

**Individual paper abstracts – including
individual papers from panels and streams**

Isabella Alexander

Stream: Intellectual Property in Empire

Copyright, Nature and Empire in Cook's Voyages

This paper seeks to explore the intersections between copyright, nature, and empire during the formative years of the modern, statutory regime of copyright law through the genre of travel writing and a close focus upon accounts of the three Pacific voyages of Captain James Cook. It examines how the interactions between seamen, naturalists, booksellers, and institutions sought to produce authoritative accounts of both voyage and nature, as well as their relationship to empire, how these accounts were ushered into print, and how ownership was sought to be exerted over them. It seeks to draw out the pivotal role played by copyright law in the way that the printed accounts of Cook's voyages were produced and circulated, and thus by extension in the construct of nature that these accounts produced. Copyright draws nature into the commodity form when it is systematised, narrated, visualised and made infinitely reproducible. Copyright works to stabilise the text and allows its authority to be asserted and reasserted. There are close parallels between the ways that travel narratives enable nature to be valued for its exploitable potential and appropriated, and, drawing upon the work of Bernard Edelman, the ways that copyright law also allows nature to be 'authored', and thus appropriated as the object of copyright.

Isabella Alexander PhD (Cantab) BA (Hons) LLB (Hons) (ANU) is a professor in the Faculty of Law at the University of Technology Sydney. She researches and teaches in the field of intellectual property law and legal history, specialising in the law of copyright. Isabella is the lead Chief Investigator on the ARC Discovery grant, 'Hacking Copyright Law in the 21st Century: Art, Law, History and Technology', investigating the tensions that underlie the legal treatment of visual works of art. She is sole CI on the ARC Discovery grant *Copyright and Cartography: Understanding the past, shaping the future, uncovering the history of copyright in maps and other geographic publications*. Her publications include *Copyright and the Public Interest in the Nineteenth Century* (Hart Publishing, 2010) and *Research Handbook on the History of Copyright Law*, co-edited with Tomas Gomez-Arostegui (Edward Elgar, 2016). She is currently the Secretary of the Australian and New Zealand Law and History Society and a member of the Executive Committee of the International Society for the History and Theory of Intellectual Property. Before joining UTS in 2012, Isabella was Director of Studies in Law and Fellow in Law at Robinson College, Cambridge, and a Newton Trust Lecturer in Law at the Faculty of Law, University of Cambridge.

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Fady Aoun

Stream: Intellectual Property in Empire

Tobacco Empires as Agents of Empire: Reconceptualising Corporate Empires within Sovereign Empires

Colonial and imperialist ideologies, as is well known, were promulgated not only through official government channels and public art, but also through entrepreneurs promoting their wares across an increasingly interconnected globe. Celebratory representations of Britannica and America—together with racist portrayals of marginalised Others—frequently materialised in registered trademarks adorning products such as tobacco, alcohol, and sugar.

Corporate tobacco empires operated as especially powerful commercial vehicles that smoothed the integration of metropolises and their colonies and featured heavily in historical trademark registers across the British Empire, continental European states and the United States. Through trademark registrations and business records, this article explores the role played by such empires as agents of imperialist ideology across sophisticated domestic and international trade networks. Many of the confronting trademarks documented in this article were unsurprisingly owned by powerful tobacco traders based in Bristol, a former slave trading port and one of the leading tobacco processing centres in the British Empire for imported plantation tobacco.

Charting the corporate lives and entanglements of Bristolian firms— such as preeminent nineteenth century Bristolian tobacco manufacturer WD & HO Wills and its founding role in the Imperial Tobacco Company (now Imperial Brands) — offers fascinating historical vignettes into the complex intersectionality of Empire, persons, and places, whether real or imagined. Fairly consistent transatlantic and transpacific laws, it will be shown, facilitated semiotic mythmaking relating to the triumphalism of the ‘idea’ of Empires and the subjugation of Others

Fady Aoun BEc (Hons), LLB (Hons) Phd (Syd) is a Senior Lecturer in law at the University of Sydney Law School and is admitted to practice law in NSW. His research and teaching interests are mainly in intellectual property, corporations law and legal history. He is a co-author of *Intellectual Property: Commentary & Materials* (6th ed, Thomson Reuters, 2017) with Colin Bodkin and David Price. Recent publications include ‘The Belated Awakening of the Public Sphere to Racist Branding & Racist Stereotypes in Trademarks’ (2021) 61 *IDEA: The Intellectual Property Law Review*, 545–672, *Submission to IP Australia’s Indigenous Knowledge Project* (March, 2021) (with Kathy Bowrey and Michael Handler) and ‘Whitewashing Australia’s History of Stigmatising Trade Marks and Commercial Imagery’ (2019) 42(3) *Melbourne University Law Review* 671–736.

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Yasser Arafath

Stream: General

Panel: Legal Pluralism in Colonial and Pre-colonial South Asia

Community and Jurisprudence in Malabar, 1500-1600: A Reading of Fath-ul-Muin

This paper focuses on the Fath-ul-Muin written by Zainuddin Makdhum II, a major scholar of shafi'ite Islam in the pre-modern period in the background of the Portuguese invasions in late 16th century Malabar. Makdhum II, who saw himself as a mujtahid or an independent interpreter, wrote the text by incorporating into it legal ideas from a range of Islamic juridical scholars who belonged to different, and often conflicting, schools of law.

Addressing the political, economic and religious turmoil that engulfed the coastal Muslims of Malabar with pietistic anxiety in the late 16th century, the Muin is a legal and religious text directed at “freeman, free women, children, slave and protected non-Muslims.” For Makdhum II, Malabar was the Darul Islam, the originary land of Islam, and as the foremost legal and spiritual authority of Muslims in the region, he deployed the Muin to enable the Muslims of Malabar to weather the storm of the transitional period of turmoil that he referred to as fasad. Written in Arabi-Malayalam in the context of the impending loss of political support and economic stability, the Muin is a didactic text that sought to provide its readers a sense of kinship and a notion self governing community to allow it to negotiate with its troubled times.

Dr P.K. Yasser Arafath is a historian of medieval and early modern India. His research primarily focuses on Kerala, and the areas of his interests include its legal and intellectual traditions, Arabi- Malayalam literature, history of violence, Indian Ocean communities and cultural histories of the body. He has co-edited a book entitled *Sultana's Sisters: Genres, Gender, and Genealogy in South Asian Muslim Women's Fiction* (Routledge, 2021) Currently, he is in the process of completing a monograph on Indian Ocean texts entitled *Malabarnama: Intimate Texts, Ulema, and the Lyrical Resistance in the Age of Disorder (1500- 1875)*

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Preet Aulakh

Stream: General

Inter-Colony Analogies and the Institutionalization of Peasant Proprietorship from Punjab to Prince Edward Island, 1868-1875

This paper examines how a creative use of ‘inter-colony’ analogies allowed the British Empire to overcome entrenched ideas about property rights and political economy that protected interests of the landed aristocracy, and institutionalize peasant proprietorship in diverse and geographically dispersed colonies of Punjab, Ireland and Prince Edward Island during the 1868-1875 period. A growing scholarly interest in studying connected and comparative histories of the British Empire to understand multifaceted and shifting imperial relationships has led to a body of work that examines how British institutions were adapted and introduced across the globe. Under the conceptual framing of ‘intra-imperial’ analogies and precedents, this scholarship foregrounds the ways in which English principles and policies introduced in a ‘colonial point of reference’ (e.g., Ireland) were subsequently transferred to other colonies on grounds that what is good for one colony is also good for the other. My paper expands on this body of research by looking at the interconnections through the lens of ‘inter-colony’ analogies. Unlike ‘intra-imperial’ analogies, which functioned to justify the diffusion of policies based on Imperial or English principles across the Empire, I argue that the objective of ‘inter-colony’ analogies was to decouple the colonies from England. By identifying shared characteristics and experiences around land tenure relationships between the colonies, and showing how these characteristics made English principles about property rights and improvement unsuited or inappropriate for the colonies, inter-colony analogies allowed for a theoretical shift whereby subsequent land tenure questions would no longer be constrained by historical English practices.

Preet S. Aulakh is Professor and Pierre Lassonde Chair in International Business at York University, Canada. He has published extensively on topics related to economic liberalization and organizational strategies in developing economies, cross-border knowledge transfers, and intellectual property rights. His recent work focuses on comparative institutionalisms especially with respect to state capitalisms in developing economies and evolution of colonial legal institutions across the British Empire. He is also working on a comparative legal history project on land tenure relationships across the British Empire’s during the second half of the nineteenth century. Some of his recent work include articles in *the Journal of Imperial and Commonwealth History* and *Law and Literature*, and books on *Mobilities of Labour and Capital in Asia* (Cambridge University Press, 2020) and *Coping with Global Institutional Change* (Cambridge University Press, forthcoming).

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Grietje Baars

Stream: General

Panel: Law, Personhood and Racial Capitalism in the History of Empire

The Making of the Corporate Legal Form in the Colonial Encounter

In his seminal monograph ‘Imperialism, Sovereignty and the Making of International Law’, author Anthony Anghie claims that both Third World states and international law are created not as previously believed by European powers, but are shaped by the colonial encounter (Anghie: 2007). Anghie’s monograph was paradigm-shifting for the discipline of international law. It is well known, however, that the colonial enterprise was perpetrated by European merchants and explorers (rather than states) through legal vehicles first known as joint-stock corporations, which evolved to become the multinational corporations we know today. The question this project explores is: ‘precisely how did the corporate legal form take shape in the colonial encounter?’ Although there existed legal forms of incorporation in Roman law and also in Islamic law, it was the Dutch financial inventions that lay at the core of the legal construct of the corporation as we know it around the world today, so my research is focused here. A motivation for this research is to discover what particular dynamics and/or processes have been hard-wired into the corporate legal form from its inception in the early colonial era and are still present today.

Grietje Baars is a Reader in Law and Social Change at the City Law School, City, University of London. They work on the role of law in society, using queer and Marxist theory to understand (and ultimately subvert) the constitutive, ordering and ideological functions of law. Their monograph (*The Corporation, Law and Capitalism*; Brill, 2019 / Haymarket, 2020) offers a radical perspective on the relationship between law and capitalism through the prism of the corporation. Grietje has also co-edited, with Andre Spicer, *The Corporation, a Critical, Multidisciplinary Handbook*, a volume which has come out of the ESRC funded Critical Corporation seminar series (CUP 2017). In addition to these projects, Grietje has written on the emancipatory potential of human rights law and the interconnectedness of liberation struggles. Grietje has a background in English literature (Utrecht 1997), corporate-commercial legal practice in the City of London (2000-05) and human rights and international humanitarian law work in the Middle East (2006-09). Their current project explores the colonial roots of corporate law.

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Aparna Balachandran

Stream: General

Panel: Legal Pluralism in Colonial and Pre-colonial South Asia

Catholics and Others: Religion and Legal Pluralism in Early Colonial Madras

Under East India Company rule, early colonial urbanism in the south Indian port city of Madras was characterized by an exceptional degree of legal pluralism marked by the co-existence of English, European, international and indigenous law, as well as custom. In this patchwork of multiple and overlapping jurisdictions, the administration of the city's Catholic churches with their large numbers of native worshippers - many of them from the lowest rungs of society – was a particularly complex matter. European church officials claimed sovereign authority over the spiritual and religious lives of their congregations even as they struggled with an increasingly powerful Protestant English government that sought to control quotidian secular matters concerning the churches.

In this paper, I begin by examining a series of disputes from the early 19th century between outcaste “Pariah” worshippers and their French and Portuguese priests over the administration of their churches. The former's negotiations with the plural legal context that they inhabited is evidenced in their self-articulation as urban, legal subjects on the one hand, and as Christians on the other. The ideology and practices of early colonial governance both enabled, and shaped the language and forms of the legal subjectivity of colonized subjects, as well as the character of subaltern Christianity, and the category of religion itself.

Dr Aparna Balachandran teaches Modern History at the Department of History, University of Delhi. Her research and teaching interests focus on the legal and urban history of the early modern world of South Asia. She is the co-editor of *Iterations of Law: Legal Histories from India* (OUP, 2018) and is currently completing a monograph on law and urban governance in the port city of Madras in early colonial South India.

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Krista Barclay

Stream: Indigeneity, Law and Empires

Imperial Intersections: Family, Indigeneity and Inheritance Law in British North America

By the nineteenth century the Hudson's Bay Company (HBC) permitted its retiring fur trade employees to settle with their Indigenous partners and children outside the boundaries of the territories it claimed in British North America (Rupert's Land). This paper focuses on a network of fur trade families that were bound together by personal and professional connections that spanned the nineteenth century British Empire. Through their wills, fur traders attempted to ensure the orderly distribution of large estates with assets, executors, and legatees spread across territories that operated under varying legal systems. Before 1870 an uneven mix of English common law, Indigenous protocols, French civil law, and locally specific legal practices governed Rupert's Land. The legal complexities of fur trade inheritance law illustrate the ways that a nascent settler state and its legal system became solidified by the late nineteenth century. This paper highlights the ways that legal disputes over fur trade estates became sites where hybrid legal codes and traditions were unevenly upheld, reworked, or subverted with important impacts for Indigenous legatees and inheritance law across the British World more broadly.

Krista Barclay: I am a Postdoctoral Fellow at the University of Toronto, where I teach in the Canadian Studies program and work on a digital humanities partnership with Rainy River First Nations called Kiinawin Kawindomowin (Story Nations). I am a settler in Williams Treaties Territory north of Toronto, Canada. I hold a PhD from the Department of History at the University of Manitoba. My dissertation, titled "'Far asunder there are those to whom my name is music': Nineteenth Century Hudson's Bay Company Families in the British Imperial World" focused on the settlement experiences of Indigenous Hudson's Bay Company families in Scotland and Ontario. Part of this research was published in the Journal of the Canadian Historical Association (CHA) and won the CHA's Jean-Marie Fecteau Article Prize.

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James P. Barry

Stream: The Maritime World in Legal History

An Analysis of John Reeves's *History of the Law of Shipping and Navigation*

This paper analyses *A History of the Law of Shipping and Navigation* by the English jurist and legal writer John Reeves (1752-1829). Reeves published the text in 1792 following two seasonal tenures on Newfoundland as the island's first chief justice. Inscribed for the use of the British Board of Trade, the text is an historical account of the Navigation Acts to the year 1792. The text expounds the Acts by drawing on the opinions of courts and law officers of the crown as to their "construction and usage" over time, in divers foreign and colonial contexts. This analysis yields two points. First, it suggests that Reeves's method in *A History of the Law of Shipping and Navigation* helped to turn a bare series of statutes into a cohesive "law of merchant shipping". Second, it suggests that Reeves's text, on account of its method, functioned as an instrument of colonial and imperial legal consolidation at the end of the eighteenth century. Identified by W.S. Holdsworth in 1938 as the first treatise on the English law of merchant shipping, Reeves's text received no subsequent analysis by scholars. This paper fills the gap in the legal-historical record. In so doing, it endeavors to initiate a discussion on the development of this genre of legal literature and its relationship to empire-building in the late Georgian period.

James P Barry: I am a second-year doctoral candidate at Osgoode Hall Law School at York University in Toronto, Ontario, Canada. I am working in the field of legal history under the supervision of Professor Philip Girard. My doctoral work is focused on the legal writings of John Reeves (1752-1829). I am applying to the "Maritime World in Legal History" stream at the Third Legal Histories of Empire Conference in order to connect with scholars working at the intersections of legal and maritime history, to get my footing within that research community and, hopefully, to receive feedback on my work on Reeves's *A History of the Law of Shipping and Navigation*.

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Melike Batgiray Abboud

Stream: General

Political Crime in Colonial Sudan: The Rule of the Two Empires (1899-1915)

At the end of nineteenth century and the beginning of the twentieth, several attacks against the established order turned into a critical phenomenon reflecting the social, moral, legal and judicial aspects of the era. To date, such social reactions has not been fully categorized in the literature. The concepts of anarchy, terrorism and political crime are often confused due to the lack of clear definitions. This work focuses on defining the complex phenomenon of political crime over a comparative analysis of the Ottoman-Egyptian and British rule of colonial Sudan during the “condominium” period, which starts in 1899 and ends in 1914 with official annexation of Egypt by Britain. The study aims at reconciling the mismatching perspectives of the two empires that were jointly ruling Sudan by investigating case studies of convicted locals with documented court decisions. Contradictions in criminal law of the British and the Ottoman empires prove that the empires have never agreed on a universal perception of what constitutes a political crime. Colonial Sudan, in particular, provides a plethora of relevant case studies that pave the way for more comprehensive interconnectivity studies between the criminal laws of the two empires.

Melike Batgiray Abboud studied History at Middle East Technical University in Turkey. She completed her master’s degree at Bilkent University in the Ottoman Studies under the department of history with the thesis title “Of Disguise and Provocation: The Politics of Clothing in the Late Ottoman Empire, 1890-1910.” She joined as a doctoral student the Max Planck Research Group “Legal Connectivities and Colonial Cultures in Africa” lead by Inge Van Hulle in the Max Planck Institute for Legal History and Legal Theory in 2021, with a project on the political crimes and criminals in the colonial Sudan during the condominium period.

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Smadar Ben-Natan

Stream: General

Panel: Israeli regimes of citizenship, immigration, enemies, and space, in comparative perspectives

The Dual Penal Empire: Emergency Powers and Military Courts in Palestine/Israel and Beyond

This paper explores the duality of emergency powers and criminal law in old and new formations of empire. Set against the backdrop of the US “war on terror,” I link discussions around current articulations of empire and the treatment of “enemy combatants,” illuminating new connections between empire, emergency, and “enemy penology.” Focusing on Palestine/Israel, I explore the duality created by emergency powers and criminal law from the late British Empire to contemporary Israel/Palestine as an “imperial formation.” Through a genealogy of emergency legislation, military courts, and two case studies from 1980s Israel, I show how emergency powers constitute a *penal regime* that complements ordinary criminal law through prosecutions of racialized enemy populations under a distinct exclusionary and punitive legality. Building on Markus Dubber’s *Dual Penal State*, I demonstrate how the—openly illiberal—dual penal empire (i) suppresses political resistance (insurgency, rebellion, and terrorism) and (ii) institutionalizes enemy penology through emergency statutes and military courts. Thus, in imperial formations like Israel and the US—which deny their illiberal features—emergency powers are framed as preventive security and denied as part of the penal system, while enemy penology operates in plain sight.

Smadar Ben-Natan. is the Benaroya postdoctoral fellow in Israel Studies at the University of Washington, Seattle, and a longtime Israeli human rights lawyer. She holds a PhD in Law from Tel Aviv University and a Master’s in international human Rights law from the University of Oxford and was a visiting scholar at UC Berkeley and Harvard University. Specializing in socio-legal studies and international law, her research focuses on Israel/Palestine and the intersection of legal history of empire and colonialism, political sociology, and law, carceral studies and criminal justice, national security, and human rights. Research topics include military courts, human rights, citizenship, torture, and incarceration. She is a 2020 Harry Frank Guggenheim distinguished scholar, granted support for her project *The Carceral State in Conflict: Between Reconciliation and Radicalization*.

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Yael Berda

Stream: General

Panel: Israeli regimes of citizenship, immigration, enemies, and space, in comparative perspectives

Citizenship as a mobility regime. How colonial emergency laws made citizenship in the aftermath of the British Empire in Israel/ Palestine and India

This paper traces the historical foundations of current security legislation as the matrix of citizenship. Examining Israel's new Counter-Terrorism Law against the backdrop of security legislation in India, its main proposition is that these laws and their effects are rooted in colonial emergency regulations and the bureaucratic mechanisms for population control developed therein, rather than in the 'global war on terror'. The article offers an organizational vantage point from which to understand the development of population- classification practices in terms of an 'axis of suspicion' that conflates 'political risk' with 'security risk'. Through an account of the formalization of emergency laws, it explains the effects of colonial bureaucracies of security upon independent regimes seeking legitimacy as new democracies by tracing decisions regarding the use of an inherited arsenal of colonial and settler-colonial practices of security laws for population management, particularly mobility restrictions, surveillance, and political control. One of the most important of these effects is the shaping of the citizenship of targeted populations by security laws.

Yael Berda is an Assistant Professor of Sociology & Anthropology at Hebrew University and a non-resident fellow with the Middle East Initiative. Previously, Berda was the Gerard Weinstock Visiting Lecturer in the Department of Sociology at Harvard University. She was also an Academy Scholar at the Harvard Academy for International & Regional Studies, WCFIA from 2014-2017. Berda publishes, teaches, and speaks on the intersections of sociology of law, bureaucracy and the state, race and racism and sociology of empires. Her most recent book is *Living Emergency: Israel's Permit Regime in the West Bank* (Stanford University Press, 2017). Her forthcoming book traces how British colonial bureaucracy and emergency laws have shaped citizenship in three former colonies created through partition: Israel/Palestine, India and Cyprus. Berda was a practicing Human Rights lawyer, representing in military, district, and Supreme courts in Israel. Berda received her PhD from Princeton University; MA from Tel Aviv University and LLB from Hebrew University faculty of Law.

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Nandi Bhatia

Stream: Intellectual Property in Empire

Literary-Cultural Surveillance in British India and Beyond

Among the various laws passed to regulate and proscribe literary, journalistic, and dramatic texts in British India were the Dramatic Performances Act of 1876, the 1878 “Act for the better Control of Publications in Oriental Languages,” the Press and Registration Act of 1867, and the Sea Customs Act of 1878, all of which functioned as mechanisms of surveillance and control over the literary and cultural life of the colony. While the purpose behind the proscription of texts was to contain the spread of anti-colonial messages within India, a survey of selected banned texts reveals how these laws became channels for managing the flow of literature into India from abroad. For example, a review of the “List of publications proscribed under Section 19 of the Sea Customs Act, 1878,” (India Office Records, File J&P, 6050, 1919) shows the colonial government’s concern with texts about British rule in India, published from other colonies, England and the US. The list includes, for example, Gandhi’s *Hind Swarajya* about the demands for India’s Home Rule, which was printed in Natal, South Africa; a leaflet in Gurmukhi published in England; and literature and pamphlets of the Ghadar party in the US West coast whose members advocated freedom from British rule. While examining the language of the laws, this paper analyzes archival documents to understand what insights they provide on the British Empire’s outreach and impact beyond the subcontinent, and its simultaneous attempts to legally control the inflow of its critiques into India.

Nandi Bhatia is a Professor in the Department of English at The University of Western Ontario and Associate Dean (Research) in the Faculty of Arts and Humanities. Her research explores the connections between literature and the British Empire in India. Such connections have been analyzed in her monographs, *Acts of Authority/Acts of Resistance: Theatre and Politics in Colonial and Postcolonial India* (University of Michigan Press and Oxford University Press, 2004), *Performing Women/Performing Womanhood: Theatre, Politics and Dissent in North India* (OUP, 2010) and in edited collections, journal articles and anthologies. She has served on the editorial/advisory boards of the *Journal of South Asian Popular Culture*, *Feminist Review*, *TOPIA: Canadian Journal of Cultural Studies*, *Negotiations: An International Journal of Literary and Cultural Studies* and *The Forest City Film Festival*. For her research, she was awarded the Ontario Government's John Charles Polanyi Prize for Literature and she was named University of Western Ontario Faculty Scholar. Nandi's current research is on literary representations of the 1947 Partition.

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Binyamin Blum

Stream: General

Panel: The Social and Political Histories of Forensic Science in the British Empire

The Ceylon Police Footprint Bureau: The Untold History of a Forgotten Forensic Science

Tracking the footprints of both animals and humans is an ancient art. Beginning in the nineteenth century colonial officials began harnessing this knowledge to combat crime. Throughout the British Empire, colonial authorities employed native trackers—African Bushmen, Australian Aborigines, Maoris in New Zealand, Bedouin in the Middle East, Khoji in India—to assist them in detecting crime and in bringing offenders to justice. Depending on the time and place, such trackers were often allowed to testify in court about their findings, even when they were unable to articulate their precise methods to judicial factfinders.

In the twentieth century, British authorities redirected their efforts towards making footprinting at least *appear* more scientific. The purpose of doing so was twofold: first, to make it admissible in court; second, to make it teachable to British police forces without relying on local trackers. This paper analyzes one such effort in British Ceylon during the 1920s. Replicating the success of fingerprinting in identification, Ceylonese officials began collecting footprints through a newly created “Fingerprint Bureau,” to assist in criminal identification. Relying on the fact that much of the population in Ceylon did not regularly wear shoes, the hope was that footprints would help prosecute burglaries even when no eyewitnesses were present. Footprints, it was argued, were often more prevalent and pronounced than fingerprints at crime scenes, because the feet bore the entire weight of an intruder’s body. Though the Ceylonese government invested considerable resources in collecting samples, footprints ultimately did not prove particularly useful in crime detection or prosecution. The paper explores some of the reasons why the Ceylonese government continued to invest in this forensic technology despite its uselessness.

Binyamin Blum is a professor of law at the University of California, Hastings. He works and teaches in the fields of evidence, criminal procedure and criminal law. His current book project, *Forensic Empire: How Colonialism Shaped our Forensic Culture*, explored the origins of forensic technologies across the British Empire during the late nineteenth and early twentieth century.

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Michael Birnhack

Stream: Intellectual Property in Empire

The Emergence of a Brand: A Case of Jaffa Oranges from Mandate Palestine

The Shamouti oranges grown along the Mediterranean coast of Palestine under the British Mandate (1922-1948) sparkled in European markets in the 1920s and 1930s. The oranges, known as Jaffa Oranges or Jaffas, gained economic importance during the Mandate. Today, the brand is contested and has opposite national meanings for Israelis and Palestinians. This paper explores the emergence of the brand, when Jews and Arabs worked alongside each other and on occasion together, albeit with growing national tensions.

The brand emerged in a multi-layered industry, with different kinds of competition in each of its segments: growers, traders, and foreign markets, within a triangular legal setting: (1) The law did not protect geographical indications, leaving JAFFA ORANGES free to all; (2) The law protected distinctive trademarks. During the period, 102 relevant trademarks were registered, by Jewish and Arab growers and traders. Two-thirds used the geographical brand. (3) A regulatory scheme established to assure the quality of the citrus exports, acted as a de facto certification, resulting in numerous unregistered marks, markas.

This paper analyses the JAFFA ORANGES brand, by examining archival material and data from a reconstructed registry of the period, along a legal inquiry, contextualized within the economic and national situation.

Michael Birnhack is a Professor of Law at Tel Aviv University, where he has served until recently as Associate Dean for Research, and Director of the S. Horowitz IP Institute. His research focuses, inter alia, on IP history. His book, *Colonial Copyright* (OUP), was published in 2012. His current project explores trademark law in mandate Palestine.

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Michael Borsk

Stream: Indigeneity, Law and Empires

Belts and Chains: Mapping the Meeting of Law in the Great Lakes Region, 1783-1840

While chaining for a road survey in 1794, the Upper Canadian surveyor, Augustus Jones, and his Mississauga-Anishinabek guide, Wabenose, confronted an unexpected obstacle: a delegation of Chippewa-Anishinabek and Mississauga-Anishinabek. The Anishinabek informed Jones that this was their land and ordered him to depart, only relenting after Wabenose intervened with a belt of wampum beads and the promise that the road did not affect their territorial rights. Far from an isolated occurrence, this paper investigates similar encounters between surveyors and Indigenous delegations in the Great Lakes region to argue that such imperial confrontations were meetings of law. Drawing together examples from the British colony of Upper Canada and the American Territory of Michigan after 1783 reveals how surveying territorial borders and property boundaries generated particular kinds of legal relations. Unlike those studies which have understood surveying as a process of abstraction, this paper treats the markers of and on the land that surveyors created as “technologies of jurisdiction” (Dorsett and McVeigh, 2012) that oriented lawful relations between Indigenous nations and settler states. Mapping these meetings thus reveals that surveying not only spatialized law by delimiting jurisdictional boundaries, but objectified law as survey chains crossed the land and wampum belts changed hands.

Michael Borsk is a doctoral student in the History Department at Queen’s University, where he is currently the Donald S. Rickerd Fellow in Canadian-American Studies. His SSHRC-funded dissertation, “Measuring Ground: Surveyors and the Geography of Colonialism in the Great Lakes Region, 1783-1840” examines the work of land surveyors in the British colony of Upper Canada and the American Territory of Michigan. Last year, he was a visiting fellow with the Weatherhead Initiative on Global History at Harvard University, held the Brian Leigh Dunnigan Fellowship in the History of Cartography at the William L. Clements Library, and received an honourable mention for the Roy R. McMurtry Fellowship in Legal History from the Osgoode Society for Canadian Legal History.

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Aurélie Bouvart

Stream: Indigeneity, Law and Empires

Women and Colonial Justice in Late-Colonial Central Africa: Native women's alcohol transgressions before the Criminal Courts of Belgian Congo (1940s-1950s)

Criminal justice system enforced by Belgian colonial rule in its former colonies relied on a strong distinction between African and European litigants, resulting notably, in the introduction of a body of legal decisions that applied exclusively to native populations. Amongst the “indigenous” prosecutions, alcohol related offences emerge as the most recurring offences charged against native women in the upper criminal Courts. Alcohol transgression practices included “alcohol consumption”, “distilled alcohol fabrication and trafficking” and “public drunkenness”. Considered as “serious” crimes, these were sentenced to an average of nine months prison and payment of substantial fines, with detrimental effects on Congolese women. Drawing on a systematic analysis of a hundred court records of convicted native women for breaching alcohol prohibitive laws during the late-colonial period, this paper sheds light on native women's experiences of colonial law and justice and reveals Belgian colonial authorities' endeavours to sanction specific law violations in order to maintain social order and tackle “unruly” native women who challenged restrictive and racially discriminatory alcohol regulations. Alcohol cases against women in Belgian Congo offer in this respect a key site to study the connections between the role played by law and its production of gender and racial bias in a colonial criminalization context.

Aurélie Bouvart is a doctoral research fellow at the Université libre de Bruxelles (Belgium) carrying out her PhD project in the Atelier of Gender(s) and Sexuality/ies and in the Centre for Modern and Contemporary Worlds. Her research interests concern Belgian colonial history and more specifically the study of criminality and criminal justice from a gender perspective. She has co-authored an article on anti-gender politics in Europe which was published in the *Journal of the International Network for Sexual Ethics and Politics* (INSEP) 5(1).

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Kathy Bowrey

Stream: Intellectual Property in Empire

David Unaipon as Inventor: Patents, Aboriginal Invention & Settler Colonial Myth-making

Heralded as the Australian Da Vinci, David Unaipon (1872-1967) is the most significant Aboriginal inventor of the 20th century. Many of his inventions relate to a fascination with physics and perpetual motion. His most famous invention is a 1909 patented shearing mechanism. Celebrated in his lifetime for significant contributions to science and literature, Unaipon was honoured by inclusion on the face of the Australian \$50 banknote in 1995, re-released 2018.

There are very few nationally significant representations of Australian achievement in the field of science and technology. Acclaim for Unaipon as inventor has proceeded in the absence of any authoritative study of his patent applications, a failure to evaluate why he failed to financially benefit from his remarkable inventiveness, and without discussing relevant history with the Unaipon family. Unaipon descendant Kym Kropinyeri lived with his uncle David Unaipon. He approached Professor Bowrey with doubts and questions about standard accounts of the inventor's life and in particular, about his much celebrated 1909 shearing patent. Unaipon's "improved mechanical motion device" converted the conventional rotary motion of shearing devices into a straight-line reciprocal motion, improving problems with the mechanisms seizing, difficulties in shearing fine merino wool and dust and dirt spraying into shearer's faces. Oscillatory motion became and remains the industry standard.

Why did Unaipon fail to benefit from this patent or indeed from any of his other inventions? The family understood that the shearing invention was taken by Cooper Engineering/Sunbeam without recompense.

This paper critiques conventional accounts of technological innovation that link stories of stand-alone objects to exceptional individuals to better connect Unaipon's invention to Aboriginal accounts of history, survival and opportunity.

Kathy Bowrey is Professor in the School of Law, Society and Criminology, Faculty of Law & Justice, UNSW, Australia. She is a legal historian and socio-legal researcher whose research explores laws and practices that inform knowledge creation and the production, distribution and reception of technology and culture. Her recent books include [*Copyright, Creativity, Big Media and Cultural Value: Incorporating the Author*](#), (Routledge, 2021) and with Jose Bellido, *Adventures in Childhood, Intellectual Property, Imagination and the Business of Play*, (Cambridge University Press, forthcoming). She is a Co-Director of the *International Society for the History and Theory of Intellectual Property* (ISHTIP).

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Elizabeth Bowyer

Stream: General

Binding Engagements on the Edge of the British Empire: Women and contracts under the law in settler colonial New Zealand.

This paper will discuss the dynamic and convoluted relationship between women and contracts in settler colonial New Zealand. Women were part of the distinct and diverse ways contracts operated in colonial settings. Contracts not only acted as an instrument of creating and maintaining order within the colonial marketplace, but as a way in which unconnected individuals were able to form and build relationships and networks between each other when they came from disparate and unfamiliar backgrounds. The law and its courts were a system by which the rules of these relationships were governed. In New Zealand, women, both Māori and Pākehā, populate the archive of cases relating to contracts, as well as the archives where the law of contract was tried and developed. The law however, interacted in complex ways with women's capacity to contract. This paper will discuss whether colonial settings allowed women greater or lesser autonomy to act as economic and social agents. It will situate New Zealand within the broader context of European settler colonialism and the common law world in which New Zealand's marketplace and its people, through trade, commerce, law, and travel, were inextricably linked. It will discuss how women's contracting practices were influenced by the practices and laws of jurisdictions they had lived in previously.

Elizabeth Bowyer is a PhD candidate in the History Programme of Te Herenga Waka – Victoria University of Wellington. Her research focuses on women's legal history in Aotearoa New Zealand. In 2019 she completed her Master of Arts thesis on women as witnesses in the colonial New Zealand courts. Her PhD thesis is about the contractual engagements of women in New Zealand from 1840 until 1920 and women's experiences in the courts of law because of their contracting practices.

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Erin Braatz

Stream: General

Constructing Colonial Space

The criminal law remains a significantly understudied aspect of colonial law. This paper uses nineteenth century Ghana as a case study to examine how British colonial officials used the criminal law to implement a particular vision of a well-ordered society and proposes a taxonomy of colonial criminal law, mapping the range of purposes the British sought to achieve via its criminal codes. This taxonomy reveals an idea for colonial society that encompassed particular physical aspects of the community, including town design (roads, distance between houses); home order (the clearing of weeds, where individuals could relieve themselves); community order and regulation (where and when markets could be held, where people could be buried, where animals could roam and the licensing of said animals, who could have guns and ammunition); and the relations between people (particularly between subjects and authority figures, including the definition of the latter). All of these examples reflect attempts by the colonial state to implement its image of a properly governed space and all were effectuated at least in part by the imposition of criminal penalties. Moreover, court records reveal that common law criminal offenses constituted a minority of the offenses that were prosecuted in the colony. Rather, the single largest category of offense for most of the colonial period was nuisance offenses, particularly sanitary offenses, further supporting the argument that the British used the criminal law to achieve particular goals within colonial society that were distinct from those pursued in the metropole.

Erin Braatz joined Suffolk University Law School as an Assistant Professor of Law in 2018. Professor Braatz has a JD and PhD in Law & Society from New York University. She previously held a Golieb Fellowship in Legal History at NYU and completed clerkships with Judge Richard Stearns of the Eastern District of Massachusetts and Judge Juan Torruella of the U.S. Court of Appeals for the First Circuit. Professor Braatz's dissertation, *Governing Difference: Penal Policy and State Building on the Gold Coast, 1844-1957*, examines British criminal law and penal regimes in colonial West Africa and connects these practices to broader debates concerning governance and the global circulation of imprisonment as a technique of punishment during the nineteenth and early twentieth centuries. She is currently working on turning the dissertation into a book manuscript. In addition to her work on criminal law in colonial settings, Professor Braatz also studies the history punishment in the United States, specifically how that history has impacted the Supreme Court's interpretation of the Eighth Amendment's prohibition on cruel and unusual punishment.

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Lia Brazil

Stream: General

Martial law in the British Empire: Temporal and Spatial

In 1906, four villagers were executed in a small village in rural Egypt. The same year, an uprising in Natal, South Africa was viciously suppressed by British rule. A decade later, Irish prisoners were detained without trial for their own uprising, just as a mining strike in South Africa was suppressed. What connects these Egyptian fellaheen, Irish prisoners, Zulu rebels, and South African mineworkers? Despite the varying reasons and forms of their revolt or resistance to imperial rule, each was subjected to arbitrary detention, suppression and in some cases, trial, under the application of martial law.

Drawing together these distinct moments in the application of martial law this paper puts forward an exploration of emergency legislation across multiple spaces in the British Empire. Though the British Empire resorted to emergency measures repeatedly, wide discrepancies in its application have made devising a general theory of martial law extremely difficult. This paper proposes one approach, by finding connections in the application of martial law across the British Empire and in its aftermath. It looks at the transfer of legal knowledge, personnel, and practices across time and space, probing whether martial law evolved temporally, or shifted depending on geographies and the objects against which it was used.

Lia Brazil is a postdoctoral research fellow at Nuffield College, Oxford, working on the AHRC-funded project, INGOs and the Long Humanitarian Century. She completed her PhD at the European University Institute, Florence in 2021. Entitled 'International Law and the rule of law in the British Empire, 1899 - 1919' this project explored the operation of laws of war on the ground in South Africa and Ireland.

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Jacqueline Briggs

Stream: General

**Networks of Colonial Governance: Department of Indian Affairs legal aid,
1870 to 1970**

This paper presents the inaugural history of a Department of Indian Affairs (DIA) legal aid policy to appoint and fund defence counsel for status Indians in Canada who were charged with capital (or non-capital) murder from the 1870s, through the late 1960s. This study explores the role of legal aid in state-formation, arguing that DIA legal aid was a technique of colonial governance co-produced by a network of legal actors within and outside the federal government. These legal actors participated in the provision of DIA legal aid in a variety of *modes* that reflected their positions and interests within administrative, legal, and criminal justice systems. Focusing on DIA bureaucrats, this paper discusses the three modes of governance that characterized the Department of Indian Affairs participation in legal aid, shifting over time from strategies of conciliation in the early era (until 1932), to a punitive mode in the middle era (until 1952), and finally a mode that prioritized provincial integration in the postwar era (until 1970). Contributing to international literatures on the application of settler criminal law in the British colonies, this study explores the intersection of the administration of justice and the administration of Indian affairs in 20th century Canada.

Jacqueline Briggs is a SSHRCC Postdoctoral Fellow at the University of Ottawa Faculty of Law, where she is working on a history of Department of Justice lawyers-as-bureaucrats. She completed her PhD in Criminology and Sociolegal Studies at the University of Toronto.

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Paulien Broens

Stream: General

The imposed masculinization of legal power with the Akan in Ghana under British colonial force, c. 1890 – 1920

Recent scholarship has acknowledged the destructive impact of imperialism upon pre-colonial discourses of law. However, what remains absent is greater visibility for the consistent deconstruction of *gendered* law practices that happened through the imposition of masculinization and male-dominated societal expectations by the colonizer in the context of the British Empire. Serving as a case study in this regard, this paper looks at female legal practices present with the Akan in Ghana prior to formal colonization (1890s) and their transformation during the early years of the colony (1900s – 1920s). It illustrates the concrete impact that British colonial law had on the disappearance of women from formal colonial and customary courts and their relocation into the peripheries of law-making and law practice. Male legal power was not the standard with the Akan, as is the case for many ethnic groups in West Africa. Internalized perceptions of gender in 19th century Britain and legal practices were forced upon ‘others’ throughout the Empire, impacting the stories of Akan legal actors. Through this case-study focused upon the role of women in colonial law, it is shown that interconnectedness in the British Empire is not a case of dichotomy between the customary and the colonial, but moreover a case of both internal plurality (intraconnectedness) and external plurality (interconnectedness), which have created a complex history of legal and gendered exchange.

Paulien Broens did her BA and MA in African Studies at the University of Ghent, Belgium with a minor in Globalisation and Diversity centered extensively around gender and feminist studies. After completing her first fieldwork project in Shinyanga, Northern Tanzania, focusing on medicinal female power on the level of the chiefdom and the impact of imperialism upon the marginalization of these women, she continued her studies at the School of Oriental and African Studies, London with an MRes in Social Anthropology. Here she worked on a historical case study of the *Iya Oba* or queen mother in Southwestern Nigeria, an economically, politically and culturally powerful figure whose importance gradually diminished under the pressure British rule. Finishing her studies, she joined the Max Planck Research Group ‘Legal Connectivities and Colonial Cultures in Africa’ by Inge Van Hulle in the Max Planck Institute for Legal History and Legal Theory in 2021 as a Doctoral Student, with a project on the history of responses against colonial regimes by women in legal power positions in West Africa (more specifically with the Akan in Ghana and the Yoruba in Nigeria).

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Dean Broughton

Stream: The Maritime World in Legal History

**Illegal in the Empire 1945-1970: British Seafarers as Illegal Immigrants in New Zealand
1945 – 1970**

In 1952 the New Zealand Government introduced legislation to deport British merchant seafarers charged with illegally jumping ship, (ship desertion). Ship jumping was a back-door method of immigration to New Zealand, and if caught seafarers served one month in a New Zealand prison, but upon release could remain. After the Second World War ship jumping in New Zealand increased threefold, prompting the introduction of sections 157 and 158 of the *Shipping and Seamans Act 1952* to allow for the deportation of British ship jumpers. In attempting to close this back door to immigration the New Zealand Government in fact created a new class of illegal immigrant. While the New Zealand Governments role is clear, less transparent is the influence of British shipping companies in making their own employees illegal immigrants. This paper will address two questions, firstly, how influential were the British shipping companies on New Zealand shipping legislation, in particular the new deportation laws? Secondly, are there other examples in the British Empire of industry influencing legislation to such a degree that it changed the identity of its employees? The introduction of deportation for British ship jumpers provides a unique and interesting case study to examine these questions.

Dean Broughton is completing a PhD in history at Victoria University. Dean is working on a comprehensive study of ship-jumping seafarers in New Zealand between 1945 and 1980. His general research focuses on New Zealand and British seafarers in the nineteenth and twentieth centuries. Dean's Master's thesis discussed lascars in the nineteenth century British maritime world. Dean comes from a merchant navy background and is passionate about the seafaring narrative being more prominent in New Zealand history. Dean has worked as a researcher and tutor in a range of historical and political subjects at Victoria University.

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Arudra Burra

Stream: Legal Transfer in the Common Law World

Colonial Constitutions and Legal Memory: The Fate of Habeas Corpus in Independent India

This paper is a study of legal memory across political change. India adopted a Republican Constitution in 1950, having achieved Independence in 1947. The 1950 Constitution has been celebrated for its departures from the colonial past, and the fact that it laid the foundation of a new democratic order.

However, the colonial constitutional order has lived on well past Independence, in the judiciary, the bureaucracy, and legislation such as the Indian Penal Code of 1863. Evidence of such continuities between colonial and post-colonial rule are by and large lamented, as showing that India has not fully thrown off the shackles of colonialism.

In my paper, I examine two key moments in the Constitutional history of independent India in which colonial constitutionalism has been celebrated rather than lamented. The cases are *AK Gopalan v. State of Madras* (1950) the first constitutional case decided by the newly constituted Supreme Court of India, and the infamous case of *ADM Jabalpur vs Shiv Kant Shukla* (1976) during India's internal Emergency. Both rejected constitutional challenges to preventive detention statutes. They are now remembered for stirring dissents in favour of personal liberty.

Remarkably, these dissents did not invoke the 'transformative' 1950 Constitution and its anti-colonial values, but rather a *colonial* "rule of law" *habeas corpus* jurisprudence rooted in a broader common law world. What is it about the *law* and its relation to politics which enabled progressive dissenters in post-colonial courts to celebrate colonial jurisprudence in this way? That is the primary question this paper addresses.

