Legal Geography

Braverman, Blomley, Delaney and Kedar (Eds.)

LAW / ANTHROPOLOGY

"*The Expanding Spaces of Law* is the first book to encapsulate the trajectory of the legal geography field and point to its future possibilities. Analyzing the increasing significance of the law–space nexus, this book highlights why all socio-legal scholars should take seriously the geo-political and spatial challenges to the prevailing understandings of law."

—**EVE DARIAN-SMITH,** Professor, Global & International Studies, University of California at Santa Barbara

"*The Expanding Spaces of Law* vividly illuminates the significant contributions spatial analysis offers to sociolegal studies and to legal anthropology, making clear that an adequate analysis of law and society requires a focus on space and time. The theoretically sophisticated, wide-ranging introduction and empirically rich chapters demonstrate how legal geography enhances the analysis of socio-logical studies in settings as diverse as Indonesian villages, rural America, and urban Mexico."

—**SALLY ENGLE MERRY,** New York University

The Expanding Spaces of Law presents readers with cutting-edge scholarship in legal geography. An invaluable resource for those new to this line of scholarship, the book also pushes the boundaries of legal geography, reinvigorating previous modes of inquiry and investigating new directions. It guides scholars interested in the law–space–power nexus to underexplored empirical sites and to novel theoretical and disciplinary resources. Finally, *The Expanding Spaces of Law* asks readers to think about the temporality and dynamism of legal spaces.

IRUS BRAVERMAN is Professor at SUNY Buffalo Law School, the State University of New York.

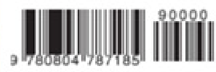
NICHOLAS BLOMLEY is Professor of Geography at Simon Fraser University.

DAVID DELANEY is Senior Lecturer in Law, Jurisprudence, and Social Thought at Amherst College.

ALEXANDRE KEDAR is Senior Lecturer at the University of Haifa School of Law.

Cover photo: Jack Delano, Farmland near Amarillo, Texas. March, 1943. Library of Congress Prints and Photographs Division, Washington, D.C. 20540. **Cover design:** Matthew J. Smith

STANFORD LAW BOOKS
An imprint of Stanford University Press
www.sup.org



BRAVERMAN, BLOMLEY
DELANEY, KEDAR
THE EXPANDING SPACES OF LAW
A TIMELY LEGAL GEOGRAPHY
STANFORD LAW BOOKS

EDITED BY IRUS BRAVERMAN, NICHOLAS BLOMLEY, DAVID DELANEY, AND ALEXANDRE KEDAR

THE EXPANDING SPACES OF LAW

A TIMELY LEGAL GEOGRAPHY

Stanford University Press, 2014

THE EXPANDING SPACES OF LAW

© *DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION*

THE EXPANDING SPACES OF LAW

A Timely Legal Geography

EDITED BY IRUS BRAVERMAN,
NICHOLAS BLOMLEY, DAVID DELANEY,
AND ALEXANDRE (SANDY) KEDAR

STANFORD LAW BOOKS
An Imprint of Stanford University Press
Stanford, California

© ***DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION***

Stanford University Press
Stanford, California

© 2014 by the Board of Trustees of the Leland Stanford Junior University.
All rights reserved.

No part of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or in any information storage or retrieval system without the prior written permission of Stanford University Press.

Printed in the United States of America on acid-free, archival-quality paper

Library of Congress Cataloging-in-Publication Data

[CIP to come]

Typeset by Newgen in 10/13.5 Minion

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

In memory of Franz von Benda-Beckmann

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

CONTENTS

Acknowledgments ix

Contributors xi

Introduction **Expanding the Spaces of Law** 1
Irus Braverman, Nicholas Blomley, David Delaney, and Alexandre (Sandy) Kedar

Chapter 1 **Places That Come and Go: A Legal Anthropological Perspective on the Temporalities of Space in Plural Legal Orders** 30
Franz von Benda-Beckmann and Keebet von Benda-Beckmann

Chapter 2 **"Time Thickens, Takes on Flesh": Spatiotemporal Dynamics in Law** 53
Mariana Valverde

Chapter 3 **Learning from Larry: Pragmatism and the Habits of Legal Space** 77
Nicholas Blomley

Chapter 4 **Expanding Legal Geographies: A Call for a Critical Comparative Approach** 95
Alexandre (Sandy) Kedar

Chapter 5 **Who's Afraid of Methodology? Advocating a Reflexive Turn in Legal Geography** 120
Irus Braverman

00a_FM_fn.indd 7 29/01/14 9:19 AM

Chapter 6 **States That Come and Go: Mapping the Geolegalities of the Afghanistan Intervention** 142
Michael D. Smith

Chapter 7 **The Everyday Formation of the Urban Space: Law and Poverty in Mexico City** 167
Antonio Azuela and Rodrigo Meneses-Reyes

