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ABSTRACTS

1. Julia Stephens, Harvard, History, Graduate Student

Defining a Lex Loci for British India: Sovereignty, Evangelicalism, and the Origins of Personal Law

In the 1830s and 1840s a question troubled colonial administrators, missionaries, Indian litigants, and legal experts in Britain: what was the lex loci or territorial law of British India? In particular, Indian Christians complained that they were subject to Muhammadan criminal law and occupied an ambiguous position with respect to civil law. In response to these concerns the first Indian Law Commission composed a report in 1840 that attempted to address these questions, charting the historical evolution of the relationship between Hindu, Muhammadan, and English law in colonial India. Retracing the early history of British judicial authority in India, the Commissioners expressed consternation that nearly seventy years of colonial legal precedent had yet to clearly establish the relative position of these multiple and competing systems of law. Looking forward, the Commissioners strongly recommended declaring English law the lex loci and subordinating Hindu and Muhammadan law to the status of religious personal laws, which could only be applied to individuals professing a particular faith.

The report, which was widely circulated but never officially printed, has been largely ignored by historians because the Commissioners’ recommendation was never legislatively enacted. This paper retrieves debates about declaring a lex loci for British India from the archives in order to explore the profound ideological shifts taking place in the 1830s and 1840s. These debates reveal the intimate connection between changing concepts of political sovereignty, the advent of concepts of personal law, and Evangelical thought. While the report’s specific recommendations were never implemented, it introduced new hierarchies and geographies of legal classification that profoundly influenced subsequent legal reforms. Much of the scholarship on religious personal law in India has focused either on the late eighteenth century or the late nineteenth century and early twentieth century. In contrast, this paper demonstrates that the ideological climate of the “Age of Reform,” with its overt emphasis on reforming Indian society and fostering Christian civilization, played a formative role in delineating the boundaries between secular and religious law.
2. Michael Fakhri, University of Oregon School of Law, Assistant Prof

**The 1937 International Sugar Agreement: Neo-Colonial Cuba and Economic Aspects of the League of Nations**

To the Cuban sugar elite of the 1920s and 1930s, the League of Nations was not the same institution imagined by delegates in Paris, 1919 – to them the League had an important and viable socio-economic function thought to be necessary to stabilize life in Cuba and augment the economic powers of the Cuban state. Accounts of the League of Nations, however, often neglect the institution’s economic aspects. Cuban delegates were the principal instigators behind one of the League’s few successful economic treaties – the 1937 International Sugar Agreement (ISA). Sugar was Cuba’s principal commodity. And everyday life was acutely affected by fluctuating sugar prices. Accordingly, Cuban Delegates linked League economic doctrines to Cuban national economic plans. First, the Cuban government wanted to stabilize the price of sugar in order to gain as much return from sugar exports as possible and to maintain social stability. Second, the government wanted to move away from depending on one commodity and planned to diversify its economy. The result was that the 1937 ISA empowered the sugar-producing periphery in relation to the sugar-importing industrial core. Cuban delegates also adopted the League assumption that the agricultural periphery had to ensure the industrialized core obtained the primary commodities necessary for manufacturing. The League’s international trade law, however, was not simply an inevitable reflection of a core-periphery relationship. Rather, we see how actors from the so-called core and periphery used international law, institutions, and practice to construct these categories for the purpose of negotiating and renegotiating their relationship with each other. Thus, through the 1937 ISA, Cuban delegates challenged the power dynamic between core and periphery and increased the Cuban state’s economic power.