Arudra Burra is Assistant Professor of Philosophy in the Department of Humanities and Social Sciences at the Indian Institute of Technology-Delhi. His research interests are in moral and political philosophy as well as Indian constitutional history: particularly on questions relating to the nature and significance of legal continuities between the colonial and post-colonial regimes in the case of India. He is currently working on a monograph on civil liberties and the rule of law in colonial India.

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Christian Buset

Stream: General

Arbitration and Empire: Bengal and British North America, 1763–1775

Historians have long appreciated the importance of courts for building colonial states, but they have paid less attention to arbitration. This paper explores two attempts to use arbitration as a substitute for civil litigation in the eighteenth-century British Empire: Bengal in the early years of East India Company Rule; and the Illinois Country in the immediate aftermath of its transfer from France. In both places, imperial officials hoped that arbitration would maintain order while sparing them the difficulties of administering French, Hindu, or Islamic law. At the same time, the attempt to substitute arbitration for litigation reflected officials' preference for docile, noncontentious societies rather than the conflict and commercial dynamism that characterized older parts of the British Empire.

Both experiments failed—largely because colonial subjects demanded a more formal approach to legality. In Illinois, Francophone inhabitants looked to English legal institutions as the key to political equality and economic integration with the rest of the British Empire. In Bengal, Indian elites objected to arbitration both because it undermined longstanding notions of Islamic legal superiority and because it commandeered local notables to provide the justice that

Bengalis considered to be the responsibility of their rulers. In both places, local resistance to arbitration forced policymakers to confront difficult questions about legal pluralism and the future of Britain's imperial common law.

Christian Buset is an associate professor of law at the University of Notre Dame, where he teaches and writes about legal history, civil procedure, and the rule of law. His research focuses on the development of British and American legal institutions, including the interaction between law and economic change, the history of arbitration, and the place of specialized courts in the Anglo- American legal tradition. His current book project, under contract with Yale University Press, explores debates in the eighteenth-century British Empire about what kinds of cases and litigants belonged in common-law courts.

Before coming to Notre Dame, Buset was a Golieb Fellow in Legal History at New York University School of Law and a clerk to the Hon. José A. Cabranes of the U.S. Courts of Appeals for the Second Circuit. Buset holds a J.D. from Yale Law School; a Ph.D. in history, also from Yale; and an A.B. in history, with highest honors, from Princeton University.

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Amanda Byer

Stream: Legal Transfer in the Common Law World

Panel: Land, Law, and Spatial Justice in the Former British Empire

Reserving space: land, nature, and empire in the development of Commonwealth Caribbean environmental law

Studies on environment and empire have contributed to a more comprehensive understanding of the impacts of imperial projects on land. Islands in particular were subject to environmental degradation, which threatened the security of ship supplies for European trading companies. The first imperial conservation programmes were thus driven by the need to reverse the ecological decline in these colonies in order to maximise economic exploitation.

This paper focuses on the development of conservation laws establishing forest reserves in the Eastern Caribbean islands. The introduction of the common law was instrumental to the reordering of the Caribbean landscape and entrenching control of land for plantation agriculture. Establishing reserves accompanied the violent resettlement of peoples, as taming the wilderness ensured that the threat of native peoples could be contained and defused.

Absorbing land to supply the plantation economy was masked as protection of plant and animal species. Conservation law's roots are thus colonial and exclusionary, reflecting the drive to depopulate and extinguish landscape. Reserving space supported land acquisition because it embedded conceptualisations of land as vacuous space. Commonwealth Caribbean environmental law reflects this contradiction, continuing to exclude communities dependent on nature for their survival, which has implications for land use and sustainability today.

Keywords: colonialism; landscape; environmental law; conservation; spatial justice

Amanda Byer is a postdoctoral researcher in the PROPERTY[IN]JUSTICE project. Amanda is an environmental lawyer and holds a PhD in cultural heritage law (Leiden University). Her research interests include land, law and spatial justice, particularly the role of landscape in the protection of environmental and human rights for local communities. In 2019 she was a Hauser Post-doctoral Fellow at New York University School of Law, where she examined the role of procedural environmental rights in the protection of the commons and undertook a comparative analysis of the Aarhus Convention and the Escazú Agreement.

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Nuno Camarinhas

Stream: General

**Justice on the move: mapping the Portuguese colonial judiciary in the *longue durée*
(1550-1910)**

Using data collected from a prosopographic analysis of the Portuguese judiciary (1620-1926), this paper proposes to analyse the circulation of magistrates inside a judicial apparatus that was built throughout the early modern period, both in mainland Portugal and in its overseas territories. It takes on the idea of an early bureaucratization of the Portuguese magistracy and the existence of factors that promote an intense circulation of agents inside a network of posts that spanned a multicontinental scale. This specialised body – with an interesting homogeneity derived from the fact that Portugal had only one university until 1910 –, while circulating in the imperial scale, carried legal practices and discourses, ways of thinking and deciding, books and writings, that would meet very different political, institutional, cultural, and social scenarios in the overseas. The paper will address how the *ius commune* matrix and the composite nature of the Iberian monarchies were equipped to deal with the colonial setting. A special attention will be given to a comparative approach and contextual contacts with other neighbouring imperial experiences, namely with Spanish America.

Nuno Camarinhas holds a PhD in History from the EHESS, Paris France (2007). I am a researcher at CEDIS, the research centre on Law and Society of the NOVA School of Law (Universidade NOVA de Lisboa, Portugal). I have worked on the history of justice, the judicial professions, the justice administration system, and its colonial transfer in early modern Portugal. Recently, I have developed research on these themes focusing on the 19th and early 20th century. I have participated in several national and international funded research projects both in early modern and modern history, in fields related to legal, social, political, colonial, and global history. I have several books, book chapters and papers on the matter, namely *Juízes e administração da Justiça. Portugal e o seu império colonial, sécs. XVII-XVIII* (Lisbon, 2010; French Editions: Paris, 2012), «Justice administration in early modern Portugal: Kingdom and empire in a bureaucratic continuum», *Portuguese Journal of Social Sciences* (2013); «Juridictions portugaises d’Outre-mer. Construction d’un appareil judiciaire et logiques de circulation à l’époque moderne» (Dijon, 2020) and «Lisbon, Goa and Bahia: imperial cities in the construction of a multicontinental judicial system» (in print).

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Lyndsay Campbell

Stream: General

Constituting a Colonial Crisis: Newfoundland in the 1830s

From 1838 to 1842, a trespass action moved from the Supreme Court of Newfoundland through to the Judicial Committee of the Privy Council, ultimately changing the law on colonial legislatures' powers. It erupted from a personal dispute that took place against a backdrop of institutional and societal tensions, over religion, "race," commerce, justice, and political philosophies in a place whipsawed by its unstable, vulnerable place in empire and the international commercial world. This presentation will examine Newfoundland's situation as almost-a-settler colony, peopled with sort-of-white, half-Protestant inhabitants who were almost totally dependent on a volatile export economy, and will explore how these factors contributed to the idiosyncratic legal and constitutional structures that produced this central conflict over legislative power.

Lyndsay Campbell is cross-appointed between Law and History at the University of Calgary, where she is currently Associate Dean, Research in Law. She holds an LLM from the University of British Columbia and a PhD in Jurisprudence and Social Policy from the University of California, Berkeley. Her publications include *Freedom's Conditions in the U.S.-Canadian Borderlands in the Age of Emancipation* (Carolina Academic Press, 2011), co-edited with Tony Freyer; *Canada's Legal Pasts: Looking Forward, Looking Back* (University of Calgary Press, 2020), co-edited with Ted McCoy and Mélanie Méthot; and most recently *Truth and Privilege: Libel Law in Massachusetts and Nova Scotia, 1820-1840* (Cambridge University Press, 2021, for the Osgoode Society for Canadian Legal History and the Studies in Legal History Series of the American Society for Legal History).

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Scott Carrière

Stream: General

Newfoundland's Customary Constitutionalism in the Age of Company Colonialism

From the outset of permanent English settlement in 1583, Newfoundland was governed by a series of chartered companies—public-private hybrids exercising sovereign authority granted by the Crown. The first ventures were a refuge for Catholics escaping persecution by Stuart England that were later overtaken by those aiming to exploit the profitable cod fishery off the Grand Banks and dominated by commercial interests in England's West Country. Until *King William's Act* was enacted in 1699, these charters formed the basis of settler law in Newfoundland, yet they were often in tension with or unresponsive to the concerns of Newfoundland's early settlers.

As a result, customary systems of law emerged to fill gaps in the charters' text while remaining consistent with their normative mandates. This presentation explains the role and nature of the law that developed in Newfoundland through the 17th century in relation to its sovereign charters. The presentation first provides the necessary context of early modern charter corporations and the contemporary interests driving colonization of Newfoundland. Next, the presentation considers the text of the charters and their interpretation in light of societal developments on the island. The presentation then looks to how this legal evolution in Newfoundland compared with its peers in Rupert's Land and Massachusetts and ultimately informed official and unofficial legal policy with the passage of *King William's Act*. Last, the presentation concludes on the ground covered, situating the importance of sovereign charters of Newfoundland in the emergent North Atlantic Empire of the 17th century.

Scott A. Carrière is a litigation associate with the law firm of Osler, Hoskin & Harcourt in Calgary, Alberta. Scott holds a Bachelor of Science in Environmental Engineering from the University of Alberta (2011), and a Juris Doctor from the University of Calgary (2020). Prior to his joining the Osler firm, Scott was a judicial law clerk with the Provincial Court of Alberta in Calgary and during law school was an Associate Editor-in-Chief of the *Alberta Law Review*. Scott's academic work focuses on constitutional law and legal history, in particular the reception and subsequent interpretation of English law and constitutional principles in the Canadian context. Scott's recent writing has been featured in *Alberta Law Review*, *Banking and Finance Law Review*, and *Law and History Review*. His present research looks to the legal and social impact of chartered companies on early settlement in Newfoundland, and how they informed contemporary constitutional norms.

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Raul Cârstocea

Stream: General

Seeing Like an Empire: The Imperial Imagination and the Boundaries of Citizenship in 19th Century Romania

The recent ‘imperial turn’ prompting the ‘new imperial histories’ of the Habsburg, Ottoman, and Romanov Empires (e.g., Weeks 2008; Şükrü Hanioglu 2010; Judson 2016) has contributed significantly to placing the Central and Eastern European land empires – long neglected by the literature on imperialism and colonialism – in dialogue with the saltwater empires in Western Europe. It has also re-written the history of the region of Eastern Europe in the long 19th century, long understood primarily or exclusively along the lines of the struggle for national emancipation from putatively ‘backward’ and increasingly obsolete empires. Recent literature has undermined this nation-empire binary, pointing instead at their complex interaction and entanglement in a context of “nationalizing empires” (Berger and Miller 2015) meeting “imperializing nation-states” (Malešević 2018, 166-168).

My paper will address the imperial legal notions and practices that can be encountered in debates surrounding citizenship in the case of Romania, a nationalising state in South-Eastern Europe that gained its independence in 1878, in the wake of the last of the Russo-Turkish Wars. Instead of a nation-state defining itself against empire, the legal understanding of the Jewish minority in the country as subjects rather than citizens – with parallels in the similar treatment of indigenous subjects in the French West African Federation at this time (Conklin 1998; Cârstocea 2020) – shows rather how nationalising elites were in thrall of the hegemonic imperial practices. In doing so, and following notions of the ‘standard of civilisation’, they sought inspiration not in the legal systems of the Eastern empires they obtained their independence from, but from the Franco-British ‘gold standard’ of Western imperialism.

Dr. Raul Cârstocea is Lecturer in Twentieth-Century European History at Maynooth University, Ireland. He has previously worked as Lecturer in Modern European History at the University of Leicester, Lecturer in European Studies at Europa Universität Flensburg, Senior Research Associate at the European Centre for Minority Issues, and as Teaching Fellow at University College London. He has held Research Fellowships at the Imre Kertész Kolleg Jena, the NIOD Institute for War, Holocaust and Genocide Studies, Amsterdam, and the Vienna Wiesenthal Institute for Holocaust Studies. His research interests focus on antisemitism, Jewish history, nationalism, fascism, and the Holocaust, and more broadly on state formation and nation-building processes in 19th and 20th century Central and Eastern Europe and their consequences for minority groups. He has co-edited with Éva Kovács a volume entitled *Modern Antisemitisms in the Peripheries: Europe and its Colonies, 1880-1945* (Vienna, 2019) and has published extensively on the history of antisemitism, fascism, and the Holocaust in Romania and, more broadly, Eastern Europe. He is co-editor with Paul Jackson of the *Modern History of Politics and Violence* book series at Bloomsbury Academic, and a member of the editorial board of the academic journal *S:I.M.O.N. Shoah: Interventions. Methods. Documentation*. He is Vice-Chair of the Scientific Advisory Council of the Observatory on History Teaching in Europe (OHTE) at the Council of Europe.

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Matilde Cazzola

Stream: Legal Transfer in the Common Law World

Philanthropy on the edges of empire: Edward Eyre Protector of Aborigines (South Australia, 1841–44)

The colonial administrator Edward John Eyre (1815–1901) is widely known for his controversial governorship of Jamaica, where in 1865 he ordered the brutal suppression of the Morant Bay Rebellion. However, his previous colonial service in the Pacific, as land explorer and magistrate in Australia and then as Lieutenant-Governor in New Zealand, has attracted comparatively less attention. My presentation is aimed to investigate Eyre's years as Resident Magistrate and Protector of Aborigines (1841–44) on the River Murray, South Australia, where he was responsible for promoting peaceful relations between the Aboriginal people and the European residents in the area. More particularly, this paper focuses on the system that Eyre devised to 'protect' and at the same time 'civilize' Aboriginal Australians: on the one hand, the young would be confined in reformatories, where they would be isolated from their parents and groups and trained to become 'useful labourers and servants'; on the other hand, the 'indoor' reformation of children should be accompanied by the 'outdoor' relief of adults, whose sedentary life and obedience to the British colonial authorities would be encouraged by the distribution of food provisions. I intend to demonstrate that Eyre's scheme was a colonial version of the systems of relief of the labouring and criminal poor and of reformation of their children which philanthropic societies had been implementing in Britain since the late eighteenth century. In Eyre's own words, the 'protection' of the colonized consisted in stretching the 'eye of philanthropy' 'upon the outskirts of civilization'.

Matilde Cazzola earned her PhD in History from the University of Bologna in 2019. Since November 2020, she is a postdoctoral researcher at the Max Planck Institute for Legal History and Legal Theory in Frankfurt am Main. As a participant in the research group 'Legal Transfer in the Common Law World', Matilde works on a project entitled 'Philanthropy, Administration and the Law in the 19th-century British Empire'.

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Donal Coffey

Stream: General

The Crown in the Irish Free State: Dominion Status and Its Afterlife

This paper considers the history of the Crown in the history of the Irish Free State. The relationship between subject and Crown, nationality, and the office of the Governor-General were all highly fraught matters of political and legal contestation within the lifetime of the Irish Free State. This paper will canvas some of the major developments in relation to this, including the abolition of the office of Governor-General in 1936. Maynooth is a particularly appropriate place to talk about the topic, as the last holder of the office, Domhnall Ua Buachalla, was from the town. The erasure of the Crown from the internal constitution of the state was completed in 1936, but there remained a legislative link for a decade. This paper will explain developments in the area and discuss the subsequent treatment of the Crown in caselaw of the Irish courts.

Donal Coffey is an Assistant Professor in Law at the National University of Ireland Maynooth. His research interests are in the fields of public law and legal history, particularly contemporary constitutional law and comparative constitutional history, specifically the constitutional history of the British Empire. Donal's PhD, completed in University College Dublin, was on Irish constitutional history in the 1930s. He subsequently published two books on this period: *Drafting the Irish Constitution 1935-1937* (Palgrave Macmillan, 2018) and *Constitutionalism in Ireland, 1932-1938* (Palgrave Macmillan, 2018). He has published articles in international law, constitutional law, and legal history. Before joining NUI Maynooth, Donal was a Senior Research Fellow in the Max Planck Institute for Legal History and Legal Theory in Frankfurt am Main, Germany. He worked as a lecturer in the United Kingdom, in the University of Surrey and the University of Portsmouth.

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Edward Jones Corredera

Stream: General

Panel: Law, Personhood and Racial Capitalism in the History of Empire

Corporations, Race, and Legal Reform in Eighteenth-Century Venezuela

The Spanish Empire has traditionally been understood a polity based on patronage networks and loyalty to the Spanish King. This paper shows, by studying the case of eighteenth-century Venezuela, that foreign and local corporations were central to the economic and social life of the Spanish Empire, and their unclear legal status within the empire often led to ad-hoc forms of contestation and protest against the racial, economic, or social hierarchies within the empire.

This paper will explore the racial and religious dimensions of various instances of contestation of power from below, and their impact in shaping corporate legislation in Venezuela, where companies of freed Black people, the Caracas Company, the Dutch West India Company, and local merchant elites harnessed legal loopholes to their advantage. It will focus, in particular, on the complicated legal status of the companies of freed Black people in the region. It will show how the law responded to their transformation: created as militia companies to repress and contain communities of freed Black people, these companies developed into important economic networks that cooperated with Dutch merchants and freed slaves from Curaçao, challenging and problematizing the Spanish legal order.

Edward Jones Corredera is a Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law, an Affiliated Postdoctoral Member at Clare Hall, University of Cambridge, and a Fellow of the Royal Society of Arts. His research focuses primarily on the connections between the Spanish Empire and the growth of modern capitalism. His first book, *The Diplomatic Enlightenment: Spain, Europe, and the Age of Speculation*, was published in 2021. His current book projects shed light, first, on the role of credit and debt in the making of Latin American nationhood, and second, as part of a collaborate project at the MPIL, on the role of Hugo Grotius' *De jure belli ac pacis* in the emergence of modern international law, with a particular focus on Latin America. A further area of research of his is the study of time. Over three years, he co-convened a DAAD-Cambridge Hub-funded series of workshops on the global legacies of Reinhart Koselleck. He has been a fellow at the Huntington Library in Pasadena and the Residencia de Estudiantes in Madrid, and his work has been published in journals such as the *Journal of Early Modern History*, *Global Intellectual History*, and *History*.

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Sonya Cotton

Stream: Legal Transfer in the Common Law World

Panel: Land, Law, and Spatial Justice in the Former British Empire

Anxious pluralisms and communal land in Anglophone Southern Africa

In the context of accelerated globalisation, there has been increased acquisition of rural land in lower- and middle- income countries, often with negative environmental and/or social consequences for local communities. While developments in international indigenous rights represent a means by which dispossessed communities can articulate their collective rights, this may conflict with states' economic interests. Forte (2013) thus recognises a 'growing anxiety on the part of states as they attempt to define, identify, and manage the explosion in Indigenous self-identification.' With reference to anglophone southern African countries, whose legal systems reflect tensions between colonial legacies of "indirect rule" vs progressive human rights, this research comparatively examines the statutory strategies through which post-colonial states manage pluralism regarding rights over communal land. I argue that while there is recognition of communal land as an independent form of tenure to private and state ownership, such legal pluralism is "anxious", and modulated through legal positivism and/or deference to colonial discourses of "tribe" that renders the state the final authority on identification. This reflects the uncomfortable position of pluralism within post-colonial African countries, which may inscribe customary rights whilst stripping communities of substantive self-determination related to communal land. Secondly, this speaks to the urgent need for clarification regarding who, from the perspective of human rights law, is a community.

Sonya Cotton is a PhD researcher in the 'PROPERTY [IN]JUSTICE,' project. She has an LLM from Peking University in Chinese law and society, a Master of Philosophy in Comparative Law in Africa from the University of Cape Town (UCT), and a Bachelor of Honours in linguistics from UCT. Her approaches to law matter are strongly shaped by her interdisciplinary background in sociolinguistics and Xhosa: she remains interested in the interplay of words, power, norms and social justice, with a strong Global South emphasis.

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Eric Covey

Stream: General

Postcolonial Nigerian Governments, Cold War Empires, and Mercenary Force at the United Nations, 1979 to 1989

Beginning in 1974, the United Nations began to address the threat posed by mercenary force in Africa and elsewhere. Adopted in 1977, Article 47 of the Additional Protocols to the Geneva Conventions simultaneously defined mercenaries for the first time and stripped them of the protections extended to legal combatants and prisoners of war. But Article 47 was a compromise that failed to incorporate much of the language of the OAU Convention for the Elimination of Mercenarism on which it was modeled. Subsequently, Nigeria helped chart a path forward at the United Nations amidst empires in decline—Britain, France, Portugal—while negotiating the space between two competing imperial powers—the United States and the Soviet Union. Yet while there was almost-universal ratification of Article 47 after 1977, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries in 1989 was largely ignored as the international order realigned after the end of the Cold War. From within this historical context, I examine the procedural and draft history of the 1989 convention and Nigeria’s motives for taking leadership in this realm of international law in relationship to the military and civilian governments that ruled over the country’s domestic and foreign policy.

Eric Covey is Visiting Assistant Professor of African and World History at Grand Valley State University in Michigan and has taught across the disciplines at Texas A&M University in Corpus Christi, the University of Abuja in Nigeria, and Miami University in Ohio. He received his PhD from the University of Texas at Austin and has published widely about mercenary force and imperialism in the eras of colonialism, the Third World, and the Global South. He is the author of *Americans at War in the Ottoman Empire: US Mercenary Force in the Middle East* (I.B. Tauris, 2018) and has explored the role of mercenary force in the Cold War, international law, and Sino-American relations in other publications. In Abuja as a Fulbright U.S. Scholar in 2018- 19, he carried out research for a new manuscript-length intellectual history of legal, political, and literary responses to mercenaries and mercenarism after 1960 in Nigeria. Initial research on this project is forthcoming in 2022 as “From Playa Girón to Luanda: Mercenaries and Internationalist Fighters” in *The Tricontinental Revolution: Third World Radicalism and the Cold War* edited by R. Joseph Parrott and Mark Atwood Lawrence for the Cambridge University Press Studies in US Foreign Relations.

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Damien Cremean (with Aldo Paciocco)

Stream: The Maritime World in Legal History

Liens for Seafarers' Wages

Admiralty or maritime law has always shown special regard to the needs of seafarers. In *The Minerva* (1825) 1 Hag 347 at 355; 166 ER 123 at 127 Lord Stowell in the High Court of Admiralty spoke of them (in hardly glowing terms admittedly) as a “set of men, generally ignorant and illiterate, notoriously and proverbially reckless and improvident, ill provided with the means of obtaining useful information, and almost ready to sign any instrument [regarding wages and conditions] that may be proposed to them, even against themselves”. Some of this outlook can still be seen even in the modern day. In *Marinis Ship Suppliers (Pty) Ltd v Ship Ionian Mariner* [1996] FCA 563, for example, Ryan J spoke of the *Admiralty Act 1988* (Cth) being “construed with the benevolence towards seafarers which has traditionally informed judgments of Courts of Admiralty”. Without seafarers there would be no maritime industry and no maritime commerce. Their wages and conditions—but their wages in particular some would say—are essential to their continued participation in the sector. And it has been so from time immemorial it might be said. The origins of the lien for seafarers’ wages and its extent and development serve as a reminder of the importance placed by the law on the welfare and well being of seafarers in their vulnerable and dangerous occupation. Examination of this question is interesting in itself but shows acutely how maritime law has responded sensitively to the times and to perceived needs.

Damien Cremean: I am a maritime lawyer and a barrister. I hold the following degrees: BA (Tas) BA (Murdoch); BA (Hons) (Lond) ; MA (Melb); LL B (Hons) (Melb) ; PhD (Monash). I am an Adjunct Professor of Law at Uni Qld in the Maritime Shipping and Law Unit. I am an established author in maritime and admiralty law. My latest book is *Admiralty Jurisdiction*, 2020, 5th ed, Federation Press.

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Orna Alyagon Darr

Stream: General

‘Special Treatment’ of European Prisoners in Mandate Palestine

In Mandate Palestine’s prisons “European” inmates were granted “special treatment” status, which conferred improved carceral conditions. The colonial practice of treating European prisoners preferentially is hardly surprising, as joint incarceration of subaltern and European inmates was potentially **disruptive for** the colonial hierarchy. However, applying the European/non-European classification to Palestine’s Jewish and Arab inmates was anything but straightforward. This article explores the politics surrounding the practice of “special treatment.” It highlights the ambivalence and tension between a prison regulation that was designed to reinforce colonial categories and hierarchies and the challenges it faced.

What was the “European” quality that merited improved conditions? Was it Nationality? Education? Physical frailty? Lifestyle? Skin color? Religion? Were Jews who immigrated from Europe considered Europeans? How were they different from other Jewish immigrants? What if they no longer carried a European passport? In prison, how should Arabs with a Western education and lifestyle be treated? What about illiterate Arabs descended from Europeans? Were Ottoman nationals European?

The vagueness of the term “European” enabled various interpretations and uses of this category. This article explores how various social players promulgated conflicting definitions of the classification entitling Palestine’s prisoners to “special treatment” and how this dispute echoed broader debates concerning the justification and nature of the colonial rule.

This paper also argues that the interpretative flexibility of “Europeanness” not only made it adjustable to the various British colonies, thus interconnecting them, but also supported a grand concept of Westernness that spanned imperial divisions.

Orna Alyagon Darr is an Associate Professor at the Law School of Sapir Academic College, Israel. She is the author of *Marks of an Absolute Witch: Evidentiary Dilemmas in Early Modern England* (Ashgate, 2011) and *Plausible Crime Stories: The Legal History of Sexual Offences in Mandate Palestine* (Cambridge University press, 2019). Her work explores evidence law, criminal law and criminal procedure in their cultural, social and historical context, and her articles have been published in leading academic journals such as *Law and History Review*, *Law and Social Inquiry*, *Continuity and Change* and *Yale Journal of Law and the Humanities*.

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Serge Dauchy

Stream: General

**Interconnecting legal Empires in the Americas through the circulation of legal books
(17th-18th centuries)**

The beginning of colonial expansion coincided with the development of mechanical printing. In the 16th century, printing houses emerged all over Europe and also in the overseas colonies. A printing press was set up in Mexico as early as 1539. Legal books, brought by settlers, clergymen and administrators and later also books printed and translated locally, circulated in the colonies. Books crossed borders; institutions, both religious and secular, organized the first libraries and universities were established.

We would like to consider the circulation of legal books and their use by lawyers and lay practitioners as an expression of legal interchange and as a factor or even instrument of legal connections and interconnections between colonial Empires in the 17th and 18th centuries, in particular in territories that have experienced changes of sovereignty.

Serge Dauchy studied History in Ghent and Law (legal history) in Paris, 1981-1987 and completed a PhD in 1991 On “State-building and the Flemish appeals at the Parlement of Paris, XIVth – XVIth centuries” (PhD director R. C. van Caenegem). Doctoral thesis awarded by the Royal Belgian Academy in 1992. His Habilitation in Law was in 1997 at the University of Lille. Serge is professor at the Universities of Lille (France) and Saint-Louis in Brussels (Belgium) : teaches history of European Public Law and History of Justice ; extraordinary professor of legal history at the universities of Ho Chi Minh City (UEL) and Can Tho. Since 202 he is the Director of the Centre d’Histoire Judiciaire (CNRS – University of Lille) and from 2010 to 2020 Director of the Doctorate school in Legal and Political Sciences of the University of Lille. He is a member of the editorial board of Tijdschrift voor Rechtsgeschiedenis / Legal History Review, Cio@Thémis, Comparative Legal History; Member of the Scientific advisory board of the European Society for Comparative Legal History; President of the royal Commission for the Publication of ancient laws of Belgium; and was Sarton Medal for History of Science awarded by the Sarton Committee of the University of Gent for the Academic year 2009-2010 on proposal of the Faculty of Law.

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Thomas Day

Stream: General

Crafting Racial Citizenship during Imperial Conflict: Liminal Black Citizenship in Massachusetts and Pennsylvania

The American Revolution is often, and rightly, cited as a moment of reform and divide in the new United States. It was also, importantly, a moment of resistance to Empire, and a moment that saw the construction of new communities and identities across imperial lines and boundaries. This project will seek to explore how, when read in the context of resistance to empire and slavery, old narratives of American identity and citizenship fall apart. Specifically, this project will examine how in Massachusetts and Pennsylvania interactions with the British imperial efforts at subduing the rebellion helped Americans craft new, specifically racialized, ideas of citizenship.

Through an exploration of violence, incarceration, and both the real and imagined fears of Black resistance, this project explores categories of belonging to understand how northern conceptualizations of white citizenship, set against a liminal Black citizenship, emerged in the Revolution. By exploring how imperial legacies and interactions over slave resistance, liberty, and race shaped developing ideas of citizenship in the nascent Republic, this project will uncover the development of a liminal Black citizenship designed to meet at the intersection of a white Republic and the rejection of slavery.

Thomas Day is a PhD Candidate at the University of Illinois Urbana-Champaign in the United States. His work focuses on the interactions between race and the law in the Early United States, with a specific emphasis on the relationships between racial exclusion in law and practice and the process of the abolition of slavery. Specifically, he examines how the early US government, and specifically abolition minded state leadership in the north developed a concept of liminal citizenship for Black Americans, providing a necessary imagined space for Black freedom that did not infringe upon the structures of white supremacy in the new nation. Prior to coming to Illinois, Thomas earned his MA at Virginia Commonwealth University where he explored the British public perspectives of Black resistance in Jamaica in the long nineteenth century.

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Rohit De (with Ornit Shani)

Stream: General

From Founding to Assembling: Towards a New History of India's Constitution Making

Drawing on new archival materials, we offer a *paradigm shift* in understanding of the making of India's constitution. Moving away from the conventional narrative that the Indian constitution was a product of elite consensual decision-making, we show how the constitution was produced from below, outside the Constituent Assembly. People across the country read, deliberated and debated the anticipated constitution in a range of sites, from princely *darbars*, to tribal villages in deep forests. We argue that the that the making of the Indian constitution entailed the process of fitting together – *assembling* – disparate and simultaneous constitution making efforts across the country involving large and diverse publics. Examining the engagement of rulers and subjects of princely states, colonial judges and tribal communities, we show how diverse people, social groups, and state officials reconstituted themselves as constitutional actors, seeking, in many ways, to make their history anew. This process created a surge in democratic aspirations and a politics of hope; it generated a sense of ownership in the constitution and thus decolonised it; and it created an order of expectations from the constitution, which meant that the process of its making and political energies it unleashed did not end with its mere formal adoption.

Rohit De is an Associate Professor of History at Yale University and Research Scholar at the Yale Law School. A lawyer and a historian of South Asia and the common law world, he is the author of *A People's Constitution: Law and Everyday Life in the Indian Republic* (2018) which was awarded the Hurst Prize for the Best Book of Socio-Legal History by the Law and Society Association. In 2020, he received the Carnegie Fellowship to support research on a global history of decolonization and rebellious lawyering. His publications cover Islamic law, constitutional history and judicial politics in modern South Asia. He has held fellowships from the Social Science Research Council, the Davis Centre for Historical Studies at Princeton University, the Melbourne Law School, and the Centre for Asian Legal Studies at the National University of Singapore. He was a Mellon Research Fellow at the Centre for History and Economics, University of Cambridge. He clerked for the Supreme Court of India and has worked with constitution reform projects on Nepal and Sri Lanka. He received his PhD in History from Princeton University and has law degrees from Yale Law School and the National Law School of India.

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Erin Delaney (with Beth Redbird and Sarah Sadlier)

Stream: General

Panel: An Empire State of Mind? Legal Transfer Between the United States and its Colonized Peoples

The IRA Constitutions: Co-option, coercion, or self-determination?

The 1934 Indian Reorganization Act ushered in a new era of mediated self-governance by tribes through constitutional provision, but the role of the federal government in the adoption of tribal constitutions remains opaque. Early scholarship, often by those involved in or adjacent to the processes of IRA constitutionalization, stressed that the federal government sought to minimize its interference in the development of tribal constitutions, while revisionist scholars have claimed that “teams of lawyers” armed with template constitutions were sent to reservations. For many tribes the IRA era represents the first written and federally endorsed constitutional enactment. How should this wave of constitutionalization be understood? Is it cooptation, in which self-government is used as a means of domination by creating a false sense of autonomy and choice? Or is it best understood as an exercise in self-determination and tribal sovereignty? To begin to engage these questions, this paper reexamines the historical record and draws on 717 documents collected by the Tribal Constitutions Project to answer an antecedent question that has vexed scholars: How prescriptive was the federal government regarding the content of the IRA constitutions?

Erin Delaney is a professor at Northwestern Pritzker School of Law. Together with Beth Redbird, Associate Professor of Sociology at Northwestern, she received a grant from the National Science Foundation to study the power processes that have shaped tribal constitutions. The initiative will result in one of the largest collections of tribal constitutions and amendments ever assembled: more than 1,000 records from 304 tribes that span 150 years. The records will be used to examine the origins of tribal constitutions, citizenship, rights, and legislative power in the continental United States. Delaney’s broader scholarship explores constitutionalism in comparative perspective, focusing on federalism and judicial design.

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Coleman A. Dennehy

Stream: General

1460 and 1689: Expressions of legislative and judicial independence in colonial Ireland

Some 230 years apart, the Irish parliament passed legislative resolutions at times of civil war, where Ireland became a refuge to English political figures of considerable import. They both expressed similar ideas – that Ireland was ‘corporate of itself’, that only legislation made in the Irish parliament was binding, and that the Irish courts were independent of the English courts and parliament. On both occasions, once military matters had been resolved, the English / British administration and parliament responded with legislation limiting the independence of the Irish parliament and the courts, some of it very similar to legislation used to bind other colonial assemblies in later centuries.

This paper will examine in a comparative manner the two pieces of legislation, putting both firmly within their historical and legal contexts. It will also examine the responses by the imperial state and her parliament, with a view to examining how important this episode was in strengthening the position of Westminster as an imperial parliament as well as defining Ireland’s constitutional position in relation to England / Britain up to the end of the eighteenth century.

Following a BA and an MLitt, **Coleman Dennehy** wrote a PhD entitled ‘An administrative and legal history of the Irish parliament, 1613-89’. He then moved to the Institute of Criminology where he took an LLM. He has previously taught at Maynooth and University College London, was a visiting researcher at Das Max-Planck-Institut in Frankfurt, and a visiting professor at Das Institut für Rechts- und Verfassungsgeschichte at the University of Vienna. He is an editor of *Parlements, États & Représentation*, is 2nd Secretary-General of the ICHRPI, and is a Councillor of the Irish Legal History Society. He was recently elected a Fellow of the Royal Historical Society. In addition to many articles and chapters, he has published *Restoration Ireland: Always settling and never settled*; *The Irish parliament, 1613-89: The evolution of a colonial institution*; *Law and revolution in Seventeenth-Century Ireland*; *Henry Bennet, Earl of Arlington, and his world: Restoration court, politics and diplomacy* (with Robin Eagles). Next up will be an edition of the diary of the 2nd earl of Burlington (with Patrick Little) for the Irish Manuscripts Commission, and a book on crime and punishment in early modern Ireland will be published by Bloomsbury.

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Meenu Deswal

Stream: Legal Transfer in the Common Law World

Re-reading Status through Contract: Matrimonial Practices and the Colonial Civil Law in South Asia, 1850-1920

My paper situates matrimonial practices in colonial South Asia within the larger history of the nineteenth-century transformations in English contract law. In doing so, it addresses broader debates on Henry Maine's formulation of status-to-contract theory, and its particular salience for understanding colonial policies on indigenous customs and practices. Drawing upon recent scholarship, it moves away from arguments in scholarship on liberal theories of contract that either emphasize the persistence of statuses as a result of uneven processes of historical change that are nevertheless progressive, or consider the persistence of status as a paradox inherent in liberalism that ultimately preserved status. These debates, argues Anat Rosenberg, miss out "on the possibility that liberalism functioned as a historical *reinterpretation* of statuses, rather than either an effort of their elimination or preservation. That reinterpretation effectively secured, yet also altered, status hierarchies. There is no teleology to such an account (Rosenberg 2018, 2)." Building on Rosenberg's argument, I examine mid-19th and early-20th century cases on breach of betrothal contracts and restitution of conjugal rights from the province of Punjab which were legal transfers from Victorian Britain. In these cases, I demonstrate the ways in which status was re-read through the language of contract law not only altering status hierarchies but also the meaning/principles, and purpose of contract through judicial readings of indigenous bodies of law, thereby, mutually constituting each other.

Meenu Deswal is a PhD candidate in the Department of History, University of Michigan, Ann Arbor. Her dissertation, "Uneven Terrains of Struggle: Caste, Class, Gender and the Everyday Experience of Law in Colonial South Asia, 1849-1940," examines the historical trajectories of lower-caste women's violent experiences with the law and normative authority in British India, and questions the dominant narrative in legal histories that privilege the liberal rights framework undergirding colonial and postcolonial legal institutions in thinking about marginalized women's capacities for action, dignity, and access to justice. Her research intervenes in and contributes to the historiography on law and empire, South Asian histories of women and law, and histories of other global contexts where women and marginalized communities come into contact with the diffuse apparatuses of the law in their everyday lives. Her research is supported by the Mellon/ACLS Dissertation Completion Fellowship, the Eisenberg Institute for Historical Studies Graduate Student Fellowship, and the Race, Law, and History Fellowship at the University of Michigan.

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Seán Patrick Donlan (with David Zammit)

Stream: General

Divisions, Subdivisions, and Distinctions: Sir John Stoddart, Malta, and Empire's Law

In the first half of the nineteenth century, Malta experienced considerable change. Before French invasion and occupation, it was a sovereign state governed by the *Knights of St John* and closely linked to the *ius commune*. After the expulsion of the French, Malta was first a British protectorate before becoming the 'old world colony' of a European imperial power whose legal systems and traditions were very different from their own.

Central to the shifts was Sir John Stoddart (1773-1856). An English civilian, Stoddart had an Oxford DCL and experience in Doctors Commons. He served as Advocate of the Crown and of the Admiralty of Malta (1803-1807) and later as both Chief Justice and Justice of the Vice-Admiralty Court (1826-1839). He also spoke fluent Italian, the language of the Maltese elite, its legal doctrine, legislations, and judicial decisions. While British legislators and jurists considered legal codification for themselves and the empire in the 1830s, Stoddart participated in a Royal Commission debating the codification of Maltese law. In that role, his support for both the English language and its laws, despite his own eclectic background, increasingly put him in conflict with the Commission's Maltese members. When a second Royal Commission, including John Austin, sought to rationalize Maltese legal institutions and finances, they emphasized instead the invaluable expertise and experience of its native jurists. Their work resulted in, among other things, the elimination of the office of Chief Justice. Stoddart's role as an agent of empire, of English and English laws, was over.

Seán Patrick Donlan is the Associate Dean of the Faculty of Law at *Thompson Rivers University* (Canada). He previously worked in Ireland and the South Pacific. His research interests include comparative legal history, mixed and plural traditions, Irish history, and Edmund Burke. Dr Donlan was a founding member of the *European Society for Comparative Legal History* and was active in the *Irish Legal History Society* and the *Eighteenth-century Ireland Society*. He's a member of the *International Academy of Comparative Law* and the *Osgoode Society for Canadian Legal History*. Dr Donlan created and edited *Comparative Legal History*. He co-edited *Legal Traditions in Louisiana and the Floridas, 1763-1848* (2019, with Vernon Palmer), *The Law's Many Bodies: Studies in Legal Hybridity and Jurisdictional Complexity, c1600-1900* (2015, with Dirk Heirbaut), and *The Law and Other Legalities of Ireland, 1689-1850* (2011, with Michael Brown). *Western Legal Traditions*, edited with Aniceto Masferrer and Remco van Rhee, is forthcoming.

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Shaunnagh Dorsett

Stream: General

Reshaping Empire: The Eastern Commission of Inquiry, Curial Reform and Drafting Ceylon's 1833 Charter of Justice

In 1833 the formal work of the Eastern Commission of Inquiry finally came to an end. After a decade, the last formal task of the Commission, the drafting of a new charter of justice for Ceylon, was complete. Between 1823 and 1838 some 12 new (or modified) charters of justice were issued across the British Empire. That number reflected that this was one of the most intense periods of reform of the administration of justice in the history of the British Empire. One of the most important reforms undertaken as part of this process was the re-design of curial institutions and consequent significant and innovative procedural reforms. The drafting of Ceylon's Charter provides a lens through which to view this complex process of reform. A number of colonies could have been selected as a point of departure: each has a unique reform history and together they narrate a particular account of governance in the British empire in the first half of the nineteenth century. Ceylon, however, with its Roman-Dutch legal traditions, inclusion in the Eastern Commission of Inquiry (ECI), Benthamite-leaning Commissioner, experienced Chief Justice and regional and metropolitan connections stands as a synecdoche for the wider process reform. In short, centring an account on Ceylon sharpens our focus on the key common aims of reform in this period while also highlighting the degree of diversity in legal ordering that was ultimately maintained across the Empire.

Shaunnagh Dorsett is Distinguished Professor of Law at the University of Technology Sydney. With John McLaren and David V. Williams she is one of the co-founders of the Legal Histories of Empires conferences. She is an Honorary Fellow of the American Society of Legal History and past-president of the Australia New Zealand Law and History Society. Her work primarily focuses on legal authority in the British Empire. This has mostly been considered through two lenses: the concept of jurisdiction, particularly through an examination of Crown-Indigenous legal relations; and the reforming of curial institutions of the British Empire in the post-Napoleonic period. This paper is drawn from a project on civil justice in the nineteenth century British Empire which is funded by the Australian Research Council.

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David Doyle

Stream: General

Unlawful Carnal Knowledge in the Irish Free State, 1922-33

Despite a growing body of research on recently reported ‘historic’ sexual offences, few studies have examined sexual offences that were investigated and prosecuted contemporaneously in the early decades of the Irish Free State. This article examines archival material on 86 cases of unlawful carnal knowledge prosecuted in 14 Circuit Criminal Courts in Ireland between 1922 and 1933. The findings that emerged from this study reveal the age profiles of the complainants, the absence or presence of a previous association between complainants and defendants, the inducements held out by alleged offenders, the relationship of those accused to their complainants, the type of sexual misconduct that occurred and the location of the alleged offences. The article also engages in an analysis of the question of *de facto* consent, investigates the physical consequences to the complainants and concludes by examining the sentences imposed by the respective Circuit Criminal Courts.

David M. Doyle is Associate Professor of Law at Maynooth University. His first book (with Liam O’Callaghan), *Capital Punishment in Independent Ireland: A Social, Legal and Political History*, was published by Liverpool University Press in 2019.

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Paul J. du Plessis

Stream: Legal Transfer in the Common Law World

Panel: Legacies of Empire: Roman-Dutch Law in South Africa and Sri Lanka in Historical Context

Once More on Roman-Dutch Law

Roman-Dutch law, as a body of mainly private-law rules formed in the Dutch province of Holland during the early-modern period, has received its fair share of attention within larger debates concerning legal transplants. As a body of legal rules closely bound up with the operation of the Dutch East India Company, it was transplanted to different environs, such as Sri Lanka and South Africa, where it fulfilled various functions ranging from the creation of a common “commercial law” to dealing with Dutch subjects stationed there through the personality principle. With the advent of the British Empire, Roman-Dutch law came to fulfil a different role in the context of Empire. In this paper, which will focus on the nineteenth century, the role of Roman-Dutch law as the law of Empire will be examined. This will be done to pose larger questions concerning the future role and purpose of Roman-Dutch law as a common connection between these two countries.

Paul J. du Plessis holds the chair of Roman law at the University of Edinburgh. He is a legal historian whose research focuses predominantly on the multifaceted and complex set of relationships between law and society in a historical context. His main field of research is Roman law (with specific reference to property, obligations and, to a lesser extent, persons, and family). In the context of his interest in ‘law and society’, his research also focuses on a further period where Roman legal principles were used to create law, namely the period of the European *ius commune* in the late Middle Ages. Here, his research explores themes such as structure, doctrine, and legitimacy with a view to challenging the accepted ‘macro-narratives’ of European legal history.

