Ottoman law and its replacement by British company law in Palestine, particularly through the Palestine Companies Ordinance 1929.

A recently published article of mine (co-authored with Michael Crystal) suggests that transplantation of British company legislation into Palestine was neither straightforward nor all encompassing. The Article discusses some specific areas of transplantation difficulty in the case of mandatory Palestine viz private companies, foreign companies, branch registers and limits on land acquisition. My research reveals that the transplantation was not enforced from the metropolis, the Colonial Office, on Palestine but rather initiated in the periphery. The act was not drafted solely by colonial officials but also by private Jewish lawyers in London and in Palestine. It was not enacted only in order to serve British commercial interests.

The study exposes the potential of studying company law issues within the Imperial context. It shows the emergence of several models and connections and influences between various colonies within the Empire. It demonstrates the complications involved in designing, enacting and maintaining an interconnected company law system for an entity as diverse and heterogeneous the British Empire.

Adam Hofri-Winogradow (Hebrew University of Jerusalem Faculty of Law, hofri@mscc.huji.ac.il),
Zionist Settlers and the English Private Trust in Mandate Palestine

My essay is the first sustained description, based on archival materials, of the use Zionist settlers in British Mandate-era Palestine made of the English private trust and trust company, and Mandate authorities' reactions to that use. An early, ill-fated attempt to create a family trust of land in the English style produced an ambiguous decision by the Supreme Court of Palestine, which could be construed to mean that the private trust was no part of Palestinian law. I show how in the shadow of that decision, the Zionist settler population of Palestine made significant use of the trust for a variety of purposes. The story thus provides a particularly sharp example of a colonial population adopting more of the colonizer's own law than that colonizer was willing to have it use. Still more use was made of the trust company; it was a key instrument in encouraging Jewish immigration to, settlement of and investment in Palestine. Thanks to a particularly sophisticated international trust structure set up in 1933, more than 50,000 German Jews escaped the Nazi noose with at least some of their property intact. Their arrival in Palestine largely created its middle class. The essay thus contributes to both the socio-legal history of British colonial law, the history of Mandate Palestine, and that of the worldwide dissemination and uses of the trust and trust company during the early 20th Century.

V. Law and the Postcolonial State

Rohit De (Princeton University, Dept. of History, rohitde@princeton.edu), **A Republic of Writs: Litigious Citizens, the Nehruvian State and the Rule of Law in India**

I am a lawyer and a doctoral candidate in the Department of History at Princeton University. Trained as a historian of South Asia, my interests are primarily in legal history and anthropological approaches to understanding law and the state. The archive of courts and litigation has been central to my research. I am interested not only in the processes of lawmaking but the everyday lives of the law.

My dissertation project, "A Republic of Writs: Litigious Citizens, the Nehruvian State and the Rule of Law in India", examines litigation by citizens against the newly independent republic to engage with questions of citizenship, postcolonial transformations and the spread of legal consciousness. The state in late colonial India expanded in both its scope and reach during the Second World War. The postcolonial state which emerged a few years later, coupled this increased capacity with its ambitious program of social and economic change and "*etched itself into the imagination of Indians in a way that no previous political agency had.*"¹ However, the powerful states always coexisted with a reasonably independent and often unpredictable judiciary, giving citizens scope to negotiate with the state through the courts of law. It is this process of engagement that I hope to uncover by examining litigation around certain legislation and new bureaucratic agencies. In a recent paper, I examine the behavior of colonial courts in India during the Second World War, to investigate how judges dealt with the contradictions between a state that claimed legitimacy on the basis of the rule of law, but governed entirely through a rule of exceptions and colonial difference.

¹ Sunil Khilnani, *The Idea of India* (Farrar, Straus and Giroux, 1999), (p. 41).

The similarities between mandate Palestine and colonial India, and in some ways republican Israel and India are striking. In some cases the legislations concerned are even identical. I examine the Evacuee Property Act in my dissertation. This Act empowered the government to seize property of “evacuees” (all Muslims) who had left for Pakistan and to use it for the benefit of refugees who had come from Pakistan (mostly Hindus and Sikhs). Not only could the state take over property, it also had the power of determining who could be classified as an evacuee. This meant that people who had left their homes temporarily because of fear and insecurity found themselves declared evacuee and disposed of property. Despite attempts to place the Act beyond judicial review, the Office of the Controller of Evacuee Property came to be subject to large amounts of litigation. The Absentee Property Act, 1949 in Israel bears an uncanny resemblance to the regime created by the Evacuee Property Act. According to this, Arabs who were not present in their homes in March, 1948 were declared ‘absentee’ and their properties appropriated.