The Cuban state’s gains, however, were still limited within the confines of League doctrine. Which assumed a core-periphery relationship between countries. As such, a legal analysis Reveals how the 1937 ISA further entrenched sugar producers’ dependence on the sugar-importing core. The treaty provided no opportunities for peripheral sugar-producing states to fundamentally alter their economic and social structures away from relying on a single commodity.
3. Omar Cheta, NYU, Department of History, Graduate Student

What Did Commerce Mean in Late Ottoman Egypt?
This paper will explore the reorganization of the legal infrastructure and the concurrent emergence of a new understanding of “commerce” in late Ottoman Egypt (1841-1876). Two historical phenomena formed the background for this process, namely, the prevalence of European extra-territorial rights and the attempt to consolidate the domestic Egyptian legal order. An underlying assumption of this paper is that Egypt was the site of colonization projects during the nineteenth century, although it was not a formal colony of any European power. Thus, following Timothy Mitchell’s *Colonising Egypt*, this paper understands the colonial setting to be one in which certain concepts of order prevail, regardless of the existence or absence of military occupation.

Starting the early 1840s, the number of European merchants operating in Egypt increased dramatically as a result of the abolition of state monopolies. The incoming merchants enjoyed extra-territorial rights that often rendered them immune from prosecution in local courts. Meanwhile, the nineteenth-century Egyptian state was the site of numerous attempts to synchronize various contemporaneous legal institutions and codes: imperial, state-enacted, religious and consular. In light of this background, conflicts between local and European merchants were irresolvable through legal means. Hence, the Egyptian state and various European consulates cooperated to establish mixed merchant courts. These courts were presided over by an equal number of local and European merchants, deployed French, Ottoman and Egyptian state-enacted commercial laws (in this order), and enjoyed jurisdiction over all merchant legal disputes.

This paper argues that the attempt to govern the commercial sphere through newly introduced legal practices resulted in a substantive redefinition of “commerce” as a concept. In building this argument, it will demonstrate how certain activities, such as specific kinds of exchange and money lending were excluded, while others, like inheritance, were included into the new commercial sphere. Furthermore, it will touch upon the question of who had access to this new sphere. For example, did a merchant’s specific trade or legal status affect his access to this commercial sphere? Three sets of sources will serve as the foundation for this paper: merchant court proceedings, (near) contemporaneous encyclopedias and commercial laws.
4. Nada Moumtaz, CUNY Graduate Centre, Anthropology, Graduate Student

What of the “interest of the waqf?” French mandate legislation and articulations of the Lebanese public

In 1922, the French mandatory powers over Lebanon left the administration of Islamic waqfs [charitable foundations] in the hands of the Muslim community, but reserved supervisory powers in the name of the “common” or “public good,” and today, contemporary waqf administration still bears the marks of the colonial legislation. Based on an analysis of contemporary waqf expropriations in the post-war (1975-1990) redevelopment of Beirut’s city center, I analyze how, when, and by whom the concept of the “common good” is marshaled, and the concepts that counter-arguments for these expropriations use, namely “the interest of the waqf.” To better understand the latter, I trace its use in a similar expropriation in the same area towards the end of the Ottoman period, as documented in the shari’a court records of Beirut. In the nineteenth century, the process of exchange was compulsory, but each individual waqf was replaced on a one-to-one basis by an equivalent according to the value and the revenue of the waqf, which guaranteed each waqf’s interest, or what best serves each waqf individually. During the post-war reconstruction of Beirut’s city center, the exchanged lots were consolidated in a few plots, signaling the anchoring of the centralization of the administration of waqfs and of the approach to waqfs as a large-scale financial operation independent of the interests of individual waqfs. In addition, in contrast to earlier usage, the contemporary uses of the concept of the interest of the waqf shows a re-articulation of the public and the private. Indeed, today, the public good represents the nation’s common good, and excludes goods provided by individual waqfs embodying an ethical living and sustaining certain types of social relations, which were understood earlier to participate to a certain “common good.” By attending to the grammars of this concept of the interest of the waqf, I argue that the colonial introduction of the concept of the public good in the legal vocabulary of the newly founded Lebanese Republic rearticulated its very meaning by reconfiguring what counts as a private and a public good.
5. Poornima Padipati, Postdoctoral Fellow, University of Chicago