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Haris A. Durrani

Stream: Intellectual Property in Empire

Panel: Positioning Intellectual Property in North America: Crossing Boundaries from the British to US Empires

The Recent History of Free Space: Patents, Satellites, and the Idea of Empire in the Global Cold War

The legal history of US empire usually treats the Global Cold War as a turning point: Legal geography shifted from territorial sovereignty to globalism, from the annexations that marked settler colonialism and overseas acquisitions, to the hegemony of international institutions. Accordingly, the story goes, empire's legal context moved from the US legal system to international law and diplomacy. However, unexamined histories of IP and the US administrative state offer a different story. This paper provides a glimpse of mid-century extraterritorial regulation through a patent dispute about the operation of the first geosynchronous communications satellite in 1963, an event of enormous significance for US technological, commercial, political, and military power. In a 1966 administrative law hearing, the Board of Patent Appeals and Interferences decided that the National Aeronautics and Space Administration, rather than Hughes Aircraft Company, should receive title to a key patent related to the satellite. In and around the Board's decision, patent examiners and lawyers asserted that the US patent code applied "beyond the United States" to the satellite's control system, which comprised not only the satellite in orbit but also its tracking and command stations in Maryland, New Jersey, Nigeria, and South Africa. They maintained that any site in which US technology operated was a "free space" subject to technological control, and thus jurisdiction. In part, they understood the mid-century legal geography of US empire as continuous with the past. However, patent law, decolonization, and postwar technology generated novel legal approaches to those old geographies.

Haris A. Durrani is a PhD candidate at Princeton University's History Department (Program in History of Science). His scholarship interrogates the intersections between histories of law, technology, and empire in and beyond the twentieth century United States. Previously, he earned a JD from Columbia Law School, an MPhil in History and Philosophy of Science from the University of Cambridge, and a BS in Applied Physics (Minor in Middle Eastern, South Asian, and African Studies) from Columbia Engineering. His academic work has appeared in *Quest: The History of Spaceflight Quarterly* (Sacknoff Prize for Space History), *Columbia Journal of Transnational Law*, *The New York Review of Science Fiction*, and *Comparative Islamic Studies*, and his popular essays in *The Washington Post*, *The Nation*, *Catapult*, *Media Diversified*, and more. He also writes fiction: His debut book is *Technologies of the Self* (Driftless Novella Prize), and his short fiction has appeared in *The Gollancz Book of South Asian Science Fiction, Vol. 2*, *McSweeney's Quarterly Concern*, *Analog Science Fiction and Fact*, *Lightspeed*, and elsewhere.

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Penny Edmonds

Stream: Indigeneity, Law and Empires

Emancipation Acts on the Oceanic Frontier? Intimacy, Diplomacy, Colonial Invasion and the Legal Traces of ‘Protection’ in the Bass Strait World, 1832

Inspired by postcolonial and feminist scholarship and new work on the law and British humanitarian governance, along with recent considerations of the maritime and 'oceans connect' approaches, this paper examines the apparent 'emancipation' acts of colonial officials and Quakers who turned to the law to retrieve high-status Australian Aboriginal women from sealers on both sides of the Bass Strait frontier in the Southern Oceans. Foregrounding issues of legal plurality, Indigenous law and political diplomacy alongside those of Europeans, and attending to questions of intimacy, gendered governance, protection and the law, the paper considers how these variously intersected in an 'anomalous legal zone' - the watery Bass Strait world stretching between Van Diemen's Land and Port Philip on the Australian mainland. In paying attention to Bass Strait as one oceanic and colonial legal field and the appeals to law to address the problem of abduction, the paper argues that higher orders of diplomacy were at play in a precarious period when the rapid colonisation of Aboriginal lands, negotiation and the stabilisation of incendiary frontier violence were necessary. Here, the attempted legal regulation of intimacies on colonial peripheries was directly connected to issues of land, invasion, diplomacy and treaty making.

Penny Edmonds is Matthew Flinders Professor of History in the College of Humanities, Arts and Social Sciences, Flinders University, Adelaide, Australia. Her recent publications include *Settler Colonialism and (Re)Conciliation: Frontier Violence, Affective Performances, and Imaginative Refoundings* (Palgrave, 2016), and the collection *Intimacies of Violence in the Settler Colony* (co-edited with Amanda Nettelbeck, Routledge, 2018). Her paper 'Emancipation Acts on the Oceanic Frontier?' won the 2018 inaugural *Law and History* journal's Theory, Race and Colonialism (TRACE) award.

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Rohan Edrisinha (with Tavini Nanayakkara)

Stream: Legal Transfer in the Common Law World

Panel: Legacies of Empire: Roman-Dutch Law in South Africa and Sri Lanka in Historical Context

The Roman Dutch Law in Sri Lanka: Common Law or Anachronism

Though the Roman Dutch Law (RDL) was recognised as the common law of Ceylon when Britain replaced the Dutch as colonial rulers, its recognition and application was inconsistent and uneven. There were periods when English Law superseded the RDL, followed by periods when judges revived RDL concepts and principles and reminded the legal community of their relevance and importance. Today, the RDL seems more secure in the areas of property law and the law of delict, but less so in the areas of family law and the law of contract. The reasons for this will be explored and the roles of the judiciary and the academy in facilitating these trends will be assessed. A major question concerning the future of the RDL in Sri Lanka has been raised by the controversial decision of the Sri Lankan Supreme Court in *Priyani Soysa v Arsecularatne* [2001] 2 SLR 293, where the court adopted a view that suggested that the Sri Lankan judiciary was unable to develop the RDL as what was received into the country was, in effect, frozen in time. The paper will also critically examine various initiatives taken to revive interest in the RDL and the countervailing trends to reduce its influence within Sri Lanka's legal system.

Rohan Edrisinha is the Senior Constitutions and Political Officer in the Department of Political and Peacebuilding Affairs of the United Nations in New York. He is presently on leave from his position and based in Colombo. He is a visiting lecturer at the Faculty of Law, University of Colombo, where he taught from 1986-2011 before he joined the UN. He taught courses in Constitutional Law, Interpretation of Statutes and Documents, and the Law of Delict. He taught at the Faculty of Law, University of Witwatersrand in 1995 and was a visiting fellow at Harvard Divinity School (2004/5) and the University of Toronto (2009).

Lama El Sharief

Stream: General

The Role of Passports in Connecting Spaces and Expanding Empires

During the eighteenth and early nineteenth centuries, the British and French Empires depended on Mediterranean travel permits (passports) to regulate and monitor trade routes and protect trade vessels subjected to seaborne violence especially from North African corsairs. Current historiography has focused on how travel permits issued by different empires were used to protect their merchants and shipowners from maritime violence. My paper takes this conversation a step further and throws light on how these empires used this legal document for reasons that go beyond monitoring movement and identification. It traces the development of the British and French passport systems that began during the late seventeenth century as an interstate regulatory procedure of identification and that changed over time to later become a strategic instrument used to aid imperial expansion. By utilizing Ottoman, Arabic, English and French sources, I will examine how British and French consuls altered the nature and significance of passports through their treaties with North African governments to meet maritime issues and challenges they faced of the day. In doing so, my paper offers a new picture of imperial interconnectedness, bringing together North African and European corsairs, captives and diplomats. Ultimately, I argue that passports played a major role in connecting spaces and disconnecting others in order to expand the British and French empires in the early modern Mediterranean.

Lama El Sharief: I am a doctoral candidate at Purdue University specializing in the history of Middle East and North Africa. My academic interests include corsairing in the Mediterranean, the Ottoman state as an early modern Mediterranean Empire, environmental history and aspects of political, economic and social structure of the Ottoman provinces in North Africa and the Levant. My current research explores the political economy of North African corsairing in the late eighteenth and early nineteenth centuries.

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Sam Erman

Stream: General

Panel: An Empire State of Mind? Legal Transfer Between the United States and its Colonized Peoples

Status Manipulation, Spectral Sovereignty, and the Self-Preservation of Empire

This essay examines how empire invisibly perpetuates itself through a process that I term “status manipulation.” By “status” I mean formal polity-person and polity-place relationships that are perceived to be well-defined, pre-established, unchanging, and consequential. Such relationships are envisioned as automatically creating both rights and powers and obligations, detriments, and exclusions. The gap between the perceived fixity of status and its actual malleability gapes wide in the case of U.S. empire. The ambiguity is purposeful, the result of choices by U.S. empire builders. “Manipulation” captures the frequency with which changes to status and the changeability of status sustain colonialism while hiding it from view. The U.S. empire dangles sovereignty before some colonized Americans and strings other along in beliefs that colonial sovereignty already exists. By doing so, the U.S. Empire divides, frustrates, and seduces anti-colonialists. Like Tantalus, parched and starved, yet unable to consume the fruit and water always just out of reach, contemporary U.S. colonialism is characterized by a degraded status whose redemption is tantalizingly close but never within reach. This essay illuminates the process by examining controversies in the smallest and largest populated U.S. territories, American Samoa and Puerto Rico.

Sam Erman is a professor at the USC Gould School of Law. He is a scholar of law and history, whose research and teaching focuses on citizenship, the Constitution, empire, race, and legal change. Erman is the author of *Almost Citizens: Puerto Rico, the U.S. Constitution and Empire* (Cambridge University Press, 2018). The book lays out the tragic story of how the United States denied Puerto Ricans full citizenship following annexation of the island in 1898. Erman’s other projects span widely. In addition to the larger project of which his presentation is a part, Erman is co-authoring a project concerning the history of birthright nationality in England, France, and the United States. In addition, Erman is part of a research team seeking to use insights from social psychology to expand access to the legal profession. He has authored and organized numerous friend-of-the-court briefs and published multiple op-eds. Erman’s prize-winning work appears in leading legal and peer-reviewed journals, including *Yale Law Journal*, *Michigan Law Review*, *California Law Review*, and the *Journal of American Ethnic History*.

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Oksana Ermolaeva

Stream: General

Re-creating an Imperial Border: Postrevolutionary Transformations in the Legal Regimes in Theory and on Practice (The Case of the Soviet-Finnish Border, 1920-1929)

The 1917 Revolution and the Civil War resulted in the imperial breakdown in the Russian borderlands, with its Western post-imperial borders left transparent, fluid, and almost uncontrolled. Soon new, Soviet “politicized” regulations came into force. Taking the local case-study of a Soviet border with the independent Finland, the current research paper explores legal (b)order-making practices of the early Soviet period, and the responses they entailed locally and internationally. It traces, how the legal conventions on border crossings and economic contracts between the two countries were elaborated and worked out in practice. Using documentary collections from two Russian archives (LOGAV, NARK), it analyzes the cases of conflicts among various Soviet and international agencies, caused by the contradictions in the Soviet legal border regime (such as the People’s Commissariat of Foreign Trade, Main Political Administration (GPU), Main Customs Directorate) and Trade Mission of Finland in the USSR. It dwells upon grand illegal transborder smuggling schemes, accomplished with assistance of official organizations through the Soviet-Finnish border (*Glavstroybalt* case, the Trade Missions, etc). Finally, it comments upon the early Soviet legislature in relation to the crimes related to violations of transborder regime.

Oksana Ermolaeva: I earned a Ph.D. degree in History of Central and Eastern Europe from the Central European University (Budapest, Hungary). The research was devoted to the social history of the Soviet Gulag in a North-Western Russian borderland (the Republic of Karelia). During the years 2020-2021 I have been enrolled as a research fellow at the Institute for Advanced Studies, New College Europe, Bucharest, Romania (<https://nec.ro/fellowships/current-fellows/>); and a Global Digital Research Fellow, Council for European Studies (Columbia University, USA), World Society Foundation. (<https://councilforeuropeanstudies.org/wsf-writing-labs/>).

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Catherine Evans

Stream: General

Panel: The Social and Political Histories of Forensic Science in the British Empire

Investigating Incendiarism in Nineteenth-Century Canada

In 1877, the Superintendent of Insurance for the Dominion of Canada submitted a report to Parliament in which he warned of the damage fires were doing to the wealth of the country. In the previous year, hundreds of houses in “wooden towns” had burned down, costing householders, businesses, and insurance concerns some seven million dollars. Three-fourths, he guessed, were the product of a scourge that went widely uninvestigated and unpunished in Canada: arson.

Incendiarism was a major economic and social concern in the nineteenth-century British empire, where it preserved its longstanding association – noted equally by Victorian officials and contemporary historians – with class unrest and political subversion. In fact, some colonial commentators argued that the Canadian climate, weak infrastructure, and the presence of Indigenous people made fire an especially acute danger. And yet, statutes limited officials’ ability to prosecute arson, often leaving it to insurance companies to initiate and fund fire inquests. When coroners did investigate, the unsettled state of fire forensics and lay disagreements about the signs of incendiarism, including the psychological and demographic profile of the ‘arsonist,’ further complicated matters. Focusing on coroners’ inquests in nineteenth-century Ontario, this paper explores the evidentiary and procedural barriers to arson prosecution at a time when the threat of fire seemed particularly acute.

Catherine Evans is Assistant Professor at the Centre for Criminology and Sociolegal Studies at the University of Toronto. Her book, *Unsound Empire: Civilization and Madness in Late-Victorian Law* (Yale University Press, 2021), considers legal subjecthood and the mind in the British empire through criminal insanity trials. Her new book project is about law and fire, including arson and insurance, in the nineteenth-century empire.

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Christopher Fritsch

Stream: General

Between Town and Empire: Administrative Law in Colonial America

At the edge of the eighteenth-century British Empire, there was the colony of Pennsylvania — a world unlike its British neighbours. Within a sixty miles radius stretching north and west of Philadelphia, stretching from the Delaware River to the Maryland border, colonists from Palatinate- Rhineland Germany, Bohemia, Switzerland, France, and the Netherlands lived. These colonists spoke their native languages and practiced their form of Christianity; they lived an Old World culture, but within a frontier, geographical space that was the British Empire in Pennsylvania.

This paper focuses upon how these colonists adapted to an English common law world. As legal cases and situations involved Pennsylvania Germans in the counties where they resided, they wrote wills, died intestate, became plaintiffs and defendants, committed crimes, and served as jurors. They operated in a legal structure of which they had little knowledge. Previous research has targeted men, such as Conrad Weiser, who acted as a cultural bridge between the dominant British legal culture and the colonists who lived in Pennsylvania German space. This research questions whether or not there was a broader process by which Pennsylvania Germans protected their cultural geographic space, while nominally participating in the British Empire. Examining and comparing the legal worlds of Moravian Bethlehem, Lutheran and Reformed Reading, and Amish and Mennonite Lancaster presents the opportunity to find other cultural bridges within these environments and broader cultural patterns that allowed Pennsylvania Germans to use English law to protect their worlds.

Christopher Fritsch was awarded undergraduate and postgraduate degrees from Millersville University of Pennsylvania. He later attended Lancaster University, where he studied under Professor David Sugarman. After this, he matriculated at St. Cross College, Oxford, and he studied under, then, Rhodes Professor Emeritus J. R. Pole. His thesis, of which this paper is a part, should be completed within a year.

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Donald Fyson (with Eric H. Reiter)

Stream: Legal Transfer in the Common Law World

Fatal Transplant: Lord Campbell's Act and Fatal Accident Litigation in Upper and Lower Canada, 1847-1860

In 1846, the UK parliament passed the *Fatal Accidents Act* (aka Lord Campbell's Act), which allowed close relatives a civil action for compensation for the wrongful death of a spouse, parent, or child. A parallel act abolished deodands, substituting damages for the forfeiture of the thing causing the death. Colonial legislatures in the Province of Canada, New South Wales, Western Australia, India, and others took note, and soon adopted their own fatal accidents acts (with local variations).

In this paper, we will examine the early history of the transplanting and application of Lord Campbell's Act in Lower and Upper Canada (today Quebec and Ontario respectively). The two jurisdictions provide an interesting comparison in the operation of legal transplants, since the statute entered a civil law system in Quebec and a common law system in Ontario. The contrast is particularly strong since in Ontario, the statute created an action for wrongful death where before there had been none (as in Britain), while in Quebec, it limited an already available action (as in French law).

Our paper will be based on the earliest litigation on the statute in the two jurisdictions, which reveal how victims' families, their lawyers, and judges negotiated the new statutory regime, one at odds with previous practice.

Donald Fyson, full professor at the Département des sciences historiques of Université Laval (Quebec City), is a specialist in eighteenth-, nineteenth- and twentieth-century Quebec and Canadian history, notably its social, socio-legal and socio-political aspects. He is particularly interested in the relationship between state, law and society, especially as seen through the civil and criminal and justice systems, the police, and local administration, topics on which he has published extensively. His current research interests include civil justice in mid-nineteenth-century British North America, capital punishment and imprisonment in Quebec 1760-1960, and homicides in Quebec 1760-1920. He is a member of the Centre interuniversitaire d'études québécoises and the Centre d'histoire des régulations sociales.

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Thaïs Gendry (with Stacey Hynd)

Stream: General

White Men's Mercy: Gender, Race and Capital Sentencing under British and French Colonial Rule in Africa, c.1920-40s

As the first comparative analysis of the treatment of African women in British and French colonial law, this paper analyses the development of a colonial 'white man's mercy', to show the cultural and politico-legal reasons why many African women were adjudged befitting of judicial leniency. The article compares evidence from over 115 trial records involving female accused from French West Africa and Kenya, Ghana and Malawi. The paper demonstrates how criminal law normally did not involve direct exchange between imperial legal systems, but that synergies did emerge that benefit from comparative analysis. It argues that gender was a significant factor in capital sentencing in both empires, but its significance varied with three main factors. Firstly, the distance between the original crime and final sentencing outcome, both geographically and along politico-legal hierarchies. Secondly, gender's intersection with other facets of a defendant's identity. Thirdly, the nature of the offence, and how this did (not) violate gender norms or colonial order, was a key factor in judicial severity. Overall, the differences in treatment of women accused of murder between French and British courts stemmed primarily from differences in the mercy process and separate waves of repression of African societies across each empire.

Thaïs Gendry completed her PhD in Modern History at the *Ecole des Hautes Etudes en Sciences Sociales* and the University of Geneva, where she also taught classes on colonial and world history, as well as methodology of history and historical sources. Her research interests are criminality and repression, penal systems, death penalty and state violence in colonial contexts. She has published in *Crime History and Societies*, *Revue Vingtième siècle*, *Délibérée* and *French Colonial History*. Her postdoctoral research is a Digital Humanities project that aims to inventory, map and modelize the use of death penalty across the French Empire, connecting French West Africa, to French Equatorial Africa and Indochina. She is currently co-editing a special issue for the *Revue d'histoire contemporaine de l'Afrique* on human, cultural and political connections between Africa and Latin America circa 1850 – 1990.

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Thomas Gidney

Stream: General

Negotiating the End of Extraterritoriality 1919-1945

Often viewed as a 19th century affair, extraterritorial courts continued to act as delineators of status of civilization in global diplomacy until the 1940's. This perpetuated 'unequal treaties' with Asian and African states until they had met a perceived normative level of alignment with Western values. Developments such as the inclusion of many non-European states into the League of Nations in 1919, brought hope for many states subject to unequal treaties and extraterritorial courts for international reform. Many League members, particularly China, used their newfound position within international society to push for the abolition of these treaties and courts system.

The diplomatic route proved to be unsuccessful, and the extraterritorial system not only remained entrenched, but was reinforced by new hurdles. The League of Nations introduced new conceptions of civilization, creating additional normative hurdles for non-European states to bridge. In this project, I analyse the politics behind the removal of extraterritoriality, and how their demise was due to expediency rather than by the alignment of non-European states with Western law. This topic is part of an ongoing postdoc proposal, that aims to examine the role of international organisations in the formation and evolution of international norms, to assess to what extent international organisations convey status and equal international personality.

Thomas Gidney is a Fellow at the Global Governance Centre at the Graduate Institute for International and Development Studies in Geneva. His recently completed Doctorate explores the legal basis under which Britain included colonies such as British India, the Irish Free States, and later Egypt as full member-states of the League of Nations. This thesis thus explores how Britain attempted to reframe its colonial politics in the face of growing calls for decolonisation, self-rule and independence, utilising international organisations such as the League as sites to legitimise a seemingly new or 'Third British Empire'. His other research interests cover how imperial politics have driven normative changes at international organisations.

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Philip Girard

Stream: General

On the edge of many empires: employers' liability in Quebec's industrial age, 1880-1930

Quebec went through a period of rapid industrial growth from the 1880s onwards, as Montreal became Canada's financial and manufacturing capital, supported by mining, electricity generation and related pursuits in its hinterland. As in other places undergoing such transformations, workplace accidents, often fatal or grievously maiming, became a flashpoint of conflict between labour and capital. Most Canadian provinces, following Ontario's lead in 1914, abolished tort claims and created a no-fault regime administered by a state-run agency funded by employer contributions.

Quebec, the only civil law jurisdiction in Canada, followed a different route. Its private law of delict was already more worker-friendly than the common law (no fellow-servant rule, for example), and it chose to institute significant reform in 1909 by amending the private law of delict rather than creating a state agency. Yet the approach of Quebec courts, drawing largely on the French example and civil law notions, often ran into conflict with attitudes in the Supreme Court of Canada, where the citation of English and American jurisprudence, less generous to workers, tended to prevail.

This paper will analyze the tug of war between different legal metropolises that characterized this area of law in Quebec, using case law, juristic writings, government reports, and empirical evidence of worker accidents and their redress.

Philip Girard is professor of Law at Osgoode Hall Law School, York University, Toronto, Canada, and has published extensively in the field of Canadian and comparative legal history. Author of *Bora Laskin: Bringing Law to Life* (2005) and *Lawyers and Legal Culture in British North America: Beamish Murdoch of Halifax* (2011), Dr Girard has been writing a history of law in Canada with Jim Phillips and R. Blake Brown, of which volume I (beginnings to 1866) appeared in 2018, and volumes II and III are expected to appear in 2022 and 2023. He is a Fellow of the Royal Society of Canada, an honorary fellow of the American Society for Legal History, and Associate Editor of the Osgoode Society for Canadian Legal History.

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Lee Godden

Stream: General

Pandemics, Law and Movement Controls at the Edges of Empire

The COVID-19 Pandemic has focused attention on the legal powers that control peoples' movement and to deal with the 'infected body' and its 'wastes.' This presentation considers the historical legal controls exercised over those who were infected with various forms of communicable diseases in the colonial and the modern period in Australia. The historical movement of such diseases 'mapped' broader flows of colonisation and globalisation, and the encounters between peoples and legal systems across the nineteenth and early twentieth centuries. The presentation examines the initial impact of infectious diseases such as small pox on the Aboriginal population before turning to analyse the later forms of public health and associated legal measures designed to isolate people suffering infectious diseases. These measures assumed a specific spatial and temporal dynamic that was to culminate in a (contested) federal quarantine system after World War 1 and the outbreaks of Spanish flu. The legal powers to place people in this bodily dimension of being 'beyond the pale' at the 'Edges of Empire' have a long historical genesis in legal systems, including the common law. To this extent, the use of spatiotemporal forms to physically isolate people, actually linked legal systems and institutions in the types of governmental powers and the disciplining of the body that was transferred from penal to health settings. A study of these bodily controls provides insights into how we might conceptualise the 'movement', of law and spatial practices, and it offers a window on how, 'we could envisage legal interchange across time and place'.

Lee Godden is a Professor Melbourne Law School, The University of Melbourne, Australia. She is a Fellow of the Academy of Social Sciences in Australia and a Fellow of the Australian Academy of Law. She specialises in legal research on Indigenous land rights and their intersection with environmental and natural resources laws. As part of that work she has considered how, historically, Indigenous and settler values find expression in landscapes as a particular manifestation of intersecting legal and spatial forms. Previously, she has examined how spatial planning law control bodily movement and seek to contain bodily contagion in respect of prostitution controls. Recent publications of relevance include: Godden, L. 'Law and sacrifice in Australian extra-territorial nation spaces: The residue of empire' *Routledge Handbook of International Law and the Humanities* (2021) 369-378; Godden, L. 'Legal geography - place, time, law and method: The spatial and the archival in 'Connection to Country'' in T. O'Donnell et al., (eds) *Legal Geography Perspectives and Methods*, 1st Edition (Routledge 2020) 130-148.

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Nishant Gokhale

Stream: Indigeneity, Law and Empires

A Bhil Chief in Company India: Legal Fragments of the Life of Goomany Naik (c.1818-1824)

As the hereditary chief protecting the Sindhwa mountain-pass connecting central and western India, Goomany Naik played several, and drastically different roles during his lifetime. In the few short years he engaged with the increasingly dominant English East India Company ('Company'), Goomany was sovereign, policeman, patriarch and outlaw before his penal transportation to Penang following a dramatic judicial trial. Fragmentary archival references and some scholarship notices Goomany. However, these neither account for Goomany's plural engagements with the Company nor his intricate social entanglements in Indian society. This narrowing of the already limited archival space that Goomany, and other indigenous figures occupy, pushes them into the peripheries of the imperial legal world. Through legal biography, this paper focusses on Goomany to understand manifestations of the Company's imperial legal system at local levels. It disrupts existing historiographies about law in Company India which have been dominated by accounts of, and about, British Company officials. This paper furthers recent imperial history scholarship which looks at law, not as embodied in legislations and judgments, but as reconstructed from writings and practises of local officials fitfully furthering hazy—but oddly specific—iterations of order.

This paper enriches understandings of day-to-day working of Company legal systems, and how these were received and navigated by the indigenous Bhils as they transitioned from the legal practises of the Maratha government. By locating indigenous peoples' within the 19th century imperial world as legal actors exercising agency, this paper nuances— if not challenges—the totalising narrative of their subjugation through law.

Nishant Gokhale is a third year Ph.D. Candidate (Legal Studies) at Cambridge. Nishant obtained his undergraduate degree in law and humanities at NUJS, Kolkata and an LL.M. from Harvard Law School. Before starting his Ph.D., Nishant worked for a year as a judicial clerk at the Indian Supreme Court, and for several years as a litigator in criminal and capital cases. Nishant's Ph.D. research examines the British East India Company's engagement with law at home and in India. Examining archival sources in the United Kingdom and India, his research delves into the Company's project of legal ordering as it manifested in relation to the indigenous Bhil communities in the erstwhile province of Khandesh (western India). At the cross-roads between imperial and socio-legal history, his research examines published and unpublished materials spanning judicial archives, literary accounts and private correspondence of Company officials. Nishant's research contends that Bhils were not merely subjects of the processes of imperial legal ordering, but were also agents of legal change in Company India in the early 19th century. The ways in which they engaged with law continues to inform present-day legal and bureaucratic practises at local and regional levels.

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H. Tomas Gomez-Arostegui (with Sean Bottomley)

Stream: Intellectual Property in Empire

Patent-Infringement Litigation in 18th Century England and the Right to a Jury Trial

Our paper addresses the law and practice governing patent litigation in 18th-century England, particularly with a view to helping courts decide whether litigants have a constitutional right to a jury trial under the Seventh Amendment of the United States Constitution. The right to a jury trial depends largely, and sometimes exclusively, on English historical practice at the time the amendment was adopted in 1791. The Founders of the United States are often seen as having adopted many of the laws of England, unless there is a clear indication to the contrary. Although some excellent historical work on English patent-law history has been written, not all of it treats the procedural history in depth and much of it relies largely and sometimes exclusively on published sources. In this paper, our aim is to do a deep dive on patent-litigation procedure in various fora—relying on hundreds of manuscript sources—in an effort to offer a detailed account that corrects what we believe to be several misperceptions about this area of history.

Tomas Gomez-Arostegui is the Kay Kitagawa & Andy Johnson-Laird IP Faculty Scholar and a professor at Lewis & Clark Law School in Portland, OR. His scholarship interests lie primarily in the history of intellectual property before the year 1800, especially that of copyright and patent, and in the remedies awarded in intellectual property cases. In 2015, the American Society for Legal History awarded him the Sutherland Prize for the best article or book chapter on English legal history published in the prior year. Before entering private practice and teaching, he clerked for the late Judge Edward Rafeedie of the U.S. District Court for the Central District of California and for Judge John C. Porfilio of the U.S. Court of Appeals for the Tenth Circuit.

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David Goodwin

Stream: The Maritime World in Legal History

How Torres Strait Shipping Shaped Queensland's Aboriginal Protection Legislation

The *Aboriginal Protection and Restriction of the Sale of Opium Act* 1897 was the Australian State of Queensland's first instrument of separate legal control over Aboriginal people. It set the framework for the State's management of indigenous issues over the subsequent half-century. This paper outlines the legislative mechanisms contained within the Act and analyses the priorities of the early Protectorate. Research into the motivations which underpinned the passage of the Act has tended to emphasise four themes – liberal humanitarianism; the desire to keep Aboriginal people at a safe distance from whites; enabling the use of indigenous labour; and the control impulse. In this paper a fifth key driver for the legislation is identified - late Victorian moralistic concern at the appalling levels of sexual predation upon Aboriginal women by white settlers and others. Much of this occurred in connection with North Queensland shipping and the lucrative Beche-de-Mer trade in particular. This fifth factor was a leading motivation for the passage of the legislation. This is made clear by the storytelling in the Hansard record of the era, and in Chief Protector Annual Reports. These sources offer a fascinating window into the motivations and mores of Queensland's colonial era legislators.

David Goodwin is Head, Industry and External Engagement at Victoria University, Melbourne with responsibilities across the Business and Law schools. He holds a Bachelor of Laws from the University of Queensland, a Graduate Diploma in Commercial Law from Monash University, and Master of Business and PhD qualifications from RMIT. In previous roles he was MBA Director and Director, Juris Doctor Programs at RMIT. David maintains a part-time practice at the Victorian Bar, having signed the Bar Roll in 2010. In his early career he was a corporate lawyer with the BHP and ANL Groups and Head of Corporate Affairs for BlueScope Steel and Singapore's Neptune Orient Lines. He has extensive experience in the shipping industry and is the Immediate Past President of the Maritime Law Association of Australia and New Zealand and a Director of Melbourne Maritime Heritage Network Inc.

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Robert Hamilton

Stream: General

Resisting and Extending Empire: How the Acadian people shaped British and French imperial rule through the strategic use of law

In the 17th and 18th centuries, the region now known as Canada's Maritime Provinces was primarily Indigenous territory. It was also a contested imperial borderland. The French and British exchanged the region frequently by treaty while exercising little effective control. The region was controlled by the Mi'kmaq and Wolastoqey peoples. The gradual extension of imperial law was achieved in part through settlement. French settlers arrived in the early 17th century and, partially owing to the limited reach of imperial law, developed into a distinct and independent political community. The Acadians, as they came to be known, navigated their place within Indigenous homelands and contested imperial borderlands through the strategic use of multiple legal systems. While developing their own internal laws and customs, they also made strategic use of French and British law to ensure their cultural and political survival. In doing so, they extended British and French legal regimes by putting them into use in contested spaces. They also contested imperial rule by holding open spaces where divergent legalities prevailed. This paper considers the Acadians' strategic use of law through three examples: property holding, dispute resolution, and negotiated oaths of allegiance. These examples illustrate how the Acadians used law instrumentally to maintain a distinctly Acadian political community and how that political community's use of law shaped imperial law in a contested region over the course of nearly two centuries.

Robert Hamilton is an Assistant Professor at the University of Calgary Faculty of Law where he teaches Property Law, Indigenous Peoples and the Law, and Legal Research and Writing. Robert holds a PhD from the University of Victoria, an LLM from Osgoode Hall Law School, and a JD from the University of New Brunswick. Robert's research and publications engage with Indigenous-state relations, legal history, and legal theory.

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Vanja Hamzić

Stream: General

Panel: Law, Personhood and Racial Capitalism in the History of Empire

Labours in Time and Subjectivity: Gender Nonconformity, Law and Racial Capitalism in the Making of Eighteenth-Century New Orleans

This paper engages the temporality of work and selfhood in its violent, dispossessive modes, which figure as an abiding feature of racial capitalism. I argue that gender nonconforming individuals and communities of colour in colonial Louisiana were systemically dispossessed not only due to their perceived race and class, but also due to their gender difference. Bringing forth a range of resistive remnants of circum-Atlantic Black and Indigenous gender nonconformity, the paper centres on the distinct legal and socio-temporal contexts of eighteenth-century New Orleans, which reveal a changing landscape of racial capitalist regulation of the gender binary and the sites of labour.

New Orleans, this uneasy city—which had been, from its very founding, designated as the devil’s own domain for its ostensible sexual, gender, class and racial transgressions—offers a unique insight into the centrality of socio-economic alienation of certain forms of gender and bodily labour for the enduring project of racial capitalism. But I also ask what practices of temporal alienation, or *distemporalisation*, such forms of labour would have to contend with, and just how, in turn, gender nonconforming subjectivities—whether enslaved or free—among New Orleanian communities of colour organised and sustained their resistance to such systemic violence.

Vanja Hamzić is Reader in Law, History and Anthropology at SOAS University of London. His work principally considers colonial, postcolonial and decolonial subjectivity making—with a particular focus on gender nonconformity—in South and Southeast Asia, West Africa and Louisiana. Vanja’s books include *Control and Sexuality: The Revival of Zinā Laws in Muslim Contexts* (with Ziba Mir-Hosseini, 2010) and *Sexual and Gender Diversity in the Muslim World: History, Law and Vernacular Knowledge* (2016, 2019). His current book project addresses gender diversity and cosmological pluralism in eighteenth-century Senegambia as well as the ways enslaved gender nonconforming West Africans have survived the Middle Passage and the gender regime of colonial Louisiana. Vanja was a 2016/17 Member at the School of Social Science in the Institute for Advanced Study at Princeton.

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Lenny Hodges

Stream: General

The Code Noir in Bengal: Slavery, Race, and the French Imperial Constitution in the Eighteenth Century

In October 1770 a Luso-Indian woman dictated her will before a notary in Chandernagore, the principal French colony in Bengal. Marie da Costa bequeathed the significant sum of 1,500 rupees to a woman named only as Rosine. After her death, her husband François Gravier sought to annul the will before colonial courts. Gravier argued that his wife had bequeathed money to ‘persons incapable of inheriting according to the *Code Noir*, who are her slaves and their children’. Likely because the money at stake was substantial, Gravier sought recourse to the Code Noir, an influential body of French slave law, to invalidate a testamentary practice commonly accepted in Bengal. Traditionally associated with the development of Atlantic slave plantations, historians have been slow to think about the Code Noir in the Indian Ocean, and little is known about its application in India. Yet Gravier’s suit reveals that contemporary litigants were not constrained by the boundaries of what historians have conceptualized as the Atlantic World, but drew freely upon a body of law common to France and its empire. Demonstrating how this broad set of imperial legalities and norms came to bear in Chandernagore, this paper posits a French imperial constitution that formed a distinctive and compelling consideration in matters of colonial law and governance. This constitution is not understood as a static document, applied uniformly, but rather a process of adaptation and reformulation, by which actors such as da Costa and Gravier grappled with a diverse set of legal practices, norms, and texts to help produce an organic corpus of imperial law.

Leonard (Lenny) Hodges is a Leverhulme Early Career Fellow at Birkbeck. He is working on a project that examines how notions of race and slavery coalesced to legal structures in early modern France and its empire. This project will be supported through a Leverhulme Early Career Fellowship held at Birkbeck College in London from February 2022. He is also working on a book based on his dissertation on the French Company of the Indies (*Compagnie des Indes*), undertaken at King’s College London. Previous work has explored the administration of law in eighteenth-century colonial Bombay, as well as an article with Nandini Chatterjee on how European trading companies used Mughal law. He has held postdoctoral fellowships at the London School of Economics and Lancaster University.

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Stacey Hynd (with Thaïs Gendry)

Stream: General

White Men's Mercy: Gender, Race and Capital Sentencing under British and French Colonial Rule in Africa, c.1920-40s

As the first comparative analysis of the treatment of African women in British and French colonial law, this paper analyses the development of a colonial 'white man's mercy', to show the cultural and politico-legal reasons why many African women were adjudged befitting of judicial leniency. The article compares evidence from over 115 trial records involving female accused from French West Africa and Kenya, Ghana and Malawi. The paper demonstrates how criminal law normally did not involve direct exchange between imperial legal systems, but that synergies did emerge that benefit from comparative analysis. It argues that gender was a significant factor in capital sentencing in both empires, but its significance varied with three main factors. Firstly, the distance between the original crime and final sentencing outcome, both geographically and along politico-legal hierarchies. Secondly, gender's intersection with other facets of a defendant's identity. Thirdly, the nature of the offence, and how this did (not) violate gender norms or colonial order, was a key factor in judicial severity. Overall, the differences in treatment of women accused of murder between French and British courts stemmed primarily from differences in the mercy process and separate waves of repression of African societies across each empire.

Stacey Hynd completed her D.Phil. in Modern History at the University of Oxford, where she was an AHRC doctoral candidate. She lectured in African and World History at the University of Cambridge, and is now Senior Lecturer in African History and Co-Director for the Centre for Imperial and Global History at the University of Exeter. She has researched murder, capital punishment, prisons, domestic violence, juvenile delinquency, and forced labour in colonial history, focusing primarily on Ghana, Kenya and Malawi. Her work has been published in *Journal of African History*, *International Journal of African Studies*, *Journal of Eastern African Studies*, *Journal of Southern African Studies*, *Journal of West African History*, *Gender & History*, *Comparative Studies in Society and History*, and *Crime, History & Society*, and multiple edited volumes on imperial legal and criminal history, including Dorsett & McClaren (eds.) *Legal History of the British Empire* (2014). Her forthcoming monograph with Bloomsbury is *Imperial Gallows: Murder, Violence and the Death Penalty in British Colonial Africa, c. 1910-50s*, and she is currently co-editing a special issue for *Punishment & Society* on African penal systems in global context. She also writes on African/global histories of child soldiering and humanitarianism.

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Miranda Johnson

Stream: Indigeneity, Law and Empires

Threshold states: Indigeneity and Colonial Imperialism in the South Pacific

“Threshold states” are anticipatory political entities, on the edge of becoming but with no essential sense of what they will be. In this paper, I develop the concept of inter-acting threshold states in the late nineteenth-century when Indigenous and settler polities in the South Pacific engaged each other in new, uncertain, and often fraught terms. Leaders from Pacific Island nations, particularly in Polynesia, styled themselves monarchs and undertook diplomatic missions around the Pacific (as well as in some cases to Europe). These missions included visits to cities of the white settler colonies of Australia and New Zealand where they engaged with other Indigenous leaders and settler politicians, businessmen and missionaries for the purpose of building alliances, shoring up trade routes, and deepening relationships with churches. Some white settler politicians welcomed these visits, as they harboured their own dreams of economic expansion and imperial rule and hoped that Island leaders would seek protection under their authority. However, such dreams were circumscribed by the fact of the white settler countries’ *colonial* status which, in a context of divided sovereignty, meant their external relations and particularly the capacity to annex other territories, was dependent on the imperial government’s consent. In proposing the concept of threshold states in this rapidly shape-shifting region, I aim to contribute to the re-telling of stories of colonialism, anti-colonialism and nation-building in non-linear and post-progressive modes that more clearly speak to our complex, interdependent present.

Miranda Johnson is a senior lecturer in the History Programme at the University of Otago in Aotearoa New Zealand. A historian of the modern Pacific world, focusing on colonial, indigenous, and cross-cultural histories, she is the author of the prize-winning book *The Land Is Our History: Indigeneity, Law, and the Settler State* (Oxford University Press, 2016) and co-editor with Warwick Anderson and Barbara Brookes of *Pacific Futures: Past and Present* (University of Hawai‘i Press, 2018). She has also taught at the University of Sydney and the University of Wisconsin-Madison.

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Naveen Kanalu

Stream: General

Hanafi Idioms of Law: Transregional Legal Mobilities between the Gunpowder Empires (c. 1670-1700)

In the early modern world, multiple and rivaling legal systems such as Civil law, Common law, and Islamic law coexisted across empires. In the seventeenth century, nearly 25 percent of the world population lived under Hanafi law (one of the four main schools of Sunni Islam), making it one of the largest legal systems in the early modern world. The Ottoman Empire in the Middle East and the Mughal Empire in South Asia were two major centers of Hanafi law. The paper will analyze the development of this trans-imperial legal culture by examining the circulation of codifications and legal ideas between the two empires. In the 1660s, the Mughal emperor, Aurangzeb (r. 1658– 1707) commissioned the imperial codification in Arabic, *Al-fatawa al-'alamgiriyya* (“The Institutions of the World Conqueror”). In Ottoman Istanbul, leading scholar bureaucrats like Chief justices, head scribes of the Ottoman imperial council, and college teachers read, cited, and extensively used this work from the 1690s onwards. The paper argues that codifications played a powerful role in creating an impetus for new forms of legal inquiry and the revision of older views. They led jurists to find innovative answers to emerging problems in fiscal, commercial, and public spheres of the early modern realities. Examining legal debates and their impact on ordinary civilian claims and rights, the paper argues that imperial legal doctrine and practice were mutually inter-related and vibrant rather than “rigid” as it has often been portrayed in contemporary debates on Islamic law.

Naveen Kanalu holds a PhD in South Asian History from the University of California, Los Angeles. He has taught history and philosophy at UCLA and the Université de Strasbourg. In 2021-22, he is an Associate Postdoctoral Fellow at the Centre d'Études de l'Inde et de l'Asie du Sud, EHESS, Paris. Naveen's research analyses the nature of Islamicate statecraft in the Mughal Empire through the prism of legal institutions and the codification of Islamic law. Revisiting the Mughal emperor, Aurangzeb's rule (r. 1658–1707) that has often been portrayed as a phase of “Muslim orthodoxy” in South Asia, he argues that the period marked a shift towards increased legal approaches to governance. His intervention offers the first monograph-length legal history of precolonial empires, demonstrating that law-making became a symbol of Mughal sovereignty through legal socialization among ordinary subjects. Naveen has published articles in leading peer-reviewed journals and collected volumes in intellectual history, law and history, and literary cultures. His research has garnered the institutional and financial support of prestigious fellowships of the Social Science Research Council (SSRC), the American Institute of Pakistan Studies (AIPS), and the French-American Cultural Exchange Foundation.

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Manav Kapur

Stream: General

The many afterlives of a ‘satanic law’: the transplantation of India and Pakistan’s evacuee property regime

Through the 20th century, states have used their (increasing) power to redefine, reconstitute and obliterate the property rights of minority or ‘enemy’ populations. This assumed particular significance in the wake of the end of empire, as earlier diffused citizenship regimes came into conflict with new ‘homogenous’ states which ought to purge their minority populations and sequester their property. The paper discusses how viewing this process through property rights provides a fresh view of postcolonial state-formation as birthing a set of new claims on property and belonging, particularly vis-à-vis recalcitrant minority populations.

In my proposed paper, I examine the operation of evacuee property norms in Pakistan and India at the ‘edge of empire’ both spatially (at new borderlands created after partition) and temporally (at the precise moment between ‘empire’ and ‘state’). I demonstrate how laws initially adopted to protect the property of out-migrants after British India’s partition were used to increase out-migration of minority populations. Though ‘custodians’ maintained a legal fiction of ownership by the original owners, they allowed for this property to rehabilitate of incoming refugees, in effect virtually expropriating it without compensation. While detractors argued that this legal regime was ‘satanic’, and even supporters considered it ‘unjust legislation’, I highlight this model’s usefulness in presaging later challenges to property rights, questions of expropriation, and minority rights, including beyond the Indo-Pakistani partition. Indeed, similar laws were promulgated in Goa after Portuguese decolonization, as well as in newly independent Israel, where the ambivalences in the evacuee property legal regime became a blueprint for their own legislation around absentee property, thus facilitating the legal dispossession of Palestinians.

Manav Kapur is a PhD candidate at the Department of History at Princeton University, where he is working on evacuee property and citizenship in the wake of British India's partition. He has completed his LL.M From NYU, where he specialised in International Law and Human Rights, and has taught international law and constitutional law at NALSAR, Hyderabad, India and the OP Jindal Law School, Sonapat, Haryana. His interests lie in constitution-making, legal history, and state formation after decolonisation.