Chapter 8 **The Rural Lawscape: Space Tames Law Tames Space** 190
Lisa R. Pruitt

Chapter 9 **Rules of Engagement: The Spatiality of Judicial Review** 215
Melinda Harm Benson

Chapter 10 **At Work in the Nomosphere: The Spatio-Legal Production of Emotions at Work** 239
David Delaney

Index 263

ACKNOWLEDGMENTS

This project has been two years in the making, and there are many people who we would like to thank for their contributions. First, we are grateful to the Baldy Center for Law and Social Policy, and its director Errol Meidinger in particular, for the financial and institutional support that enabled us to convene the workshop that initially brought the contributors of this collection together. After two days of intense discussions, it was clear to most of us that we wanted to translate our discussions, debates, and realizations into a book format. One of the liveliest voices in the workshop was that of Franz von Benda-Beckmann, whose rich and invaluable cultural experiences provided a rare foundation for the workshop and an inspiration for this book. We were all distraught to find out that Franz passed away unexpectedly in January 2013, and we unanimously decided to commemorate his thoughtful influence on this book by dedicating it to his memory.

Our gratitude also extends to Michelle Lipinski of Stanford University Press for her patience and support of this project from the start, as well as the much-appreciated administrative support by Mary Voglmayr at SUNY Buffalo Law School.

© *DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION*

4 EXPANDING LEGAL GEOGRAPHIES

A Call for a Critical Comparative Approach

Alexandre (Sandy) Kedar

The project of expanding the horizons of legal geography must involve the adoption of a comparative outlook. Since the late 1980s, legal geography scholarship increased and deepened immensely, simultaneously broadening its topical scope (Blank and Rosen-Zvi 2010; Blomley 2009; Butler 2009; Delaney 2010; Kedar 2003; see also the introduction to this volume). Legal geographers have gradually moved beyond the binary treatment of law and space as two distinctive autonomous realms in favor of an understanding that they are "conjoined and co-constituted." Blomley (2003a) terms this spatio-legal integration *splice*, and Delaney (2004, 2010) calls it *nomosphere*.

Contemporary legal geographers look at "the ways in which the (socio)spatial and the (socio)legal are constituted through each other" imagined and performed (Delaney 2010, 23), in an impressive range of areas, as diverse as the human body, public housing, "spaces of exception" and the "international" (Blank and Rosen-Zvi 2010; Blomley 2001, 2009; Braverman 2009a, 2009b, 2012; Delaney 2004, 2010; Kedar 2001, 2003; Yiftachel 2006; Yiftachel, Kedar, and Amara 2012). Such projects are undoubtedly important, and legal geography needs more of them.

Yet the scholarship focuses mainly on and is produced by common law countries and scholars, typically North American, with some branches in Israel, Australia, the United Kingdom, and several European countries. As noted in the introduction to this volume, the legal geography project could be enriched by studies situated out of usual ambit of the largely urban, Global Northwest. Furthermore, as legal comparatists note, comparative law—and, I argue, also *comparative* legal geography—can serve as "a critical or 'subversive' discipline that can destabilize and undermine established beliefs and conceptions" (Reimann 2002, 682; see also Nelken 2010). Nevertheless, legal geographers hardly engage in sustained comparative research.

I have approached comparative law hoping to draw upon its rich tradition of legal comparisons in suggesting an agenda for comparative legal geography. As I explain later, I discovered that legal geography scholarship could contribute to

© *DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION*

comparative law as much as, if not more than, it has to gain from it, and thus I have found ample space for cross-fertilization. Yet to date, contemporary comparative law and legal geography remain separate academic spheres. This is remarkable, as "historically, the development of spatial concepts in law appears to have originated within comparative legal studies" (Economides, Blacksell, and Watkins 1986, 163) and legal comparatists are deeply involved in the classification and mapping of "legal families" across the globe and the tracing of the movement and transplantation of law between jurisdictions. Nevertheless, there are practically no academic articles addressing the terms *comparative law* and *legal geography* in unison; I have found no entries for *geography* or *legal geography* in the indexes of leading books on comparative law and the term *comparative law* is absent from the indexes of major books in legal geography. Legal comparatists and legal geographers virtually ignore each other's work.[1]

This chapter represents an initial attempt to discuss the benefits of adopting a critical comparative legal geographical (CCLG) approach. The first part of the chapter addresses comparative law scholarship. It demonstrates that while early comparatists engaged with geography, their interest in it waned with the institutionalization of the field at the beginning of the twentieth century. Until recently, the bulk of mainstream comparative law—to which I refer to as the "dominant outlook"—was mainly conservative and formalist, and did not interact much with other academic disciplines. The dominant outlook is recently undergoing what some define as a crisis, while even mainstream comparatists begin to understand that "co-operation with other disciplines is an *essential element* for the prospect of development in the future of comparative law" (Husa 2004, 37–38). Particularly interesting is the work of critical and postcolonial comparatists who challenge the dominant outlook, and a small number have even started to take space seriously. These scholars offer insights and research questions that should inform the construction of the comparative legal geography project and that simultaneously would greatly benefit from an acquaintance with legal geography.