Time Zones: Anthropology, Tribes and Contractual Space in Colonial India

In the nineteenth century, large numbers of tribal workers from central India were recruited as indentured labourers to the plantation economies of Assam and the West Indies. Indenture was exacerbated by tribal indebtedness and the loss of agricultural land caused by colonial land settlements and military campaigns. However, in the wake of sudden and large-scale tribal uprisings—including the ‘Kol’ Mutiny, the Santhal Rebellion and the Birsa movement—colonial authorities attempted to curb the alienation of tribal land and the activities of merchants and moneylenders by ‘scheduling’ tribal districts. Such administrative zones were excluded from the standard procedures of British Indian law and placed under the direct executive authority of colonial officers. Here tribal land could not be alienated to non-tribals and commercial activity was subject to strict colonial oversight. Colonial officials presumed that "primitive" tribes—as the anachronistic remnants of an earlier moment in historical time—were unable to track and understand the effects of time itself. As such, they supposedly failed to appreciate the operations of debt and interest, and were ill-equipped to negotiate contracts. Ironically, it was precisely this "quality"—of tribal credulity—that made tribal workers such a valued component of the plantation economy. In colonial India, tribes as political communities were defined not only in relation to historical time, but also in relation to contract—to both the usurious contracts of the moneylender and the coveted contracts of indenture. Such relationships were charted and codified by the growing discipline of colonial anthropology, which played a central role in juridically enclosing tribal communities in Scheduled Districts. This paper will examine the formation of anthropology as a discipline deployed along the internal frontiers of colonial conquest, and its role in the juridical definition of aboriginal space. The presentation also illustrates how contractual space and its exception—the Scheduled District—impacted race science in the subcontinent and structured zones of economic exclusion fashioned from earlier colonial boundaries of conquest and pacification. In the process, the paper will re-examine the history of both early British anthropology and colonial legal theory (including the work of Maine, Mill and Fitzjames Stephen) by tracing how these are (re)formulated in the exceptional regions of the colonial frontier.
6. Joseph Younger, Princeton University, Department of History, Graduate Student

“Monstrous and Illegal Proceedings:” Law, Violence and the Local Politics of Cross-Border Property in Alegrete, Brazil (1852-1864)

In 1855, Manoel de Almeida Lima appeared in the courthouse in Alegrete, Brazil. Lima demanded payment from another Brazilian rancher, Manoel Rodrigues da Silva, for lands and cattle Lima alleged that da Silva had illegally appropriated from him across the near-by border in Uruguay. Lima had already been pursuing his claim for years in courts throughout the Uruguayan and Brazilian borderlands. Now, Lima hoped to at long last obtain justice for his losses. As the case played out in Alegrete over the next year, it became a flash point for local factional conflicts, regional disputes over property, and ultimately international debates over the control of the Río de la Plata borderlands.

Using Lima and da Silva’s dispute as a point of departure, my paper will explore the intense local uses of law and the courts in the contested borderlands region shared by Brazil, Uruguay, and Argentina. Linked together by the vast river network that converged on its eponymous estuary, the Río de la Plata borderlands constituted a dynamic export region in the emerging Atlantic World. At the same time, however, the region that provided Alegrete’s growing prosperity was equally a theater for nearly constant violence as rival national projects struggled to integrate the rivertine system under their control.

Noting these pervasive conflicts, traditional accounts of this borderlands region have emphasized its lawless nature. In these narratives, state formation occurred only when distant national centers developed sufficient resources to control local caudillos and police porous borders in the late 19th century. Yet, litigation like Lima’s and da Silva’s occupied a prominent place alongside cross-border violence in the daily experience of borderlands residents. My paper posits that rather than borderlands lawlessness, the region is best understood as one in which its inhabitants strategically utilized competing notions of sovereignty to advance their interests.