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Narcisse Kaze

Stream: General

The Process of Kingdom/Fondom Formation in Pre-colonial Bamenda Grassfields of Cameroon c. 1800-1884

This paper explores the historical factors that laid to the basis of the establishment of pre-colonial socio-political entities referred to in most in the Bamenda Grassfields studies as *Fondom*. *Fondoms* in this area were the equivalent of empires or kingdoms that occurred in other parts of Africa before colonial rule. *Fondoms* which are the a symbol of the socio-cultural heritage of people of the Bamenda Grassfields of Cameroon, was the product of a historical process that started with 19th century forced migrations caused by the Jihads forced many kins groups to flee southwards towards in central and south Cameroon. Historically, the mechanism for the creation of *Fondoms* in this area was generally done through military conquest, federation and annexation.

This paper argues that the legal interconnection between *Fondoms* in the Bamenda Grassfields was fundamentally determined by the conditions in which each *fondom* was founded. Empirical evidence suggests that Bamenda Grassfields *Fondoms* had the characterised of the constitutive elements of a state, consecrated in article 1 of the Montevideo Convention on the Rights and Duties of States of 1933. Inter-fondom relations in the Bamenda Grassfields were regulated through mutually and common accepted diplomatic norms.

This paper explains how the legal relations between fondoms in the Bamenda Grassfields though not written (uncoded) played an important role in the regulation of inter-fondom relations. This facilitated interconnections and consolidated peaceful co-existence among fondoms till the advent of colonial rule that brought about a legal inter-fondom paradigm in the Bamenda Grassfields of Cameroon.

Tindo Narcisse Saturnin Kaze is junior PhD graduate in African Political History and International Relations from the University of Yaounde I Cameroon. He holds two Master's degree in; International Relations and history of international relations obtained in 2017 and 2012 from the International Relations Institute of Cameroon and The University of Yaounde I-Cameroon respectively. He obtained his BA in History in 2008 from The University of Yaounde I. Kaze's research interests include; traditional African institutions, migration patterns, armed conflicts, humanitarian assistance, and ethnic politics. Kaze has five published articles.

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Nir Kedar

Stream: General

The Russian Imperial Roots of Israeli Civicism and Rule of Law

The paper will track the ways in which civic and legal ideas fashioned in 19th century Russian Empire were later developed and realized in Mandatory Palestine (which was part of the British Empire) and mainly in Israel. Israeli society is often criticized of lacking a genuine respect to democracy, the rule of law and other civic values. According to a central explanation to this problematic political culture Israel could not develop into a fully-fledged democracy since most of its citizens immigrated from Eastern Europe and the Moslem world, two areas with no tradition of democracy or rule of law and with no progressive civil society.

The purpose of my paper is to offer a new historical account of Jewish modern legal and civil history, showing the Russian imperial roots of Israeli “civicism” and rule of law. 19th century Russian Jews underwent complex processes of modernization, that were influenced by Western political and legal Ideas, as well as by the intellectual, cultural and political reality in 19th century Imperial Russia. The significant presence of law and the modern idea of the rule of law in the minds and social life of East European Jews eased the integration of Jewish immigrants in Western civil societies, and enabled those immigrating to Palestine – then part of the British Empire – and later to Israel to develop a stabile law abiding democracy.

Nir Kedar is the Vice President for Academic Affairs at Sapir Academic College (where he previously served as the Dean of the Law School), and a professor of law and history. He graduated from Tel-Aviv University (history and law) *magna cum laude*, clerked for the President of the Israeli Supreme Court Prof. Aharon Barak, and received his S.J.D. from Harvard. His main fields of interest are Israeli, modern European and American legal history, comparative law, and legal and political theory. In these fields he has published numerous articles and five books. His most recent book, *Law and Identity in Israel: A Century of Debate* (2019), appeared with Cambridge University Press. He is a former member of the editorial staff of Comparative Legal History (CLH).

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Sandy Kedar

Stream:

Panel: Israeli regimes of citizenship, immigration, enemies, and space, in comparative perspectives

The Israeli Supreme Court and Appeal Committee in the OPT in Comparison with the U.S. Supreme Court and the Indian Claims Commission

The presentation is based on an article in progress, which compares the jurisprudence of the Israeli High Court of Justice in adjudicating petitions concerning land against the Israeli Military Appeal Committee (AC) in the Occupied Palestinian Territory (OPT), with the U.S. Supreme Court jurisprudence in cases emanating from the Indian Claims Commission (ICC). Both the AC and the ICC served as key institutions and arenas in the resolution of land disputes between native landholders and the settler state. In both cases, the Supreme Courts routinely deferred to these peripheral lower tribunals to which the pivotal issue of land claims was relegated. Furthermore, in both cases, academic lack of attention replicates and reinforces the marginality these crucial processes. While differences obviously exist—including the time frame, the geography, the legal regime, and structure, and more—as shown in this article, a comparison of both Supreme Courts' adjudication of cases emanating from lower tribunals instructs us on the role of such institutions in the context of settler colonialism's land hunger and its attempt to conceal land dispossession.

Alexandre (Sandy) Kedar is faculty, Law School at the University of Haifa. Doctorate in Law (S.J.D) Harvard Law School. Was visiting professor and Grotius International Law Visiting Scholar, University of Michigan Law School. Researches legal geography, legal history, law and society and land regimes in settler societies. Past President, Israeli Law and Society Association; co-coordinator of the Legal Geography CRN of the Law and Society Association. Among relevant recent publications: Roded, Yiftachel, Kedar "Between Rights and Denials: Bedouin Indigeneity in the Negev/Naqab," *Environment and Planning A*, (2016); "The Development Authority and the Formative Years of the Israeli Land Regime," Ela Trachtenberg, Alexandre (Sandy) Kedar and Deborah Shmueli, *Journal of Israeli History*, 2016; co-editor, of *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press, 2014). Author with Amara and Yiftachel a book titled *Emptied Lands: A Legal Geography of Bedouin Rights in the Negev* (Stanford University Press, 2018.) Mishirqi-Assad and Kedar "Power, Law, and Place in the Shadow of the Occupation A Legal-Geographical Examination of the Transformation of the Susiya Area" (Shafa Yatta 1967 شفا يطا to 1998) forthcoming, *Din U Dvvarim*. Currently leading an Israeli Science Foundation research grant project on The Land Regime of the Territories Occupied by Israel: A Legal Geography of The West Bank, 1967-2017.

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Ibrahim Khan

Stream: General

Managing the Decline of Empires: International Law and the Regulation of War

My proposed paper looks at how jurists from different empires during the interwar period conceived of changes in the international law surrounding the regulation of the use of force, and what this reveals about aspirations and anxieties surrounding the fall of empire. Looking at Carl Schmitt from Germany, Hans Kelsen from Austria-Hungary, Hersch Lauterpacht from Britain, and Georges Scelle from France, I explore the way their respective approaches to the changing norms surrounding the use of force suggest both convergent and divergent anxieties and aspirations. Essentially, the new regulations on the use of force were ways of managing empire, and the force of their writings symbolized the decline of empire. Looking at these authors together develops a picture of how very different approaches to international law coming from very different individuals might be bound up by a shared experience of inhabiting empire—or of managing its decline. I will also examine how these authors were critiqued (sometimes implicitly, sometimes explicitly) by jurists in the colonies writing at the same time—most notably Radhabinod Pal in India—for whom the newly-emerging norms surrounding the use of force similarly elicited an intense response, one also constituted by empire but through a very different experience of it.

Ibrahim Khan is a fourth-year PhD candidate in political theory at the University of Chicago, where he works with Adom Getachew and Jennifer Pitts (co-chairs), and Darryl Li. His research interests fall broadly within the history of international law and global intellectual history. Ibrahim’s current research project explores the the development of norms surrounding the use of force during the twentieth century, from around the interwar period into the end of decolonization. As part of that, he is examining how ideas on sovereignty were transformed by jurists and diplomats from the Global South, through concepts such as aggression, which made the discussion on the regulation of war a central part of the quest for self-determination. Prior to entering the doctoral program at Chicago, Ibrahim completed a master’s degree in Islamic law at the University of Oxford and a master’s degree in politics at the University of Cambridge.

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Coel Kirkby

Stream: Indigeneity, Law and Empires

Disenfranchisement and the Reconstitution in the British Empire, c.1884-1900

In the closing decade of the nineteenth century, the British Empire would exclude all non-white subjects from self-government. This imperial moment is usually told (if remembered at all) as two discrete stories: the disenfranchisement of Indigenous peoples in the settler colonies and the imposition of ‘traditional’ or ‘indirect’ rule in India, Africa and the other dependent colonies. I will challenge this history of two distinct empires by showing how the new literature on racial capitalism can help us to analyse these through a common act of disavowal necessary to reconstitute the British Empire as a self-consciously white global polity. The story begins in India with the ‘white mutiny’ against Ilbert Bill of 1884. While British settlers nominally critiqued the idea of equal civil rights, their ultimate target was Ripon’s proposed reforms to introduced the non-racial ‘elective principle’ to representative government. The mutineers’ success in India was followed by successive acts to effectively disenfranchise non-white subjects in the settler colonies in the early 1890s. By the end of the century, the British Empire had been radically reconstituted as an exclusively white (and mostly male) global polity with the few vestigial exceptions for non-white subjects proving this new rule of representation.

Coel Kirkby is a Senior Lecturer at the University of Sydney Law School. He was elected the Smuts Research Fellow in Commonwealth Studies at the University of Cambridge for 2017-8. Before that he was a McKenzie Fellow at Melbourne Law School, an Endeavour Fellow at UNSW and a researcher at the Dullah Omar Institute. Coel is both a historian of the legal thought and practice of British imperialism, and a comparative constitutional scholar concerned with its legacies in postcolonial states. He is completing two books, one on the birth of liberal democracy in the British Empire and the other on the rebirth Anglo-American jurisprudence in the Cold War. He has also worked on contemporary constitutional reform projects from Fiji and Tuvalu to Victoria and South Africa.

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Diane Kirkby

Stream: The Maritime World in Legal History

Seafarers refusing ‘coolie standards’ on British ships

Seafarers were regarded as a special case when British labour law developed in the late 19th century. Most of the regulations covering their employment had evolved on the ships, as custom, not in legislation, and they were subsequently excluded from labour protections when these were extended to shore-based workers. It was ‘the peculiar status of the sailor’ according to a US economist in the early 20th century, to be kept in ‘economic helplessness’ and denied rights of personal freedom open to shore workers. Legislation was a very powerful influence in shaping this reality. When Britain repealed its pre-industrial navigation laws in 1849 and passed the merchant shipping act it removed restrictions on commercial operators and allowed private companies to carry government mails, including a new service between Singapore and Australia as well as services to China, Ceylon and India. The new law permitted a limitless supply of cheap labour from these colonies to be employed by British shipping companies which circulated large numbers of seafarers across the empire, without matching that employment with legislative protections. Seafarers from India were particularly exploited. Seafarers in the Australasian colonies, organised into unions, rejected the idea that ‘because men go to sea’ they could not be granted the same protections as other workers. They opposed the employment of cheap labour under systems of indenture and ‘coolie’ standards, which forced down wages and conditions on British ships. A Royal Commission in 1906 exposed these as unacceptably low by Australian standards. This paper explores the entwining of domestic labour regulation with empire through the prism of these Australian standards.

Diane Kirkby is Professor of Law and Humanities at University of Technology Sydney. She has published extensively on Australian and US labour history and labour legislation. This research was funded by the Australian Research Council in a Linkage Project with the Maritime Union of Australia and is the subject of her most recent book, *Maritime Men of the Asia-Pacific: True-blue Internationals Navigating Labour Rights 1906-2006* (Liverpool University Press, 2022).

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Larissa Kopytoff

Stream: General

“Seeking to return home from the hajj”: The repatriation of colonial subjects across imperial boundaries

In the early twentieth century, Muslims making the hajj – the annual pilgrimage to Mecca – regularly crossed imperial boundaries along the way. As pilgrims traveled, they created spaces and moments of interaction, negotiation, and contestation among empires. British, French, Ottoman, Russian, and other officials sought ways to control the flow of pilgrims traveling from, or transiting through, their territories; they often looked to each other for examples of how they might better manage the legal, economic, political, and public health challenges of the hajj. Among those challenges was the issue of repatriation. Pilgrims who found themselves ill or destitute while in transit frequently sought government assistance to return home, prompting debates between officials – and between empires – about whose legal responsibility it was to bring them home (not to mention who would bear the financial burden of doing so).

This paper examines requests for repatriation assistance from West African Muslims – including both British and French subjects – and the responses of colonial officials to those requests. Specifically, it focuses on the interimperial legal connections, negotiations, and tensions such requests prompted. Repatriation requests raised questions about the relationship of mobility and legal status; they also focused attention on the complex legal relationships between colonial subjects and authorities, and between empires. In their requests, we can see how colonial subjects understood and claimed their own legal rights and protections; in the responses of colonial officials, we can better understand how and why empires sought to claim or eschew responsibility for their subjects.

Larissa Kopytoff is an Instructor in History at the University of South Florida. She earned her Ph.D. in African History from New York University in 2018. Her current work explores the political and legal history of French citizenship in colonial Senegal. More broadly, her research interests include citizenship and nationality in colonial and postcolonial Africa; colonial law and administration; and migration and mobility within and across imperial boundaries, with an emphasis on the French empire. Her research has been supported by the National Endowment for the Humanities, the American Society for Legal History, and the Fulbright-Hays Program, and in 2019, she was a Fellow at the University of Wisconsin’s J. Willard Hurst Summer Institute in Legal History.

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Jessica Lake

Stream: General

‘This is a legal joke that finds no parallel outside of the British Empire’: The sexual slander of women in the 19th century common law world

Beginning in 1808, a series of legislative reforms across the common law world, often labelled the Slander of Women Acts, corrected a ‘barbarous’ ‘defect’, ‘oddity’ or ‘anomaly’ within English law and enabled women to sue for sexual slander and verbal abuse without needing to prove economic loss. As a result, if a woman was called a ‘whore’, ‘unchaste’, ‘an adulteress’, ‘a prostitute’ or a ‘fornicator’ she could more easily have her grievances heard in court, her reputation vindicated, her emotional distress compensated, and her slanderer punished. What was the nature of these gendered reforms? What kinds of concerns and preoccupations drove them? How were they framed and what were their implications and consequences? Focussing on cases and debates in the Australian colonies and the US states, this interdisciplinary paper will highlight the ways in which interconnected ideas about the status of women, sexuality, ‘whiteness’ and speech circulated – page to page, precedent to precedent, parliament to parliament – via transnational common law networks during the nineteenth century. It argues that these reforms – surprisingly neglected in 19th century women’s legal history – occupy an ambiguous and ambivalent position, at once conservative in implication and yet progressive in intent and consequence. They reflected and reinforced sexual morality as white women’s primary social value, but also broke from established legal traditions to contest the masculinist nature of English defamation law and address women’s lived experiences in the New World, enabling women greater access to compensation and vindication in the civil courts.

Jessica Lake is a Research Fellow in the Gender and Women’s History Research Centre in the Institute for Humanities and Social Sciences at the Australian Catholic University, East Melbourne, Australia. Previously, she was a Karl Loewenstein Postdoctoral Fellow at Amherst College, Massachusetts. Dr Lake is an interdisciplinary scholar working at the intersection of legal, cultural and social history within common law countries during the modern period, with a particular focus on gender. Her first book, *The Face that Launched a Thousand Lawsuits: The American Women Who Forged a Right to Privacy*, was published by Yale University Press in 2016 and shortlisted for the WK Hancock Prize. She is currently working on a transnational history of sexual slander.

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Jack Jin Gary Lee

Stream: General

Anxieties of Whiteness: Evidence, Race, and the Prosecution of the Malayan “Sexual Perversion” Cases, 1938-1940

Engaging with newly declassified archival sources related to the origins of Singapore's law on "gross indecency," this paper reports on the official debates tied to the enactment of Section 377A of the Straits Settlements' Penal Code in 1938. I explain how the Straits Settlements' criminalization of "gross indecency" in this provision was but one part of measures developed to contain an apparent “epidemic” of sexual liaisons between senior officials and male prostitutes in Malaya. Critically, the Governor emphasized his preference for avoiding criminal prosecution, which would subject the sexual misadventures of high-ranking officials and other European elites to public scrutiny. The 1938 Penal Code Amendment, which expanded the scope of sex-related practices subject to punishment, thus facilitated the silent removal of sexually deviant elites from the colony and the Colonial Service by providing the symbolic threat of prosecution. However, the criminalization of "gross indecency" established a double standard of sexual discipline that punished local actors and practices while maintaining the prestige of white officials and law. In this paper, I argue that the colonial state’s contradictory approach toward sexual deviance was structured by anxieties of whiteness rooted in officials’ defense of the rule of colonial difference.

Jack Jin Gary Lee is a Visiting Scholar in residence at the American Bar Foundation and an Adjunct Senior Research Fellow at the Centre for Asian Legal Studies, National University of Singapore. Previously, he taught Sociology and Law and Society at Oberlin and Kenyon College.

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Hazel Leung (with Christopher Roberts)

Stream: General

The Importation, Reception and Evolution of Vagrancy Laws in Hong Kong

The paper will explore the implementation, evolution and understood social import of vagrancy laws over the 155 years in which the British governed Hong Kong. As elsewhere around the British Empire, the vagrancy laws adopted in Hong Kong were influenced by the extremely expansive English Vagrancy Act of 1824, which targeted a wide range of loosely defined activities associated with poverty. Vagrancy was penalized almost immediately after the British took over Hong Kong. A little over a decade later, Chinese persons were required to obtain passes in order to move around at night, underscoring the overlap between race and class categorizations and official concerns. Vagrancy laws were increasingly enforced in Hong Kong as the nineteenth century went on. In the late nineteenth and early twentieth centuries, hundreds if not thousands were typically jailed under such laws every year. Attention to the issue continued in the inter-war period, where concerns with vagrants intersected with broader concerns on the part of the authorities with growing labor rights and nationalist sentiment. Such laws remained influential in the post-World War II period, even as they came under increasing challenge. The article concludes with a discussion of the limited reforms generated by the 1990 'Law Reform Commission of Hong Kong Report on Loitering', which posed a mild challenge to vagrancy laws' legacy in the region. Throughout, the article will consider to what extent developments in Hong Kong matched developments elsewhere, to what extent the approach adopted in the city took its own course.

Hazel W.H Leung is currently a research assistant at the Chinese University of Hong Kong, Faculty of Law. She graduated from Wellesley College in 2020 with a BA in History and Political Science. Her research interests include state-society relations and grassroots local institutions in late colonial Hong Kong.

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Assaf Likhovski

Stream: General

Jurisprudence in the British Empire: India, Egypt and Palestine Compared

My paper analyzes jurisprudence textbooks written in three British-ruled territories (India, Egypt, and Palestine) in the early decades of the 20th century. The paper argues that both British and local legal scholars working in these territories were not simply passive recipients of western legal theories. Three unique aspects characterize the works produced in these territories: First, colonial authors wrote books which were more cosmopolitan than contemporary UK works, using ideas taken from English thinkers, but also referring to contemporary American and Continental theories; Second, colonial scholars relied on examples taken from local law to criticize western legal theories. Finally, inspired by cultural nationalism, some of the authors I discuss also sought to expand the scope of western jurisprudence by infusing it with ideas and examples taken from their own normative systems (Hindu law, Islamic law, Jewish law). The similarities between non-western jurisprudential works produced in some of the earliest institutions providing modern legal education in South Asia and the Middle East has, until now, not been discussed by legal historians. This similarity, I argue, was partly the result of a transnational nationalist legal wave that swept non-western territories (including such places as China and Japan) in the first decades of the 20th century. The analysis of the forgotten works I examine in my paper is important, I conclude, if we want to create a truly global history of modern jurisprudence.

Assaf Likhovski is a professor of law and legal history at Tel Aviv University Faculty of Law. He is the author of *Law and Identity in Mandate Palestine* (University of North Carolina Press, 2006), and *Tax, Law, and Social Norms in Mandatory Palestine and Israel* (Cambridge University Press, 2017), as well as articles on Israeli, American and English legal history. He is co-editor of a number of collections of articles on legal history including "Histories of Legal Transplantations" *Theoretical Inquiries in Law* (with Ron Harris). He was visiting professor at Yeshiva University, the University of Toronto, UCLA, and Georgetown University. He is a graduate of Tel Aviv University and Harvard Law School, where he was a Fulbright and Rothschild fellow. He was later a Golieb fellow at the NYU School of Law, and a fellow at the Institute for Advanced Studies in Jerusalem. He was co-founder of the Israeli Legal History Association, and served as the director of the TAU Cegla Center for Interdisciplinary Research of the Law, the director of the TAU David Berg Foundation Institute for Law and History, and the Associate Dean for Research at the TAU Faculty of Law.

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Michael Littlewood

Stream: General

Panel: People and institutions: New Zealand connections with the British Empire

Sir George Grey's Machiavellian Constitutional and Fiscal reforms in Aotearoa New Zealand, 1845-1875

This paper examines the origins, aims, terms and consequences of the New Zealand Constitution Act 1852 (UK), which was designed by the Governor, Sir George Grey, and which divided the colony into provinces – first six, then ten. There were hardly any roads, so allowing isolated communities a degree of autonomy made obvious sense. But Grey's more sinister aim was not merely to allow the provinces a measure of self-government, but also to burden them with the cost. The colonial regime itself kept tight control over its two main sources of revenue (land sales and customs duties) and also over the military, but it abdicated its responsibility for almost everything else. The provinces were free to build and operate roads, wharves, railways, schools, hospitals and so on – but they would have to pay for them themselves. That they did, mainly by means of taxes on land and tolls on roads.

Only twenty years later, the difficulties of communication had been solved, by means of roads, railways and the electric telegraph. Moreover, the colonial government, chronically insolvent prior to Grey's arrival, was financially secure. It had resorted to the widespread seizure of Māori land by force, rather than buying it (so the revenues derived from land sales had improved exponentially); and it had reduced smuggling to a tolerable level (so the revenues from the customs duties were likewise greatly improved). It had also, in 1866, introduced stamp duties and death duties, and centrally-administered taxes on land and incomes were on the horizon. The provinces had served their purpose, and in 1875 they were abolished. Since then, New Zealand has had one of the most centralised systems of government in the world, and the Māori people are still suffering the catastrophic loss of their land.

Michael Littlewood is a Professor in the Faculty of Law at the University of Auckland. He is a New Zealander but has spent many years in Hong Kong. He has degrees in law and politics from the University of Auckland and a doctorate in tax from the University of Hong Kong. He is admitted as a barrister and solicitor in New Zealand, as a solicitor in England and Wales and as a solicitor in Hong Kong. He is an authority on New Zealand tax law, Hong Kong tax law, tax policy and tax history. Much of his work has been in the fields of tax planning, tax avoidance and international tax. His work has been published and cited in leading journals in New Zealand, the US, the UK, Australia and Hong Kong. He is a fulltime academic but has also from time to time provided advice to business interests and to the governments of several countries.

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Michael Lobban

Stream: General

Author-Meets-Reader

Michael Lobban, *Imperial Incarceration: Detention without Trial in the Making of British Colonial Africa* (CUP, 2021)

For nineteenth-century Britons, the rule of law stood at the heart of their constitutional culture, and guaranteed the right not to be imprisoned without trial. At the same time, in an expanding empire, the authorities made frequent resort to detention without trial to remove political leaders who stood in the way of imperial expansion. Such conduct raised difficult questions about Britain's commitment to the rule of law. Was it satisfied if the sovereign validated acts of naked power by legislative forms, or could imperial subjects claim the protection of Magna Carta and the common law tradition? Michael Lobban explores how these matters were debated from the liberal Cape, to the jurisdictional borderlands of West Africa, to the occupied territory of Egypt, and shows how and when the demands of power undermined the rule of law.

Readers:

Stacey Hynd, University of Exeter

Tim Soriano, University of Chicago Illinois and Newberry Library

Inge van Hulle, Max Planck Institute for Legal History and Legal Theory

Michael Lobban is Michael Lobban is Professor of Legal History at the London School of Economics. He has written widely on the history of English legal thought and legal practice, and is the author of *White Man's Justice: South African Political Trials in the Black Consciousness Era* (1996).

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Francisco Lobo

Stream: General

Empire strikes back: Comparative notes on evolving conceptions of Western imperialism

Americans seem flabbergasted when confronted with the accusation that they have an empire. Their path is righteous, their ideals legitimate, and their vocation universal. But they do not have an empire. Or do they? Michael Ignatieff has characterized the American form of imperialism as “empire lite,” global influence without colonies. In this presentation, I argue that “empire” is an essentially contested concept that has many iterations throughout history. Revolving around two critical features of empire, its *telos* of civilization and its legal-geographical *nomos* or scope, I offer an overview of evolving conceptions of Western imperialism, culminating in the American Empire, or the “Reluctant Empire.” There is no imperialist experience without war, as expansion always encounters resistance. To the extent possible, American imperialism aims at waging legitimate wars under the legal framework provided by the UN Charter and the International Law of the Use of Force (*jus ad bellum*). This framework is but the latest iteration of the older *Jus Publicum Europaeum*, and its idea of restrained legal war among Europeans as “just enemies” (*justus hostes*), while at the same time waging unfettered wars in the rest of the newly discovered world. In the 21st century, the *Jus Publicum Americanum* is the normative framework that provides legal justification for the American experiment of exporting democracy, human rights, and capitalism worldwide. The tragedy of the Reluctant Empire is that, unlike its European predecessors, it does not embrace its imperial nature, and therefore it is not willing to take responsibility for its conquests.

Francisco Lobo is a Doctoral Researcher, Department of War Studies, King’s College London. LL.M. in International Legal Studies, NYU. LL.M. in International Law, University of Chile. LL.B., University of Chile. Lecturer of Legal Theory, Diego Portales University. Visiting Professor of International Law, Adolfo Ibáñez University. Email: francisco.lobos@kcl.ac.uk.

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Arlie Loughnan

Stream: Legal Transfer in the Common Law World

Making Modern Criminal Law in the context of the British Empire

This paper makes the case for thinking about the common law of crime in the context of Empire. The British Empire and colonialism have profoundly shaped the nature, content, and scope of modern criminal law, with the systematisation of the law bound up in Imperial projects. Yet this impact has not been fully grasped within criminal law scholarship. Against this background, this paper has two main aims. First, it aims to provide a framework for the pursuit of research on criminal law and Empire. This framework lays the ground for a deeper understanding of the role of the criminal law, in settler colonial contexts in particular and contributes to the construction of a broader understanding of the place of criminal law in the social and political orders of liberal democratic states. Second, this paper seeks to point up the value of thinking again about criminal law and Empire, including appreciating the diversity of spaces implicated in the development of the modern criminal law, the complex intellectual genealogies of influence that informed it, and the significance of the multivalent ideas which animated it.

Arlie Loughnan is Professor of Criminal Law and Criminal Law Theory at the University of Sydney Law School. Arlie's research concerns criminal law and the criminal justice system. Her particular interests are constructions of criminal responsibility and non-responsibility, the interaction of legal and expert medical knowledges and the historical development of the criminal law. She is the author of *Self, Others and the State: Relations of Criminal Responsibility* (CUP 2020) and *Manifest Madness: Mental Incapacity in Criminal Law* (OUP 2012).

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Dries Lyna

Stream: General

Uncodified customs: Dutch civil courts and cross examinations in 18th-century Sri Lanka

Studies on early modern legal culture increasingly focus attention on the (limited) agency of ‘users’ or ‘consumers’ of justice, and the strategies devised by litigants and witnesses in relationship to the institutional codes of the legal system. Besides drawing the Dutch colonial empire into the debates, this paper explicitly wants to shift attention away from criminal procedures, and highlight the neglected potential of interrogations and cross-examinations in civil suits to study the concept of *Justitznutzung*. Eighteenth-century colonial Sri Lanka will serve as a cross cultural legal laboratory where uncodified Sinhalese, Tamil and Moorish customs on the edge of the Dutch empire were negotiated with Roman-Dutch law from the centre. Drawing on a background of over 300 civil cases in Dutch colonial courts, four influential manuals of Roman-Dutch procedural law and seven lengthy transcripts of civil interrogations and cross-examinations allow us to explore how the translation of a European legal system into the plural legal context of littoral Sri Lanka influenced litigants’ agency. In the end this paper will claim that precisely (cross-) examinations were the perfect playground for cross cultural litigants and their legal representatives to devise a winning legal strategy.

Dries Lyna is a global urban historian at the Radboud University Nijmegen (The Netherlands). Dries’ research interest lies in the socio-legal history of colonial cities, with a focus on eighteenth-century Sri Lanka. Among others Dries studies the social function of colonial courts in Colombo, Jaffna and Galle. In addition, Dries is interested in the family life of former slaves in the suburbs of colonial cities, as part of the project 'Life after Slavery: Setting the Research Agenda of Slave Histories in the Global Era, 1750-1900', a collaboration with the University of Glasgow of which Dries is the project leader.

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Craig Lyons

Stream: General

Gerald of Wales, John Davies, and the Laws of the Irish in an English Colonial Perspective

In the wake of the Nine Years' War the Attorney-General for Ireland, John Davies, delved into the legal records of England's centuries of rule in Ireland in preparation for his 1612 work, the *Discoverie of the True Causes why Ireland was never entirely subdued*. Drawing upon medieval and contemporary records, he formed an analysis that focused in a large part on the legal aspects of the English conquest of Ireland. Critical of both the native Irish legal tradition, as perceived by the English at least since the writings of Gerald of Wales, and of the incomplete imposition of English law during the conquest, he concluded that the indigenous legal system should have been completely replaced with that of the English. The influence of Davies and his written works on the development of English colonial thought and policy has long been recognized in scholarship, but the medieval basis for many of his assumptions and conclusions has received less attention. In this paper, I propose to focus explicitly upon Davies' engagement with the legal history of medieval Ireland and the lessons he drew from it in crafting his narrative of the English Conquest. Situating Davies and his works in the context of Ireland's post-Conquest legal history, the *Discoverie* may be seen as a conduit for medieval English colonial attitudes towards the Irish which frequently centered on and were expressed through law, and which spread thereafter around the globe in the wake of England's colonial expansions.

Craig Lyons is a PhD candidate in History at Cornell University, focusing on the Norse community in Ireland over the centuries surrounding the English Conquest, particularly through the lens of legal history. I am particularly interested in the ways in which the Norse constructed or expressed their legal identities alongside the Irish and English as all three groups navigated a new and changing legal environment. I have published on the Norse presence in medieval Ireland and presented papers several times at the Irish Conference of Medievalists and the International Medieval Congress in Leeds. This past year I have participated in the National Endowment for the Humanities Summer Institute for Higher Education Faculty on "Law and Culture in Medieval England," and have been a recipient of Cornell's Mommsen Research Fellowship for the past two years, as well as the Adam Smith Fellow at George Mason University.

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Elisabetta Fiocchi Malaspina

Stream: General

Panel: Colonial Imaginings and the Normative Regimes Concerning Land (19th-early 20th C)

The *Institut Colonial International* on land law and land registration systems (1898-1905)

In 1894 the *Institut Colonial International* was founded in Brussels, with the aim to engage and promote transnational exchanges between jurists, scholars, politicians, colonial administrators and experts, comparing different colonial experiences. In its annual or biannual meetings, the *Institut Colonial International* produced and edited a considerable number of research papers, studies and proceedings (the so-called *comptes-rendus*), which represented a fruitful source for various colonial (law) topics. As the *Institut's* founders had hoped, their publications promoted legal debates, discussions and the prospects of specific legislation, decrees or norms to be adapted and used in completely different colonial systems. Examples of this “borrowing” and cross-pollination were the application in African territories of concepts as property, land law as well as the different (European) land registrations systems. The paper will show discussions of *Institut Colonial International* on various colonial experiences particularly concerning land law and land registration systems. Between 1898 and 1905, in fact, the *Institut Colonial International* published several detailed reports on how land ownership was regulated and introduced a specific land registration system within the various colonies of the different European countries. The ambitious objective was to map the whole “colonial world”, giving the broadest possible picture, by collecting all legislation concerning the regulation of land law in the colonies.

Elisabetta Fiocchi Malaspina is Assistant Professor of Legal History at the Law Faculty of the University of Zurich (Switzerland). She received her MA in Law at the University of Milan and her PhD in Legal History at the University of Genoa (Italy). Her main research fields include history of international law, circulation and diffusion of natural law and law of nations theories between the 18th and 19th centuries, history of water law, history of land ownership and land registration (19th and 20th centuries). She is the author of: *L'utile giusto. Il binomio economia e diritto per l'avvocato Giacomo Giovanetti (1787-1849)* (Soveria Mannelli: Rubbettino, 2020) and *L'eterno ritorno del Droit des gens di Emer de Vattel (secc. XVIII-XIX). L'impatto sulla cultura giuridica in prospettiva globale*, Global Perspective on Legal History 8, 2017 (Frankfurt am Main: Max-Planck-Institut für europäische Rechtsgeschichte).

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Bevan Marten

Stream: The Maritime World in Legal History

The High Court of Admiralty: Paying Lip Service to the Law of Nations

Maritime / admiralty law enthusiasts are often quick to highlight the international connections of their subject, and this is often bolstered by references to the supposedly rich tradition of international law running through the jurisdiction. This paper will argue that, contrary to this inherited wisdom, international law – and even the application of foreign law in the private international law context – played very little substantive role in the Court’s “instance” (civil) decision-making for most of the 19th century. Indeed, the Court’s frequent invocation of the “maritime law of the world” and its central role in the Court’s mission can best be described as window-dressing in virtually all cases that came before it. International issues were certainly raised on numerous occasions by litigants seeking to emphasise a case’s international pedigree, but seldom were international authors or ideas engaged with in any depth. Famous Judges such as Stowell and Lushington were adept at quietly batting them away on the grounds that the issue was really one of procedure – and thus a matter of English law – or that the international issue was important, but only as a factor in the exercise of a Judge’s discretion, and not as a hard-and-fast rule.

This all changed with the appointment of the Court’s final Judge, Sir Robert Phillimore, who charged into print in the *Halley* (1867) with citations from sources ranging from ancient Roman law to contemporary American jurists. His influence ensured that the Court’s final few years of existence (its doors permanently closed in 1875) proceeded with a much stronger sense of the Court as performing a key role within a wider community of maritime nations – and bound more closely to their rules. Did Sir Robert not “get the memo” that this so-called “maritime law of nations” was supposed to align quite carefully with British imperial interests? Was it merely coincidence that, as the discipline of international law came of age, the British legislature decided to close the domestic court that chose to engage with it most freely? Or do the reported cases suggest that the Court had always treated foreign interests in an even-handed manner, regardless of whether or not it chose with the laws of their home jurisdictions.

Dr **Bevan Marten** is an Honorary Research Fellow at Victoria University of Wellington School of Law, and a Partner at IZARD WESTON Lawyers. He is a specialist in maritime law with postgraduate degrees from Cambridge and Hamburg. This presentation forms part of a long-term project on the history of international law in Britain’s High Court of Admiralty during the 19th century, including the role of that institution within the British Empire. The project is funded by the Royal Society of New Zealand’s Marsden Fund.

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Alex Martinborough

Stream: General

Settler Constitution-Writing on the Edges of Empire

This paper explores the constitutional comparisons made by British and settler politicians, officials, and political and legal commentators in moments of constitution-writing from the late 1860s to mid-1880s in what is now Canada, New Zealand, South Africa, and Australia. As they debated their own constitutional futures, settlers in each jurisdiction drew comparisons to other British colonies and occasionally to other empires. Placing the arguments made in colonial newspapers, pamphlets, and assemblies alongside better-known works in the history of British political thought repositions the history of settler constitutions as part of a global process of creating and justifying colonial difference and global imperial rule. I bring together recent work on the history of the British Empire, settler colonialism and law, global history, and the history of constitutions to revisit an older historiography that focuses on colony-to-nation stories and the gradual spread of liberalism and democracy. Returning to the subject through local debates at several sites of empire helps conceptualize the global processes at play in settler attempts at constitution-writing. It also encourages attention to the vertical hierarchies constructed by settlers within each colony and the asymmetric networks of exchange connecting different colonies to each other and to Britain. This paper interrogates how politicians, officials, and commentators understood the actions they were taking locally were a part of empire-wide debates. It argues that ideas of settler ambitions of expansion and exclusion based on race combined with British thinkers' and politicians' racializing constitutional trajectories were global processes despite being driven by local priorities.

Alex Martinborough is a PhD Candidate at Queen's University in Kingston, Ontario where he is affiliated with the Queen's Global History Initiative. His dissertation explores the intercolonial movement of laws and ideas among British settler colonies in the late nineteenth and early twentieth century.

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Rafael Mateus

Stream: General

Order of Grace and Land Concessions in the Captaincy of Siará, XVII Century

To constitute its ultramarine empire, the Portuguese crown conceded powers to its representatives (Governors, Captains) to, as an extension of the king's hand, distribute property in the Brazilian territory. These properties were to be distributed among the crown's subjects so that they populated the territory and preserved it as part of the empire. But, since 1663, the concession of properties (sesmarias) by the Major Captains of the Captaincies in Brazil was prohibited by royal decree of the Portuguese crown. Yet, many requests were made directly to them and were granted. That was the case in the Captaincy of Siará Grande, in the northeast of the ultramarine territory. Being part of the *ius commune* law in the colony, although preserving a similar structure, demanded changes to better suit the local needs. The present paper will shed some light in the limits of legality and "illegality", the effective governmental power of the crown as well as the concessions it made to local power and the way property was distributed in the XVIIth century Portuguese empire.

Rafael Mateus is currently pursuing a Masters in Legal History at Universidade Federal do Ceará (Brazil) and has a degree in Law at Universidade Federal do Ceará. Rafael studies the history of juridical experiences in Portuguese America, XVI-XIX centuries, especially the relation between the Order of Grace, the political theology/philosophy of the epoch and the legal institutes.

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Anubhuti Maurya

Stream: General

Panel: Legal Pluralism in Colonial and Pre-colonial South Asia

The Curious Incident of Yusuf Aindar: Contesting Orders of Justice and Politics in Early Modern Kashmir

My paper focuses on the case of a homicide in Kashmir in the 16th century in order to reflect on how law was understood and practiced in a regional Sultanate, in a context marked by jurisdictional conflicts with the Mughal imperial authority that was aspiring to consolidate its power in the region.

I analyze an unusual case from the city of Srinagar where a local court appeared to have overstepped the bounds of its power, and of accepted convention in dealing with particular types of crimes. In 1581, Yusuf Aindar was executed on the orders of the Kashmiri qazat on the charges of having hurt a man in a scuffle. The unusual severity of the punishment meted out caused widespread disquiet that resulted in heated public debates about the role and powers of the Sultan on the one hand and the Mughal emperor on the other. The case both presented, and was constitutive of the jurisdictional tensions between the regional Sultanate of Kashmir and the supra regional Mughal state. Thus, I argue that the case of Yusuf Aindar, which played out in multiple theatres, and through a web of deliberations between state and non- state actors, illuminates the complexities of a regional legal order at the cusp of assimilation into a larger imperial system, marked as it was, by quotidian negotiations between different sources of law and notions of justice.

Dr. Anubhuti Maurya is a historian of medieval and early modern South Asia who teaches at Shiv Nadar University. Her research interests include the political history of imperial and regional formations, cities in early modern south Asia, Persianate narrative traditions and spatial practices of the Mughal empire. Currently, she is working on completing her monograph on Kashmir in sixteenth and seventeenth centuries, when the region was under Mughal rule.

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Connor McBain

Stream: General

Debt and Civilisation: Protection of Subjects Abroad and The British Government's changing legal justification(s) for military intervention, 1848-1914

The 'standard of civilisation' has been the object of longstanding study in histories of international law and empire. Rather than focus on the 'macro' application of that standard between states. This paper seeks to describe some of the 'micro' discursive effects of that standard, namely how it created different categories of nationality according to a hierarchical view of capitalist development. To explore this notion, this paper examines 'debt intervention' in the context of the British Empire's foreign policy. Making use of discourse analysis, it analyses the way in which Britain justified the levying of force abroad in pursuit of debts owed to British nationals.

British imperial institutions, in order to protect the commercial activities of those nationals abroad, envisaged intervention as means of 'civilising' those parts of the world that did not conform to European standards regarding security of property rights. The most blatant example of this civilising intervention came in the form of the *Don Pacifico Affair* (1850). There, Britain's navy blockaded the Kingdom of Greece to obtain satisfaction for debts owed to several British nationals. Before Parliament and in correspondence with other imperial powers, this species of intervention was justified as a form of diplomatic protection, pursued according to the law of nations. This paper interrogates that claim and the subsequent hierarchy of nationality it produced.

Connor McBain is a Teaching Fellow in law and a fourth year PhD candidate at University of Glasgow School of Law. He holds a Master of International and Comparative Law from University of Helsinki, an LLB from University of Glasgow, and a Bachelor of International Relations from Bond University. Connor's research profile is located at the intersection of public law, international law, and legal theory – namely the history of that intersection. It has been broadly focused on the genealogy of 'institutions' and practices in domestic and international governance, encompassing quasi-sovereign corporate bodies, British government departments, and international organisations.

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Kate McGregor

Stream: Indigeneity, Law and Empires

‘There is only one way to be pretty!’ Racialized Beauty Norms in German South West Africa, 1894-1906’

Though the scholarship on German imperialism largely neglects beauty and appearance as a category of analysis, it was an important element of daily colonial life. By underestimating beauty as a tool of power and race, we fail to understand the relationship between the metropole, settler colonial women, and indigenous female populations. The project proposes that imperial laws regarding race and miscegenation permitted colonial women to solidify their own identity through beauty and appearance while relegating the local indigenous women to a lower standing in the racist colonial hierarchy, which was a system based on false racial superiority. Beauty and appearance were weapons during the Imperial German period and highlight the difference between racism as a theory and racism in practice. This paper specifically uses legislation regarding indigenous populations and mixed marriages as well as the memoir of Helene von Falkenhausen, to focus on the racialized and gendered colonial social hierarchy of German Southwest Africa (today Namibia) and to highlight expectations placed on German colonial women, and local female indigenous populations, including the Herero, Nama, Ovambo, and the Rehoboth. I argue that the imposition of laws regarding race by the Kaiserreich allowed German women to solidify their identity while relegating indigenous women to a lower standing in the racialized colonial hierarchy. Beauty and appearance were ways to exert control over racialized bodies in the colonial sphere.

Kate McGregor is a Ph.D. student in the Department of History at the University of New Brunswick, Fredericton, Canada. Her doctoral research, “‘*There is only one way to be pretty!*’ *Racialized Beauty Norms in the Global German Empire, 1884-1939*” focuses on the connection between race, power and beauty in the female spaces of the global German Empire. Her other research interests include the diffusion and maintenance of German traditions in the colonial sphere and the important domestic role that women played. She was a recipient of a Doctoral Fellowship from the Social Sciences and Humanities Research Council of Canada in 2020. She is currently writing an article on Christmas in the German Africa colonies, which builds on her Master’s research.

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Sinéad Mercier

Stream: Legal Transfer in the Common Law World

Panel: Land, Law, and Spatial Justice in the Former British Empire

Lawscape or Landscape? Finding space for the Irish fairyfort

‘Landscape’ is a concept from Nicole Graham that charts how land has become a disembodied ‘thing’, dephysicalised into bundles of property rights that transform it into a standardised fungible entity. These legal inventions have their roots in the land-clearing techniques developed with the colonial plantation of the island of Ireland. Brenna Bhandar tracks how throughout the colonies, lacklustre engagement in particular productive development of land, or adherence to ‘superstitious’ belief in the land’s properties became a signifier of racially inferior peoples, incapable of self-government.

This paper explores the fairyfort as a form of resistance to colonial interpretations of land through the prism of Brian Friel’s *Translations*. Why is it that living beliefs in *na daoine maithe* have functioned for centuries as effective forms of cultural heritage and environmental protection, but do not fit within the dominant legal rationality? In order to explore how decolonial ‘other ways of seeing’ may be entered into legal analysis, it is argued that in the Irish fairyfort is a letting-dwell in place. Giving space to the fairyfort in law can enable us to build an analysis of what cannot be reducible to neutralized, abstract space, thereby counteracting the legal techniques of empire and its ‘new language’, and enabling a turn from the Landscape to the original etymological concept of landscape as a ‘peopled place’.