The second part is a preliminary attempt to envision a comparative critical legal geography inspired by both critical legal geography (CLG) and comparative law scholarship. My purpose here is no more than to raise questions and suggest some possible research directions. I focus on colonial and postcolonial settings, interrogate processes of displacement and dispossession, and argue that they are important locations to engage in CCLG. I illustrate my argument with a short case study that investigates a legal-geographical triangle set within the British "legal family": Britain, Palestine/Israel, and India/Pakistan, showing how ideas and legal concepts embodied in British war legislation were transplanted to and transformed in post-partition India/Pakistan and Israel in the form of Evacuee

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

04_ch04_fn.indd 96 27/01/14 2:07 PM

Property acts in India/Pakistan and Absentee Property legislation in Israel. These laws facilitated the taking and reallocation of refugee property and played a part in postindependence spatial transformations. The chapter concludes by suggesting some additional research directions and methods.

THE TRAJECTORY OF COMPARATIVE LAW: FROM ENGAGEMENT WITH GEOGRAPHY TO DESPATIALIZATION AND BACK?

"Modern" comparative law begins with the work of French jurists and social thinkers such as Montesquieu, the "foremost precursor of modern comparative law" (Hug 1932, 1050; see also Fauvarque-Cosson 2006) and Pascal, who, according to Grossfeld (1984), were also the pioneers of legal geography. Unlike present-day comparatists' neglect of geography, these and other early modern scholars compared legal systems while simultaneously attributing determining influences to climate and physical geography, seeking to explain legal differences "in relation to the climate of each country, to the quality of its soil, to its situation and extent" (Montesquieu, quoted in Blomley 1994, 29; see also Donahue 2006; Zweigert and Kötz 1998).

Following these and additional precursors, academic comparative law developed during the nineteenth and twentieth centuries, primarily in France, Great Britain, and Germany, and later in the United States (Cairns 2006; Clark 2006; Fauvarque-Cosson 2006; Schwenzer 2006; see generally Reimann and Zimmermann 2006). The first congress of the French Société de Législation Comparée, held in 1900, is considered the "birthplace of comparative law" (Fauvarque-Cosson 2006, 36) and set optimistic and Eurocentric goals aiming to uncover the common legal core of "advanced nations" and to contribute thereby to world unity (Clark 2006; Cotterrell 2003; Zweigert and Kötz 1998).

The inception of academic comparative law during the age of colonialism, social Darwinism, classificatory scientific models, legal formalism, and dogmas of progress had much to do with the discipline's trajectory (Glenn 2006; Riles 2001). Comparatists classify national systems, comparing and ascribing them to "legal families." At the apex of this classification, one usually finds a particular European "family," such as civil (sometimes subdivided) or common law. During late nineteenth and early twentieth centuries, this evolutionary classification often justified colonization (Arminjon, Nolde, and Wolff 1950; Cairns 2006; David and Brierley 1985; Glenn 2006; Zweigert and Kötz 1998). The "legal families" classification has even generated a series of legal maps, such as the one John Wigmore (1929) published in *Geographical Review*. Furthermore, comparatists argue that the divergent heritage of European legal families left lingering traces in their former African

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

colonies. This creates a particular, nonlinear legal geography: "There is still a deep divide between the previous French and Belgian colonies on the one hand, and those that were British on the others. This is why it is much easier for a lawyer from Ghana to understand a lawyer from Kenya, Uganda, or even from England, which are far away, than a lawyer from the Ivory Coast next door" (Zweigert and Kötz 1998, 67).

Although there is a growing criticism of "legal families," the concept still plays a dominant role in comparative legal studies (Glenn 2006; Menski 2006; Twining 2009), and as I argue in the conclusion, it can assist legal geographers in constructing comparative conceptual tools.

Following Günter Frankenberg (1985), critical comparatists have challenged the discipline's conservatism; its "keeping ideology out of comparative law analysis" (Kennedy 2012, 54); its lack of a solid critical agenda; and the "epistemological racism" of the dominant outlook, which "remains Eurocentric" (Watt 2006, 583, 597). They note that the "core" of "modern" law is still neocolonial, whereas comparative law complies with the politics of "organized amnesia of law as a form of conquest" (Baxi 2003, 49–50; see also Miller and Ruru 2009). An additional critique focuses on comparative law's fixation on official legal rules and its dated law-in-the-books conception of "the legal," which leads to its dearth of dialogue with other disciplines (Cotterrell 2003, 2006; ; Gross 2011; Harris 2001; Husa 2006; Merryman 1997; Riles 2006).

