Institutional Encounters:

EUROPEAN PROPERTY RIGHTS IN COLONIAL CONTEXTS

(panel organiser: José Vicente Serrão)
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(Thursday, 22 August 2013 // 1000 – 1630 // Session 10 & 11 – Room A 022)
José Vicente Serrão  
*European property rights in colonial contexts: overview and topics for debate.*

An introduction to the panel, outlining the main issues at stake and pointing out some questions for the ensuing discussion.

Nadeera Seneviratne  
*Constructing a legal language: the Landraad and the thombo in Dutch Colonial Sri Lanka.*

During its administration of parts of Sri Lanka the Dutch East India Company (VOC) set up the Landraad, a court composed of European and native officials, in the eighteenth century. Its primary task was to hear civil cases and its primary tool the thombo or land register. The VOC wished to set down who could do what in which piece of land and what it could extract in return. This paper is a study of land rights in southern Sri Lanka, providing a quantitative and qualitative analysis of the types of possession recognised in the thombos. Local terms relating to land tenure such as paraveni, malapalu and nilapalu were adopted in the thombo, the Landraad and other official discussions. The thombo and the Landraad were in effect the legal mechanisms by which the conversion of land, whether collectively or individually held, into alienable title was sought to be consolidated. Dutch practices of surveying, indigenous land tenure, and existing and new practices of registering lands combined with a new institutional legal framework in which to settle disputes. Despite the complexities of the local land tenure system, the VOC attempted to enforce regulations that would create a neat, circumscribed system that followed specific legal procedures and written forms. The important role of the non-elite actors who appear in this study for the first time can also be seen. Their priorities and claims encountered those of foreign and local elites.

Susana Munch Miranda  
*Property rights and land use in the Portuguese Empire of the East, 16th-18th centuries.*

In the 16th century, the Portuguese Estado da India was a commercial empire, which sought to control maritime trade routes in the Indian Ocean by a network of trading posts, seaports and fortresses scattered from East Africa to the South China Sea. During most of the sixteenth century, this system generated considerable revenues to the crown and land issues were not at the top of the Portuguese priorities, even if they became rulers of a few territories, such as Goa, Bassein and Daman (both in Gujarat), incorporated during the first half of the sixteenth century. Since these territories were already occupied and land use was regulated through a well-consolidated system of property rights, the Estado faced the challenge of adapting the preexisting system to the Portuguese legal tradition in order to achieve their own goals of colonization. The result was a system which kept features derived from Hindu and Muslim institutions merged with European institutions. This paper focuses more specifically on the case of Bassein, a territory ruled by the Portuguese from 1530s to the mid-1700s, as a case-study of this interaction between native and European institutions. It aims to outline an overview of the property rights system that evolved in Bassein during the Portuguese rule, which will highlight the role played by the emphyteusis and by the legal framework of the Crown’s endowments. On another level, the paper also deals with changes this system underwent in the long run, due to its reception and re-appropriation by social actors.

Derek Byerlee  
*Plantations vs the People: Explaining the Diversity of Land Policies within the Tropical British Empire.*

Property rights regimes governing the expansion of agricultural commodity exports in the tropics have varied widely between and within colonial empires. This presentation will illustrate this diversity within the British Empire from 1850. I will show a divergence from full recognition of indigenous customary rights in British West Africa that excluded land concessions to plantations, to large-scale alienation of land for plantations in Malaya, the Indian hill tracts and Ceylon that often conflicted with indigenous rights and shifting farming systems in upland forest areas. These differences among colonial policies on land and forest rights in turn led to quite different agrarian structures and strongly influenced the location of production--differences that have persisted until today. The paper explores a
range of explanations for policy divergence with respect to land rights, ranging from initial conditions of population density and pre-existing industry to strategic concerns of the metropolitan power, growing civil society agitation on human rights in Africa, shifting paradigms within the empire, and the role of individual champions of human rights.

Ewout Frankema & Marlous van Waijenburg


Taxes constitute the financial backbone of the state. We explore the role of exogenously imposed metropolitan policies and endogenous economic and political conditions on the process of colonial state formation in British and French Africa through the lens of colonial taxation. Using colonial government budget accounts we construct PPP-adjusted comparisons of per capita government revenue, analyze the source composition of taxes, and compare per capita tax pressure. We find that local geographies and indigenous responses to commercial opportunities were key in the design of local colonial tax systems and that typically ‘British’ or ‘French’ tax policy blueprints are hard to decipher. All colonial administrations in Africa shared a preference to tax international trade and only resorted to direct taxes (head, poll, cattle or hut taxes) when the potential for taxing trade and consumption was limited. Forced labor programs occurred where alternative revenue opportunities were limited, although once in place, the French tended to maintain the corvée much longer than necessary.

Jemaiyo Chabeda-Barthe

How European concepts of marriage and land ownership excluded rural women in Kenya from accessing and owning property.

The British colonial land policy began when Kenya became a crown colony in 1920 and all the land was assumed to belong to the crown. The acquisition of African lands took place through the Crown Land Ordinance of 1915 and imposed English tenure of land. In 1932, the Kenya Land Commission was appointed and charged with the responsibility of appropriating land to Kenyans and British settlers in accordance to the British colonial laws. By 1954, the Kenyan guerilla freedom army MauMau demanded for land back and many were killed by the British. In 1963, Kenya attained independence but continued with the policies left by the colonialists. This paper will concentrate on women’s property rights in Kenya within the context of British colonial institutions. British overlooked indigenous customary tenure systems and applied western concepts on the institution of marriage and land reform. The two forms of property within the colonial context that this paper will address are Land ownership and Matrimonial property. The European colonial institution shaped the agrarian economy and the rural society when Kenya submitted to colonial rule. The colonial policy of individualization transformed land from a shared form of property to individual ownership through registration. Land was registered in the man’s name. Also, the colonials assumed that marriages are monogamous and imposed the Married Women’s Property Act of 1882 onto Kenyan courts as the only avenue for married women to access matrimonial property. Majority of rural marriages are polygamous and the Act hinders many women from accessing and owning matrimonial property.

Jesus Marchán

The ‘registro de inmuebles’ as a tool of colonization in the Spanish Protectorate of Northern Morocco (1912-1956).

The Spanish protectorate in northern Morocco was a very expensive colonial enterprise because of the difficulties and costs, both in human lives and money, involved in the ‘pacification’ of the small area occupied (about 20.000 km²), in comparison to metropolitan territory (about 505.000 km²). One of the main objectives of the Spanish authorities was then to obtain economic benefits from the exploitation of Moroccan natural resources. One such activity was agricultural colonization. It was necessary to introduce a new system of property to develop it, in the context of a new (and colonial) judicial organization. The purpose was to modernize both the Moroccan justice, considered backward, savage and cruel, and the Moroccan property regime, criticized by the Spanish colonialists as delayed and insecure. Thus, Spanish colonialism introduced a new legislation that aimed to promote the development of agricultural colonization. Thanks to this ‘legal colonization’, Spanish settlers could easily acquire lands in northern Morocco. In the Sherifian empire existed various types of properties that were inalienable. With these reforms, adapted protectorate agreements signed in 1912, were intended to promote the mobilization of Moroccan lands. In this paper we will discuss some points that led to the establishment of the Registro de inmuebles (a property registration) in Spanish protectorate of northern Morocco, legal basis for agricultural colonization, and the new legal status that was granted to the different types of properties that existed in Morocco to encourage their mobilization to achieve the metropolitan agricultural purposes.