Sinéad Mercier is a lecturer in environmental law and policy and a PhD researcher on the PROPERTY [IN]JUSTICE project (LL.B TCD, PgDip Gender Globalisation and Human Rights NUIG, LL.M LSE). She has previously lectured in Environment, Sustainability and Social Justice in NUI Maynooth and worked as a consultant on climate law and policy with a range of government, policymaker and NGO bodies. Her recent book is *Men Who Eat Ringforts* written with Michael Holly and Eddie Lenihan, published by Askeaton Public Arts and funded by Clare County Council and the Arts Council.

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Admire Mseba

Stream: General

Panel: Colonial Imaginings and the Normative Regimes Concerning Land (19th-early 20th C)

Imagining Traditions, Making Authority: Discourses and Practices of African Customary Landholding and their Implications for Power Relations in the Reserves of Early Colonial Northeastern Zimbabwe, 1890-c.1937

This paper is about land and power among the indigenous population of colonial northeastern Zimbabwe in the early years British rule. It interrogates the tensions between colonial visions of customary law and the practices of land holding and their implications for the making of rural authority in colonial settings. Southern Rhodesia's colonial rulers, like colonial rulers elsewhere in the British empire, identified authority over land among the colony's African population with the 'customary' leadership of chiefs and headmen. These were mostly men. By contrast, they sought to diminish the authority of key institutions such the mhondoro, the spirit mediums, who had previously checked the powers of chiefs and whom they accused of inciting the 1896-97 Chimurenga uprisings. At face value, this appropriation of 'customary' law at the service of indirect rule strengthened the authority of chiefs and male elders. In practice, this did not mean that chiefs obtained unchecked powers over land and people. Colonial changes in the legal sphere, I argue, corroded the ritual bases of chiefly claims to land. Moreover, colonialism introduced new sources of authority that rivalled chiefs and mhondoro. And so, in colonial Zimbabwe at least, the colonial state's imaginations of customary authority were never completely successful in producing rural despots and in supplanting other forms of authority over land and people.

Admire Mseba joined the Departments of Black Studies and History of the University of Missouri-Columbia in Fall 2019. He is a historian of precolonial and Colonial Africa. Admire's scholarship focuses on social relations, racialized colonial policies and access to land in Southern Africa. He is completing his first book. Entitled, *Society, Power and Land in Northeastern Zimbabwe, c.1560-1960*, the book is under contract with Ohio University Press (New African Histories Series). Admire's most recent article entitled "Narratives, Rituals and Political Imaginations: The Social and Political World of the Vashona of North-Eastern Zimbabwe from the 16th to the 19th Centuries," was published in the *Journal of Southern African Studies*, 46, 3, 2020. His other recent publications appeared in *African Economic History* and *The International Journal of African Historical Studies*.

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Tavini Nanayakkara (with Rohan Edrisinha)

Stream: Legal Transfer in the Common Law World

Panel: Legacies of Empire: Roman-Dutch Law in South Africa and Sri Lanka in Historical Context

The Roman Dutch Law in Sri Lanka: Common Law or Anachronism

Though the Roman Dutch Law (RDL) was recognised as the common law of Ceylon when Britain replaced the Dutch as colonial rulers, its recognition and application was inconsistent and uneven. There were periods when English Law superseded the RDL, followed by periods when judges revived RDL concepts and principles and reminded the legal community of their relevance and importance. Today, the RDL seems more secure in the areas of property law and the law of delict, but less so in the areas of family law and the law of contract. The reasons for this will be explored and the roles of the judiciary and the academy in facilitating these trends will be assessed. A major question concerning the future of the RDL in Sri Lanka has been raised by the controversial decision of the Sri Lankan Supreme Court in *Priyani Soysa v Arsecularatne* [2001] 2 SLR 293, where the court adopted a view that suggested that the Sri Lankan judiciary was unable to develop the RDL as what was received into the country was, in effect, frozen in time. The paper will also critically examine various initiatives taken to revive interest in the RDL and the countervailing trends to reduce its influence within Sri Lanka's legal system.

Tavini Nanayakkara is a Lecturer (Probationary) at the Faculty of Law of the University of Colombo. She is attached to the Department of Private and Comparative Law. She stepped into academia in 2020 and took oaths as an Attorney-at-Law in March, 2021. Her research interests lie in Intellectual Property Law and Administrative Law along with an eye to the legal systems of Sri Lanka. She teaches the subjects of Jurisprudence, Land Law, and the Law of Evidence and Criminal Procedure.

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Sugata Nandi

Stream: General

Empire over Law: Charles Tegart and Colonial Policing, 1901-1931

This paper studies the career of Charles Tegart, arguably the most heroic police officer of the British Empire in the twentieth century to enquire how the primacy of defence of empire led the colonial police to innovate an arsenal of extra-legal strategies. For this purpose it closely examines the unique methods of policing which he innovated in response to the exigencies faced during his career. In 1901 at the age of twenty, Tegart, an Irishman joined the then newly-founded Indian Police Service. Orphaned at the age of twelve he hailed from humble background and earned the reputation of an intrepid policeman soon after joining service. When posted in the Calcutta Police he became known for his anti-terrorist campaign and that against violent ordinary criminals. He survived a number of attempts on his life and innovated a method of policing which relied heavily on unofficial intelligence gathering by his Indian subordinates, an informal system of police espionage, the use of disguise and of rumour to instil fear of police among Indians, and fierce gun-battles with revolutionary terrorists which he led. The paper argues that taken together these methods amounted to a masculine and intimidating assertion of imperial power, rather than law- keeping.

Sugata Nandi studied history at the Presidency College, Kolkata, and at the Jawaharlal Nehru University, New Delhi. He earned his doctorate from the said university in 2015. He is the recipient of several national and international fellowships, including the SARAI-Centre for the Study of Developing Societies, Delhi, Fellowship (2006 and 2007), the Fulbright-Nehru Doctoral and Professional Research Fellowship (2011-12), University of Washington, Seattle, USA), Visiting Research Fellowship at the Institute for Advanced Studies in the Humanities of the University of Edinburgh, UK (2018), and the first ever Senate House Fellowship of the University of London (2019). He has worked earlier on the history of crime and criminality in colonial India, and has published four papers on that among other publications. He is currently working on a history of Indian Magic in the modern age. He has presented papers at twenty five international conferences in India and abroad and given public lectures at the JNU and University of London. He has taught at the Presidency College, Calcutta, and works now at the Department of History, West Bengal State University, Kolkata, India.

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Olindo de Napoli

Stream: General

The French Connection: Politics and justice in the Italian colonies of East Africa and the French model (1890-1936)

At the dawn of Italian colonialism, the colonial ruler Antonio Gandolfi reflected on – and somehow re-elaborated – a “French model” of governing the colonies. In the following years, several jurists, like the future President of the Court of Cassation Mariano D’Amelio, worked to distance the administration of justice in Eritrea from the French model. This “model” simplified some governmental trends in French colonial history and often ignored elements of discontinuity within it. Its reception and elaboration served to direct Italian politics away from the idea of assimilation, very often viewed as the most severe risk for Italian colonies. Nonetheless, French intellectuals received significant consideration. For example, Arthur Girault had remarkable reception, and the Congrès International de Sociologie Coloniale of 1900 was the object of discussion for a long time. Surprisingly, the fascist law on the administration of Eritrea (1933) held norms inspired by the model of assimilation and jurists who commented on it recognised the influence of the French explicitly. The year 1936, with the official “conquest of the empire”, marked a new racist trend that strongly condemned the “French-way assimilation”.

Olindo De Napoli is Associate Professor in Modern History at the Università di Napoli Federico II. Law degree at the University of Naples Federico II (2006), PhDs in Analysis and Interpretation of European Societies (2008) and Legal History (2013), De Napoli has received fellowships by several institutions, among which the National Institute Ferruccio Parri (2008-2009) and the Institute for Advanced Study, Princeton (2014-2015). In addition, he has been a visiting scholar at European Institute, Columbia University (2013), and Universidad de Huelva (2018). De Napoli has been a member of the Project of national interest “War & Citizenship: Redrawing the boundaries of citizenship in the First World War and its aftermath” and is currently a member of the Project of national interests “Legal History and Mass Migration”. He is a member of the PhD board “Global history and governance” at the Scuola Superiore Meridionale, Napoli. He has published a book on the Italian legal culture and racism in the 1930s (2009) and a book on the Italo-Ethiopian war (2017). De Napoli is editor, along with Simona Berhe, of a volume on the regimes of citizenship in the Italian colonies (*Citizens and Subjects of the Italian Colonies 1882-1943*, Routledge 2022).

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Amanda Nettelbeck

Stream: Indigeneity, Law and Empires

Precarious subjects: Between British and Indigenous jurisdiction in the settler colony

Contemporary debate in Australia about a First Nations Voice protected by the Constitution emphasises the Australian colonies' historical exceptionalism among British settler territories for the Crown's claim to sovereignty without treaty. This paper considers a pre-history to this contemporary debate, returning to a period of policy transition in the post-abolition British Empire when, with especial attention to the Australian colonies, imperial authorities sought first to clarify and then to activate Aboriginal people's legal status as British subjects. Focusing particularly upon visual vocabularies of law, order and policing during the 1840s and 1850s prior to the arrival of settler self-government, the paper explores vacillating colonial visions of Aboriginal people as precarious subjects: on one hand as colonial citizens in the making through the ameliorative influence of the law; on the other as people ever beyond the law's scope. In a position neither fully within the Crown's jurisdiction nor fully outside it, Aboriginal people's relation to settler law exposed the fragility of their imposed British subjecthood, and of settler sovereignty itself.

Amanda Nettelbeck is Professor of History in the Institute for Humanities & Social Sciences, Australian Catholic University. She is author, co-author or co-editor of numerous books relating to the legal governance of Indigenous peoples and the history and memory of colonial violence. Her most recent book, *Indigenous Rights and Colonial Subjecthood: Protection and Reform in the Nineteenth-Century British Empire* (Cambridge University Press, 2019) won the 2020 Australian & New Zealand Annual Legal History Prize.

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Raphael Ng’etich

Stream: Legal Transfer in the Common Law World

Panel: Land, Law, and Spatial Justice in the Former British Empire

Competing Notions of Land in Colonial Kenya and Impact on Present-Day Land Governance

The establishment of colonialism in Kenya pitted the newly introduced notion of private land ownership against the communal ownership practiced among the natives. To achieve its objective of phasing out collective land use, the colonial enterprise deployed various strategies: ‘agreements’ with communities to cede some of their land to the Crown, moving the natives to reserves, depiction of local land practices as backward and retrogressive, subjugation of customary law to statutory and common law, and giving incentives to facilitate the private ownership of land. This paper traces the conflict between common law and customary approaches to land and its impact on the governance of land and associated resources in colonial and present-day Kenya. In particular, this paper examines these implications from a spatial justice perspective, considering the impacts of inequitable distribution of resources and rights not just through a social justice lens or across time (historically), but on spatial relationships between people and place.

Raphael Ng’etich is a PhD researcher in the ERC Project PROPERTY[IN]JUSTICE within which he focuses on the land acquisition process in Kenya. Prior to commencing his doctoral studies, Raphael was an adjunct lecturer at Daystar University School of Law in Nairobi. He is an Advocate of the High Court of Kenya and a member of the Chartered Institute of Arbitrators. He obtained a Master of Laws degree from Notre Dame Law School, and a Bachelor of Laws degree from Strathmore Law School. His research interests are primarily in property law, alternative justice systems, and law and technology. Raphael’s publications include Property Law (with F. Kariuki and S. Ouma, Strathmore University Press, 2016); and ‘The promotion of alternative dispute resolution mechanisms by the Judiciary in Kenya and its impact on party autonomy’ with S. Kariuki, (2018) 6(2) Alternative Dispute Resolution 63.

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Matteo Nicolini

Stream: General

Manufacturing Imperial Spatialities: The British Integrated Legal Geography of Land and Sea

Within the histories of the British Empire, the manufacturing of Imperial spatialities has traditionally been the precinct of human geographers and cartographers. Seldom have legal scholars undertaken a closer examination of how England (and Great Britain) processed newly acquired territories and turned them into legal spaces. The proposed presentation assumes that, through spatial production, land appropriation favoured the creation of private property in the colonies. The seal of English law was thus impressed into the fertile grounds of its colonies, which were infused with the principles of the common law. The presentation suggests that this spatial production be also applied to oceanic spaces, whose navigation has usually been considered functional to interconnecting Imperial territories across the globe. Indeed, maritime corridors have remained at the edge of the legal history of the Empire. The proposed presentation intends to navigate different routes and searches a new paradigm through which terrestrial and marine logical spaces might be integrated. It assumes that this is possible due to some intrinsic qualities of the English common law. Ultimately, the proposed presentation maintains that the English 'legal coding' of Imperial spatialities devised a holistic approach, which globally captured the spatiality of the whole earth and crossed the divide between the geographies of land and sea.

Matteo Nicolini PhD is Associate Professor of Public Comparative Law, Department of Law, University of Verona (Italy); Visiting Lecturer at the Newcastle University Law School (the UK); external partner of the Centre for the Study of Law in Theory and Practice (LTAP), Liverpool John Moores University (the UK); and Senior Researcher at the Institute of Comparative Federalism, Eurac Research (Italy). His fields of research include comparative methodology, European constitutional law, federal studies, judicial review of legislation, law and literature, African law, and legal geography. He is author of publications in Italian, Spanish, and English, including the monographs (with Silvia Bagni) *Comparative Constitutional Justice* (The Hague: Eleven Publishing 2021), and *Legal Geography. Borders, Space, and Comparative Law* (Cham; Springer; forthcoming); and the collections (with Thomas Perrin) *Geographical Connections: Law, Islands, and Remoteness*, *Liverpool Law Review*, 42(1); (with Thomas Bennett, Emilia Mickiewicz and Richard Mullender) *Law and Imagination in Troubled Times: A Legal and Literary Discourse* (Abingdon: Routledge, forthcoming 2020); with (Chiara Battisti, Sidia Fiorato, and Thomas Perrin), *Islands in Geography, Law, and Literature: A Cross-Disciplinary Journey* (Berlin et al: de Gruyter; forthcoming).

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Tomas Nilson

Stream: The Maritime World in Legal History

“To be saved from oneself”: The Consular Service, the Seaman’s Mission and the Welfare of Swedish Seafarers in Foreign Ports, 1925-1935.

During the period 1925-1935, a bitter struggle took place between the labour organisations of seafarers and the consular service. The latter was accused of treating seafarers in need of help badly and in a discriminating and biased way while the Consular Service themselves claimed they only acted according to the rules and regulations. The pastors of the Seaman’s Mission were more lenient and understanding towards the hardship of seafarers. The period in question has been labelled The Seaman’s Question, and had earlier precursors in several other seafaring nations. The struggle culminated in demands for a National Inquiry that was commissioned in 1931 and presented in 1934.

My proposal is a study of how the Consular Service and the Seaman’s Mission acted towards seafarers in need in foreign ports during the period 1925-1935. I will show that working men at sea were viewed upon very differently by the consuls and the pastors, and therefore also treated in different ways. I will use the findings of the National Inquiry as well as source material from both the Consular Service and the Seaman’s Mission.

Tomas Nilson: I received my PhD from the University of Gothenburg in 2004. It was a study on Swedish entrepreneurs and the notion of success during the period 1890-1920. I have since published within the fields of Technology transfer and tech history; Heritage studies, and Cultural Studies. I became interested in Maritime history in 2012 when I presented a paper in Ghent. That paper was later published in the Swedish Historical Journal. In maritime history my research interest deal to a great extent with the urban life of seafarers: living conditions, family patterns, migration flows and crime in Port Towns but I also have a keen interest in coastal history as a liminal zone. I am senior lecturer in history at Halmstad University where I also teach at the cultural studies programme Culture and Societal Development. I am affiliated with the Port Towns and Urban Culture group at the University of Portsmouth and I am also member of the Editorial Board of the journal Coastal Studies and Society. I am participation in the activities of the Maritime Labour History Working Group, led by Enric Garcia-Domingo and Jordi Ibarz from Barcelona, as well.

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Martin O'Donoghue

Stream: Legal Transfer in the Common Law World

Minority representation but with a colonial model? The creation of the Irish senate in imperial perspective

Scholarship on Irish upper houses has focused on the senate created in 1922 as the Irish Free State gained dominion status, or its successor established in 1938. By contrast, there has been less focus on the evolution of constitutional thought concerning Irish upper houses from legislative proposals in the 1880s through to independence. Yet as Alan J. Ward had observed, Irish home rule proposals in 1893 'used the nomenclature of the colonies' for legislative bodies, and both Ireland and the Australian colonies shared a concept of conservative upper houses and more liberal lower houses. Australian models were quoted in legislative debates about Ireland, and while 1912 senate proposals were designed to represent the minority opposed to home rule, the Australian colonial model was employed for resolving disputes in the Northern Ireland senate in 1920.

This paper will thus examine the influence of the Australian colonial constitution's provisions on Irish bicameralism, investigating its influence on proposals for devolved government and the use of colonial models to argue for and against Irish home rule. It will examine how advocates pointed to colonial arrangements in Australia as evidence of greater imperial integration while opponents argued that colonies were moving towards independence in order to defeat the Irish proposal. While the influence of the Australian colonial constitution highlighted aspects of the peculiar relationship between Ireland and empire, this paper will also explore the extent to which it laid bare questions about legal structures for autonomy within the United Kingdom and the wider empire.

Martin O'Donoghue teaches modern British and Irish history at the University of Sheffield. He has previously lectured at Northumbria University, and the University of Limerick. He is a former recipient of the National Library of Ireland Research Studentship and a former Academic Director of the Parnell Summer School. He was awarded his PhD in 2017 from the National University of Ireland, Galway where he was an Irish Research Council Government of Ireland Scholar. His research examines the political history of modern Ireland, the relationship with British rule, parliamentary and constitutional history, particularly the history of bicameralism, and commemoration in twentieth-century Ireland. His first book, *The Legacy of the Irish Parliamentary Party in Independent Ireland, 1922-1949* (Liverpool, 2019) was highly commended for the British Association of Irish Studies Book Prize. He has also published on the origins and the development of the Irish senate, the Anglo-Irish Treaty (1921), and the 1918 general election. He was elected a Fellow of the Royal Historical Society in 2020 and serves as a committee member of the Irish Association of Professional Historians.

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Yolanda Osondu

Stream: General

The ‘Price’ of War: The Punishment of Female Profiteers in Colonial Southern Nigeria (1941-1947)

In traditional Southern Nigerian societies, the participation of women in trade served as a means of empowerment, and markets were often considered sanctuaries for female activities. Under British colonial rule, the enactment of economic laws constantly ignored and significantly undermined the powers once enjoyed by female traders. The introduction of defence legislation during World War II negatively impacted the unique position occupied by these women since these laws empowered the colonial government to control the prices of foodstuff. This period also witnessed the increased punishment of female profiteers who were either fined or sentenced to prison. This research draws from court records, newspaper reports, and archival documents to explore the criminalization of female trading activities in colonial Southern Nigeria during the Second World War. Intersecting various unexplored aspects of Nigerian legal and military history, this paper investigates the efforts of female traders to reassert their agency by challenging newly introduced legislation that infringed on their rights to control market prices and regulated their position as subjects of the empire. The paper also engages the concept of space (i.e., the public sphere) and the significance of the inter-war period as an important determinant in the extent of sanctions imposed on female profiteers.

Yolanda Osondu is a PhD Candidate in the Department of History at the University of Calgary. She earned my bachelors and master’s degrees in History & Strategic Studies at the University of Lagos, Nigeria in 2014 and 2016. Yolanda’s research interest includes African legal history, gender studies, and the history of crime and punishment. Her current research explores the politics of representation, the medium by which women were humanized or, perhaps, dehumanized by the colonial criminal law and the justice system in Southern Nigeria.

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Adetola Elizabeth Oyewo

Stream: Legal Transfer in the Common Law World

Indigenous Legal Systems and Primogeniture in the Benin Empire

Indigenous legal systems existed in pre-colonial Nigeria through the Native Courts and customary laws, ensuring social cohesion and stability. Amongst such are the primogeniture laws whereby males inherit the property of deceased parents. Primogeniture was also prevalent in one of the oldest surviving kingdoms, the great Benin kingdom during Ogoiso Orriagba, where the king inherits the wife's property, and a wife does not inherit her husband's property. However, "new" legal traditions of the British were transplanted in the indigenous legal systems, such as the Testate successions codified in the English Wills Act (1837) and amended in 1867. In light of this, the paper discusses the law practices of historically British-controlled territories in Nigeria, namely the Benin kingdom, to interrogate how British legal practices of the common law were transplanted to colonial territories in areas of primogeniture laws. The paper discusses the Benin Kingdom legal system in the pre-colonial era and the impact of folk customs on the law-making in the Benin kingdom. It interrogates the alignment and disjuncture between customary laws and 'received English law' on primogeniture laws. Does such English law undermine, jettison, or strengthen the indigenous legal order in pre-colonial Nigeria? How was indigenous legal order subjected to common law, and doctrines of the English Wills Act (1837), and an amended version from 1867? Data were generated from triangulated sources such as oral traditions, interviews from traditional sources, archival materials and National Archives of Nigeria.

Adetola Elizabeth Oyewo wears many hats as a student mentor, journalist, researcher, travel consultant and teacher. She is a researcher at the University of KwaZulu-Natal, South Africa, where she marks modules in Human Rights, social justice and Diversity. She is a member of several research networks such as the Law and Development Research Network, South Africa, Kaldor Centre for International Refugee Law, Australia and the Institute For Justice & Reconciliation, South Africa

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Aldo Paciocco (with Damien Cremean)

Stream: The Maritime World in Legal History

Liens for Seafarers' Wages

Admiralty or maritime law has always shown special regard to the needs of seafarers. In *The Minerva* (1825) 1 Hag 347 at 355; 166 ER 123 at 127 Lord Stowell in the High Court of Admiralty spoke of them (in hardly glowing terms admittedly) as a “set of men, generally ignorant and illiterate, notoriously and proverbially reckless and improvident, ill provided with the means of obtaining useful information, and almost ready to sign any instrument [regarding wages and conditions] that may be proposed to them, even against themselves”. Some of this outlook can still be seen even in the modern day. In *Marinis Ship Suppliers (Pty) Ltd v Ship Ionian Mariner* [1996] FCA 563, for example, Ryan J spoke of the *Admiralty Act 1988* (Cth) being “construed with the benevolence towards seafarers which has traditionally informed judgments of Courts of Admiralty”. Without seafarers there would be no maritime industry and no maritime commerce. Their wages and conditions—but their wages in particular some would say—are essential to their continued participation in the sector. And it has been so from time immemorial it might be said. The origins of the lien for seafarers’ wages and its extent and development serve as a reminder of the importance placed by the law on the welfare and well being of seafarers in their vulnerable and dangerous occupation. Examination of this question is interesting in itself but shows acutely how maritime law has responded sensitively to the times and to perceived needs.

Aldo Paciocco: Qualifications - BA., BLaws, GrdDipLegPrac. Worked at Victorian Civil Administrative Tribunal, Commonwealth Bank- Commsec, Invesco and various superannuation fund managers as associate and legal adviser in risk and compliance. Subsequently, worked with Victoria Legal Aid, in Commonwealth benefits and fraud. For the last 12 years I have been at Australian Securities and Investment Commission, holding the positions of investigator, hearing delegate, in house prosecutor and, currently, litigator

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Genevieve Renard Painter

Stream: Indigeneity, Law and Empires

Constituting Canada: Patriation as a Settler - Indigenous Legal Encounter

Ever since its confederation, Canada has strained to secure its status as a sovereign country, free from the British Crown's apron strings, united against Francophone secessionists, and immune from protest by Indigenous nations. Indigenous people continue to contest the boundaries of Canada's putative territory and demand the respect of fiduciary obligations vested to Canada by the Crown. How, then, is Canada sovereign? This paper is part of a larger project about how the constitution of settler legality is responsive to, and thus conditional on, the encounter with Indigenous people and Indigenous law. What if Canada's sovereignty is a counter-claim in reply to Indigenous sovereignty? This project asks the question, "Is Canada sovereign?", not to answer it, but to examine the speakers, hearers, and contexts which make question apprehensible.

The effort to move the juridical home of Canada's constitution from the United Kingdom to Canada promised a fundamental change in Canada's relationship to the British Crown and in the relationship between the Crown and Indigenous nations. This paper offers a fresh perspective on the patriation of Canada's constitution by focusing on the advocacy work undertaken by Indigenous leaders in the UK and in other international fora. I examine how lawmakers from the UK, other states, and international bodies heard demands that Canada respect Indigenous sovereignty, a dimension of the patriation story often overlooked in the literature. The project builds on historiography on Indigenous diplomatic efforts regarding Europeans on their territories, and it puts that work into conversation with legal scholarship on international legal personality.

Genevieve Renard Painter is an assistant professor at the Simone de Beauvoir Institute, at Concordia University. She holds a PhD in Jurisprudence and Social Policy from the University of California, Berkeley. Her historical and theoretical work on international law, constitutional law and settler colonialism has been published in the *London Review of International Law*, *Law Text Culture*, and a number of edited collections. She sits on the executive of the Association for the Study of Law, Culture and the Humanities. In 2021, she won Concordia University's Presidential Excellence in Teaching Award (non-tenured). Prior to becoming an academic, Dr. Painter gained practice experience litigating aboriginal and constitutional cases in Montreal, and she conducted policy work in international criminal justice in the Hague.

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Pooja Parmar

Stream: Indigeneity, Law and Empires

‘Andrew Paull: A lawyer without a ticket and an interpreter of justice’

In this paper I trace the career of Andrew Paull (1892-1959), one of the first Indigenous lawyers in British Columbia. Raised on the Mission reserve in North Vancouver, Paull (also named Xwechtaal after an ancestor) was among the first students to attend the St. Paul’s residential school that opened near the Mission reserve in 1899. While receiving education at the school, Paull remained connected to his traditions, especially through his close relationship with his grandma, and subsequently also received his “Indian education” from Squamish elders. He began his Canadian legal training in the law office of Hugh Cayley in Vancouver as a fifteen-year-old in 1907. Despite his four years with Cayley, his knowledge of law and legal procedures, and “a natural talent for conducting himself in a courtroom”, Paul was not called to the bar. This exclusion did not however come in the way of Paull’s career in advocating for Indigenous peoples both inside and outside the courts. Referred to as “Chief Andy Paull” and an “Indian lawyer” in local newspapers, Paull was also described by some as a “trouble-maker” and by others as Canada’s “Indian conscience” for his commitment to demanding legal recognition of Indigenous rights. His long engagement with Canadian law and legal processes included representing Indigenous defendants in criminal matters and communities defending their treaty rights, work as interpreter for a Royal commission and for organizations like the Allied Tribes, investigating Cowichan land claims, and negotiating contracts on behalf of Indigenous clients.

Pooja Parmar is an Associate Professor at University of Victoria Faculty of Law.

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Sergio Peña Neira

Stream: General

**Influence of English law and international law of English learned scholars in Chile:
Andres Bello**

Chile was under Spanish legal tradition in the XIXth Century. However, something not well studied is the transfer of English legal, juridical and philosophical knowledge to Chile. Further, evidence of this transfer in Chilean Civil Code, Chilean constitution and legal rules (on press) and practice of international law is possible to be found. Everything has a common learned scholar as the source of knowledge transfer: Professor Andres Bello. Bello was in London from 1810 till 1829 working in various areas, learning, and researching. He had access to libraries (John Mill and British Library) and practiced diplomacy (for various States) and law in England (defending himself or others on his dignity and freedom of press). However, he accepted the offer of the Chilean Government to work for the Civil Administration in Chile. In this context since his arrival to Chile legal rules and legal knowledge (Blackstone, for example) were influenced by laws and legal thinking from England. This contribution will focus on this subject with a qualitative methodology, particularly broad review of documents and comparison between ideas and rules on specific topics from a doctrinal and legal viewpoint.

Sergio Peña Neira is Doctor in Law (equivalent to Dr. iur) with a books, chapters of books, articles, book reviews and jurisprudence commentaries in international, procedure and philosophy of law. Dr. Peña-Neira is interested in legal knowledge and he has been working on the work of various important learned scholars, Joseph Raz, Herbert Hart, Ian Brownlie, Hans Kelsen, Andrés Bello. His interest in Bello arose with his work on a by law in force in 1829 after the arrival of Mr. Bello to Chile and he is currently working on an article based on previous and current research on the work on Bello promoting not only a regional international law but more an international rule of law a A.V. Dicey proposed in 1885. The reason is based on the quality of the observations of Bello on England and the history of Chile a new Republic fighting for rejection of old legal tradition and rules like the Civil Code of Chile based on the idea of Rule of Law. His most recent publication is the foreword of the book of Andres Bello, Principles of International Law (Hammurabi, Santiago, 2021, reprint). Dr. Peña-Neira is Associate Professor in Universidad Mayor, Chile.

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Jim Phillips

Stream: General

Separation and Divorce in a Federal Dominion: The Campbell Cases, Canada, 1873-1879

In 1879 the Canadian Parliament legislated a separation from bed and board of Elizabeth (Eliza) Campbell from her husband Robert, as an exercise of its jurisdiction over ‘marriage and divorce’ conferred by section 91 (26) of the *British North America Act*. It was only the tenth divorce Act passed since Confederation in 1867, and it was the only divorce Act ever passed by Parliament that was not for a *divorce a vinculo matrimonii* (divorce from the bonds of matrimony) but a *divorce a mensa et thoro* (separation from bed and board). Eliza Campbell’s Act was the longest one of the 262 passed prior to 1914, and the only one that began life as a bill to grant her husband Robert a divorce from her in 1876 and was transformed along the way into a bill to grant her a separation from Robert. It was also the only Act passed at the behest of a woman whose husband had won a suit for criminal conversation. The Campbell matrimonial dispute was an extensive part of parliamentary proceedings in 1876, 1877 and 1879, taking up nearly 50 days of full house and committee time in the Senate and the Commons. It also generated seven civil suits in the Ontario courts. Within the confines of Parliament it produced passionate and at times vituperative debate, accusations of conspiracies, and denunciations of MPs and Senators as either hoodwinked by a beguiling and shameless harlot or as heartless accomplices to a husband’s cruelty. It also produced intense debates over two legal and constitutional questions. One was the meaning of section 91 (26) and its relationship to section 92 (13), the provincial property and civil rights power. The other was whether Parliament could and should pass legislation which was effectively a judgment in appeal from the Ontario Court of Chancery.

Jim Phillips, M.A (Edinburgh), Ph.D (History), LL.B. (Dalhousie), is Professor of Law, History and Criminology at the University of Toronto, and editor-in-chief of the Osgoode Society for Canadian Legal History. He was formerly law clerk to Madam Justice Bertha Wilson at the Supreme Court of Canada, and in 2013 won the Mundell Medal awarded by the Attorney-General for Ontario for ‘a distinguished contribution to law and letters.’ He teaches Property, Trusts, and Legal History. He is the co-author of *A History of Law in Canada Volume I: Beginnings to 1866* (2018) and *A History of Law in Canada Volume II: Law for the New Dominion, 1867-1914* (forthcoming 2022). He has co-edited four volumes of the Osgoode Society for Canadian Legal History/University of Toronto Press’ *Essays in the History of Canadian Law* and, with Philip Girard, *The Supreme Court of Nova Scotia 1754-2004: From Imperial Bastion to Provincial Oracle*. He is also the author, with Rosemary Gartner, of *Murdering Holiness: The Trials of Franz Creffield and George Mitchell* (UBC Press, 2003).

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David Plater (with Andy Alexander)

Stream: Indigeneity, Law and Empires

**‘Virtually Outlaws in their Native Land which they have never Alienated or Forfeited’:
the ‘Incompetence’ of Aboriginal Witnesses in 19th Century Colonial Australia**

This presentation considers the law of witness competence in its application to Aboriginal witnesses in 19th century colonial Australia. After British colonisation, there existed strong awareness of the rule of law and the need for equality before the law and access to justice for all. Yet this supposed ‘equality’ runs counter to the fact that Aboriginal witnesses were deemed as ‘incompetent’ witnesses and were ineligible to swear an oath as they were ‘destitute of the knowledge of God’ and did not believe ‘in a future state of reward and punishment’. However, this law was arbitrarily applied and ignored Aboriginal lore and beliefs, compared with the recognition of the testimony of other non-Christian witnesses. There were efforts at reform, culminating in various laws in the mid-1800s which belatedly allowed the limited testimony of Aboriginal witnesses. The presentation contrasts the relatively uncontentious nature of such laws in South Australia, with the hostility to reform in NSW where such a law did not pass until 1876. The presentation question to what extent these reforms were successful to accommodate and recognise Aboriginal custom and beliefs (a wider issue that persists in Australia) and raise the continued implications of the law of competence to Aboriginal witnesses.

David Plater BA, LLB (Monash), LLM (ICSL), PhD (Tas). David is currently a Senior Lecturer at the University of Adelaide and Deputy Director of the independent South Australian Law Reform Institute (SALRI) based at the Adelaide Law School. This presentation partly arises from SALRI’s present examination of the vexed law of witness competence; a topic with continued particular application for Aboriginal communities. David has worked with the Crown Prosecution Service and was a Senior Crown Prosecutor at the CPS Youth and Inner London Crown Court branch. He subsequently worked from 2008 to 2018 with the South Australian DPP and then the State Attorney-General’s Department where he was involved with such major projects as the landmark *Disability Justice Plan*. He previously lectured at the University of South Australia and the University of Tasmania (where he retains a role as an Adjunct Senior Lecturer). His PhD from the University of Tasmania in 2011 examined the development and modern application of the role of the prosecution lawyer as a ‘minister of justice’. David’s research interests include prosecutorial discretion, vulnerable parties in the justice system, modern law reform, the prerogative of mercy and exercise of death penalty in the 19th century and Morris dancing.

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Christina D. Ponsa-Kraus

Stream: General

Panel: An Empire State of Mind? Legal Transfer Between the United States and its Colonized Peoples

Empire by Gaslight: U.S. Constitutionalism in Puerto Rico

This paper examines how law created the conditions of possibility for a form of involuntary self-subordination by the people of Puerto Rico. I argue that the legal framework of U.S. colonial rule functioned as a form of gaslighting, entrenching Puerto Rico's colonial status even as, until recently, it persuaded many Puerto Ricans that they did not live in a colony at all. Beginning with the U.S. Supreme Court's *Insular Cases* of 1901, which gave sanction to the United States' annexation and governance of perpetual colonies, and culminating with the adoption of Puerto Rico's own Constitution in 1952, which contrary to prior practice was not followed by the territory's admission into statehood, U.S. colonial law achieved this feat through a series of contradictions that generated constant uncertainty about the island's legal and political status: Puerto Rico was neither foreign nor part of the United States; its people were neither aliens nor U.S. citizens; even when they became U.S. citizens, the island was still not on the path to statehood; and when they adopted a Constitution, the island became state-like but not a state. These contradictions generated a decolonization debate in which the most hotly contested question was not what Puerto Rico should become but what it *was*. As a result—perversely yet predictably—the constitutional debate over Puerto Rico's status itself became the engine that kept colonialism running.

Christina D. Ponsa-Kraus joined the faculty of Columbia Law School in 2007. A Puerto Rican raised on the island, she writes about the constitutional history of American territorial expansion and the legal issues surrounding the political status of Puerto Rico and other U.S. territories. Before joining the law faculty at Columbia, Ponsa-Kraus clerked for Judge José A. Cabranes of the U.S. Court of Appeals for the 2nd Circuit and for Justice Stephen G. Breyer on the U.S. Supreme Court.

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Nandini Ramachandran

Stream: Indigeneity, Law and Empires

Dalit Dkhar: Belonging and Recognition in a Shillong Slum

This paper explores the consequences of the Sixth Schedule of the Indian Constitution on municipal workers in the city of Shillong in northeastern India. Originally brought to the region to clean army barracks, this community of Dalit Sikhs now ekes out a precarious existence on a small but valuable strip of land at the heart of the biggest market in the city. My paper will trace their legal battle to prove their right to live in Shillong—a city that did not yet exist when they began to inhabit it—by contextualizing the peculiar legal history of Shillong municipality within broader histories of labour migration and frontier governance in the British empire.

The Sixth Schedule, intended to protect the indigenous inhabitants of northeastern India, is one contested legacy of the regime of “frontier governmentality” (Hopkins 2020) the postcolonial Indian state inherited from the British empire. My paper examines the enduring conundrums it has created regarding municipal and criminal jurisdiction in Shillong, and the manner in which the reified distinction between “tribal” and “non-tribal” instantiated by the dominant interpretation of the Sixth Schedule haunts the politics of recognition and redistribution in the region. In doing so, it highlights the cultural assumptions that continue to animate constitutional discourses in postcolonial liberal democracies.

Nandini Ramachandran: I am a doctoral candidate in anthropology at the CUNY Graduate Center. I recently finished my fieldwork, which was supported by the SSRC's IDRF grant, in Shillong, and am currently writing my dissertation. I am also a trained lawyer, having graduated from the National Law School in Bangalore, India, in 2009, and spent several years as a journalist and critic before turning to anthropology.

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Reeju Ray

Stream: Indigeneity, Law and Empires

Contesting Boundaries and Settling Jurisdiction in Colonial Frontiers

The paper examines colonial boundary making on the north-east frontier between British empire in India and the concomitant production of the legal and political category ‘tribal’. Colonial law generated and deployed categories such as ‘tribal’, ‘frontier’ and ‘customary law’ to formulate a linear temporalization of space. In other words, law became both a measure and embodiment of time that differentiated colonial spaces along gradations from primitive to modern. Colonial governance through law was enabled by regulatory frameworks of laws and customs already in place in the colony. The plural legal order on the imperial frontier depended on formulations of customs and customary authority. The paper shows the interplay between colonial law and customary law in disputes around jurisdiction and successions of ‘tribal’ chiefs. In this way the paper demonstrates entanglements between legal ordering of colonial subjects and “non-subjects” through the spatial reorganization of the Himalayan borderlands into a frontier. The paper thus highlights law’s location and the creation of modern legal subjects such as tribals and indigenous in colonial India. The ‘where of law’ is used as a critical analytic to reveal entanglements between specific laws used against specific kinds of population.

Reeju Ray is an Associate Professor at O.P. Jindal Global University. She has a Ph.D. in History from Queen’s University Canada. She has previously taught at the University of Toronto, and Queen’s University Canada. She has held research positions at the University of Western Ontario and York University, Canada. She is two-time global academy scholar at the Institute of Global Law and Policy, Harvard Law School. Her area of expertise is Southern Asian history and her research interests include legal history, borderlands stories, human geography, feminist theory, gender studies, and global indigenous studies. Ray’s forthcoming book with OUP titled *Placing the Frontier Hills: Law and Custom on the North-eastern Frontier of the British Empire in India* examines the movement of law and its interface with custom in the north east frontier of the British Empire in India. Ray held a post-doctoral position at the University of Western Ontario between 2015-2017 funded by the prestigious Social Science and Humanities Research Council of Canada. Ray is currently working on a podcast on north east Indian history, and on her new research on law and political economy in contemporary north east India.

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Beth Redbird (with Erin Delaney and Sarah Sadlier)

Stream: General

Panel: An Empire State of Mind? Legal Transfer Between the United States and its Colonized Peoples

The IRA Constitutions: Co-option, coercion, or self-determination?

The 1934 Indian Reorganization Act ushered in a new era of mediated self-governance by tribes through constitutional provision, but the role of the federal government in the adoption of tribal constitutions remains opaque. Early scholarship, often by those involved in or adjacent to the processes of IRA constitutionalization, stressed that the federal government sought to minimize its interference in the development of tribal constitutions, while revisionist scholars have claimed that “teams of lawyers” armed with template constitutions were sent to reservations. For many tribes the IRA era represents the first written and federally endorsed constitutional enactment. How should this wave of constitutionalization be understood? Is it cooptation, in which self-government is used as a means of domination by creating a false sense of autonomy and choice? Or is it best understood as an exercise in self-determination and tribal sovereignty? To begin to engage these questions, this paper reexamines the historical record and draws on 717 documents collected by the Tribal Constitutions Project to answer an antecedent question that has vexed scholars: How prescriptive was the federal government regarding the content of the IRA constitutions?

Beth Redbird is an Assistant Professor in the Department of Sociology at Northwestern University. She is also a faculty fellow with the Institute for Policy Research and the Center for Native American and Indigenous Research. Her work focuses on how between-group boundaries impact interaction, conflict and inequality. Boundaries can be as formal as borders between nations, or as informal as cultural differences. Whether they are geographical, political, legal, or social, boundaries create inequality because limit the free flow of resources; restrict knowledge and ideas; and draw distinctions between 'us' and 'them'. Her current work focuses on two areas:(1) The ways in which modern settler-colonial boundaries constrain and influence native nations; (2) The flow of human movement within and between spaces.

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Eric H. Reiter (with Donald Fyson)

Stream: Legal Transfer in the Common Law World

Fatal Transplant: Lord Campbell's Act and Fatal Accident Litigation in Upper and Lower Canada, 1847-1860

In 1846, the UK parliament passed the *Fatal Accidents Act* (aka Lord Campbell's Act), which allowed close relatives a civil action for compensation for the wrongful death of a spouse, parent, or child. A parallel act abolished deodands, substituting damages for the forfeiture of the thing causing the death. Colonial legislatures in the Province of Canada, New South Wales, Western Australia, India, and others took note, and soon adopted their own fatal accidents acts (with local variations).

In this paper, we will examine the early history of the transplanting and application of Lord Campbell's Act in Lower and Upper Canada (today Quebec and Ontario respectively). The two jurisdictions provide an interesting comparison in the operation of legal transplants, since the statute entered a civil law system in Quebec and a common law system in Ontario. The contrast is particularly strong since in Ontario, the statute created an action for wrongful death where before there had been none (as in Britain), while in Quebec, it limited an already available action (as in French law).

Our paper will be based on the earliest litigation on the statute in the two jurisdictions, which reveal how victims' families, their lawyers, and judges negotiated the new statutory regime, one at odds with previous practice.

Eric H. Reiter is a full professor in the Department of History, Concordia University, Montreal. He is a member (retired status) of the Quebec Bar and a member of the Centre interuniversitaire d'études québécoises. His research focuses on the legal history of Quebec, especially civil law in the nineteenth and twentieth centuries, and on socio-legal studies generally. He is the author of *Wounded Feelings: Litigating Emotions in Quebec, 1870-1950* (Toronto, 2019), and articles on, recently, the legal history of emotions, defamation litigation, and religious liberty. He is co-editor-in-chief for English manuscripts of the *Canadian Journal of Law and Society*.

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Christopher Roberts (with Hazel Leung)

Stream: General

The Importation, Reception and Evolution of Vagrancy Laws in Hong Kong

The paper will explore the implementation, evolution and understood social import of vagrancy laws over the 155 years in which the British governed Hong Kong. As elsewhere around the British Empire, the vagrancy laws adopted in Hong Kong were influenced by the extremely expansive English Vagrancy Act of 1824, which targeted a wide range of loosely defined activities associated with poverty. Vagrancy was penalized almost immediately after the British took over Hong Kong. A little over a decade later, Chinese persons were required to obtain passes in order to move around at night, underscoring the overlap between race and class categorizations and official concerns. Vagrancy laws were increasingly enforced in Hong Kong as the nineteenth century went on. In the late nineteenth and early twentieth centuries, hundreds if not thousands were typically jailed under such laws every year. Attention to the issue continued in the inter-war period, where concerns with vagrants intersected with broader concerns on the part of the authorities with growing labor rights and nationalist sentiment. Such laws remained influential in the post-World War II period, even as they came under increasing challenge. The article concludes with a discussion of the limited reforms generated by the 1990 'Law Reform Commission of Hong Kong Report on Loitering', which posed a mild challenge to vagrancy laws' legacy in the region. Throughout, the article will consider to what extent developments in Hong Kong matched developments elsewhere, to what extent the approach adopted in the city took its own course.