All this explains comparative law's neglect of legal geography and shows how much it can gain from engaging with critical legal geography. The time seems ripe, as the winds of change have begun to reach the strongholds of the discipline while the dominant outlook is experiencing what is some observers have referred to as "the crisis of orthodox comparative law" (Harris 2001, 443–44) and the "discipline's malaise" (Reimann 2002, 672). The annual meeting of the American Society of Comparative Law in 2008 devoted to "The West and the Rest in Comparative Law," aimed at "unveiling the master 'narrative' of the Western Legal Tradition as reflected in the comparative study of law." A recent plenary session held by two leading comparative law societies revealed a similar approach (International Academy of Comparative Law and American Society of Comparative Law 2010). Comparatists have started to acknowledge that cooperation with other disciplines is crucial for the future of comparative law. However, while legal comparatists have discovered interdisciplinary work, practically none directly engages legal geography scholarship.

Nevertheless, some come quite close. For example, William Twining (2009), who devotes a chapter to "mapping law," offers insights that resonate with spatial conceptions of cultural anthropologists such as James Ferguson and Akhil Gupta (see the introduction to this volume). While the dominant approach assumes that

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

04_ch04_fn.indd 98 27/01/14 2:07 PM

legal relations are neatly arranged in hierarchical concentric circles ranging "from the very local, through sub-state, regional, continental, North-South, Global and beyond to outer space," Twining (2009, 14–15) argues that the picture includes "empires, alliances coalitions, diasporas, networks, trade routes and movements . . . special groupings of power such as the G7, the G8, NATO, the European Union, the Commonwealth, multi-national corporations, crime syndicates and other non-governmental organizations and networks."

Twining maintains that the amount of interdependence, influences, and interactions among legal orderings will be greater when spatial or other proximities such as historical associations (of former colonies, established alliances, or trade routes) and legal traditions such as common or civil law exist. His embedded understanding of law, which includes social practices arising at particular times and in specific places, comes as close as any legal comparatist to that of legal geographers. Thus, important comparatists begin studying legalities as embedded in social, cultural, and especially *spatial* settings. Although there still has been no meaningful direct dialogue between comparatists and legal geographers, the ground is set for such encounters.

In the next section, I address a promising area of comparative law, which some comparatists consider "at the core of the comparative legal enterprise" (Twining 2005, 214), that, while currently suffering from a failure to consider legal-geographical literature, stands to gain the most from such rethinking: the scholarship on "legal transplants." Concurrently, comparatists addressing critically mainstream transplantation discourse, such as Twining and Upendra Baxi, offer insights and research questions that should inform the construction of the comparative legal geography project.

LEGAL TRANSPLANTS AND DIFFUSION OF LAW

A dominant research stream in orthodox comparative law, originally introduced by Allan Watson, studies the movement—commonly termed *transplantation* by comparatists—of legal norms from one country to another.[2] Watson's (1974) publication of *Legal Transplants* and his subsequent work (e.g., 1993, 2000a, 2000b) have positioned legal transplants at the forefront of the comparative project (Graziadei 2003, 2006, 2009; Nelken 2003; Twining 2005).

Transplantation scholarship has begun without paying much attention to local conditions or "extralegal" factors, and without engaging with relevant geographical literature (Cotterrell 2006).[3] Watson and his collaborator Ewald assert that legal changes are mainly "internal" processes and that social influences on legal norms are relatively unimportant (Cotterrell 2003; Nelken 2003). With such

© *DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION*

positivist focus on formal legal rules, there is no need to dwell upon local socio-spatial characteristics or to engage in empirical study (Riles 2006; Twining 2005).

Critical comparatists critique Watson's transplant theory for ignoring questions of power relations between such zones as the metropolitan center, the semiperiphery and the colonial periphery (Mattei 2006) and point out that this scholarship has focused mainly on the transplantations of "Western inputs" (Menski 2006, 51). While some question the very possibility of such transplants (Legrand 1997, 2003), law can spread similarly to ideas, structures of thoughts, innovations, fashions, and policies (Twining 2005). Transplantation does not entail full adherence to the original meanings and functions, and the process "always involve[s] a degree of cultural adaptation, a 'domestication'" (Graziadei 2009, 728).

While there is a good deal of discussion of "transplantation, transposition, spread, transfer, import/export, reception, circulation, mixing and transfrontier mobility" of law, this scholarship usually does not engage with the social science literature on diffusion (Twining 2006, 510; see also Twining 2005). Twining (2005, 221) offers a set of basic questions on diffusion that could inspire legal geographers:

> What were the conditions of the process, and the occasion for its occurrence? What was diffused? Through what channel(s)? Who were the main change agents? To what extent were the characteristics of the change agents and their contexts similar or different? When and for how long did the process occur? Why did it start at that particular time? What were the main obstacles to change? How much did the object of diffusion change in the process? What were the consequences of the process and what was the degree of implementation, acceptance and use of the diffused objects over time?