Alegrete’s courthouse lay at the heart of this borderlands world. It represented a critical site in which local elites and emerging states negotiated the terms of rule over the middle decades of the 19th century. My paper explores the factional conflicts to control the administration of justice in Alegrete. Within this local arena of struggle, law and violence often became tightly entangled. In this way, personal disputes over legal rights became linked with broader collisions over the relationship between emerging national entities and the dynamic peripheral regions they labored to control.
One flew east, one flew west: Medical jurisprudence and British readings of the Indian criminal mind, 1850-1900

Medical jurisprudence can be understood as the evidence-based mirror of legal codification. Codification removes (in theory) a degree of discretion, flexibility and uncertainty from the common law. However, the clearest law must still be applied in complex and contingent factual scenarios. Medical jurisprudence allows doctors (also in theory) to extract facts from contentious cases by following specific protocols, allowing judges to apply clear laws to clear facts. Insanity – which inevitably requires judges to consider a defendant’s past mental state – was a messy judicial affair. In colonial courts, insanity was decidedly messier.

My paper explores British colonial medical jurisprudence in India in the latter half of the nineteenth century. I argue that medical jurisprudence can be understood as a part of an attempt by colonial jurists to write Indian subjectivity out of the law. By introducing standardized medico-legal expertise, I argue that the colonial legal system sought to make the Indian criminal mind a legible object of legal judgment. Instead of grappling with the emotions, religious beliefs and motives of Indian defendants, judges could rely on doctors to extract objective indicators of insanity from the evidence.

While the medicalization of the criminal mind was occurring simultaneously in Britain, British colonial efforts to modernize, codify and reform Indian law provide a specifically imperial subtext to this transformation.

To prove this claim, I examine a series of influential medical jurisprudence textbooks published in India by European lawyers and doctors. They, and their England-published counterparts, were used by judges in India in deciding cases with medical aspects. Many were produced under government authority, or were adopted by governments as elements of civil service examinations for police and pleaders. I focus my attention on the medical literature relating specifically to insanity and mental disorder (including issues of capacity and criminal responsibility).
8. Sarah Ghabrial, McGill, History, Graduate Student

“Le ‘Fiqh francisé’?: Law reform and the Modern Muslim Family in Algeria, 1890-1918.”

At the turn of the twentieth century, the architects of French colonial law in Algeria began to embark on a sustained project to codify Islamic family law of the Maliki school of jurisprudence. This marked a stark reversal in the French policy of non-interference in the personal law of non-citizen Muslims – a policy that underpinned colonial Algeria’s political segregation cum legal pluralism. While qadi courts and customary tribunals were nonetheless gradually absorbed into the civil law regime,\(^1\) it was not until much later that French reformers ventured into matters of doctrine, jurisprudence (fiqh), and the very fabric of Muslim family law. How and why did French jurists and Orientalist scholars come to involve themselves in the process of formulating Islamic jurisprudence? What does this turning point tell us about both local dynamics between colonizer and colonized and wider, global trends in colonial and Islamic legal cultures?

The most compelling artifact of the French interest in codifying Islamic family law was the seminal ‘Code Morand’ (1916) – so named for its author Marcel Morand, the preeminent French expert on Berber ‘customary law’ and the Maliki school.\(^2\) The Code was commissioned by the Algerian Governor-General and took over ten years to complete. Though never officially implemented, it was nonetheless highly influential and was consulted by jurists well after independence. Drawing on colonial archives and juristic writings, the first object of this paper is to interrogate this codification program not as an irresistible assertion of civilizing will or colonial power, but rather as a product of negotiation. Indeed, Muslim jurists within and beyond Algeria articulated their own visions of Islamic modernity and set the tempo for Islamic law reform. The second object, related to the first, is a consideration of a crucial site of this negotiation: divorce. Inherent in debates over divorce in late-nineteenth-century Algeria were questions about redefining ‘the (Muslim) family’ and its changing relation to the state. As such, this paper situates the codification project within the context of colonial and indigenous discourses on domesticity, gendered social orders, and the rights of men and women in the formation and dissolution of marriages.