Chris Roberts is an Assistant Professor, Assistant Dean (Undergraduate Studies) and LLB Programme Director at the Chinese University of Hong Kong. His current research focuses on the historical evolution of public order legality in nineteenth and early twentieth century Britain and the British Empire. Chris is the Chair of the Transnational Legal History Group within the Law Faculty's Centre for Comparative and Transnational Law and a member of the Comparative Constitutional Law Forum. In addition to his academic work, Chris has worked as an expert legal consultant addressing issues such as constitutional and legal reform, the rule of law and human rights standards with intergovernmental and non-governmental organizations, including the African Commission on Human and Peoples' Rights, the Cairo Institute for Human Rights Studies, the Egyptian Initiative for Personal Rights, the Arab Center for the Promotion of Human Rights, Transparency Maldives and many others. He is currently serving as a senior adviser to the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association.

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Mandi Rollinson

Stream: General

The Ties That Bind: A Case Study of the United Nations and Colonial Rule in 1950's Rwanda

Late 1950's Rwanda exemplifies the United Nations (UN) Trusteeship Council's failure to implement decolonization and highlights imperial discord during the Cold War. The interests and actions of nation-states acting as contemporary imperial powers undermined the UN Charter's goals of promoting human rights and decolonization. These powers subverted the UN to retain their own power while avoiding communism ousting democracy. The circumstances surrounding the 1957 UN Trusteeship Council Visiting Mission to Ruanda-Urundi displayed the tension among the UN, Belgium, and the United States, which highlights the environment where these powers operated. The UN was paradoxically a bastion of supranational idealism and a conglomeration of self-interested nation-states. This research discusses how Rwandan domestic political action illuminates the UN's engagement with the colonial world via the extension of United States imperial power. This research considers the degree that the Mission perpetuated colonial systems while simultaneously claimed to support future independence. Crucially, this research shows that Rwandans were agents of change, not passive recipients, of colonial hegemony. It also interrogates the degree to which these outcomes legitimized Rwandan political dialogue and to what extent Rwandan political action successfully manipulated the UN, thus further complicating these power differentials. Furthermore, the analysis from this research acts as a vital bridge that integrates these actors and thus serves to contextualize the 1994 genocide within the political systems that established its foundations. Lastly, it contextualizes contemporary Rwandan economic and political action within the structures of Western power structures to which these contemporary empires respond.

Amanda E. Rollinson is an Instructor at the United States Military Academy, West Point, New York, in the Department of History. She teaches courses ranging from the history of the U.S. Army and introductory African History courses, to elective courses on the history of Modern Africa and a colloquium on gender and sexuality in the Modern Era. She earned her Baccalaureate degree in English from the United States Military Academy in 2011 and her Masters of Arts in Global History from Duquesne University in 2020.

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Margaret O’Riordan Ross

Stream: Legal Transfer in the Common Law World

Canadian Prostitution Law and Colonial Legal Transfer

In 1881, Toronto city officials and police embarked on a crusade against brothels and their patrons, which were perceived to harm downtown property values. Although Canadian police, like police elsewhere in the British Empire, had wide-reaching power to arrest women soliciting outdoors under the 1869 Vagrancy Act, they were unable to enter brothels without warrants, nor could they arrest men without proving that they had entered three times prior as “habitual frequenters.” Consequently, it was difficult to close brothels and convict their patrons. Canada’s status as a colony and the continued applicability of English statutes unless specifically repealed, however, enabled prosecutors to circumvent laws that were deemed inadequate to serve community demands. They began to prosecute men who otherwise would have had their charges dismissed by using an unrepealed English medieval law, thus instrumentalizing Canada’s colonial position and England’s long legal tradition to evade unequal laws based on gender.

While Canadian historians have documented and argued that Canada’s prostitution laws were inherited from and extended on English common law, the legal application of long-standing but seldom used English statutes such as the 1361 *Justices of the Peace* act has been overlooked. Using the case of Toronto in 1881, I suggest that local colonial issues drove imperial legal transfers, and that Canadian police were willing to borrow from established English law when it suited them, in creative and unpredictable ways. Like other places in the Empire, legal transfer based on Canada’s colonial status was leveraged to target women and police sexuality.

Margaret O’Riordan Ross is a third-year PhD Candidate at Queen’s University in Kingston, Ontario. Her dissertation provides the first comprehensive historical examination of sex work in Ontario from 1870 to 1930. Margaret’s research explores how women navigated sexual labour across the province and how regional communities developed distinct methods of regulating and profiting from the sex trade.

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Liz Rushen

Stream: The Maritime World in Legal History

John Marshall and the reformation of *Lloyd's Register of British and Foreign Shipping*

John Julius Angerstein has long been regarded as ‘the Father of Lloyd’s’ the bastion of worldwide shipping intelligence. A well-connected banker and underwriter, he was instrumental in founding the modern Lloyd’s. John Marshall could equally claim the title ‘Father of Lloyd’s Register’, as it was Marshall who instigated the merger of the Red and Green Registers used by shipowners and underwriters for information about the condition of vessels they insured or chartered. By 1823 the system of the Red and Green Registers devised by Angerstein in 1773 was becoming unworkable and Marshall became the prime mover for reform. He lobbied for a single register, a revised system for the classification of ships based on age, condition and the quality of construction, greater control over surveyors and a reformed committee with representation beyond shipowners and underwriters. It took ten years before Marshall had the satisfaction of seeing the fusion of the two Registers as *Lloyd’s Register of British and Foreign Shipping*. Both the *Register* and the system of ship classification advocated by Marshall are still used today.

This paper examines how Marshall, an ambitious ship and insurance broker, drove the reform of shipping classification and contributed to the ‘informal empire’ of influence and colonial control which was the outstanding feature of Britain’s expansion overseas in the mid-nineteenth century.

Liz Rushen is a historian, researcher and author with a PhD in history from Monash University (1999). She is on the Board of the Melbourne Maritime Heritage Network and a Research Associate in the Faculty of Arts, Monash University. She is also a former Chair of the History Council of Victoria, a former Executive Director of the Royal Historical Society of Victoria, and has served on many historical and community boards and committees. In the Queen’s Birthday Honours 2021, Liz was appointed a Member (AM) of the Order of Australia (General Division) for significant service to community history and heritage preservation. The author of *Single & Free: female migration to Australia, 1833-1837*, Liz is widely published in the field of migration history, women in colonial Australia and the social history of the Port Phillip District (Victoria). In 2018-19 Liz was awarded a Creative Fellowship by the State Library Victoria to research the life and writings of Edmund Finn (‘Garryowen’). Her latest book is *John Marshall: shipowner, Lloyd’s reformer and emigration agent*.

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Michael Samuel

Stream: General

Illicit Import: The Artful Incorporation of the Defence (Emergency) Regulations, 1945 into the Israeli Legal System

Based on extensive archival research, this paper examines the process through which one of the most consequential legal instruments of mandatory Palestine, the Defence (Emergency) Regulations, 1945 (DER), was incorporated into the Israeli legal system. Consisting of 147 regulations representing statutory martial law, the DER belongs to a category of laws developed, refined, and shared by colonial governments of the British Empire in the 20th century and retained by successor states following independence. Since 1948, the DER has been the principal law upon which the Israeli government has relied in its protracted violent dispossession of the native Palestinian population. Remarkably, despite its extensive use by Israel over the course of many decades, the DER is an invalid instrument due to the facts that it was officially revoked by the British shortly before the end of the mandate and that the Israeli legislature never reenacted the instrument on its own. Following a discussion establishing the DER's invalidity, the paper proceeds to reveal the extraordinary actions taken by David Ben-Gurion, Israel's first prime minister and defense minister, and Pinchas Rosen, the first justice minister, to ensure the DER's illicit incorporation into Israel's legal system. It demonstrates that the two ministers worked in concert to conceal the DER's invalidity from other government officials in order to allow Ben-Gurion to assume its vast powers. The paper concludes with a discussion of the implications of these findings for our understanding of the functioning of law in settler colonialism and the role of emergency powers therein.

Michael Samuel is a Ph.D. candidate in Emory University's Middle Eastern and South Asian Studies Department. His research focuses on indigenous rights, international law, settler colonialism, and the legal history of Palestine/Israel. Prior to embarking on his academic career he worked as an attorney in Palestine/Israel representing clients in civil and human rights matters. He received his J.D. from Boston College Law School.

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Sarah Sadlier (with Erin Delaney and Beth Redbird)

Stream: General

Panel: An Empire State of Mind? Legal Transfer Between the United States and its Colonized Peoples

The IRA Constitutions: Co-option, coercion, or self-determination?

The 1934 Indian Reorganization Act ushered in a new era of mediated self-governance by tribes through constitutional provision, but the role of the federal government in the adoption of tribal constitutions remains opaque. Early scholarship, often by those involved in or adjacent to the processes of IRA constitutionalization, stressed that the federal government sought to minimize its interference in the development of tribal constitutions, while revisionist scholars have claimed that “teams of lawyers” armed with template constitutions were sent to reservations. For many tribes the IRA era represents the first written and federally endorsed constitutional enactment. How should this wave of constitutionalization be understood? Is it cooptation, in which self-government is used as a means of domination by creating a false sense of autonomy and choice? Or is it best understood as an exercise in self-determination and tribal sovereignty? To begin to engage these questions, this paper reexamines the historical record and draws on 717 documents collected by the Tribal Constitutions Project to answer an antecedent question that has vexed scholars: How prescriptive was the federal government regarding the content of the IRA constitutions?

Sarah Sadlier is a JD Candidate and a History PhD Candidate at Harvard. As an undergraduate at Stanford, she quadruple-majored in American Studies (with Honors), History (with Honors), Iberian and Latin American Cultures, and Political Science with Distinction. She completed an MA in Modern Thought and Literature in 2017 at Stanford and an MA in History in 2019 at Harvard. She is the recipient of over fifty academic awards, grants, and fellowships. Her current work addresses the history of Native American veterans, Indian boarding schools, and Native American lawyering.

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Katherine Sanders

Stream: General

Panel: People and institutions: New Zealand connections with the British Empire

Appealing to Empire: The Treaty of Waitangi at the Centennial, New Zealand 1940

My presentation will discuss narratives of the Treaty of Waitangi, signed by representatives of the British Crown and of some indigenous Māori tribes, around the time the Treaty's centenary was marked on 6 February 1940. I explore the performative nature of argument about the meaning of the Treaty at its centennial, and the way in which debates about the legal and constitutional status of the Treaty were framed by the culture and politics of marking (and making) a national milestone.

Concepts of empire and its legal and political reach were also at play in these debates. In late 1940, the case of *Hoani Te Heuheu Tukino v The Aotea District Maori Land Board* was argued before the Judicial Committee of the Privy Council in London. The advice of the Committee in *Te Heuheu* remains the leading authority for the proposition that the Treaty of Waitangi is not enforceable in the New Zealand courts, except where it has been incorporated in legislation. Yet this outcome was not unexpected; the case was part of a wider strategy that aimed for the "restoration" of the Treaty. Following the loss, the claimant Te Heuheu, leader of a Māori tribe, planned to appeal directly to Privy Councillors in the United Kingdom and its overseas Dominions in their capacity as political advisers to the Crown. A "Memorial of the Māori People of New Zealand to the Privy Council" would set out the Treaty as a solemn compact between Māori and the Crown and highlight its breach.

Exploring *Te Heuheu* in the context of centennial events in New Zealand, this paper takes the Treaty's centenary as an opportunity to consider the role of ideas of empire in debate about how to tell stories of law and history.

Katherine Sanders is a senior lecturer in the Faculty of Law, University of Auckland, Aotearoa New Zealand. Katherine's research is in New Zealand legal history and land law.

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David Schorr

Stream: Legal Transfer in the Common Law World

Questioning ‘Anglicisation’: Class, Codification, and the Common Law in Two Former Ottoman Colonies

Cyprus enacted its Civil Wrongs Law, based on the English law of torts, in 1932. Palestine took the Cyprus law as its model when it enacted its own codification of tort law in the 1940s. This replacement, by British colonial authorities, of Ottoman law by common-law codifications has been viewed by commentators through the lenses of national identity and legal families, as an example of Anglicisation. I believe they are missing the point.

The first clues to the inaptness of the 'Anglicisation' framing are the many deviations from the common law, especially in the Palestine codification: non-absolute contributory negligence, no defence of common employment, no tort of conspiracy, the exemption of strikers from liability for tortious interference, and more. What these departures from English law had in common was the favouring of the interests of labour over those of capital.

Perhaps more significant, issues of identity and culture were simply dwarfed by the distributive effects of the replacement of Ottoman tort law with English-flavoured codes. For the first time, tort victims in these colonies could recover compensation for bodily injury, sue employers for their vicarious liability, and sue under the general tort of negligence (defined more broadly than in England). These and other changes represented a massive shift of the costs of accidents from workers and consumers to businesses and the wealthy. 'Anglicisation' has blinded us to the distributive and class implications of these colonial laws; the same may be the case for other cases of 'Anglicisation' as well.

David Schorr is a Senior Lecturer at the Tel Aviv University Faculty of Law. In addition to researching the history of tort law and water law in Mandate Palestine, he is currently working on the history of the Society of Comparative Legislation.

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Helen Scott

Stream: Legal Transfer in the Common Law World

Panel: Legacies of Empire: Roman-Dutch Law in South Africa and Sri Lanka in Historical Context

***Iniuria* in Sri Lanka and South Africa**

This paper seeks to compare the development of the Roman-Dutch delict of *iniuria* in Sri Lanka (Ceylon) and South Africa during the late nineteenth and twentieth centuries. It will entail comparative assessment of the degree to which the English torts of libel and slander have impacted on the law of defamation in each jurisdiction, and in particular the degree to which each jurisdiction has shifted from a delict organised around injurious intention – *animus iniuriandi* – to one that requires only the publication of material defamatory of the plaintiff in order for *prima facie* liability to arise. The parallel development(s) of *iniuria* in Sri Lanka and South Africa will serve as a lens through which to examine the ways in which courts and scholars from each of these jurisdictions have been influenced by those of the other. Particular attention will be paid to the work of Amerasinghe (Sri Lanka), McKerron and Price (South Africa), and to collaborative projects such as Lee and Honoré's *The South African Law of Obligations*. Finally, this paper will consider the implications of the emergence of a post-colonial rights discourse in both jurisdictions, and in particular the implications for *iniuria* of the rights to freedom of expression and privacy.

Helen Scott is Professor of Private Law in the Oxford Law Faculty and Tutorial Fellow in Law at Lady Margaret Hall. She completed three degrees in law and classics at the University of Cape Town during the 1990s and then did the BCL, MPhil, and DPhil at Oxford. She was a professor in the Department of Private Law at the University of Cape Town between 2009 and 2017, and before that, a tutorial fellow in law at St Catherine's College Oxford as well as a visiting professor at the Université Panthéon-Assas (Paris II). Her research interests fall within the law of obligations (particularly tort and unjust enrichment) and civilian legal history (particularly Roman law). She is the author of *Unjust Enrichment in South African Law: Rethinking Enrichment by Transfer* (Hart, 2013), and recently edited *Private Law in a Changing World*, a collection of essays celebrating the career of Danie Visser. She is currently working on projects concerning the role of foreseeability in the law of tort, remedies arising from theft of incorporeal money, and the significance of careless mistake in unjust enrichment.

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Kirsten Sellars

Stream: The Maritime World in Legal History

Islands' maritime zones — colonialism's last gasp within the law of the sea

While the developing states saw the 1973-82 UN law of the sea conference as an opportunity to reconstruct international law to serve the new international economic order, the maritime powers, at least initially, saw the conference as being a mechanism for codifying customary international law. Drawing on French and British documents, this paper shows how the powers also pushed for new maritime entitlements for their remaining colonial holdings.

This issue arose in relation to islands. Delegates debated how to distinguish islands from rocks (size, population, economic capacity?) and whether islands should have the whole gamut of maritime zones or just a territorial sea. This question arose because some developing states argued that colonised islands should not be entitled to an EEZ and continental shelf in case the colonial authorities plundered the zones before independence.

Given the sensitivity of the issue, the maritime powers ducked the issue of EEZs for their colonies and instead invoked the integrity of the state. They argued that when it came to maritime zones, no distinction should be drawn between continents and islands because if the latter were given a different status, it would offer islands an incentive to seek independence from the mainland. The developing states, often contending with separatist movements of their own, took the point — self-determination had its limits. Article 121 of the law of the sea convention, drafted by powers seeking to maximise the economic potential of their oceanic colonies, thus gives islands the same zones as continental states, and shows that even in recent history, colonial interests continued to shape the law.

Kirsten Sellars will shortly be taking up a visiting faculty position at the Centre for International Law, Gujarat National Law School, India. Prior to that, she was Visiting Fellow at the Coral Bell School of Asia Pacific Affairs, Australian National University. Her research focuses on the law of the sea, the laws governing uses of force, and international criminal law — with particular emphasis on South and East Asian perspectives. Her latest books, *'Crimes against Peace' and International Law*, the edited volume, *Trials for International Crimes in Asia*, and her next, *The Making and Remaking of the Law of the Sea Convention* (due out in 2022) are published by Cambridge University Press.

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Aviram Shahal

Stream: General

Empirically Tested: Multinational Empires and Zionist Constitutional Thought

The paper traces the development of Zionist constitutional thought in the light of the national struggles in the three multinational fin de-siècle empires: Tzarist Russia, Ottoman Turkey and the Austro-Hungarian monarchy. Zionist leaders were deeply familiar with these struggles which primarily surrounded the accommodation of national minorities and their legal status. I explore how notions such as federalism, bi-nationalism, and the Austro-Marxist concept of personal autonomy were imported from these empires and integrated into Zionist constitutional proposals for Palestine after WWI. However, I show that there were significant differences regarding the goals of what these legal arrangements meant to achieve in the three empires on the one hand and in Palestine on the other hand.

In the case of empires, federalism and autonomous regimes were meant to stabilize the shaky imperial frameworks and to preserve the dominance of the existing national majorities of Russians, Turks and German Austrians. However, in the case of the Zionist constitutional plans, the same ideas were meant to establish a new political entity, that of a Jewish state. More importantly, I show how the Zionist leadership meant to disrupt the existing demographic reality by turning the Palestinian-Arabs into a minority and create a Jewish majority.

Aviram Shahal is currently a fellow scholar at the Julis-Rabinowitz Program on Jewish and Israeli Law at Harvard Law School. He recently submitted his S.J.D dissertation at the University of Michigan Law School which examines how demographic changes and the notion of a Jewish majority impacted on Israeli and Zionist constitutional thought. Shahal owns two LL.M. degrees from Michigan Law School (2015) and Tel Aviv University Faculty of Law (2014). He received his LL.B. degree from the Hebrew University of Jerusalem (2008). Shahal's areas of interests include Legal and Constitutional History, Comparative Law, Law and Literature and Legal Theories of Constitutional Law

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Ornit Shani (with Rohit De)

Stream: General

From Founding to Assembling: Towards a New History of India's Constitution Making

Drawing on new archival materials, we offer a *paradigm shift* in understanding of the making of India's constitution. Moving away from the conventional narrative that the Indian constitution was a product of elite consensual decision-making, we show how the constitution was produced from below, outside the Constituent Assembly. People across the country read, deliberated and debated the anticipated constitution in a range of sites, from princely *darbars*, to tribal villages in deep forests. We argue that the that the making of the Indian constitution entailed the process of fitting together – *assembling* – disparate and simultaneous constitution making efforts across the country involving large and diverse publics. Examining the engagement of rulers and subjects of princely states, colonial judges and tribal communities, we show how diverse people, social groups, and state officials reconstituted themselves as constitutional actors, seeking, in many ways, to make their history anew. This process created a surge in democratic aspirations and a politics of hope; it generated a sense of ownership in the constitution and thus decolonised it; and it created an order of expectations from the constitution, which meant that the process of its making and political energies it unleashed did not end with its mere formal adoption.

Ornit Shani is an Associate Professor of Modern Indian History, Department of Asian Studies, University of Haifa, and an Affiliated Scholar at the Centre of South Asian Studies, Cambridge. She is the author of *How India Became Democratic: Citizenship and the Making of the Universal Franchise* (2018) which won the Kamaladevi Chattopadhyay New India Foundation Prize for the best book on modern India for 2019. Her previous book is *Communalism, Caste, and Hindu Nationalism: The Violence in Gujarat* (2007). Her publications cover identity and caste politics, the rise of Hindu nationalism, Indian citizenship, democracy and the history of elections. She was awarded a grant from the Israel Science Foundation for her research on a history of India's first elections.

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Airton Ribeiro da Silva Jr

Stream: General

Comparing colonial law libraries: the circulation of normative knowledge in Iberian empires

Books played an important role in the formation of Ibero-American legal spaces, as they were one of the main means by which legal ideas have been transmitted. This object ensured that normative information reached the most distant locations at the fringes of Iberian domains. Hence, knowing which law books were on the shelves of colonial libraries may shed valuable light on how the global circulation and translation of normative knowledge took place within colonial spaces. In this way, the main objective of this research is to compare law libraries of the Portuguese and Spanish empires of the 17th and 18th centuries and then, verify to which extent those empires engendered similar legal regimes. The research will focus on libraries owned by agents of the administration of justice, either established permanently overseas or nominated for rotative judicial posts. This perspective would take into consideration the dissimilarities of each justice system while examining the composition of these colonial law libraries. The idea is to compare magistrate's libraries from different regions of Iberian America, using social network analysis, to measure similarities and dissimilarities, how did they relate with each other. The literary genres and titles the libraries had in common would reveal how these empires were interconnected through law. Furthermore, the outcome may support a background hypothesis about the reach of the *ius commune* beyond the European borders, prevailing as the general legal framework in the Iberian colonial spaces.

This proposed study is part of the Project *Comparing Early Modern Colonial Laws: England, the Netherlands, Portugal, and Spain*, led by Academy Professor Heikki Pihlajamäki, University of Helsinki.

Airton Ribeiro da Silva Jr. is a lecturer in Legal History and Theory at *Universidade Federal de Pernambuco*, Brazil. He holds a PhD in Legal History from the *Università degli Studi di Firenze* and received his Master's in International Law from the *Universidade Federal de Santa Catarina*. Recently, he had been a postdoc researcher at the *Max Planck Institute for Legal History and Legal Theory*, where he investigated magistrates' travelling libraries of the Portuguese administration of justice.

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Penny Sinanoglou

Stream: General

Child Brides and Imperial Stability: Languages of Risk in the Debate over the Age of Consent and Child Marriage, 1890-1930

In the pluralistic legal order of the British empire age of consent laws varied widely and efforts to regulate or eliminate child marriage in individual imperial territories were halting and uneven over the late nineteenth and early twentieth centuries. Meanwhile, by the early 1920s interwar internationalist organizations were engaged in a struggle to regularize age of consent laws globally, deploying rhetoric about the risks to girls' physical health inherent in early marriage and the dangerous connections between child marriage and prostitution. In many instances, British and local officials resisted these efforts to raise the legal age of consent on the grounds that this would represent undue interference with religiously-based personal status law and thus risk destabilizing the imperial *status quo*.

Focusing on moments when international organizations challenged British regulation (or lack of regulation) of child marriage and the age of consent in territories ranging from the Middle East to Africa and South Asia, this paper examines the impact of the League of Nations' Temporary Slavery Commission and Permanent Mandates Commission on debates over the age of consent and child marriage in Britain and its empire in the 1920s and 1930s, and the ways in which marital laws of other empires, in particular the French and Dutch, shaped those debates. It thus tells a story about the ways in which international oversight and multi-imperial policymaking intersected, complemented each other, and clashed over the issue of child marriage and the age of consent in the interwar British empire.

Penny Sinanoglou (Ph.D., Harvard University) is an associate professor of history at Wake Forest University, where she teaches British and European imperial and international history. She is the author of *Partitioning Palestine: British Policymaking at the End of the Empire* (University of Chicago Press, 2019), which won the 2020 Phi Alpha Theta Best First Book Award. Sinanoglou is broadly interested in the intersections between British imperial power and international systems of oversight and governance; the role of ethnicity, religion, gender and nationality in imperial politics; and the changing legal status of imperial subjects in the colonial and postcolonial eras. She is currently writing a legal history of marriage in the nineteenth- and twentieth-century British empire.

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Rachna Singh

Stream: General

Panel: Legal Pluralism in Colonial and Pre-colonial South Asia

Universal templates, local renditions: Feeding prisoners in the colonial jails of the 1840s

Between 1838-41, the colonial state in India, imposed standardized dietaries and common messing for prisoners inside its jails. The measure arose from a larger wave of Utilitarian reformism that sought to make punishment more frugal, predictable and uniform. Depriving prisoners of the ‘pleasure’ of cooking, and simultaneously imposing the obligation to do hard work was designed to add to the terrors of imprisonment, and thus enhance the punitive and deterrent components of punishment. While bland jail circulars laid out universalizing templates for these transformations within penal regimes, the actual arrangements that were transacted at the local level varied tremendously from jail to jail, to the extent of seriously qualifying the import of the regulations.

In this paper, I look at a range of ways in which prisoners, administrators and ordinary civilians weighed in to secure adjustments or changes in the proposed norms for standardized messing. The official specification of equal-sized messes of twenty prisoners each was thwarted by the pressure to accommodate caste and commensality norms that, in the process came to be represented in highly specific and variable ways. Thus, the history of a specific mode of penal reformism in the early 19th century serves as a rich context from which one can prise open the shades of legal pluralism in early colonial regimes

Dr Rachna Singh teaches Modern History at Hindu College, University of Delhi. Her research and teaching interests include the history of penal regimes in the 19th century British empire with a particular focus on colonial South Asia. She is presently completing a monograph on penology and penal practices in British North India.

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Oliver Skinner

Stream: Indigeneity, Law and Empires

“It's about tikanga”: Māori, British law, and Wairarapa Moana in the nineteenth century’

Prior to the arrival of European settlers to the region in the mid-nineteenth century, rights to Wairarapa Moana (the lakes and large wetland system located in the lower North Island of Aotearoa/New Zealand) and its resources were governed by tikanga Māori. While better understood as ‘the Māori way of doing things’, Tikanga Māori operated as the sole legal system in Aotearoa during this time. This quickly changed following the arrival of Pākehā settlers to the region, who brought with them different perspectives on the use and ownership of land, water, and their resources, as well as the support of the British Crown, which had just established the Colony of New Zealand.

This paper focuses on Wairarapa Māori experiences from the mid- to late-nineteenth century as they sought to preserve their rights and interests in Wairarapa Moana, largely by engaging with a British legal system that was imposed upon them with increasing intensity. It focuses especially on the ways in which certain figures, Māori and English alike, grappled with the imposition of this legal system on a people and country so different to where it was established and developed. Importantly, it also discusses the ways in which Wairarapa Māori fought to retain remnants of tikanga Māori in their efforts to preserve their long-held rights and interests in the moana.

Oliver Skinner traces his whakapapa (genealogy) to the Waikato Tainui iwi (tribe) in Aotearoa/New Zealand. He is a current PhD candidate at the University of Otago where he is writing a legal history of Wairarapa Moana – one of the largest wetland systems in Aotearoa. His thesis explores the intersections and tensions between Māori and European legal systems as they relate to Wairarapa Moana from pre-contact through to the present day. For the last six years, Oliver has also worked for the public service in a number of roles relating to Māori-Crown relations.

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Nora Slonimsky

Stream: Intellectual Property in Empire

Panel: Positioning Intellectual Property in North America: Crossing Boundaries from the British to US Empires

‘None Must Be Sent For Sale to America’: Copies, Rights, and Maps of Subjecthood in the British Empire, 1755-1776

In the winter of 1756, colonial geographer Lewis Evans wrote to the London-based map and bookseller, Robert Dodsley. Laying out his plan for a new edition of his popular *A General Map of the Middle British Colonies*, Evans expressed his interest in obtaining the “benefits” of acts of Parliament which provided copyright to texts and images in certain circumstances. As a resident of Pennsylvania, Evans was unsure exactly what laws and rights involving literary or textual property extended to him outside of England. Moreover, Evans argued, the North American colonies functioned, defacto if not legally, as a distinct commercial space, one in which a London edition of his map and its accompanying essay collection might compete with the locally made version. As a result, he said to Dodsley, “none must be sent for sale to America.”

Relying on the contested publication history of *A General Map of the Middle British Colonies* as a case-study, this paper makes a two-fold argument. First, given the unusual appearance of discussions about copyright before North American independence from the British empire, this paper argues that Evans’ consciousness of copyright highlights a nascent understanding of England and America as two separate spheres. Second, this interpretation of borders depicted in *A General Map of the Middle British Colonies* relied on collaboration and Indigenous knowledge in its production. This episode also demonstrates who and who was not included in forms of ownership, even while Evans’ understanding of copyright did (and did not) align with the formal practices and interpretations of copyright law in England.

Nora Slonimsky is the Gardiner Assistant Professor of History at Iona College, where she serves as Director of the Institute for Thomas Paine Studies ([ITPS](#)). At Iona, Nora teaches courses on subjects ranging from the Age of Revolution to histories of intellectual property. Her work at the ITPS is focused largely on public and digital history. Nora’s in-progress book, *The Engine of Free Expression: Copyrighting the State in Early America* is forthcoming with the University of Pennsylvania Press and won the Society for the History of the Early American Republic (SHEAR) prize for best manuscript and was a finalist for the Zuckerman prize in American Studies. This project, along with other research, is supported by the Huntington Library, the Library Company of Philadelphia, the New-York Historical Society, and the America Antiquarian Society, among others, and has been published in *Early American Studies* and *New York History Journal*. She is also co-editing an open-access volume with Cornell University Press, *American Revolutions in the Digital Age*. Nora serves as the Social Media Editor for the *Journal of the Early Republic* and the reviews editor for *SHARP News*. You can follow her on twitter [@NoraSlonimsky](#) or check out her website, www.hamiltonsolo.com.

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Angela Smith

Stream: General

Aviation Empire: a legal history of friendship and flying at the end of empire

If at the end of the European civil war of 1914-1918 there was no doubting air power's deadly capacities, by the conclusion of the second European war aviation was infused with a sense of post-war optimism. Newly independent postcolonial states were developing fledgling national carriers while at the level of international cooperation, 52 states signed the Chicago Convention on International Civil Aviation at the end of 1944. It was hoped that international civil aviation – as a tool to ‘create and preserve friendship among nations and peoples of the world’ – would be developed in a safe and orderly manner, and that international air transport services may be established ‘on the basis of equality of opportunity’.

Despite these aspirations, civil aviation routes had developed along colonial lines to the benefit of European colonial powers and continued as such. The legal division of the skies into territory had rendered colonised states subordinate. As the International Civil Aviation Organisation (ICAO) sought to secure international legal agreements to make global aviation more secure in the context of increased plane hijackings in the 1950s-60s, division emerged with many postcolonial states supporting the political protests of hijackers in support of the liberation of Palestine.

Drawing on the ICAO meeting archives, this paper looks at the legal history of international efforts to divide the skies, and to develop and secure international aviation in a spirit of post-war globalism that was belied by the ongoing allegiances to empire and imperial power structures. While movement in the form of international air travel was infused with hope in the Chicago Convention, political movements or an excess of postcolonial movement, needed to be heavily regulated by law.

Angela Smith is a PhD candidate in the Faculty of Law at the University of New South Wales, where her doctoral research takes an interdisciplinary approach to the study of aviation and air power in deportation and border policing practices across the Mediterranean. She is interested in political geography, human mobility, colonialism and security practices in the contemporary Middle East and North Africa region. She holds a Masters in Migration and Refugee Studies from the American University in Cairo.

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David Smith

Stream: General

The Early Modern Tax Haven: Smuggling, Law and Global Business in Eighteenth-century Jersey and Guernsey

While the historiography assumes that “conduit” or tax haven jurisdictions are a peculiarly twentieth-century phenomenon, this paper explains their emergence alongside the expansion of early modern European empires. The policing of tariff walls and monopolies by these empires stimulated a global underground of smuggling. Haven jurisdictions around the world were central to the functioning of this contraband economy. They served as hubs of networks that shuttled goods among empires. This paper explores the British system of “integumentary” jurisdictions, such as Jersey, Guernsey and the Isle of Man, that surrounded the metropole. These islands were simultaneously both inside and outside of imperial systems, both within the British empire yet also its edge. The Channel Islands, in particular, functioned as conduits for trafficking networks linking Britain, France, Sweden, and the Netherlands. Their preservation as havens depended on their very density as legal spaces. The inhabitants of the islands drew upon the customary Norman law of the island, British statutes, and English legal precedents to defend their privileges with arguments that anticipated those leading up to the American Revolution. To theorize the legal issues at stake and their significance for our understanding of empire, the paper examines a case study from 1705-1725 when the English Customs sought to assert its authority over the island. The history of these spaces, the paper argues, reveals both the long history of tax havens in the global system of capital, and the importance of legal resources in authorizing and preserving them.

David Chan Smith is an associate professor of history at Wilfrid Laurier University, Canada. His research in the history of business and law explores liberalism, the political economy of empire, marketization, and illicit trade during the early modern period. Recent publications include ‘The Mid-Victorian Reform of Britain’s Company Laws and the Moral Economy of Fair Competition’, *Enterprise & Society*, and research into the political economy of smuggling in *Past & Present*, ‘Fair Trade and the Political Economy of Brandy Smuggling in Early Eighteenth-Century Britain’.

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Nikita Sonavane

Stream: Indigeneity, Law and Empires

Informants of colonial criminality: The legacy of Criminal Tribes Act in contemporary India

The British Criminal Tribes Act, 1871 (CTA) notified several nomadic and semi-nomadic tribes in India as hereditary, habitual criminals, who were naturally predisposed to committing petty offences. To construct criminality, the colonial state used the hereditary caste system as its primary sociological paradigm. The Act subjected these communities to increased surveillance, through confinement to settlements and compulsory registration. A network of police informants, “*mukhbirs*”, has contributed to sustaining this architecture of criminality and surveillance established by the CTA despite its repeal in 1952. Initially, informants were recruited from ‘respectable’ backgrounds: oppressor-caste landlords and educated men from the emerging middle class. Subsequently, the British began to recruit mukhbirs, both men and women, from the criminalised communities themselves. In contemporary Madhya Pradesh (Central India), mukhbirs are predominantly recruited from Vimukta (de-notified tribes) and other oppressed caste communities. The figure of the mukhbir thus remains a permanent fixture in Indian policing. This paper traces this shift in the colonial rationale for selecting informants, from oppressor-caste respectability to the ‘unreliable’ criminal subject. Focusing on policing in Madhya Pradesh, the paper analyses the intra-community tensions generated by the reliance on mukhbirs. Consequently, it underscores how mukhbiri has contributed to the sustenance of the CTA regime by the post-colonial State.

Nikita Sonavane graduated with a B.A. (Political Science) degree from St. Xavier’s College, Mumbai and an LL.B. degree from Government Law College, Mumbai in 2016. She holds an LL.M degree in Law and Development from Azim Premji University (APU), Bangalore. She has worked as a legal researcher and an advocate for three years. She is the co-founder of the Criminal Justice and Police Accountability Project (CPAProject) a Central India-based litigation and research intervention that focuses on building accountability against the criminalisation of tribal communities by the police and the criminal justice system and presses for decarceration. Previously, she worked as a researcher on issues of local governance, forest rights, and gender of indigenous communities in the Western Indian region of Gujarat.

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Tim Soriano

Stream: The Maritime World in Legal History

**"His Majesty's Ponds": Salt and British Rule in the Turks and Caicos Islands
1760-1770**

As the largest source of salt in the Atlantic, the Turks and Caicos Islands, located at the far southeastern tip of the Bahamas, were contested between Britain, France, and Spain. By the 1760s Britain controlled the islands; however, legal disputes arose between the Bahamas and the salt producers. The Bahamas claimed that geographically, the islands were part of their colony, while the salt producers stated that they were independent of Bahamian control. Andrew Symmer, a salt pond manager, was appointed by the Board of Trade to manage the Turks and Caicos. He laid out "Rules and Regulations" for the islands that were to monitor salt production and limit slave laborers. Symmer did not base his laws using English Common Law but focused on how the salt ponds would be managed. Thomas Shirley (the governor of the Bahamas), as he had a royal appointment and established courts, demanded that Symmer place the islands under Bahamian rule. This paper argues that the Crown purposefully kept the legal control of the Turks and Caicos vague. By retaining Symmer, the settlers would retain their customary law practices (as viewed by the Crown) and continue the valuable salt production unimpeded. For the Bahamas, they would be given English Common Law authority over the islanders through the courts in Nassau, if cases in the islands would need a juried legal decision. The quasi-legal status of the Turks and Caicos within the British Empire continued until 1848 when Britain established the islands as a separate colony.

Tim Soriano is a PhD candidate in history at the University of Illinois at Chicago. He is also a Scholar-in-Residence at the Newberry Library, Chicago. He received his BA in Political Science from the University of Mississippi and his MA in History at DePaul University. Tim's dissertation is entitled "The Royal Navy and Legal Authority in Early Sierra Leone". Tim has published "The Peculiar Circumstances of that Settlement": Burnaby's Code and Royal Naval Rule in British Honduras 1570-1791" in *law&history* in 2020 and "What Rascals!" Perceptions of Free Labor in the Bulama Settlement 1792-1793 in *African Economic History* in 2021. Tim has also published book chapters in 2020 entitled "Promoting the Industry of Liberated Africans" in British Honduras 1824-1841" in *Liberated Africans and the Abolition of the Slave Trade* (editors Henry Lovejoy and Richard Anderson, University of Rochester Press) and "The White Ensign on Land: The Royal Navy and Legal Authority in Early Sierra Leone" in *Networks and Connections in Legal History* (editors Michael Lobban and Ian Williams, Cambridge University Press). Tim has presented his work at conferences in the United States, Canada, Barbados, Belize, Ghana, Kenya, the UK, France, and the Netherlands.

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Filippo Sposini

Stream: General

Legal Power and Medical Authority: The Global History of Lunacy Certificates (1850s-1910s)

The confinement of people deemed as insane spanned the modern world. From the beginning of the nineteenth century, an increasing number of physicians, legislators, and intellectuals in Europe and North America accepted the idea that insanity was a disease, that it required a specific treatment, in a specific place, by a specific body of experts. Lunatic asylums emerged as the elective places for care and custody. Admission into such establishments was regulated by a specific legal provision called “certification”.

Throughout the nineteenth century, medical certificates of insanity existed as a statutory requirement for institutional care in the British Empire. Using a standard formula, these certificates declared an individual to be of “unsound mind” and a “proper person to be taken charge of and detained”. In 1853 England introduced a system which proved extremely influential for the development of health provisions around the world. It required one or two medical practitioners to “personally and separately” examine the patient. Doctors filled out a template which included “facts of insanity personally observed” and “facts communicated by others”. This document authorized asylum superintendents to detain patients without temporal limits. Numerous jurisdictions adopted this system in the late nineteenth century, including India, Ontario, Jamaica, Tasmania, Fiji, and many others.

In spite of its extension and longevity, we still know very little about the history of this procedure. My presentation will trace the circulation of certificates of insanity across the British Empire with particular emphasis on North America. By considering their global diffusion, I will describe lunacy certificates as critical devices that held together the power of law and the authority of medicine. Despite the want of uniformity, the spread of certificates of insanity was not a passive process in which colonies simply copied from the metropole. There were many “hybridizations” which raised concerns about the applicability and suitability of British laws and British liberty beyond the seas.

Filippo M. Sposini is a Roy McMurry Fellow in Legal History and a PhD Candidate at the Institute for the History and Philosophy of Science & Technology (IHPST) at the University of Toronto. Trained as a psychologist in Italy and the US, he works on human sciences, medicine, and disability. He wrote on the concept of normality in psychology, the history of deviance in nineteenth-century statistics, and on the provisions for civil confinement in Ontario. His current research focuses on the medical certification of insanity. Taking a transnational perspective, he looks at the diffusion of the “Imperial system of certification” in several jurisdictions around the globe with its consequences for science, medicine, and society.

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Geetanjali Srikantan

Stream: General

Race, Religion and Indian Constitutionalism in the Legal Thought of Arthur Berriedale Keith

Arthur Berriedale Keith is well known for his prolific scholarship as an Indologist and constitutional historian having occupied important academic positions in Sanskrit, comparative philology and constitutional history as well as having a long career in the Colonial Office. There has however been little analysis of how his background as an Indologist may have affected his scholarship on constitutional history. This paper strives to understand how his usage of frameworks and methods within Indology and his conclusions about Indian culture affected his views on Indian constitutionalism and India's place within the empire. It focuses on whether the theme of origins and conflict between races in Indology (Adluri and Bagchee 2014) arises in his work in the larger context of his negative views on Native Americans and Africans. In exploring these interconnections, it focuses on the immigration of Indian labour to other British colonies, the debates around 20th century Indian constitutional reform and, India's dominion status and membership in the League of Nations. It finally concludes by understanding Keith's role as an imperial spokesman and his conception of imperial constitutional reform as controlling disorder.

Geetanjali Srikantan is currently an Independent Scholar and was formerly Assistant Professor of Global Legal History at Tilburg Law School in the Netherlands from 2016 to 2020. Geetanjali trained as a lawyer at the National Law School of India University, Bangalore and the University of Warwick, U.K. Geetanjali holds a doctorate in cultural studies from the Centre for the Study of Culture and Society in Bangalore, India. Geetanjali has held postdoctoral fellowships at the Centre for Developing Societies, New Delhi, the Zvi Meitar Centre for Advanced Legal Studies and the David Berg Foundation Institute for Law and History, Tel Aviv University, Israel. Geetanjali is the author of *Identifying and Regulating Religion in India: Law, History and the Place of Worship* published with Cambridge University Press in 2020. It deals with the historical trajectory of the legal category of "religion" through the place of worship in British India in the context of the theme of secularisation and its universality. Geetanjali has taught courses on global legal history, comparative law and philosophy of law and have published with the *Max Planck Institute of European Legal History* and the *Journal of Law, Religion and State*.

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Mikki Stelder

Stream: General

Panel: Law, Personhood and Racial Capitalism in the History of Empire

The Conquest of Maritime Imagination: Hugo Grotius, Colonial Innocence and International Law

In this paper, I draw on scholarship in critical race and critical ocean studies to interrogate imperial legalities. In particular, this paper turns to ‘conquest’ as a lens to rethink Hugo Grotius’s seminal work *mare liberum*. Although the text is most commonly read as a tract on the free and therefore unconquerable sea, I ask: how might conquest be a productive lens to re-read Grotius’s project? Thinking through Grotius’s *mare liberum* as a conquest of maritime imagination, I show how a Grotian international legal framework continues to determine and inform extractivist and racial capitalist legal regimes. In an effort to conquer how we might look at and juridicalize the seas, Grotius’s work turned acts of colonial and racial violence into colonial innocence, rendering colonial violence unprosecutable.

Mikki Stelder is a postdoctoral fellow at the University of British Columbia and the University of Amsterdam. Stelder is a recipient of a Marie Skłodowska-Curie Global Fellowship for their project *Maritime Imagination: A Cultural Oceanography of Dutch Imperialism and its Aftermaths*. Stelder’s most recent article ‘The Colonial Difference in Hugo Grotius: Rational Man, Slavery and Indigenous Dispossession’ appeared in *Postcolonial Studies*. Other work has appeared in *Radical History Review*, *Journal of Palestine Studies*, and *Settler Colonial Studies*. Stelder is currently working on their book project *The Reluctant Imperialist and Other Dutch Colonial Myths*.