Legal diffusion includes not only a "relationship between two countries involving a direct one-way transfer of legal rules or institutions" (Twining 2006, 511). Variants include a diffusion of law from a single exporter to multiple destinations, a single importer from multiple sources, and multiple sources to multiple destinations. While the standard case is from one national legal system to another, diffusion involves cross-level transfers. Pathways of diffusion include reciprocal interactions and reexport. Diffusion involves also informal or semiformal adoptions and legal phenomena or ideas such as ideologies, theories, and personnel (Twining 2006). In response to the dominant vision of law as a Northern, European, and Anglo-American creation diffused through the world via colonialism, trade, and postcolonial influences, there is a need to enrich this discourse and recognize that there are varied processes and directions of legal diffusion that do not necessarily converge. Finally, it is crucial to include, at the core of the

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

comparative project, the legal traditions of the Other, particularly the marginalized South (Twining 2009, 6–7).

The study of transplants can be a powerful critical tool. Transplants occur in several ways, including "imposition of law through violence in one form or another" (Graziadei 2006, 456). Although much of the literature "treats diffusion of law as part of development, modernization, and convergence," there is a "discernible strand . . . that treats culture, tradition, local context, and resistance sympathetically. One obvious reason for this is that so much of diffusion of state law is associated with colonialism and imperialism and neo-colonial forms of capitalism" (Twining 2005, 233). For instance, comparatist Upendra Baxi (2003, 61) recounts from a critical perspective how the British Indian penal code traveled into many of Britain's African colonies, and how "the widely-exported colonial Indian Official Secrets Act renders criminal any spatial movement by the subject within an ascribed 'place' as notified, say by the executive. . . . Colonial penal legality . . . abounds in models of legislation that constitute the political *geographies of injustice*." Thus, "among the formidable challenges which await tomorrow's comparatist [and legal geographers] . . . are the tasks of tracing the sometimes improbable paths taken by migrating law, of investigating the ways in which they come to assimilated, rejected or refashioned" (Munday 2003, 9).

The time seems ripe for a "spatial turn" in comparative law, a perspective found—in an environmental determinist version—in the scholarship of comparative law's precursors but lost with the institutionalization of the discipline. The reintroduction of spatiality and an engagement with CLG scholarship could assist comparative law in recovering from its current malaise and embarking on a new trajectory. Simultaneously, comparatists' insights, particularly those of critical and postcolonial scholarship could provide powerful, though limited, research tools and help expand legal geography's horizons.

In the next section, I examine processes of displacement and dispossession in colonial and postcolonial settings, which I conceive as important locations for engaging in comparative CLG. After introducing CLG scholarship on dispossession, I offer an example that shortly examines how ideas and legal concepts embodied in British war legislation were transplanted to and transformed in India/Pakistan and in Israel.

CRITICAL COMPARATIVE LEGAL GEOGRAPHY OF DISPOSSESSION

While legal geography consists of several approaches, a powerful stream adopts a critical perspective. As the choice of title of Blomley's (1994) seminal book, *Law,*

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

04_ch04_fn.indd 101 27/01/14 2:07 PM

Space and the Geographies of Power hints at and as the book demonstrates, attention to the interconnectedness and mutual constitution of law and space often entails a critical exposition of their frequent role in the production of oppressive power structures. Critical legal geography examines how spatial-legal alignments contribute to the legitimation and persistence of hierarchical social orders (Delaney 2010; Yiftachel 2006). It endeavors to unveil the constructed entanglements of the spatio-legal and to demonstrate that, although they are conventionally conceived as neutral and static, as integral components of the natural and unchangeable order of things, they are social constructions that "systematically favor the powerful: employers, men, whites, property owners, and so on" (Blomley 2003a, 30). Critical legal geography draws attention to neglected and hidden areas and boundaries, as well as to those that are "taken for granted," within which hierarchical social orders are forged (Kedar 2003). These contribute to the creation of a legal geography of power and powerlessness, of zones of security and those of insecurity, of legal and illegal presence, of emplacement and displacement.

Property, and especially landed property, is a central locus where such a power-space-law nexus is established and maintained (Blomley, 2003b; Delaney 2004; Kedar 2001, 2003). As Delaney (2004, 849) so aptly describes, while frequently the immediate displacement of the homeless, refugees, and indigenous peoples is effectuated by physical force, often "displacement is effected through the force of reason," by the enactment of statutes and the "canons of statutory interpretation, . . . [and] the submission before grammatical imperatives." Violences served "as a vector of colonial power. . . . Space, property and violence were performed simultaneously" (Blomley 2003b, 129). Critical legal geography has exposed how law is used to place and displace and "to produce the spaces of racial subordination (segregated spaces, native reserves, colonies). . . . As examples as varied as apartheid, Jim Crow, White Australia and indigenous reserves in different parts of the world demonstrate, racialization is commonly effected through processes of spatialization: separation, confinement, exclusion, expulsion, and forced removal" (Delaney 2009, 167–68).

Such processes of violent spatialization can serve as fertile ground for comparative CLG, and I now move to examine such an example.