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1 The French arrived in 1831 and the process of structurally assimilating Islamic family law began as early as the 1850s; steps in this process included, among others, the appropriation/elimination of Islamic consultative bodies, the integration of ‘native courts’ into the civil appellate circuit, and the appointment of French judges to qadi courts. For a detailed study, see: Allan Christelow, Muslim Law Courts and the French Colonial State in Algeria (Princeton, NJ: Princeton University Press, 1985).

9. Doreen Lustig, NYU School of Law, Graduate Student

Abolition of Slavery in the League of Nations: The Case of Firestone in Liberia

This suggested paper on the League of Nations’ investigation of slave practices in Liberia is focused on the involvement of a relatively new actor in the colonial scene of the early 20th century - the private business enterprise. In the late 1920s rumors on practices of slavery and slave trade reached different circles in the United States and Europe, leading the League of Nations to establish a pioneering enquiry commission to investigate the troubling news.3 This study revisits this forgotten episode not merely as an important incident in the history of Liberia but as a central case in the history of slavery in international law and the relationship between capital and international law.

In a swift shift of less than half a decade, the international legislation moved away from the abolition of slavery (1926) to the convention against forced labor (1930). The terminological transition from slavery to forced labor involved a change in the legal attention from private actors to the responsibility of governmental agents. The study demonstrates how both conventions were informed by the early colonial relationship of control between governments and companies. The Conventions’ articles held a presumption of a strong colonial power capable of regulating private enterprises. As such it fell short of addressing the rising influence of the private modern company in the colonial world and changes in the relationships between the public and the private spheres.

The failure to recognize the growing influence and autonomy of private companies was somewhat mitigated by the innovative institutional setting introduced by the League officials who created a space to renegotiate the concession agreement. It is in this phase that we find the influence of the regulatory state echoing in the corridors of the League. However, while the Liberian sovereignty was pierced by the close scrutiny of its government's officials, Firestone's operations 'within its territory' were considered its prerogative. Indeed, the abolition of slavery and the turn to a labor regulation carried different meanings in and outside the colonial world. The study demonstrates how these normative shifts and discrepancies paved the way to the loss of slavery as a humanitarian cause for international lawyers.

10. Paul Swanepoel, PhD Candidate, University of Edinburgh

Judicial Choice during the Mau Mau Rebellion in Kenya, 1952-1960

This paper offers a new vantage point from which to view a colonial legal system by examining judicial decisions made during the Mau Mau rebellion in Kenya, which was spearheaded by members of the Kikuyu ethnic group. Following the declaration of a State of Emergency in October 1952, regulations promulgated by the governor introduced a range of new offences, many of which carried mandatory capital sentences. With time, it became apparent that one level of the judiciary - the magistrates’ courts and the Supreme Court of Kenya - was made a part of the counter-insurgency machinery, while another, the Court of Appeal for Eastern Africa, largely tried to maintain its own independence and sphere of influence as moral guardian of the ‘rule of law’ and a check on overweening executive power.

A detailed analysis of case law relating to the possession of arms and ammunition, including the testimony of accused persons and witnesses, reveals that on a number of occasions, appellate judges chose to widen the law by moving away from literal interpretations of the regulations. In particular, they were able to import common law principles that enhanced the rights of accused persons. For instance, the defence of lawful excuse for unlawful possession of firearms was introduced and the standard of the test for joint possession of arms and ammunition was raised. Crucially, the exercise of judicial choice by judges defined legality during the rebellion and categorised accused persons as either common criminals or Mau Mau fighters. Notably, a significant body of international humanitarian law was in place by 1952. This had a bearing on colonial judgments and continues to be of relevance in compensation claims recently brought before English courts by Mau Mau veterans. The paper, which draws on the oral testimony of lawyers who practised in the 1950s as well as reported cases, provides a view from inside the ‘strong’ colonial state and exposes its fissiparous nature. In doing so, a particular kind of colonial encounter is presented, where judges displayed their adjudicative power in different ways and before diverse audiences.
The American Justice of Peace, Legal Populism and Social Intermediation: 1645 to 1860