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Kate Stevens

Stream: General

Laughing at law? The limits of humour as critique of Anglo-French legal colonialism in Vanuatu

The introduction of civilised, European law was a cornerstone of narratives of benign and humanitarian colonialism that underpinned imperial expansion into the Pacific during the late nineteenth century, including the joint British and French colonisation of Vanuatu (then the New Hebrides) under the Anglo-French Naval Commission of 1887 and Condominium of 1906. The expansion of European jurisdiction in this island group saw the proliferation of systems of European police, courts, magistrates, and prisons. The Joint Court was the apex of the New Hebrides Condominium, designed to adjudicate on cases that crossed the boundaries of race, nationality and legal procedure. Yet as British colonial lawyer and Condominium critic Edward Jacomb satirised in his play *The Joy Court*, rather than pursuing justice, in its early years the Joint Court served primarily as an arena for articulating and performing national identity and prestige in the context of British and French rivalry. Indeed, from Jacomb's publication to 1950s Gilbert and Sullivan-inspired satire to recent historians, humour has been a key means of disparaging the Joint Court and the operation of colonial law more generally, as bumbling, inept, and comical rather than effective. Varied legal alternatives filled the gaps that officials and observers laughed at, including missionary courts and punitive naval expeditions. This paper explores the ways in which different legal systems were entangled through joint colonisation, the role of humour in critiquing the limits of the court system, while also asking how such characterisations of imperialism in Vanuatu obscure the violence of legal practices if viewed uncritically.

Kate Stevens is a lecturer at the University of Waikato in Aotearoa New Zealand. Her research focuses on connected histories of cultural, environmental, and economic exchange in the colonial and postcolonial Pacific. Beyond joining Waikato, Kate completed my doctorate at the University of Cambridge and a postdoctoral fellowship at the University of Otago. She is currently completing a monography titled *Gender, Race and Criminal Justice in colonial Pacific, 1880-1920*, contracted to Bloomsbury. Her next project is a social and environmental history of the urban Pacific, focusing on Suva and supported by the Marsden Fund.

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Kara W. Swanson

Stream: Intellectual Property in Empire

Panel: Positioning Intellectual Property in North America: Crossing Boundaries from the British to US Empires

Race, Inventors, and Citizens along the Republic of Texas Border, 1836-1846

In June 1836, William F. Gray, a bankrupt lawyer and enslaver, was returning to Virginia after a trip to the Republic of Texas, taken to explore land speculation opportunities. Gray met Mr. January, traveling with a model of a new cotton press. January proposed that Gray engage in another form of speculation, seeking a Texas patent on the device and splitting the profits with January and his partner. Unlike US law, developing Texas patent law required would-be patentees to travel to Texas and become citizens. Gray emigrated, crossing a border to claim citizenship. With him, he brought his human property, depending on other Texas laws to keep the Black women and men enslaved.

This paper argues that the combination of spatial and racial requirements in Republic of Texas laws governing patents, citizenship and racial slavery reflected the changing imperial visions and racial politics of white Texians as Mexico, the United States, Tejanos, and Anglo settlers negotiated the Republic's borders. I compare Texas patent laws and practices to those of the US early republic to analyze how patent laws shaped and reflected spaces of freedom and citizenship for both white and Black English speakers along the US/Texas border.

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Olatunde Taiwo

Stream: Legal Transfers in the Common Law World

British-West Africa's Deportations In The Eyes Of The Law

This study highlights how selected deportations, between 1875 and 1950, explain the encounters between the legal traditions of the retreating Ashanti/Oyo empires and the inbound British common law. The paper explores how the prosecution of potential and eventual deportees like Prince Okoli Okojie, Oba Eshugbayi, Owa of Ijesha, Alaafin Adeniran Adeyemi, Akarigbo Oyebade, Ennimil Kwao of Wassa, and King Amoako-Atta provided models for [un]codified common law adaptations in the Gold Coast/British-Nigeria between 1875 and 1950. These adaptations, I argue, were especially mirrored in the application of such common law principles as repugnancy, azzizes, parole, burden of proof, claim/amount of damages, discretion, presumption of liability, habeas corpus, equity, and good conscience in these areas [Gold Coast/British], and the period in question. This paper similarly hypothesizes that the consequences of such adaptations, for former subjects of imperial Oyo and Ashanti, stands explained by the difference between the precolonial legal ways of the Gold Coast/British Nigeria and the bodies of customary laws [i.e if deported/banished, you can now return] applicable to the areas beyond the 1870s. In the process, the study argues for a revision of Ibhawoh's(2013) conclusion to the effect that judgements in the British imperial courts did not significantly alter colonial agenda. To achieve the foregoing, this work immensely draws on records and litigation transcripts from the West African Court of Appeal, the Judicial Council of the Privy Council, and archives in the USA, United Kingdom, Accra, and Nigeria

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Myra Tawfik

Stream: Intellectual Property in Empire

Mapping the mutations and permutations of British copyright law throughout the Empire: The case of Lower Canada (1791-1832)

I am fascinated by the question of reception of laws, common law copyright and the transplantation of the Statute of Anne within British North America, especially in the former French colony of Lower Canada (modern-day Quebec). British copyright law was not automatically received in British North America, including in ceded New France (Lower Canada). Although Lower Canada's private law was drawn from the French civil law tradition, French copyright law had little influence on policy-makers. Canada's first copyright statute, the Lower Canadian Act 1832, was derived from the Statute of Anne as transplanted into North America.

My presentation will explore the first chapter of my book on the 19C origins of Canadian copyright law (University of Toronto Press, anticipated 2022). I will discuss the underlying legal context that led to the introduction of Lower Canada's statute, and the ways in which the law was interpreted by colonial British North Americans. The 1832 Lower Canadian statute emerged as a result of the interventions of local teachers and education reformers. Colonial policy-makers were also influenced by visitors and emigrants from the UK, Europe and the US, who brought their copyright experiences with them, especially British education innovator Joseph Lancaster. Lower Canada's copyright origin story will add to the scholarly mapping of early British copyright law as it made its way throughout the Empire.

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Fatima-Ezzahrae Touilila

Stream: General

“*The Caliphate question*”: archive of a disruption into the legal imperial order (1914-1926)

In 14 October 1914, the French Ambassador in Constantinople informed his Minister of Foreign affairs of a panislamist pamphlet by Germany in which the German Emperor declared not to be in war against the Muslim world and ordered that all Muslim war prisoners from the French, British and Russian Empire to be released and sent to the Ottoman Sultan, in his quality of “Calif of the Mahometan world.” This message was to cause much disruption and distress for the colonial powers. Most evidently, through declaration of peace to Muslims, while the colonial empires were relying on them at the very front of the war. Moreover, by calling the Ottoman sultan the Caliph of the Muslim World, by recognizing to him this title and sending him Muslim war prisoners, Germany was disrupting the fragile pillars of international law. The processes of extradition of Muslim prisoners threatened the nation-state order and its principle of citizenship, colonial subjecthood by suggesting that Muslims independently of their imperial status are subjected to the Ottoman Sultan. The German proclamations were pointing toward a transnational politico-religious order that overflows the recently erected borders of national belonging and imperial affiliation. It blasts open questions of sovereignty, by pointing toward the discrepancy between territorial sovereignty and a jurisdictional sovereignty (over people) and reopens the Pandora box of questions that follow from it: what does it mean to have sovereignty over Muslim subjects? Can a Christian empire, even when redeemed through secularization ever claim or, *de facto*, achieve such sovereignty? How did concepts of Islamic political jurisprudence influence such debates? This paper explores, through the French diplomatic archives, how the colonial powers, Great Britain and France, faced the issue that territorial conquests, national borders, military power, law and violence do not guarantee the control over people sense of belonging, affiliation, allegiance and loyalism and how they sought to remedy to such a discrepancy in the postwar legal order.

Fatima-Ezzahrae Touilila is a historian of the modern French Empire. She is a doctoral candidate and a teaching fellow at Columbia University. Prior to this, she completed degrees in Law and Political Science at Sciences Po (Paris) and Columbia University. Her current project investigates the legal and political theory that buttressed French colonization in Northwest Africa at the intersection of Islamic political jurisprudence.

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Mary Anne Vallianatos

Stream: General

Canada's Anti-Asian laws: A History of Exception, Race, and Empire, 1885-1949

Canada's head tax—the poll tax that exclusively applied to Chinese migrants from 1885-1923—was openly considered a “monstrous” law by federal law makers. Yet, at the same time, this “tax on human flesh” was accepted as consistent with the rule of law. This paper unpacks this contradiction to rethink the legal history of the head tax specifically, and anti-Asian laws broadly. Anchored within Canada's history of anti-Asian racism, the paper explores how the nation's self-conscious positioning between American and British imperial legalities informed the making of anti-Asian laws and ideas of race. Although Canada would appear to participate in the legal transfer of exclusionary anti-Asian laws across and between white British dominions and settler colonies, domestically Canadian law makers were interested in a uniquely Canadian solution to the “Asian question”. The promise of freedom for Canada's Asian subjects was part of this delicate compromise. This paper explores how commitment to the British abolition of slavery, notions of unfree Asian labour in the United States, and foundational beliefs about the civilizational supremacy of white settlers in Western Canada underwrote the constantly re-negotiated structure of anti-Asian laws. In particular, I describe the place of legal exception, as well as state mediated racial inclusion and recognition as part of this enduring framework. Sources relied on in the paper include the Senate and House of Commons debates concerning the failed efforts to abolish the head tax, its five amendments, newspaper reports, and case law.

Mary Anne Vallianatos is a Schulich Fellow at Dalhousie University and a PhD candidate at the Faculty of Law at the University of Victoria in British Columbia. Her research lies at the intersection of critical race theory, law and empire, and the legal history of anti-Asian racism. Her approach to Canadian history draws on law and empire scholarship to attend to the ways that racial colonial orders were made not only by the retraction of legal protection for certain subjects, but also through its expansion across the former British empire. She has published articles in the *Canadian Journal of Law and Society* and the *Alberta Law Review*. Before grad school, Mary Anne practiced in the area of Canadian Aboriginal law and was active in a number of law reform projects regarding gender equality and housing. Mary Anne has an LLM from Columbia Law School, a JD from the Schulich School of Law, and a BA from McGill University.

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Inge van Hulle

Stream: General

Panel: Colonial Imaginings and the Normative Regimes Concerning Land (19th-early 20th C)

Horror Vacui: Colonial Cartography and the Notion of Emptiness in Title to Territory and Colonial Land Law

During the colonial period, European concepts of title to territory and of legal tenure were used to acquire and to subject unoccupied lands in Africa to proprietary ownership. This paper explores the legal and cartographic use of the notion of emptiness during this process by focusing on land acquisition and colonial land law in the Gold Coast and the Congo Free State. It argues that colonial cartography was not only of material importance in the construction of colonial spaces, boundaries of jurisdiction and sovereignty, but also in the creation and legitimation of colonial land law. During the initial phase of acquisition of territorial sovereignty, colonial maps designated the interior of Africa as blank or empty, indicating a cartographic translation of the Roman law concept of *res nullius*, which played a key role in imperial efforts towards the erasure of African sovereignty from Western legal theory and in the negation of Euro-African treaty practices. After the establishment of colonial rule, administrative maps similarly designation fallow lying lands as *terres vacantes* or waste land and therefore available for exploitation. Colonial maps thus reveal a *horror vacui*, namely a Western need to subject, occupy and cultivate spaces that were legally considered as empty.

Inge Van Hulle is a Max Planck Research Group Leader at the Max Planck Institute for Legal History and Legal Theory in Frankfurt, where she leads the project ‘Legal Connectivities and Colonial Cultures in Africa’. She is an expert in the history of international law and empire and has published on this subject in journals such as *Grotiana*, the *International History Review* and the *Legal History Review*. Her most recent work is *Britain and International Law in West Africa. The Practice of Empire* (OUP, 2020).

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Stefan Vogenauer

Stream: The Maritime World in Legal History

Creating a Legal Order in a Colonial Setting: The Dutch Colonies in Guyana

In 1814, the Netherlands ceded three colonies on the northern coast of South America to the United Kingdom: Berbice, Demerara and Essequibo. Later, the three territories were united and called 'British Guiana', and since gaining independence in 1966 they have been known as 'Guyana'. In the Articles of Capitulation the British and the Dutch agreed that 'the laws and usages of the colony shall remain in force and be respected'. It is therefore generally assumed that British Guiana was, like South Africa and Ceylon, a mixed legal system where 'Roman-Dutch law' applied to the extent that it was not supplemented or superseded by English law. However, the reality on the ground was more complex because the 'laws and usages' in force under Dutch rule were much more varied. Roman-Dutch law was but one of the relevant normative regimes. It is the purpose of this paper to show the multitude and richness of other legal sources that applied in these territories before the transfer to the British occurred, including the importance of Dutch maritime law. It is argued that, despite the difficulties of organising small communities of settlers in a hostile environment more than 4,000 nautical miles from the metropole, the framework of rules and regulations put into place by the Dutch amounted to a comprehensive overseas 'legal order' that cannot be captured by mere reference to Roman-Dutch law.

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Andrea Wallace

Stream: Intellectual Property in Empire

“Another Perspective” of Digital Surrogates in the Public Domain: what Pornhub and the Classic Nudes project can tell us about the empire of copyright

In July 2021, Pornhub launched “Classic Nudes,” an interactive website with six guides to erotic paintings at major museums in France, Italy, Spain, the UK, and US. A seventh guide, called “Another Perspective”, brings together works by artists outside of Europe and by European artists depicting Othered cultures. All artworks are in the public domain. Most were created long before copyright law protected fine art. And new EU laws preclude rights in reproductions of “works of visual art” in the public domain. Yet, this didn’t stop three museums from issuing cease and desists alleging copyright infringement in the digital surrogates. The fallout of “Classic Nudes” reveals the residual imperialism deeply embedded in museum and public practices around collections, curation, digitization, copyright, reuse and even the public domain.

Against this backdrop, this paper examines the legal systems and traditions of empire replicated in the contemporary management of rights and museum collections. It details how copyright has historically disenfranchised marginalized groups from benefitting from the economic and attribution rights attaching to artistic creations, particularly by excluding expressions like “craft” and “antiquity” from protection. It then examines new EU laws that dictate narrowly *which* (i.e., *whose*) “works of visual art” will remain in the public domain upon digitization. While welcome, the paper argues their effect will be to liberate digitized public domain artworks that reflect Western patriarchal and hegemonic values while re-subjecting to copyright the digitized public domain artworks more likely to have been created by women and people of colour. It concludes with recommendations for museums of former empires to counter this “hypercanonization” (Rodriguez-Ortega), which could further relegate these artistic contributions to the margins of history.

Andrea Wallace is a Senior Lecturer in Law at the University of Exeter. Andrea explores legal issues surrounding copyright, restitution, cultural institutions, and the public domain. Her research considers the impact of digital technologies on the preservation, interpretation, and dissemination of cultural heritage and the obstacles and opportunities presented by the digital realm. She frequently writes and presents on open culture and the impact that a claim to copyright in reproductions has on meaningful access to and reuse of cultural heritage in the public domain.

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Valerie Wallace

Stream: Legal Transfer in the Common Law World

Scots law and the British empire: a plea for a new subject

Scots law, opined Scottish historian Andrew Dewar Gibb, was ‘received nowhere in the Empire’. While the Union Treaty (1707) between England and Scotland preserved Scotland’s distinctive legal system, English law, not Scots law, was exported by official statute to Britain’s colonies. Yet Scots law had a greater influence in the British empire than Gibb allowed. This paper will briefly outline the conspicuous absence of Scots law from the historiography on legal pluralism and empires before revealing, drawing on preliminary data, the hidden influence of Scots law on the law of Aotearoa New Zealand and the lived experiences of its people in the long nineteenth century. By considering the interconnections and legal relations between Scotland and New Zealand – two countries at the edge of Britain’s empire – the paper challenges received assumptions about New Zealand’s legal inheritance, and transcends the national framework in which Scots law has traditionally been studied.

Valerie Wallace is a Senior Lecturer in History at Te Herenga Waka-Victoria University of Wellington in Aotearoa New Zealand. She is the author of the prize-winning book, *Empire of Dissent: Scottish Presbyterianism and Settler Colonial Politics* (2018) and the lead researcher on ‘Scots Law and British Colonialism’, a major research project funded by the Royal Society of New Zealand Te Apārangi.

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Mark D. Walters

Stream: General

The Covenant Chain Treaty Relationship and Criminal Justice on the Edges of Settled Canada, 1760-1800

In my paper, I propose to explore the themes of law, empire, and the constitution of normative relationships between European and Indigenous peoples in the Great Lakes region of North America through an examination of the “covenant chain” treaty relationship and the question of “criminal justice”. I will argue that the covenant chain established a kind of inter-societal law or constitution for Europeans and Indigenous peoples, in particular the English/British and the Haudenosaunee confederacy and, later, Anishinaabe nations. I will suggest that exploring how the covenant chain addressed the issue of socially disruptive behaviour within and between communities that had fundamentally different ideas about legal and social ordering, provides us with a particularly good entry point into a deeper and fuller understanding of the rise (and fall) of distinctive forms of intercultural normative or legal ordering within or on the edges of the Empire.

My focus will be on the operation of the covenant chain constitution once the British regime began in Canada in 1760 – with particular attention on how it shaped responses to violent conduct between Europeans and Indigenous peoples on the edges of ‘settled’ Canada. Although English/British authorities already had a century of experience in working with Indigenous nations to develop an inter-societal law on crime under the covenant chain, that law remained unstable and controversial. Questions of *power* and *dominance* would now motivate imperial officials to seek amendments to the law. Yet the covenant chain was more than an imperial tool. It represented a commitment to ideals of *justice* and *legality* appropriate for diverse peoples. The covenant chain’s inter-societal law on crime would endure considerable challenges and only succumb gradually to new colonial legal realities as the nineteenth century dawned. The covenant chain’s durability suggests that its aspiration for a just relationship was, in a sense that is easily overlooked, genuine.

Mark D. Walters is Professor and Dean of Law at Queen’s University, Ontario. I studied at the University of Western Ontario, Queen’s University, and Oxford University. After practising law briefly, I joined the Faculty of Law at Queen’s in 1999, where I remained until I was appointed F.R. Scott Professor of Public and Constitutional Law at McGill University. I returned to Queen’s to become Dean of Law in 2019. I research and publish in the areas of public and constitutional law, legal history, and legal theory, with a special emphasis on the rights of Indigenous peoples, institutional structures, and the history of legal ideas. I am the author of *A.V. Dicey and the Common Law Constitutional Tradition: A Legal Turn of Mind* (Cambridge University Press, 2020). I have written a series of articles and book chapters on Indigenous-Crown relations in British North America, focusing upon the “covenant chain” treaty relationship and the ways in which it used, respected, exploited, and distorted Indigenous systems of law and governance. The paper that I propose for the conference is based on research undertaken for a book I am writing tentatively entitled *The Covenant Chain Constitution: A Legal History of Indigenous-Crown Relations in Canada, 1760-1800*.

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Anjuli Webster

Stream: The Maritime World in Legal History

Border making on the edge of Empire: The English Claim to Delagoa Bay in the nineteenth century

In 1821, Captain Owen of the British Navy stood aboard the ship *Leven* off the coast of Delagoa Bay in south eastern Africa. He was in the midst of a five year mission mapping the east African coast from the Cape of Good Hope to the Horn of Africa. Fifty years later in the 1870s, the documents he produced on this mission were used in a dispute between the British and Portuguese governments over the boundaries and imperial possession of Delagoa Bay. The British claimed that the Portuguese held no meaningful jurisdiction in the area beyond the measure of their forts or guns, and that the section of the Bay from the southern shore of the English River was de facto English territory. The English claim to Delagoa Bay eventually failed. However, the dispute constitutes an important moment in procedures of imperial land speculation and enclosure in the final decades of the nineteenth century. It demonstrates that these developments were rooted in processes reaching back to the 1820s. The geographical surveying and informal legal ethnography conducted in the earlier part of the century was later used to construct borders, enclose territory, and claim imperial sovereignty a decade before the treaty rush of the Scramble for Africa.

Anjuli Webster is currently a Woodruff Fellow in the African History Ph.D program at Emory University. Anjuli trained in history and anthropology at the University of Dar es Salaam, University of the Witwatersrand. Anjuli works on empires, law, and sovereignty in southeastern Africa. Specifically Anjuli is interested in histories of dispossession, enclosure, and border formation between the British and Portuguese Empires along the Indian Ocean littoral in the nineteenth century. Anjuli also has an ongoing project on the intellectual history and sociology of knowledge of anthropology and social science in twentieth-century South Africa.

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Asanga Welikala

Stream: Legal Transfer in the Common Law World

Panel: Legacies of Empire: Roman-Dutch Law in South Africa and Sri Lanka in Historical Context

RDL, Economic Democratisation and Constitutional Development: A Comparative Study of *Fideicommissum* in South Africa and Sri Lanka

A core task of constitutionalism in post-colonial states has been the creation of some level of economic equality as to make democracy possible. The performance of this constitutional task may bring public law and private law into confrontation, where public law is used to achieve public objectives and private law exists to protect private rights. The Roman-Dutch Law institution of the *fideicommissum* was abolished by statute in Sri Lanka in 1972, whereas it survives to this day in the private law of South Africa. The overall constitutional objective of the Sri Lankan abolition was avowedly one of economic democratisation: the removal of the concentration of immovable property in a few families, one of the main bases of the landed elite's political power, by the elimination of this aspect of testamentary freedom. In South Africa, by contrast, the *fideicommissum* as part of the broader private law of succession appears to have survived judicial scrutiny even within the egalitarian framework of the 1996 Constitution, even though economic inequality in post-apartheid South Africa constitutes a far greater constitutional challenge than in Sri Lanka. This paper critically discusses these two contrasting histories of the law of *fideicommissum*, with a view to identifying what they denote for constitutional democracy in the two countries.

Asanga Welikala is a Lecturer in Public Law and Head of the Public Law Subject Area at Edinburgh Law School, and the Director of the Edinburgh Centre for Constitutional Law. He is also an Associate Fellow of the Institute of Commonwealth Studies, University of London, and Research Fellow of the Centre for Policy Alternatives (CPA), Sri Lanka. He is a technical advisor on constitution-building for International IDEA. His research and teaching interests lie in British public law, comparative and Commonwealth constitutional law, applied constitutional theory, and the history of constitutional ideas. He is a leading expert on Sri Lankan constitutional law, and has been engaged in constitutional and legal advisory work in Sri Lanka, Iraq, The Maldives, Nepal, Thailand, Somalia, Egypt, Libya, Myanmar, and The Gambia.

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Tyler Wentzell

Stream: General

Merging the Militias: Adaptation and Exclusion in Early Canada

The colonial governments that joined the Dominion of Canada between 1867 and 1873 shared a relatively homogenous view of service to the state and idealized masculinity as embodied by militia service. From British Columbia to Nova Scotia, militia service was compulsory for men over the age of 18, or 16 in the case of Nova Scotia. While these militias – consolidated into a single federal militia upon entering Confederation – had much in common, there were significant differences among them, and the Militia Department did not incorporate them into the new organization equally. For instance, the Nova Scotian island of Cape Breton went into Confederation with 20 volunteer companies—and emerged with zero. More striking was the robust Métis militia in what became Manitoba. This institution – which persisted as a non-state endeavour – was entirely excluded from the ‘new’ federal militia and wholly replaced by settler militia units and rifle clubs. The militia's behaviour towards the Métis from 1870-1873 was deplorable, some historians dubbing the period 'the terror.' This paper examines the legislation and customs that created the colonial militias and how elements (and people) were incorporated or excluded from the new Canadian militia. It takes a comparative approach – looking at the contemporary Militia Acts of Britain, Newfoundland, New Zealand, and the colonies that become Australia – to examine what adaptations were inherited, shared in the colonial experience, or unique to the establishment of the Canadian state.

Tyler Wentzell is a doctoral candidate at the University of Toronto Faculty of Law, a military historian, and a serving infantry officer at the Canadian Forces College and the 48th Highlanders of Canada. His dissertation in legal history focuses on civil-military relations and the use of the military in state formation and the rule of law in Canada. He has served as an expert witness for the Crown regarding the domestic use of military force in what became Canada in the early nineteenth century. He has published his work in *Labour/Le Travail*, *Ontario History*, *Canadian Military History*, the *Canadian Army Journal*, and the *Canadian Military Journal*. His first book, *Not for King or Country: Edward Cecil-Smith, the Communist Party of Canada, and the Spanish Civil War*, is now in print with the University of Toronto Press. He is a Vanier Scholar and McMurtry Fellow.

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David V. Williams

Stream: General

Panel: People and institutions: New Zealand connections with the British Empire

‘Office’ and the colonised in Tanganyika and New Zealand, 1920-1945

My presentation will reflect on recent work by Nicole Roughan, Janet McLean and Paul McHugh on the notion of ‘office’ and ‘officers’. In the imperial metropolis understandings of office in cases such as *Entick v Carrington* are the backdrop to evolving notions of legality and rule of law exemplified by A V Dicey. In recent times Timothy Endicott has associated Dicey and others with the ‘negative conception of public powers’ according to which no public powers exist unless they have been specifically conferred by law. Endicott prefers a ‘positive conception’ whereby public authorities have open-ended, inherent powers to carry out their own appropriate role for the public good unless such a power is specifically taken away by law. But in the colonial periphery who defined what was for the ‘public good’ of the colonised? One answer is officers such as District Officers in ‘indirect rule’ Tanganyika Territory, and Native Land Court judges in settler dominion New Zealand in the period 1920-1945. Both are examples of officers of a colonising state whose job descriptions and whose actual praxis involved them in policy making for natives, in legislating, and in adjudicating. The notion of separation of powers was not relevant to how these colonial officers dealt with Africans and Māori in that period.

David V. Williams is a Professor Emeritus and Honorary Research Fellow at the University of Auckland, New Zealand. He has tertiary qualifications in history, law and theology. His PhD is from the University of Dar es Salaam in Tanzania where he taught in the 1970s. He has held a number of visiting positions at the University of Oxford and the University of Dar es Salaam. He continues to work as an independent researcher on Treaty of Waitangi claims by indigenous Māori. He is an Honorary Fellow of the American Society for Legal History and a Fellow of the Royal Society of New Zealand Te Apārangi.

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Sarah Winter

Stream: General

Writs Crossing Borders: Transimperial Habeas Corpus and the History of Human Rights

In June 1954, American lawyer Luis Kutner proposed an international writ of habeas corpus to enable political prisoners to petition the United Nations for review of their detentions. Kutner's unsuccessful proposal recalls the 1679 Habeas Corpus Act in England and subsequent uses of the writ of habeas corpus as an instrument by which the jurisdictions of the English high courts could cross borders. Taking the habeas corpus procedure as lens to examine the history of human rights as a regime of international law that influences legal interchanges and conflicts between empires, the paper focuses on an 1861 Canadian case, *Ex parte Anderson*. British abolitionists petitioned the Queen's Bench to issue a writ of habeas corpus into Canada for the fugitive slave, John Anderson, to prevent his extradition to the United States for murdering his master in Missouri during his flight. Anderson's release elevated his personal right to asylum from slavery above the requirements of an extradition treaty, thus establishing a transimperial human rights jurisdiction of the Queen's Bench that was immediately restricted by Parliament in 1862. The case also appears as a precursor for activists' implementation of habeas corpus as a human rights remedy on behalf of detained refugees today.

Sarah Winter is Professor of English and Comparative Literary and Cultural Studies at the University of Connecticut, Storrs, USA and Co-Director of the Research Program on Humanitarianism at the UConn Human Rights Institute. An interdisciplinary scholar of British literature of the long nineteenth century, human rights, and the history of law and the modern disciplines, she has published most recently a co-edited collection, *From Political Economy to Economics through Nineteenth-Century Literature: Reclaiming the Social* (Palgrave Studies in Literature, Culture and Economics, 2019). She has also published recent chapters in: *The State of Nature: Histories of an Idea*, Mark Somos and Anne Peters eds. (Brill 2021); *Empire and Legal Thought: Ideas and Institutions from Antiquity to Modernity*, Edward Cavanagh ed. (Brill 2020); and *Fictional Discourse and the Law*, Hans J. Lind ed. (Routledge 2020). Her current book project focuses on the history of habeas corpus, empire, and human rights narratives.

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Heather Wolfram

Stream: General

Panel: The Social and Political Histories of Forensic Science in the British Empire

Cairo's Medico-Legal laboratory during the Inter-War Period

In the 1930s, as both medico-legalists and forensic scientists in the United Kingdom argued for the necessity of a national laboratory for the forensic sciences and contemplated its ideal structure and personnel, the Home Office looked to the Empire for models. While the institutionalization and professionalization of forensic medicine and science in Britain had been piecemeal throughout the late nineteenth and early twentieth centuries, the exigencies of the colonial context in this same period led to the foundation of highly-organised and well-integrated medico-legal and chemical services in a number of colonies. Of particular interest to Home Office officials investigating potential models for a British national laboratory was the medico-legal institute in Cairo. As these officials soon realised, however, the nature of medico-legal work in Egypt had necessitated the development of a laboratory quite different from that required in Britain.

Using the correspondence of Sydney Smith, manuals of laboratory routine and Home Office materials, this paper will consider how inter-war Egypt's political, cultural and criminal contexts shaped the Cairo medico-legal laboratory's development, scientific work and physical structures.

Heather Wolfram is a historian at the University of Canterbury, New Zealand. She is the author of the monographs *Forensic Psychology in Germany: Witnessing Crime, 1880-1939* and *The Stepchildren of Science: Psychical Research and Parapsychology in Germany, 1870-1939* as well as papers on Northwestern University's Scientific Crime Detection Laboratory and medico-legal networks in the British Empire.

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Nurfadzilah Yahaya

Stream: General

Panel: Colonial Imaginings and the Normative Regimes Concerning Land (19th-early 20th C)

The Role of the Foreshore in Land Reclamation

This paper focuses on the changing status of territory known as the foreshore, the part of the shore that is wholly covered by the sea at high tide and wholly uncovered at low tide, valuable primarily because it provided an entry to the sea. The foreshore functioned as a “hydroborder” to borrow Isabel Hofmeyr’s term, “where the ‘normal’ anxieties of the boundary were exacerbated by ecological uncertainty.” In British jurisdictions, the foreshore had always occupied a special place since access to the sea had to be guaranteed. Even before land reclamation became common throughout British Empire in the twentieth century, characteristics of the foreshore as a recognised buffer zone between land and water challenged the bifurcation of land/maritime law in coastal regions. The intensification of land reclamation made the foreshore even more crucial as a gateway to the process which eventually brought a new enemy on the horizon for residents in coastal regions - coastal development which subsequently disadvantaged those whom it was supposed to benefit for example to rising costs post-reclamation. Something about control over watery spaces, a relatively new form of domination, resist risk assessment necessary for compensation requests.

Nurfadzilah Yahaya is a historian at the National University of Singapore. I specialize in legal history, histories of Southeast Asia, Islamic law, mobilities, and the Indian Ocean. I received my PhD in History at Princeton University in 2012. Between 2012 and 2015, I was the Mark Steinberg Weil Early Career Fellow in Islamic Studies at Washington University in St. Louis. My book *Fluid Jurisdictions: Colonial Law and Arabs in Southeast Asia* was published by Cornell University Press. My second book will be on the history of land reclamation in the British Empire. I have published in *Journal of Women’s History, Law and History Review, Muslim World* and *Indonesia and the Malay World*. I currently serve on the editorial boards of *Journal of Southeast Asian Studies, Journal of Global History* and *Journal of Indian Ocean World Studies*.

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Jeremy Young

Stream: The Maritime World in Legal History

Legal limits to maritime labour in France and Britain in the second half of the 18th Century

In the second half of the 18th century, France and Britain were two of the most important colonial empires in the world. Their richness and power relied on maritime trade in the context of the first globalisation. To defend and expand this trade, both countries had to develop systems of forced maritime labour in their war navies in the form of impressment for the Royal Navy and “le système des classes” for the French Navy. Both those systems have often been misrepresented as violent and arbitrary, conscripting seamen indiscriminately. However, this vision might not be completely accurate and there was in fact an important set of legal limits to those forms of recruitment. For instance, some maritime labourers were protected from forceful recruitment in the king’s fleets, sometimes the system meant seamen were only supposed to serve for a limited period. This paper proposes to study the limits of forced maritime labour in both France and Britain using some of the contemporary legislation about manning the fleets but also some original resources held in the archives of the two countries, such as certificate of exemptions or logbooks to the “système des classes”. It will also touch on how the two systems limited other forms of maritime labour especially in the merchant navies.

Jeremy Young PhD, French and British Historian, studied History in France at the University of Paris Saclay before studying political science at the ICES. Then moved to the United Kingdom to study Diplomacy at the University of Nottingham and a PGCE at the University of Southampton. Started his PhD at the university of Paris Saclay under the direction of Serge Benoit before moving to the University of South Brittany under the direction of Sylviane Llinares. He currently teaches International History at Valor International Scholars in Anseong, South Korea. He is also a member since 2017 of the Historical Society of Guadeloupe (Société d’Histoire de la Guadeloupe). He joined a work group on maritime labour hosted by Jordi Ibarz and Enric Garcia-Domingo of the university of Barcelona. This allowed me to participate in several conferences and publications. His thesis was a comparative study of maritime recruitment in France and Great-Britain (1756-1783). It focused on the method of recruitment and the chronic shortage of seamen, but it also touched upon questions of forced labour and the use of slaves and black seamen.

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David Zammit (with Seán Patrick Donlan)

Stream: General

Divisions, Subdivisions, and Distinctions: Sir John Stoddart, Malta, and Empire's Law

In the first half of the nineteenth century, Malta experienced considerable change. Before French invasion and occupation, it was a sovereign state governed by the *Knights of St John* and closely linked to the *ius commune*. After the expulsion of the French, Malta was first a British protectorate before becoming the 'old world colony' of a European imperial power whose legal systems and traditions were very different from their own.

Central to the shifts was Sir John Stoddart (1773-1856). An English civilian, Stoddart had an Oxford DCL and experience in Doctors Commons. He served as Advocate of the Crown and of the Admiralty of Malta (1803-1807) and later as both Chief Justice and Justice of the Vice-Admiralty Court (1826-1839). He also spoke fluent Italian, the language of the Maltese elite, its legal doctrine, legislations, and judicial decisions.

While British legislators and jurists considered legal codification for themselves and the empire in the 1830s, Stoddart participated in a Royal Commission debating the codification of Maltese law. In that role, his support for both the English language and its laws, despite his own eclectic background, increasingly put him in conflict with the Commission's Maltese members. When a second Royal Commission, including John Austin, sought to rationalize Maltese legal institutions and finances, they emphasized instead the invaluable expertise and experience of its native jurists. Their work resulted in, among other things, the elimination of the office of Chief Justice. Stoddart's role as an agent of empire, of English and English laws, was over.

Dr David Zammit is a Senior Lecturer at the *University of Malta's* Faculty of Laws, where he heads the Department of Civil Law and directs the *University of Malta Law Clinic*. His research interests span legal anthropology, comparative law, tort law, human rights and anthropology in/of Southern Europe. Dr Zammit has conducted anthropological research in Maltese courts and legal offices. In 2006, he was awarded a Fulbright research scholarship to study clinical law teaching at the *University of Villanova Law School*. Between 1997-2014, he was Executive Editor of the *University of Malta's Mediterranean Journal of Human Rights*; publishing 17 volumes. In 2019, Dr Zammit's article 'Vernacularising Asylum Law in Malta' was the first winner of the *University's Human Rights Award*. In 2019 he was also awarded €60,000 *University of Malta Research Excellence Award* for his project *Systematising Smart Contracts within Classical Contract Law Theory*.

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Yuan Yi Zhu

Stream: Legal Transfer in the Common Law World

The Chinese Habeas Corpus: Legal Transfers and the Limits of the Common Law World

What is the common law world? Studies of common law legal transfer have understandably focused on those countries whose legal system was directly based on English law. However, exploration further afield can be revealing in different ways. Through a series of case studies based on the history of habeas corpus—the emblematic common law writ—in modern Chinese history, I aim to show that the limits of the common law world are in fact far wider than generally acknowledged, and that legal transmission could take place in the most unexpected ways.

Yuan Yi Zhu is a DPhil candidate in International Relations at the University of Oxford, an Associate Member of Pembroke College, Oxford, and a Senior Research Fellow at the Judicial Power Project.

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Panels

General Stream

People and institutions: New Zealand connections with the British Empire

The conference's Call for Papers seeks papers on the role played by law (broadly defined) in facilitating, constituting, and enabling connections; on people of law who moved between places; and the institutions which bound them together. Sir George Grey was one of those people who moved between places in the Empire [South Australia, Cape Colony and New Zealand]. Littlewood's presentation will outline little studied aspects of Grey's government revenue and taxation policies. The Privy Council was a central institution of the Empire. Sanders' presentation will outline an appeal by a Māori tribe to both the Judicial Committee and also its political counsellors around the centenary of the Treaty of Waitangi that had ushered in British colonial rule in 1840. Williams' paper will focus on the role of 'office' in understanding the role of District Officers in indirect rule Tanganyika Territory, and of Native Land Court judges in settler dominion New Zealand in the period 1920-1945. One observable similarity between these distinctly different colonial contexts was that such officers had job descriptions that took no account of separation of powers notions as they engaged in policy making for natives, in legislating for them, and in adjudicating their disputes.

Sir George Grey's Machiavellian Constitutional and Fiscal reforms in Aotearoa New Zealand, 1845-1875

Michael Littlewood

This paper examines the origins, aims, terms and consequences of the New Zealand Constitution Act 1852 (UK), which was designed by the Governor, Sir George Grey, and which divided the colony into provinces – first six, then ten. There were hardly any roads, so allowing isolated communities a degree of autonomy made obvious sense. But Grey's more sinister aim was not merely to allow the provinces a measure of self-government, but also to burden them with the cost. The colonial regime itself kept tight control over its two main sources of revenue (land sales and customs duties) and also over the military, but it abdicated its responsibility for almost everything else. The provinces were free to build and operate roads, wharves, railways, schools, hospitals and so on – but they would have to pay for them themselves. That they did, mainly by means of taxes on land and tolls on roads.

Only twenty years later, the difficulties of communication had been solved, by means of roads, railways and the electric telegraph. Moreover, the colonial government, chronically insolvent prior to Grey's arrival, was financially secure. It had resorted to the widespread seizure of Māori land by force, rather than buying it (so the revenues derived from land sales had improved exponentially); and it had reduced smuggling to a tolerable level (so the revenues from the customs duties were likewise greatly improved). It had also, in 1866, introduced stamp duties and death duties, and centrally-administered taxes on land and incomes were on the horizon. The provinces had served their purpose, and in 1875 they were abolished. Since then, New Zealand has had one of the most centralised systems of government in the world, and the Māori people are still suffering the catastrophic loss of their land.

Appealing to Empire: The Treaty of Waitangi at the Centennial, New Zealand 1940

Katherine Sanders

My presentation will discuss narratives of the Treaty of Waitangi, signed by representatives of the British Crown and of some indigenous Māori tribes, around the time the Treaty's centenary was marked on 6 February 1940. I explore the performative nature of argument about the meaning of the Treaty at its centennial, and the way in which debates about the legal and constitutional status of the Treaty were framed by the culture and politics of marking (and making) a national milestone.

Concepts of empire and its legal and political reach were also at play in these debates. In late 1940, the case of *Hoani Te Heuheu Tukino v The Aotea District Maori Land Board* was argued before the Judicial Committee of the Privy Council in London. The advice of the Committee in *Te Heuheu* remains the leading authority for the proposition that the Treaty of Waitangi is not enforceable in the New Zealand courts, except where it has been incorporated in legislation. Yet this outcome was not unexpected; the case was part of a wider strategy that aimed for the "restoration" of the Treaty. Following the loss, the claimant Te Heuheu, leader of a Māori tribe, planned to appeal directly to Privy Councillors in the United Kingdom and its overseas Dominions in their capacity as political advisers to the Crown. A "Memorial of the Māori People of New Zealand to the Privy Council" would set out the Treaty as a solemn compact between Māori and the Crown and highlight its breach.

Exploring *Te Heuheu* in the context of centennial events in New Zealand, this paper takes the Treaty's centenary as an opportunity to consider the role of ideas of empire in debate about how to tell stories of law and history.

'Office' and the colonised in Tanganyika and New Zealand, 1920-1945

David V. Williams

My presentation will reflect on recent work by Nicole Roughan, Janet McLean and Paul McHugh on the notion of 'office' and 'officers'. In the imperial metropolis understandings of office in cases such as *Entick v Carrington* are the backdrop to evolving notions of legality and rule of law exemplified by A V Dicey. In recent times Timothy Endicott has associated Dicey and others with the 'negative conception of public powers' according to which no public powers exist unless they have been specifically conferred by law. Endicott prefers a 'positive conception' whereby public authorities have open-ended, inherent powers to carry out their own appropriate role for the public good unless such a power is specifically taken away by law. But in the colonial periphery who defined what was for the 'public good' of the colonised? One answer is officers such as District Officers in 'indirect rule' Tanganyika Territory, and Native Land Court judges in settler dominion New Zealand in the period 1920-1945. Both are examples of officers of a colonising state whose job descriptions and whose actual praxis involved them in policy making for natives, in legislating, and in adjudicating. The notion of separation of powers was not relevant to how these colonial officers dealt with Africans and Māori in that period.

General Stream

The Social and Political Histories of Forensic Science in the British Empire

Chair and commentator: Mitra Sharafi, University of Wisconsin–Madison,

This panel explores the social and political context in which various forensic sciences and forensic laboratories emerged throughout the British Empire, during the late nineteenth and early twentieth centuries. Spanning three continents—North America, Africa and Asia—panelists examine how social and political context shaped forensic sciences such as ballistics, foot-printing, and arson investigation. The panel aims to deepen our understanding of the ways in which legal knowledge, and the science that supports it, were constructed and manufactured. In so doing, panelists challenge the perception—prevalent among legal scholars—that forensic sciences are created and vetted by scientists, then adopted by the legal system only after they have been peer reviewed and broadly accepted within the scientific community. Instead, we demonstrate that as a historical matter, the process has often been reversed, particularly in the colonial context in which many early forensic sciences were developed: legal necessities were often the driving forces behind forensic innovations, which emerged in particular social and political contexts.

Investigating Incendiarism in Nineteenth-Century Canada

Catherine Evans

In 1877, the Superintendent of Insurance for the Dominion of Canada submitted a report to Parliament in which he warned of the damage fires were doing to the wealth of the country. In the previous year, hundreds of houses in “wooden towns” had burned down, costing householders, businesses, and insurance concerns some seven million dollars. Three-fourths, he guessed, were the product of a scourge that went widely uninvestigated and unpunished in Canada: arson.

Incendiarism was a major economic and social concern in the nineteenth-century British empire, where it preserved its longstanding association – noted equally by Victorian officials and contemporary historians – with class unrest and political subversion. In fact, some colonial commentators argued that the Canadian climate, weak infrastructure, and the presence of Indigenous people made fire an especially acute danger. And yet, statutes limited officials’ ability to prosecute arson, often leaving it to insurance companies to initiate and fund fire inquests. When coroners did investigate, the unsettled state of fire forensics and lay disagreements about the signs of incendiarism, including the psychological and demographic profile of the ‘arsonist,’ further complicated matters. Focusing on coroners’ inquests in nineteenth-century Ontario, this paper explores the evidentiary and procedural barriers to arson prosecution at a time when the threat of fire seemed particularly acute.

Cairo’s Medico-Legal laboratory during the Inter-War Period

Heather Wolfram

In the 1930s, as both medico-legalists and forensic scientists in the United Kingdom argued for the necessity of a national laboratory for the forensic sciences and contemplated its ideal structure and personnel, the Home Office looked to the Empire for models. While the institutionalization and professionalization of forensic medicine and science in Britain had

been piecemeal throughout the late nineteenth and early twentieth centuries, the exigencies of the colonial context in this same period led to the foundation of highly-organised and well-integrated medico-legal and chemical services in a number of colonies. Of particular interest to Home Office officials investigating potential models for a British national laboratory was the medico-legal institute in Cairo. As these officials soon realised, however, the nature of medico-legal work in Egypt had necessitated the development of a laboratory quite different from that required in Britain.

Using the correspondence of Sydney Smith, manuals of laboratory routine and Home Office materials, this paper will consider how inter-war Egypt's political, cultural and criminal contexts shaped the Cairo medico-legal laboratory's development, scientific work and physical structures.