BRITAIN, INDIA/PAKISTAN, PALESTINE/ISRAEL

This case study investigates a legal-geographical triangle set within the British "legal family," showing how ideas and legal concepts embodied in the World War II–era British Trading with the Enemy Act (TEA) moved in space and were transplanted to and transformed in two of its former possessions: postpartition India/

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

Pakistan as evacuee property legislation and Palestine/Israel in the form the Israeli absentee property legislation. These territories underwent partition, ethnic war, mass population movements, a radical restructuring of their human and physical landscapes, and a simultaneous creation of new property regimes and legal geographies.

As we have seen, comparatists contend that legalities are "transplanted" to novel settings. They move not only from "advanced Western" centers to recipient peripheries but also in varied diffusion patterns. In the process, they are transformed and sometimes reexported. Transplantation can be violent. Legal transplantations are more likely to occur between regimes in which spatial or other proximities exist, like former colonies, or between countries sharing legal traditions such as the common law.

The present case applies and interrogates these insights. Until the mid-twentieth century, the British Empire ruled much of the world, including India and Palestine. In this context, members of epistemic legal communities communicated with one another and legal actors were moving across regions, transporting with them legal conceptions, and implementing and adapting those in new locations, while leaving traces, traditions, and lines of communications that continued to influence former possessions long after the British left (see, e.g., Smandych 2010).

Britain and Mandate Palestine

During World War II, most belligerents enacted or reapplied legislation limiting, freezing or confiscating enemy property (Domke 1943; Grathii 2006; McNair and Watts 1966). The British TEA (1939) provided that the Board of Trade could appoint a custodian of enemy property (CEP) and vest in him enemy property (see Domke 1943, 385). Ordinarily, decisions to vest property in the custodian were taken on an individual basis and included only designated property (Domke 1943; Foreign and Commonwealth Office 1998). Vesting property in the custodian gave him almost unlimited powers with respect to that property (Greenspan 1959; McNair and Watts 1966).

As the legislation did not directly apply to Mandate Palestine, it was transplanted in the form of the Trading with the Enemy Ordinance (TEO) of 1939 and subsequent legislation that closely followed the British model.[4] In Palestine, the decision of whether to transfer specific properties to the custodian remained in the hands of the high commissioner. while he issued specific vesting orders, many of them as a protective measure to safeguard property in Palestine of Jews under Nazi sway, unlike the future Indian, Pakistani, and Israeli legislation, most property of enemy nationals was not vested in the custodian (Kantrovitch 1943).

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

The custodian received stringent procedural and evidentiary powers, which the future Israeli legislation regulating absentee property essentially reproduced. A certificate issued by the custodian declaring "enemy property" or "with regard to matters within the scope of his duties" served as evidence of the facts stated in it (TEO Sec. 9(2)), "unless the Court directs otherwise for special reasons."[5] The vesting or transferal of a property by the custodian could not be invalidated simply on the grounds that the person declared by the custodian an enemy was discovered not to be one (Sec. 9(b)(4)).

Many of the trading-with-the-enemy arrangements were adopted in the future Israeli evacuee property legislation, such as the office of the Israeli Custodian of Absentee Property (CAP), the stringent powers accorded him, and the formal extinguishing of all former rights to the property vested in the custodian (Fischbach 2003, 21). Israeli legislation differed in three essential areas: First, unlike the British laws, Israeli law included persons who had never left their residence and were not nationals of enemy states. Second, unlike the British Mandatory legislation that required specific orders, Israeli legislation vested in the CAP all property belonging to anyone coming under the statutory definition of *absentee*. Last, while both the stated aims of Mandatory legislation and the practices associated with it presented it as a temporary economic weapon until hostilities end, the stated purpose of Israeli legislation remained vague, in practice serving as a tool for extensive expropriation of Arab land in Israel.[6] To find the sources of these arrangements, we have to turn to the Pakistani and Indian legislation.

India/Pakistan

As was Israel, established about a year later, Pakistan and India were established in a context of intercommunal violence after a period of British colonial rule, with the partition of British-controlled India into the states of Pakistan and India on August 15, 1947 (Frazer 1988; Moore 1988). As a result, between 500,000 to 1 million people died and an estimated 14 million to 17 million people crossed the Indo-Pakistani border, leaving behind vast amounts of property (Naqvi 2007; Schechtman 1951; Talbot 2011; Talbot and Singh 2009, 61–62; Vernant 1953, 736–37; Zamindar 2007). While Indian and Pakistani lawmakers drew on the British TEA, their legislation incorporated new components that facilitated not only vesting but also transfer and reallocation of ownership.