In *Democracy in America*, Alexis de Tocqueville notes that the English institution of the justice of the peace had been transplanted to the American colonies, while “removing from it the aristocratic character that distinguishes it in the mother country.” What precisely Tocqueville meant by distinguishing the American from the English justice of the peace in this way is not completely clear. Like their English siblings, American justices of the peace exercised considerable criminal, civil, and administrative powers as a county court. In addition, individual justices of the peace in England and America exercised criminal jurisdiction over petty crimes. Yet, English and American justices of the peace were crucially different. Unlike their English counterparts, justices of the peace in American became instruments of commerce and trade, establishing a nationwide network of small claims courts, in a way they never did in England. More precisely, the American justice of the peace became an institution for the recording and seizing of property, a site of information for where credit had been extended, and a forum in which the coercive legal authority of the state could be mediated through community norms.

The aim of this paper – through the examination of legal tracts, English laws, justice of the peace manuals, state laws and constitutions, and justice of the peace record books – is to illustrate the “social intermediation” role justices of the peace played in early American society. By “social intermediation” I mean that societies require institutions to solve the problems associated with complex human cooperation in large social groups. Justices of the peace, through their ability to coercively enforce obligations, and facilitate information sharing, provided the institutional infrastructure required of large social networks. By closing the gap between continuing personal relationships and the enforcement of impersonal legalities, justices of the peace simultaneously encouraged human cooperation, and, somewhat counter-intuitively, built the colonial and postcolonial American state’s coercive capacity. In addition, this paper situates the office in its seventeenth-century intellectual context – in particular, it suggests popular demands for easy access to justice were a normative resource for the development of the coercive power of the colonial and postcolonial American state.
12. Anna Leah Fidelis, Harvard Law School, Graduate Student

Civilizing the Filipino Public: Colonialism and the American Constitutional Tradition in the Philippine Islands, 1900-1935

To American colonial careerists like William Howard Taft and the Second Philippine Commission, nothing more clearly demonstrated the exceptional beneficence of American colonialism than its civilizing goals. In the Philippine Islands they found a “virgin state” where “[n]ature has done everything, but man has done very little.”¹ The Philippine frontier was an undiscovered country that beckoned to the pioneering American spirit; the undernourished, uneducated, unproductive natives cried out to the American missionaries of modernity to preach the gospel of progress. But Americanizing life in the Islands served a higher goal – that of creating the material support for democracy and, eventually, independent self-government.

This civilizing mission was facilitated by the Government of the Philippine Islands’ highly centralized administrative apparatus that Americans had inherited from Spain, streamlined, and deployed towards policies both progressive and laissez faire. But to reconcile its despotism with America’s vision of a government subject to written limits, American colonialism had to be constitutional apart from civilizing. Thus, insular jurisprudence construed civilization as a public purpose, which rendered private habits and lives the legitimate target of police power exercises and blurred the boundaries between public and private. Rooted in popular sovereignty and tied to institutions of local self-governance in the U.S. mainland, police power in the unincorporated territory that was the Philippine Islands was instead lodged in the sovereignty of the United States, placing it beyond the control of those most affected by it. Entrusted to the political departments, the discretion to define this powerful enabling concept was subjected to weak due process scrutiny by a formalist judiciary hemmed in by a separate spheres approach to separation of powers.

When Filipino legislators successfully parlayed their status as the Filipino people’s representatives to capture control over the Insular Government, they infused “the public” with their identity and invoked it to channel public resources towards their vision of national development. The judiciary validated their discriminatory strategies within equal protection, legitimizing the majoritarian tyranny that American constitutionalism was designed to thwart. On the eve of independence, Filipino framers preserved colonial understandings of “the public” in the 1935 Philippine Constitution.