The Ceylon Police Footprint Bureau: The Untold History of a Forgotten Forensic Science

Binyamin Blum

Tracking the footprints of both animals and humans is an ancient art. Beginning in the nineteenth century colonial officials began harnessing this knowledge to combat crime. Throughout the British Empire, colonial authorities employed native trackers—African Bushmen, Australian Aborigines, Maoris in New Zealand, Bedouin in the Middle East, Khoji in India—to assist them in detecting crime and in bringing offenders to justice. Depending on the time and place, such trackers were often allowed to testify in court about their findings, even when they were unable to articulate their precise methods to judicial factfinders.

In the twentieth century, British authorities redirected their efforts towards making footprinting at least *appear* more scientific. The purpose of doing so was twofold: first, to make it admissible in court; second, to make it teachable to British police forces without relying on local trackers. This paper analyzes one such effort in British Ceylon during the 1920s. Replicating the success of fingerprinting in identification, Ceylonese officials began collecting footprints through a newly created “Fingerprint Bureau,” to assist in criminal identification. Relying on the fact that much of the population in Ceylon did not regularly wear shoes, the hope was that footprints would help prosecute burglaries even when no eyewitnesses were present. Footprints, it was argued, were often more prevalent and pronounced than fingerprints at crimes scenes, because the feet bore the entire weight of an intruder's body. Though the Ceylonese government invested considerable resources in collecting samples, footprints ultimately did not prove particularly useful in crime detection or prosecution. The paper explores some of the reasons why the Ceylonese government continued to invest in this forensic technology despite its uselessness.

General Stream

Legal Pluralism in Colonial and Pre-colonial South Asia

Chair: Aparna Balachandran

The papers in this panel are historical explorations of legal pluralism in South Asia that span the period from the 16th to the 19th centuries. Ranging temporally from pre-colonial Islamic legal regimes to the period of British colonial rule, and geographically from Kashmir in the north, to the Malabar Coast, they address a range of issues concerning the nature of legal pluralism in South Asia at specific and disparate historical moments, and political contexts. The authors are specifically concerned with the ways in which both institutions and the law have travelled, both across time and place and between and within empires, producing sites with overlapping jurisdictions and complex legal subjects.

In the proposed panel, Aparna Balachandran looks at the jurisdictional complexities in the adjudication of disputes in Catholic churches run by French and Portuguese authorities by the East India Company's government in the city of Madras in the early 19th century. Rachna Singh's analyses local level negotiations for changes in proposed standard uniform rules for messing introduced by British officials in colonial prisons in India. Yasser Arafath's paper is a close textual reading of the *Fath-ul-Muin*, a 16th century jurisprudential volume written in Arabi Malayam and directed at Muslims in the Indian Ocean in the period of Portuguese expansion in the region. Finally, Anubhuti Maurya's paper displaces the notion of a centralized legal authority flowing from the Mughal state by looking at jurisdictional politics played out between forums of adjudication in the Sultanate of Kashmir and Mughal imperial authority through a lens of a case of homicide in the late 16th century.

Catholics and Others: Religion and Legal Pluralism in Early Colonial Madras

Aparna Balachandran

Under East India Company rule, early colonial urbanism in the south Indian port city of Madras was characterized by an exceptional degree of legal pluralism marked by the co-existence of English, European, international and indigenous law, as well as custom. In this patchwork of multiple and overlapping jurisdictions, the administration of the city's Catholic churches with their large numbers of native worshippers - many of them from the lowest rungs of society - was a particularly complex matter. European church officials claimed sovereign authority over the spiritual and religious lives of their congregations even as they struggled with an increasingly powerful Protestant English government that sought to control quotidian secular matters concerning the churches.

In this paper, I begin by examining a series of disputes from the early 19th century between outcaste "Pariah" worshippers and their French and Portuguese priests over the administration of their churches. The former's negotiations with the plural legal context that they inhabited is evidenced in their self-articulation as urban, legal subjects on the one hand, and as Christians on the other. The ideology and practices of early colonial governance both enabled, and shaped the language and forms of the legal subjectivity of colonized subjects, as well as the character of subaltern Christianity, and the category of religion itself.

Universal templates, local renditions: Feeding prisoners in the colonial jails of the 1840s

Rachna Singh

Between 1838-41, the colonial state in India, imposed standardized dietaries and common messing for prisoners inside its jails. The measure arose from a larger wave of Utilitarian reformism that sought to make punishment more frugal, predictable and uniform. Depriving prisoners of the ‘pleasure’ of cooking, and simultaneously imposing the obligation to do hard work was designed to add to the terrors of imprisonment, and thus enhance the punitive and deterrent components of punishment. While bland jail circulars laid out universalizing templates for these transformations within penal regimes, the actual arrangements that were transacted at the local level varied tremendously from jail to jail, to the extent of seriously qualifying the import of the regulations.

In this paper, I look at a range of ways in which prisoners, administrators and ordinary civilians weighed in to secure adjustments or changes in the proposed norms for standardized messing. The official specification of equal-sized messes of twenty prisoners each was thwarted by the pressure to accommodate caste and commensality norms that, in the process came to be represented in highly specific and variable ways. Thus, the history of a specific mode of penal reformism in the early 19th century serves as a rich context from which one can prise open the shades of legal pluralism in early colonial regimes

The Curious Incident of Yusuf Aindar: Contesting Orders of Justice and Politics in Early Modern Kashmir

Anubhuti Maurya

My paper focuses on the case of a homicide in Kashmir in the 16th century in order to reflect on how law was understood and practiced in a regional Sultanate, in a context marked by jurisdictional conflicts with the Mughal imperial authority that was aspiring to consolidate its power in the region.

I analyze an unusual case from the city of Srinagar where a local court appeared to have overstepped the bounds of its power, and of accepted convention in dealing with particular types of crimes. In 1581, Yusuf Aindar was executed on the orders of the Kashmiri qazat on the charges of having hurt a man in a scuffle. The unusual severity of the punishment meted out caused widespread disquiet that resulted in heated public debates about the role and powers of the Sultan on the one hand and the Mughal emperor on the other. The case both presented, and was constitutive of the jurisdictional tensions between the regional Sultanate of Kashmir and the supra regional Mughal state. Thus, I argue that the case of Yusuf Aindar, which played out in multiple theatres, and through a web of deliberations between state and non- state actors, illuminates the complexities of a regional legal order at the cusp of assimilation into a larger imperial system, marked as it was, by quotidian negotiations between different sources of law and notions of justice.

Community and Jurisprudence in Malabar, 1500-1600: A Reading of Fath-ul-Muin

Yasser Arafath, Department of History, University of Delhi

This paper focuses on the Fath-ul-Muin written by Zainuddin Makdhum II, a major scholar of shafi’ite Islam in the pre-modern period in the background of the Portuguese invasions in late 16th century Malabar. Makdhum II, who saw himself as a mujtahid or an independent

interpreter, wrote the text by incorporating into it legal ideas from a range of Islamic juridical scholars who belonged to different, and often conflicting, schools of law.

Addressing the political, economic and religious turmoil that engulfed the coastal Muslims of Malabar with pietistic anxiety in the late 16th century, the Muin is a legal and religious text directed at “freeman, free women, children, slave and protected non-Muslims.” For Makhdum II, Malabar was the Darul Islam, the originary land of Islam, and as the foremost legal and spiritual authority of Muslims in the region, he deployed the Muin to enable the Muslims of Malabar to weather the storm of the transitional period of turmoil that he referred to as fasad. Written in Arabi-Malayalam in the context of the impending loss of political support and economic stability, the Muin is a didactic text that sought to provide its readers a sense of kinship and a notion self governing community to allow it to negotiate with its troubled times.

General Stream

Law, Personhood and Racial Capitalism in the History of Empire

This panel offers new perspectives on law's enabling of the racial capitalist project, focusing on the European merchants', administrators' and lawyers' denial and predatory conceptualisations of personhood of enslaved Africans that set in motion colonial extractive economies. We pay particular attention to the way legal personhood is allocated, denied and instrumentalised to (dis)possess, extract, redistribute and capitalise on some legal entitlements and relationships, and to deny, subject or delimit others. Grietje Baars' paper explores the question of precisely how the corporate legal form takes shape in the colonial encounter, starting from the Dutch East India Company. Centred around the resistive remnants of Black and Indigenous gender nonconformity in a distinct legal and social context of racial capitalist labour regulation in eighteenth-century New Orleans, Vanja Hamzić's paper engages the temporality of work and selfhood in its violent, extractive modes. Ed Jones Corredera's paper studies how companies of freed Black people in eighteenth-century Venezuela exploited Spanish legal norms and inconsistencies to expand their trade with non-Catholic merchants, including the Dutch West India Company. And Mikki Stelder's paper centres on 'conquest' as a lens to rethink Hugo Grotius' seminal work *mare liberum*, and finds that Grotius' work turned acts of colonial and racial violence into colonial innocence, rendering colonial violence unprosecutable. With our new archival work, we hope to facilitate generative approaches to the many challenges facing today's society, still haunted by the spectre of racial capitalism, cloaked in legal innocence.

The Making of the Corporate Legal Form in the Colonial Encounter

Grietje Baars

In his seminal monograph 'Imperialism, Sovereignty and the Making of International Law', author Anthony Anghie claims that both Third World states and international law are created not as previously believed by European powers, but are shaped by the colonial encounter (Anghie: 2007). Anghie's monograph was paradigm-shifting for the discipline of international law. It is well known, however, that the colonial enterprise was perpetrated by European merchants and explorers (rather than states) through legal vehicles first known as joint-stock corporations, which evolved to become the multinational corporations we know today. The question this project explores is: 'precisely how did the corporate legal form take shape in the colonial encounter?' Although there existed legal forms of incorporation in Roman law and also in Islamic law, it was the Dutch financial inventions that lay at the core of the legal construct of the corporation as we know it around the world today, so my research is focused here. A motivation for this research is to discover what particular dynamics and/or processes have been hard-wired into the corporate legal form from its inception in the early colonial era and are still present today.

Labours in Time and Subjectivity: Gender Nonconformity, Law and Racial Capitalism in the Making of Eighteenth-Century New Orleans

Vanja Hamzić

This paper engages the temporality of work and selfhood in its violent, dispossessive modes, which figure as an abiding feature of racial capitalism. I argue that gender nonconforming individuals and communities of colour in colonial Louisiana were systemically dispossessed

not only due to their perceived race and class, but also due to their gender difference. Bringing forth a range of resistive remnants of circum-Atlantic Black and Indigenous gender nonconformity, the paper centres on the distinct legal and socio-temporal contexts of eighteenth-century New Orleans, which reveal a changing landscape of racial capitalist regulation of the gender binary and the sites of labour.

New Orleans, this uneasy city—which had been, from its very founding, designated as the devil’s own domain for its ostensible sexual, gender, class and racial transgressions—offers a unique insight into the centrality of socio-economic alienation of certain forms of gender and bodily labour for the enduring project of racial capitalism. But I also ask what practices of temporal alienation, or *distemporalisation*, such forms of labour would have to contend with, and just how, in turn, gender nonconforming subjectivities—whether enslaved or free—among New Orleanian communities of colour organised and sustained their resistance to such systemic violence.

Corporations, Race, and Legal Reform in Eighteenth-Century Venezuela

Edward Jones Corredera

The Spanish Empire has traditionally been understood a polity based on patronage networks and loyalty to the Spanish King. This paper shows, by studying the case of eighteenth-century Venezuela, that foreign and local corporations were central to the economic and social life of the Spanish Empire, and their unclear legal status within the empire often led to ad-hoc forms of contestation and protest against the racial, economic, or social hierarchies within the empire.

This paper will explore the racial and religious dimensions of various instances of contestation of power from below, and their impact in shaping corporate legislation in Venezuela, where companies of freed Black people, the Caracas Company, the Dutch West India Company, and local merchant elites harnessed legal loopholes to their advantage. It will focus, in particular, on the complicated legal status of the companies of freed Black people in the region. It will show how the law responded to their transformation: created as militia companies to repress and contain communities of freed Black people, these companies developed into important economic networks that cooperated with Dutch merchants and freed slaves from Curaçao, challenging and problematizing the Spanish legal order.

The Conquest of Maritime Imagination: Hugo Grotius, Colonial Innocence and International Law

Mikki Stelder

In this paper, I draw on scholarship in critical race and critical ocean studies to interrogate imperial legalities. In particular, this paper turns to ‘conquest’ as a lens to rethink Hugo Grotius’s seminal work *mare liberum*. Although the text is most commonly read as a tract on the free and therefore unconquerable sea, I ask: how might conquest be a productive lens to re-read Grotius’s project? Thinking through Grotius’s *mare liberum* as a conquest of maritime imagination, I show how a Grotian international legal framework continues to determine and inform extractivist and racial capitalist legal regimes. In an effort to conquer how we might look at and juridicalize the seas, Grotius’s work turned acts of colonial and racial violence into colonial innocence, rendering colonial violence unprosecutable.

General Stream

Israeli regimes of citizenship, immigration, enemies, and space, in comparative perspectives

The panel includes three papers, which examine the Israeli control of Israel within the “Green Line” and the Occupied Palestinian Territories in comparative perspectives, employing several theoretical outlooks, including imperialism, settler colonialism, military regime, state of exception and more. The three papers are interdisciplinary and look not only on the top-levels of the legal system, but simultaneously to additional legal institutions and actors, including the Israeli military Appeal Committee, additional Israeli military courts, and state bureaucracies. In contexts of land disputes, the treatment of “enemy combatants,” and rules concerning citizenship and immigration, we compare the Israeli situation to the U.S. Indian Claims Commission, the U.S. War on Terror and security legislation in India. We all position our work also in the backdrop of the enduring legacies of British colonialism.

The Israeli Supreme Court and Appeal Committee in the OPT in Comparison with the U.S. Supreme Court and the Indian Claims Commission

Alexandre (Sandy) Kedar

The presentation is based on an article in progress, which compares the jurisprudence of the Israeli High Court of Justice in adjudicating petitions concerning land against the Israeli Military Appeal Committee (AC) in the Occupied Palestinian Territory (OPT), with the U.S. Supreme Court jurisprudence in cases emanating from the Indian Claims Commission (ICC). Both the AC and the ICC served as key institutions and arenas in the resolution of land disputes between native landholders and the settler state. In both cases, the Supreme Courts routinely deferred to these peripheral lower tribunals to which the pivotal issue of land claims was relegated. Furthermore, in both cases, academic lack of attention replicates and reinforces the marginality these crucial processes. While differences obviously exist—including the time frame, the geography, the legal regime, and structure, and more—as shown in this article, a comparison of both Supreme Courts’ adjudication of cases emanating from lower tribunals instructs us on the role of such institutions in the context of settler colonialism’s land hunger and its attempt to conceal land dispossession.

The Dual Penal Empire: Emergency Powers and Military Courts in Palestine/Israel and Beyond

Smadar Ben-Natan

This paper explores the duality of emergency powers and criminal law in old and new formations of empire. Set against the backdrop of the US “war on terror,” I link discussions around current articulations of empire and the treatment of “enemy combatants,” illuminating new connections between empire, emergency, and “enemy penology.” Focusing on Palestine/Israel, I explore the duality created by emergency powers and criminal law from the late British Empire to contemporary Israel/Palestine as an “imperial formation.” Through a genealogy of emergency legislation, military courts, and two case studies from 1980s Israel, I show how emergency powers constitute a *penal regime* that complements ordinary criminal law through prosecutions of racialized enemy populations under a distinct exclusionary and punitive legality. Building on Markus Dubber’s *Dual Penal State*, I demonstrate how the—openly illiberal—dual penal empire (i) suppresses political resistance (insurgency, rebellion,

and terrorism) and (ii) institutionalizes enemy penology through emergency statutes and military courts. Thus, in imperial formations like Israel and the US—which deny their illiberal features—emergency powers are framed as preventive security and denied as part of the penal system, while enemy penology operates in plain sight.

Citizenship as a mobility regime. How colonial emergency laws made citizenship in the aftermath of the British Empire in Israel/ Palestine and India

Yael Berda

This paper traces the historical foundations of current security legislation as the matrix of citizenship. Examining Israel's new Counter-Terrorism Law against the backdrop of security legislation in India, its main proposition is that these laws and their effects are rooted in colonial emergency regulations and the bureaucratic mechanisms for population control developed therein, rather than in the 'global war on terror'. The article offers an organizational vantage point from which to understand the development of population- classification practices in terms of an 'axis of suspicion' that conflates 'political risk' with 'security risk'. Through an account of the formalization of emergency laws, it explains the effects of colonial bureaucracies of security upon independent regimes seeking legitimacy as new democracies by tracing decisions regarding the use of an inherited arsenal of colonial and settler-colonial practices of security laws for population management, particularly mobility restrictions, surveillance, and political control. One of the most important of these effects is the shaping of the citizenship of targeted populations by security laws.

Intellectual Property in Empire

Positioning Intellectual Property in North America: Crossing Boundaries from the British to US Empires

These papers travel the legal landscapes of North America from the colonial era to the early republic to the Cold War, investigating how intellectual property both reflected and remade the spaces of empire. Tracing relationships along the boundaries of Anglo American and Spanish empires, this panel considers how copyright and patent practices both facilitated and disrupted other forms of imperial exchange and communication, from commerce and trade, to racial justice and citizenship, to international diplomacy and territorial control. Intellectual property, a pluralistic set of understandings among changing legal traditions, positioned the authority of the state between metropole and colony, among the new Texas Republic, Mexico City and Washington, DC, and across the globe via satellite, underscoring the significance and contestation of borders.

Beginning in the mid-eighteenth century, the first paper argues, the copyright sensibilities of geographer Lewis Evans evidence the emergence of IP in the legal crafting of imperial and colonial imaginaries, drawing a boundary that separated Philadelphia and London into two distinct if porous spaces in both the map Evans created and his plans for using law to monetize it. Moving into the antebellum era, the second paper considers the border between the United States and the Republic of Texas as separating legal regimes of ownership of inventions and people, analyzing how would-be land speculator and patent licensor William F. Gray weighed moving himself, a patent model of a cotton press, and his human property into a new republic in the process of achieving independence from Mexico. Texas's unique laws governing patent rights, citizenship, and racial slavery worked in tandem to create a new legal geography that encouraged white enslavers like Gray to position themselves between Mexico and the US and to dream of a slave empire stretching westward. In the 1960s, the third paper demonstrates, the United States successfully used patent laws to support a global imperial vision, as a 1966 decision within the Board of Patent Appeals and Interferences followed the satellite technology at issue across borders and around the globe to apply the jurisdiction of US law extraterritorially. Taken together, these three papers consider how as the material artifacts of intellectual property – maps, cotton presses, satellites – moved across legal and physical borders, the competing claims around them pointed to distinct understandings of sovereignty and imperial power.

‘None Must Be Sent For Sale to America’: Copies, Rights, and Maps of Subjecthood in the British Empire, 1755-1776

Nora Slonimsky

In the winter of 1756, colonial geographer Lewis Evans wrote to the London-based map and bookseller, Robert Dodsley. Laying out his plan for a new edition of his popular *A General Map of the Middle British Colonies*, Evans expressed his interest in obtaining the “benefits” of acts of Parliament which provided copyright to texts and images in certain circumstances. As a resident of Pennsylvania, Evans was unsure exactly what laws and rights involving literary or textual property extended to him outside of England. Moreover, Evans argued, the North American colonies functioned, defacto if not legally, as a distinct commercial space, one in which a London edition of his map and its accompanying essay collection might compete with

the locally made version. As a result, he said to Dodsley, “none must be sent for sale to America.”

Relying on the contested publication history of *A General Map of the Middle British Colonies* as a case-study, this paper makes a two-fold argument. First, given the unusual appearance of discussions about copyright before North American independence from the British empire, this paper argues that Evans’ consciousness of copyright highlights a nascent understanding of England and America as two separate spheres. Second, this interpretation of borders depicted in *A General Map of the Middle British Colonies* relied on collaboration and Indigenous knowledge in its production. This episode also demonstrates who and who was not included in forms of ownership, even while Evans’ understanding of copyright did (and did not) align with the formal practices and interpretations of copyright law in England.

Race, Inventors, and Citizens along the Republic of Texas Border, 1836-1846

Kara W. Swanson

In June 1836, William F. Gray, a bankrupt lawyer and enslaver, was returning to Virginia after a trip to the Republic of Texas, taken to explore land speculation opportunities. Gray met Mr. January, traveling with a model of a new cotton press. January proposed that Gray engage in another form of speculation, seeking a Texas patent on the device and splitting the profits with January and his partner. Unlike US law, developing Texas patent law required would-be patentees to travel to Texas and become citizens. Gray emigrated, crossing a border to claim citizenship. With him, he brought his human property, depending on other Texas laws to keep the Black women and men enslaved.

This paper argues that the combination of spatial and racial requirements in Republic of Texas laws governing patents, citizenship and racial slavery reflected the changing imperial visions and racial politics of white Texians as Mexico, the United States, Tejanos, and Anglo settlers negotiated the Republic’s borders. I compare Texas patent laws and practices to those of the US early republic to analyze how patent laws shaped and reflected spaces of freedom and citizenship for both white and Black English speakers along the US/Texas border.

The Recent History of Free Space: Patents, Satellites, and the Idea of Empire in the Global Cold War

Haris A. Durrani

The legal history of US empire usually treats the Global Cold War as a turning point: Legal geography shifted from territorial sovereignty to globalism, from the annexations that marked settler colonialism and overseas acquisitions, to the hegemony of international institutions. Accordingly, the story goes, empire’s legal context moved from the US legal system to international law and diplomacy. However, unexamined histories of IP and the US administrative state offer a different story. This paper provides a glimpse of mid-century extraterritorial regulation through a patent dispute about the operation of the first geosynchronous communications satellite in 1963, an event of enormous significance for US technological, commercial, political, and military power. In a 1966 administrative law hearing, the Board of Patent Appeals and Interferences decided that the National Aeronautics and Space Administration, rather than Hughes Aircraft Company, should receive title to a key patent related to the satellite. In and around the Board’s decision, patent examiners and lawyers asserted that the US patent code applied “beyond the United States” to the satellite’s control

system, which comprised not only the satellite in orbit but also its tracking and command stations in Maryland, New Jersey, Nigeria, and South Africa. They maintained that any site in which US technology operated was a “free space” subject to technological control, and thus jurisdiction. In part, they understood the mid-century legal geography of US empire as continuous with the past. However, patent law, decolonization, and postwar technology generated novel legal approaches to those old geographies.

General Stream

An Empire State of Mind?: Legal Transfer Between the United States and its Colonized Peoples

The United States is a nation produced from and through brutal settler colonialism. Yet, it has had an uneasy relationship with empire, given the obvious tensions between imperial rule and its founding aspirations of democracy and equality. This panel will explore the ways in which the federal government and legal elites have used law, or ideas about law, to structure relationships with colonized peoples—at once providing some measure of (or simulacrum of) autonomy through language and yet ensuring the continuation of colonial hierarchies. All three papers engage with the central challenge of how to view the construction by the United States for colonized peoples of various legal statuses short of independence. Was the ambiguity in the nature of the legal transfers intentional? Did it serve only to benefit the United States? Was (or is) there space for colonized peoples to use the law to develop claims to broader autonomy? Or has the experience of being manipulated resulted in only a crabbed range of perceptible options?

Status Manipulation, Spectral Sovereignty, and the Self-Preservation of Empire

Sam Erman

This essay examines how empire invisibly perpetuates itself through a process that I term “status manipulation.” By “status” I mean formal polity-person and polity-place relationships that are perceived to be well-defined, pre-established, unchanging, and consequential. Such relationships are envisioned as automatically creating both rights and powers and obligations, detriments, and exclusions. The gap between the perceived fixity of status and its actual malleability gapes wide in the case of U.S. empire. The ambiguity is purposeful, the result of choices by U.S. empire builders. “Manipulation” captures the frequency with which changes to status and the changeability of status sustain colonialism while hiding it from view. The U.S. empire dangles sovereignty before some colonized Americans and strings other along in beliefs that colonial sovereignty already exists. By doing so, the U.S. Empire divides, frustrates, and seduces anti-colonialists. Like Tantalus, parched and starved, yet unable to consume the fruit and water always just out of reach, contemporary U.S. colonialism is characterized by a degraded status whose redemption is tantalizingly close but never within reach. This essay illuminates the process by examining controversies in the smallest and largest populated U.S. territories, American Samoa and Puerto Rico.

Empire by Gaslight: U.S. Constitutionalism in Puerto Rico

Christina D. Ponsa-Kraus

This paper examines how law created the conditions of possibility for a form of involuntary self- subordination by the people of Puerto Rico. I argue that the legal framework of U.S. colonial rule functioned as a form of gaslighting, entrenching Puerto Rico’s colonial status even as, until recently, it persuaded many Puerto Ricans that they did not live in a colony at all. Beginning with the U.S. Supreme Court’s *Insular Cases* of 1901, which gave sanction to the United States’ annexation and governance of perpetual colonies, and culminating with the adoption of Puerto Rico’s own Constitution in 1952, which contrary to prior practice was not followed by the territory’s admission into statehood, U.S. colonial law achieved this feat

through a series of contradictions that generated constant uncertainty about the island's legal and political status: Puerto Rico was neither foreign nor part of the United States; its people were neither aliens nor U.S. citizens; even when they became U.S. citizens, the island was still not on the path to statehood; and when they adopted a Constitution, the island became state-like but not a state. These contradictions generated a decolonization debate in which the most hotly contested question was not what Puerto Rico should become but what it *was*. As a result—perversely yet predictably—the constitutional debate over Puerto Rico's status itself became the engine that kept colonialism running.

The IRA Constitutions: Co-option, coercion, or self-determination?

Erin Delaney

Beth Redbird

Sarah Sadlier

The 1934 Indian Reorganization Act ushered in a new era of mediated self-governance by tribes through constitutional provision, but the role of the federal government in the adoption of tribal constitutions remains opaque. Early scholarship, often by those involved in or adjacent to the processes of IRA constitutionalization, stressed that the federal government sought to minimize its interference in the development of tribal constitutions, while revisionist scholars have claimed that “teams of lawyers” armed with template constitutions were sent to reservations. For many tribes the IRA era represents the first written and federally endorsed constitutional enactment. How should this wave of constitutionalization be understood? Is it cooptation, in which self-government is used as a means of domination by creating a false sense of autonomy and choice? Or is it best understood as an exercise in self-determination and tribal sovereignty? To begin to engage these questions, this paper reexamines the historical record and draws on 717 documents collected by the Tribal Constitutions Project to answer an antecedent question that has vexed scholars: How prescriptive was the federal government regarding the content of the IRA constitutions?

Legal Transfer in the Common Law World

Land, Law, and Spatial Justice in the Former British Empire

The aim of the PROPERTY [IN]JUSTICE project, funded by the European Research Council (<https://www.landlawandjustice.eu/>), is to analyse the ways in which transnational law facilitates spatial justice and injustice through its conceptualisation of property rights in land. The spatial dimension reflects the project's legal geographical approach. Legal geography calls attention to law's 'spatial blindness' and the need for local conditions to be infused in the law to reconcile ostensibly impartial legal concepts such as property with their geographic reality (spatial justice). This often requires recognition of the unique interactions between local communities, land and law, or landscape, to make law effective. To do so is necessarily decolonial in the Common Law world, as the legal system was imposed during the creation of the British Empire.

This panel explores ongoing research under the auspices of the project. Following an introduction on landscape, law, and spatial justice by Chair Amy Strecker, each member of the panel will address how the law, via the deployment of colonial property rights in a specific region or country, erased spatial diversity in land use. Law's dismissal of place and the consequences for local communities is a central underlying theme.

Amanda Byer will discuss colonial conservation in relation to Caribbean environmental law; Sinéad Mercier will address a cultural element of the Irish landscape and the dissonance between heritage law and locally held convictions; Sonya Cotton will examine legal pluralism and the notion of community in southern Africa, and Raphael Ng'etich will explore land ownership in the Kenyan context. These examples will demonstrate why legal geography can play an important role in disrupting Empire's stranglehold on land law today.

Chair/commentator

Amy Strecker

Amy Strecker is Associate Professor at the Sutherland School of Law and PI of PROPERTY[IN]JUSTICE, which is funded by the European Research Council and hosted by the UCD Sutherland School of Law. A continuous thread throughout her work has been the problem of access to justice for communities in landscape disputes. Her monograph, *Landscape Protection in International Law* (Oxford University Press, 2018) provided a first overview of the role of international law in landscape governance, combining legal analysis with interdisciplinary and cross-cultural perspectives. Amy was previously based at Leiden University where she taught international cultural heritage law, human rights and international justice. She was also part of a transdisciplinary European Research Council project on the impact of colonial encounters on the Caribbean (Nexus1492), in which she dealt with the role of international law in confronting the colonial past.

Reserving space: land, nature, and empire in the development of Commonwealth Caribbean environmental law

Amanda Byer

Studies on environment and empire have contributed to a more comprehensive understanding of the impacts of imperial projects on land. Islands in particular were subject to environmental degradation, which threatened the security of ship supplies for European trading companies. The first imperial conservation programmes were thus driven by the need to reverse the ecological decline in these colonies in order to maximise economic exploitation.

This paper focuses on the development of conservation laws establishing forest reserves in the Eastern Caribbean islands. The introduction of the common law was instrumental to the reordering of the Caribbean landscape and entrenching control of land for plantation agriculture. Establishing reserves accompanied the violent resettlement of peoples, as taming the wilderness ensured that the threat of native peoples could be contained and defused.

Absorbing land to supply the plantation economy was masked as protection of plant and animal species. Conservation law's roots are thus colonial and exclusionary, reflecting the drive to depopulate and extinguish landscape. Reserving space supported land acquisition because it embedded conceptualisations of land as vacuous space. Commonwealth Caribbean environmental law reflects this contradiction, continuing to exclude communities dependent on nature for their survival, which has implications for land use and sustainability today.

Keywords: colonialism; landscape; environmental law; conservation; spatial justice

Landscape or Landscape?: Finding space for the Irish fairyfort

Sinéad Mercier

'Landscape' is a concept from Nicole Graham that charts how land has become a disembodied 'thing', dephysicalised into bundles of property rights that transform it into a standardised fungible entity. These legal inventions have their roots in the land-clearing techniques developed with the colonial plantation of the island of Ireland. Brenna Bhandar tracks how throughout the colonies, lacklustre engagement in particular productive development of land, or adherence to 'superstitious' belief in the land's properties became a signifier of racially inferior peoples, incapable of self-government.

This paper explores the fairyfort as a form of resistance to colonial interpretations of land through the prism of Brian Friel's *Translations*. Why is it that living beliefs in *na daoine maithe* have functioned for centuries as effective forms of cultural heritage and environmental protection, but do not fit within the dominant legal rationality? In order to explore how decolonial 'other ways of seeing' may be entered into legal analysis, it is argued that in the Irish fairyfort is a letting-dwell in place. Giving space to the fairyfort in law can enable us to build an analysis of what cannot be reducible to neutralized, abstract space, thereby counteracting the legal techniques of empire and its 'new language', and enabling a turn from the Landscape to the original etymological concept of landscape as a 'peopled place'.

Keywords: cultural heritage law; colonialism; landscape; extractivism; environmental law; climate change; spatial justice

Anxious pluralisms and communal land in Anglophone southern Africa

Sonya Cotton

In the context of accelerated globalisation, there has been increased acquisition of rural land in lower- and middle- income countries, often with negative environmental and/or social consequences for local communities. While developments in international indigenous rights represent a means by which dispossessed communities can articulate their collective rights, this may conflict with states' economic interests. Forte (2013) thus recognises a 'growing anxiety on the part of states as they attempt to define, identify, and manage the explosion in Indigenous self-identification.' With reference to anglophone southern African countries, whose legal systems reflect tensions between colonial legacies of "indirect rule" vs progressive human rights, this research comparatively examines the statutory strategies through which post-colonial states manage pluralism regarding rights over communal land. I argue that while there is recognition of communal land as an independent form of tenure to private and state ownership, such legal pluralism is "anxious", and modulated through legal positivism and/or deference to colonial discourses of "tribe" that renders the state the final authority on identification. This reflects the uncomfortable position of pluralism within post-colonial African countries, which may inscribe customary rights whilst stripping communities of substantive self-determination related to communal land. Secondly, this speaks to the urgent need for clarification regarding who, from the perspective of human rights law, is a community.

Competing Notions of Land in Colonial Kenya and Impact on Present-Day Land Governance

Raphael Ng'etich

The establishment of colonialism in Kenya pitted the newly introduced notion of private land ownership against the communal ownership practiced among the natives. To achieve its objective of phasing out collective land use, the colonial enterprise deployed various strategies: 'agreements' with communities to cede some of their land to the Crown, moving the natives to reserves, depiction of local land practices as backward and retrogressive, subjugation of customary law to statutory and common law, and giving incentives to facilitate the private ownership of land. This paper traces the conflict between common law and customary approaches to land and its impact on the governance of land and associated resources in colonial and present-day Kenya. In particular, this paper examines these implications from a spatial justice perspective, considering the impacts of inequitable distribution of resources and rights not just through a social justice lens or across time (historically), but on spatial relationships between people and place.

Legal Transfer in the Common Law World

Legacies of Empire: Roman-Dutch Law in South Africa and Sri Lanka in Historical Context

As former Dutch and British colonies, South Africa and Sri Lanka are marked out by their mixed legal systems in which public law is mostly based on English law, and private law mostly on Roman-Dutch Law (RDL). What was once a lively shared tradition of comparative RDL studies between academics and practitioners in the two countries has all but died out in recent decades. In terms of published scholarship, there has also not been a comparative and contextual appraisal of RDL since Zimmermann in the 1990s, and the older works are based on political and legal contexts that are now outdated in both countries. The rationale for this panel therefore is to resuscitate the comparative study of RDL in South Africa and Sri Lanka in their historical and contemporary contexts. The papers will comparatively explore RDL in the two jurisdictions through the perspectives of legal history, private law, and public law and constitutional democracy. Using Alan Watson's paradigm of 'legal transplants', the papers in this panel will explore the extent to which RDL, formed within a specific Calvinist, European context, interacted with local legal cultures in the Global South. In addition, given recent discussions surrounding Empire, RDL as an instrument and legacy of Dutch and British colonial rule will be explored.

Chair: Emeritus Professor Hector MacQueen

Hector MacQueen was a member of the Edinburgh Law School staff from 1979 to 2021, having also taken his LLB and PhD at Edinburgh. Appointed to the Chair of Private Law in 1994, he was Dean of the Law School 1999-2003, and Dean of Research and Deputy Head of the College of Humanities and Social Science in the University, 2004-2008. Between 2010 and 2018, he served as a Scottish Law Commissioner. Emeritus Professor MacQueen has been a Fellow of the Royal Society of Edinburgh since 1995 and was elected a Fellow of the British Academy in 2006. He was President of the Society of Legal Scholars 2012-2013 and Vice-President (Humanities) of the RSE 2008-2011. He has held visiting appointments at Cornell University, the University of Utrecht, Stetson University College of Law (Florida), and the University of Lucerne. Hector MacQueen wrote the 1989 centenary history of Heriots Cricket Club, a work enthusiastically reviewed by no less than Alexander McCall Smith in chapter 6 of his novel, *Love Over Scotland* (2006).

Once More on Roman-Dutch Law

Paul du Plessis

Roman-Dutch law, as a body of mainly private-law rules formed in the Dutch province of Holland during the early-modern period, has received its fair share of attention within larger debates concerning legal transplants. As a body of legal rules closely bound up with the operation of the Dutch East India Company, it was transplanted to different environs, such as Sri Lanka and South Africa, where it fulfilled various functions ranging from the creation of a common "commercial law" to dealing with Dutch subjects stationed there through the personality principle. With the advent of the British Empire, Roman-Dutch law came to fulfil a different role in the context of Empire. In this paper, which will focus on the nineteenth century, the role of Roman-Dutch law as the law of Empire will be examined. This will be

done to pose larger questions concerning the future role and purpose of Roman-Dutch law as a common connection between these two countries.

***Iniuria* in Sri Lanka and South Africa: Convergence and Divergence,**

Helen Scott

This paper seeks to compare the development of the Roman-Dutch delict of *iniuria* in Sri Lanka (Ceylon) and South Africa during the late nineteenth and twentieth centuries. It will entail comparative assessment of the degree to which the English torts of libel and slander have impacted on the law of defamation in each jurisdiction, and in particular the degree to which each jurisdiction has shifted from a delict organised around injurious intention – *animus iniuriandi* – to one that requires only the publication of material defamatory of the plaintiff in order for *prima facie* liability to arise. The parallel development(s) of *iniuria* in Sri Lanka and South Africa will serve as a lens through which to examine the ways in which courts and scholars from each of these jurisdictions have been influenced by those of the other. Particular attention will be paid to the work of Amerasinghe (Sri Lanka), McKerron and Price (South Africa), and to collaborative projects such as Lee and Honoré's *The South African Law of Obligations*. Finally, this paper will consider the implications of the emergence of a post-colonial rights discourse in both jurisdictions, and in particular the implications for *iniuria* of the rights to freedom of expression and privacy.

The Roman Dutch Law in Sri Lanka: Common Law or Anachronism?

Rohan Edrisinha and Tavini Nanayakkara

Though the Roman Dutch Law (RDL) was recognised as the common law of Ceylon when Britain replaced the Dutch as colonial rulers, its recognition and application was inconsistent and uneven. There were periods when English Law superseded the RDL, followed by periods when judges revived RDL concepts and principles and reminded the legal community of their relevance and importance. Today, the RDL seems more secure in the areas of property law and the law of delict, but less so in the areas of family law and the law of contract. The reasons for this will be explored and the roles of the judiciary and the academy in facilitating these trends will be assessed. A major question concerning the future of the RDL in Sri Lanka has been raised by the controversial decision of the Sri Lankan Supreme Court in *Priyani Soysa v Arsecularatne* [2001] 2 SLR 293, where the court adopted a view that suggested that the Sri Lankan judiciary was unable to develop the RDL as what was received into the country was, in effect, frozen in time. The paper will also critically examine various initiatives taken to revive interest in the RDL and the countervailing trends to reduce its influence within Sri Lanka's legal system.

RDL, Economic Democratisation, and Constitutional Development: A Comparative Study of the *Fideicommissum* in South Africa and Sri Lanka

Asanga Welikala

A core task of constitutionalism in post-colonial states has been the creation of some level of economic equality as to make democracy possible. The performance of this constitutional task may bring public law and private law into confrontation, where public law is used to achieve public objectives and private law exists to protect private rights. The Roman-Dutch Law

institution of the *fideicommissum* was abolished by statute in Sri Lanka in 1972, whereas it survives to this day in the private law of South Africa. The overall constitutional objective of the Sri Lankan abolition was avowedly one of economic democratisation: the removal of the concentration of immovable property in a few families, one of the main bases of the landed elite's political power, by the elimination of this aspect of testamentary freedom. In South Africa, by contrast, the *fideicommissum* as part of the broader private law of succession appears to have survived judicial scrutiny even within the egalitarian framework of the 1996 Constitution, even though economic inequality in post-apartheid South Africa constitutes a far greater constitutional challenge than in Sri Lanka. This paper critically discusses these two contrasting histories of the law of *fideicommissum*, with a view to identifying what they denote for constitutional democracy in the two countries.

General Stream

Colonial Imaginings and the Normative Regimes Concerning Land (19th-early 20th C)

The *Institut Colonial International* on land law and land registration systems (1898-1905)

Elisabetta Fiocchi Malaspina

In 1894 the *Institut Colonial International* was founded in Brussels, with the aim to engage and promote transnational exchanges between jurists, scholars, politicians, colonial administrators and experts, comparing different colonial experiences. In its annual or biannual meetings, the *Institut Colonial International* produced and edited a considerable number of research papers, studies and proceedings (the so-called *comptes-rendus*), which represented a fruitful source for various colonial (law) topics. As the *Institut's* founders had hoped, their publications promoted legal debates, discussions and the prospects of specific legislation, decrees or norms to be adapted and used in completely different colonial systems. Examples of this “borrowing” and cross-pollination were the application in African territories of concepts as property, land law as well as the different (European) land registrations systems. The paper will show discussions of *Institut Colonial International* on various colonial experiences particularly concerning land law and land registration systems. Between 1898 and 1905, in fact, the *Institut Colonial International* published several detailed reports on how land ownership was regulated and introduced a specific land registration system within the various colonies of the different European countries. The ambitious objective was to map the whole “colonial world”, giving the broadest possible picture, by collecting all legislation concerning the regulation of land law in the colonies.

Imagining Traditions, Making Authority: Discourses and Practices of African Customary Landholding and their Implications for Power Relations in the Reserves of Early Colonial Northeastern Zimbabwe, 1890-c.1937

Admire Mseba

This paper is about land and power among the indigenous population of colonial northeastern Zimbabwe in the early years British rule. It interrogates the tensions between colonial visions of customary law and the practices of land holding and their implications for the making of rural authority in colonial settings. Southern Rhodesia's colonial rulers, like colonial rulers elsewhere in the British empire, identified authority over land among the colony's African population with the ‘customary’ leadership of chiefs and headmen. These were mostly men. By contrast, they sought to diminish the authority of key institutions such the mhondoro, the spirit mediums, who had previously checked the powers of chiefs and whom they accused of inciting the 1896-97 Chimurenga uprisings. At face value, this appropriation of ‘customary’ law at the service of indirect rule strengthened the authority of chiefs and male elders. In practice, this did not mean that chiefs obtained unchecked powers over land and people. Colonial changes in the legal sphere, I argue, corroded the ritual bases of chiefly claims to land. Moreover, colonialism introduced new sources of authority that rivalled chiefs and mhondoro. And so, in colonial Zimbabwe at least, the colonial state's imaginings of customary authority were never completely successful in producing rural despots and in supplanting other forms of authority over land and people.

Horror Vacui: Colonial Cartography and the Notion of Emptiness in Title to Territory and Colonial Land Law

Inge van Hulle

During the colonial period, European concepts of title to territory and of legal tenure were used to acquire and to subject unoccupied lands in Africa to proprietary ownership. This paper explores the legal and cartographic use of the notion of emptiness during this process by focusing on land acquisition and colonial land law in the Gold Coast and the Congo Free State. It argues that colonial cartography was not only of material importance in the construction of colonial spaces, boundaries of jurisdiction and sovereignty, but also in the creation and legitimation of colonial land law. During the initial phase of acquisition of territorial sovereignty, colonial maps designated the interior of Africa as blank or empty, indicating a cartographic translation of the Roman law concept of *res nullius*, which played a key role in imperial efforts towards the erasure of African sovereignty from Western legal theory and in the negation of Euro-African treaty practices. After the establishment of colonial rule, administrative maps similarly designation fallow lying lands as *terres vacantes* or waste land and therefore available for exploitation. Colonial maps thus reveal a *horror vacui*, namely a Western need to subject, occupy and cultivate spaces that were legally considered as empty.

The Role of the Foreshore in Land Reclamation

Nurfadzilah Yahaya

This paper focuses on the changing status of territory known as the foreshore, the part of the shore that is wholly covered by the sea at high tide and wholly uncovered at low tide, valuable primarily because it provided an entry to the sea. The foreshore functioned as a “hydroborder” to borrow Isabel Hofmeyr’s term, “where the ‘normal’ anxieties of the boundary were exacerbated by ecological uncertainty.” In British jurisdictions, the foreshore had always occupied a special place since access to the sea had to be guaranteed. Even before land reclamation became common throughout British Empire in the twentieth century, characteristics of the foreshore as a recognised buffer zone between land and water challenged the bifurcation of land/maritime law in coastal regions. The intensification of land reclamation made the foreshore even more crucial as a gateway to the process which eventually brought a new enemy on the horizon for residents in coastal regions - coastal development which subsequently disadvantaged those whom it was supposed to benefit for example to rising costs post-reclamation. Something about control over watery spaces, a relatively new form of domination, resist risk assessment necessary for compensation requests.