On September 9 and 14, 1947, respectively, the governments of Pakistan and India issued ordinances creating custodians of evacuee property (Das Gupta 1958, 190). These ordinances were modeled after the British CEP (Vernant 1953, 739),

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

but in the context of the massive population transfer, they served very different functions. Initially, the stated intention of the legislation was to preserve refugee properties (Das Gupta 1958), but Hindu and Sikh evacuees' property served as the major source for the resettlement in Pakistan of Muslim refugees from India, and land belonging to Muslim evacuees would serve to settle Hindu and Sikh refugees in India. On September 9, 1947, concurrently with the creation of the office of Custodian of Evacuee Property—ostensibly created to preserve property on behalf of its owners—Pakistan enacted an ordinance "to provide for the economic rehabilitation of West Punjab" (West Punjab Economic Rehabilitation Ordinance, No. IV of 1947, *West Punjab Gazette*, Lahore, September, 10, 1947, quoted in Das Gupta 1958, 191). This ordinance granted sweeping powers to the province's rehabilitation commissioner. For settling refugees, he could distribute land abandoned by evacuees (Das Gupta 1958; Schechtman 1951; Vakil 1950). A Hindu refugee could recover his property only if he physically returned to Pakistan. In light of the ethnic violence then raging, few Hindus ventured back into Pakistan (Schechtman 1951, 408; Vakil 1950). India issued similar ordinances (Das Gupta 1958, 193; Schechtman 1951, 411; Vernant 1953, 751).

The transplanted British TEA continued to transform as both India and Pakistan gradually enacted laws that broadened the definition of evacuees and vested in their custodians almost unlimited powers, with respect not only to evacuees but also to *intending evacuees*, a term referring to anyone contemplating migration from one country to the other (Das Gupta 1958, 200). Furthermore, Pakistani legislation permitted classifying as "evacuee" any landowner only visiting friends or family who had not even left Pakistan (Das Gupta 1958, 202; Vakil 1950, 109; Vernant 1953, 756). Such definitions, which included persons who had temporarily left their habitual place of residence, resembled the future Israeli legislation and the status of "present absentee."

Israel/Palestine

On November 29, 1947, the United Nations voted in favor of the partition of Palestine. The 1948 War of Independence/Nakba that ensued resulted in the establishment of Israel; the flight, expulsion, and barred return of hundreds of thousands of Palestinian refugees; and the immigration of hundreds of thousands of Jews to Israel, including most Jews who had been living in Arab countries and Holocaust survivors (Morris 1987, 2008; Patai 1971; Said 1980). Israel initiated a process of land nationalization, settling Jews on former Palestinian land. The absentee property legislation and the Development Authority Act served as major legal instruments in this process (Jirys 1976; Kedar 2003; Morris 1987).[7]

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

Comparatists argue that "[t]ransplants are affected by the actors and the networks of individuals . . . that play a role in the diffusion of laws" (Graziadei 2006, 473), contending that "ideas about law and legal institutions migrate from one jurisdiction and social context to another as a result of the efforts of individual legal actors working in the service of their individual interests—their personal career interests, the interests of their families or class, or of their firms and organizations" (Riles 2006, 789). In this case, the key actor, and the major "nomospheric technician" (Delaney 2010, 157–95) was Zalman Lifshitz, the prime minister's adviser on land and border demarcation who served as a major architect of the legislation. Archival sources reveal that Lifshitz and other Israeli officials closely followed and adopted the Indian and Pakistani evacuee legislation and policies. Lifshitz regularly received copies of the legislation of evacuee property in India and Pakistan from local correspondents like Jain Book Agency in New Delhi, and Israeli experts minutely analyzed the legislation and frequent amendments to it (Counselor on Arab Affairs, 1949).

On March 30, 1949, Lifshitz (1949) submitted to Prime Minister Ben-Gurion the "Report on the Need for a Legal Settlement of the Issue of Absentee Property to Facilitate Its Permanent Use for Settlement, Housing, and Economic Recovery Needs." He asserted that countries in similar situations, such as India and Pakistan, had assumed vast powers to liquidate refugee property for state use and urged the Israeli government "to proceed in a similar manner," as "there [was] no lack of precedents" (5–6). Lifshitz surveyed the two-statute model that Pakistan had adopted a few months earlier and explained that while Pakistani lawmakers drew on the British Trading with the Enemy Act, their legislation incorporated new components facilitating expropriation, but also ownership transfer and reallocation. The first ordinance authorized a "custodian of evacuee property" to take refugee property and transfer it to a "rehabilitation authority." The Rehabilitation Authority, created by another ordinance the same day, was empowered to "pool and allot" property to others. These two statutes created an integrated system that enabled the taking of Sikh and Hindu evacuee property in Pakistan and the use of that same land for resettling Muslim evacuees from India. Lifshitz (1949, 10) proposed replacing the temporary absentee property emergency regulations "with a new law, similar to the above mentioned Pakistani regulations and based on the principles they contain"; see also Forman and Kedar 2004). Commenting on Lifshitz's proposal, the high-ranking legal counselor Aharon Ben-Shemesh, remarked:

> In the absence of a recognized international legislative institution, recognized international customs and arrangements have a compulsory power. From this

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

04_ch04_fn.indd 106 27/01/14 2:07 PM

> perspective, we should see in: (a) the date of the Ordinances (October 1948) (b) in the fact that the problems addressed by these ordinances stem, like with us from the birth of this Muslim country, (c) in the fact that this country belongs to the British Commonwealth and to the U.N., big advantages that make it a first rate international precedent and we should chose to use it without hesitation." (Ben-Shemesh 1949, 6–7)

In concluding, he wrote: "The Pakistani Ordinances are a first rate international legal precedent. Their date and the similar problems give it an advantage over other precedents. This is an example on how these problems are solved *today.* . . . We should take this paved road and adjust it to our needs without hesitations" (Ben-Shemesh 1949, 8).