My previous research on colonial India has also turned on questions of litigation and legal networks, but in the case of family law. The British in India, as in Palestine, had attempted to follow the older Mughal/Ottoman system of allowing religious laws to govern ‘personal matters’. My research has focused on ways in which secular legal system has engaged with religious and customary law and how litigants have engaged with the possibilities made available through legal pluralism. Central to this has been the construction of knowledge in the colony and the spread of legal consciousness and networks. I have published both on the legislative codification of Muslim family law in colonial India and the consequences of such codification for legal pluralism.

Alexandre (Sandy) Kedar (Haifa University Faculty of Law, sandy@law.haifa.ac.il), **The British, Indian and Pakistani sources of the Israeli Absentee Property Act of 1950**

The war that erupted in Palestine in 1948 (referred to by Israelis as the “War of Independence” and by Palestinians as “the Catastrophe”) was the culmination of an ethno-national conflict between Arabs and Jews. The war resulted in the establishment of Israel, the expulsion and flight of hundreds of thousands of Palestinian refugees, the immigration of hundreds of thousands of Jews to Israel, and the reallocation of land formerly held by Arabs to Jewish groups and individuals

A major legal instrument that regulated the appropriation of Palestinian Land after the War was the Absentee property legislation. All Arabs who left or were expelled from Israel in 1948 were classified by this law as ‘Absentees’ and their property was defined as ‘Absentees’ property’. In addition, a large number of the Arabs who remained in Palestine/Israel after the war, suffered from the same fate.

While the Absentee Property legislation attracted academic attention, its inspiration from British, Indian and Pakistani legislation has so far remained little known. With the beginning of World War II, the British enacted the Trading with the Enemy Act (1939) which accorded sweeping powers to the Custodian of Enemy Property over the property of those defined as “enemies”. Sec. 7(1) of the British Trading with the Enemy Act of 1939 provided that “with a view to preventing the payment of money to enemies and of

preserving enemy property in contemplation of arrangements to be made at the conclusion of peace,” the Board of Trade could appoint a custodian of enemy property, and vest in the custodian such enemy property as would be prescribed. The act granted many additional powers, including that of regulating the transfer of enemy property. The British legislation served as the immediate source for local Mandatory legislation, the Trading with the Enemy Ordinance of 1939 and subsequent legislation, all of which closely followed the British model.

Several important arrangements found in the Israeli Absentees’ legislation, such as the office of the Custodian of Absentee Property, the stringent powers accorded it and the formal extinguishing of all former rights to the property vested in the Custodian, were clearly inspired by the British and Mandatory Trading with the Enemy arrangements. An additional source for Israeli Absentee Property legislation has been the Indian and Pakistani Evacuee legislation.

Like Israel, Pakistan and India had been established in a context of inter-communal violence after a period of British colonial rule, with the partition of British controlled India into the states of Pakistan and India in August 15th, 1947. As a result, between half a million to a million of people died. An estimated 14 to 17 million people crossed the Indo-Pakistani border, leaving behind them vast amounts of property. While Indian and Pakistani lawmakers also drew on the British Trading with the Enemy Act their legislation of 1948 incorporated new components that facilitated not only expropriation, but transfer of ownership and reallocation as well.

Archival work reveals that Israeli lawmakers have used the Indo-Pakistani model in drafting the Israeli Absentee Property Act. The purpose of this paper then is to examine the influence of the British Trading with the Enemy Act and the Indian and Pakistani legislation on the absentee property Act.

Yifat Holzman-Gazit (College of Management School of Law, Rishon Lezion, gazity@mail.biu.ac.il), **Israel’s Land Expropriation Law and the Legacy of the Colonial Land Acquisition Ordinance**

My research project focuses on the legal history of Israel's land expropriation law, and in particular on the consolidation of the *Land (Acquisition for Public Purposes) Ordinance (1943)* into Israeli law. The Acquisition Ordinance was passed by the British with the express purpose of facilitating the government’s acquisition of privately held land in order to meet the needs of an increasing population in Palestine and changes in the standard of living. Its provisions enabled the Mandatory government to compulsorily acquire land for a “public purpose”, which, as defined in the Act, meant “any public purpose declared as such by the High Commissioner for Palestine.” Unlike the Defence Regulations of 1939 and the Defence Emergency Regulations of 1945 which were regarded as colonial enactments aimed to enhance the direct interests of the British government, the Acquisition Ordinance was treated as an implementation of the global principle of Eminent Domain. Its interpretation in Mandatory case law downplayed the

role of local conditions of clashes between communities in Palestine and focused on issues dealt also in English jurisdictions such as what constitutes a lawful public use.

The nature of the treatment of the Acquisition Ordinance changed after it was absorbed into Israeli law. After Independence, the Acquisition Ordinance became a symbol of the colonial legacy, and it was applied in accordance with the expropriation laws passed by the Israeli government in the early 1950s as a means of controlling the Arab population. The interplay between the legacy of the Acquisition Ordinance in colonial Palestine and post-colonial Israel will be discussed in the presentation.