In 1949, two bills resembling the Indian and Pakistani ordinances came before the Knesset. Like its British, Mandatory, Indian, and Pakistani counterparts, the Israeli custodian received stringent and encompassing administrative and quasi-judicial powers. Likewise, the evidentiary and procedural tools made available to him were powerful ones. The custodian could appropriate any property on the strength of his own judgment. All he needed to do was certify in writing that a person, body of persons, or property came under the status of "absentee" or "absentee property." The burden of proof then shifted upon the owner or person involved.

In the British TEA, vesting of "enemy property" in the custodian constituted an administrative act, exercised upon a specific individual on the basis of particular considerations. The Israeli legislation, like its Indian and Pakistani models, introduced fundamentally different arrangements. While using the British legislation, it dramatically transformed it into a powerful tool of dispossession and resettlement, according to which, all property of "absentees" was vested in the custodian without need for any further legal recourse. It applied retroactively, setting a specific date as a watershed. It included "present absentees," a concept resembling the "intending evacuees" of India and Pakistan. It served not only as an instrument of war but also, as in India and Pakistan, gradually evolved from a temporary to a permanent measure with the establishment of a "Development Authority" inspired by the Pakistani Rehabilitation Authority, and transferred to that authority the full and unencumbered ownership of absentees' property.

During the parliamentary debates over the legislation of the Evacuee Property Act, Finance Minister Eliezer Kaplan explained, "We have learned of the recent example of the Indian and Pakistani nations that have also faced the problem of refugees and a mass exchange of population. These two states faced the difficulty of abandoned property head on" (Divrei HaKnesset 1949, 139). These countries,

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

too, saw fit to establish a Development Authority, he explained. "When one reads the Indian statute, one entertains the thought that after all we have nothing to be ashamed of in our statute, despite the fact that it is far from being an acme of perfection." Kaplan also likened the institution of the custodian of absentee property to the British Custodian of Enemy Property. The Knesset enacted the Absentees' Property Law in March 1950 and the Development Authority (Transfer of Property) Law in July 1950.[8] This legislation incorporated elements from the British TEA and TEO, as well as the Pakistani and Indian evacuee acts. It served as a cornerstone of the transformative Israeli spatio-legal machinery that facilitated the expropriation and reallocation of Arab land in the aftermath of 1948, and contributed to the enduring transformation of Palestinian and Israeli human geographies.

CONCLUSION

"[T]he nomosphere is radically heterogeneous. How it is manifest in, say, rural Sumatra is vastly different than how it is manifest in midtown Manhattan" (Delaney 2004, 852). Moving ahead in legal geography entails a comparative project seeking to understand similarities and differences between nomospheres. It should integrate insights and concepts informed by both comparative law and legal geography into a critical comparative legal geographical investigation that is so conspicuously absent from current scholarship in both fields.

The concept of legal families could contribute to comparative legal geography, but this necessitates elaboration. For instance, we could develop a typology that would take into account traditional comparative law classifications such as "common law" and "civil law" while simultaneously paying attention to sociospatial factors. Comparative legal geography could investigate nomospheric situations such as indigenous dispossession in countries belonging to different legal families and assess the scope and endurance of distinctive legacies while they engage with local geographies and legalities, as well as with regional and international practices. This could assist in the development of a novel classification of nomospheric situations according to states' performances. We can envision similar classifications of other typical nomospheric situations, such as those concerning homeless persons, refugees, illegal immigrants, public housing, workplaces, public-private divides, wars, spaces of exceptions, nature, and the like. With sufficient research, and depending on states' performances in these situations, it might become possible to assess states according to a "nomospheric scale" or even to classify them into "nomospheric families." Such nomospheric families would differ from current formalist comparative law classifications and would take into account not so much law in the books as emplaced legalities and law in action.

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

At least as promising is research on the transplantation and mobilities of spatio-legal knowledge and institutions between states and empires and the role of different actors in promoting and resisting it. In the case study examined here, transplantation took place within the framework of the British Empire and its postempire colonies. However, the movement can take place between empires as well. For instance, French colonizers adopted structures developed by the British Empire such as the Torrens land settlement and registration system and used them in their own colonies in Tunisia, Madagascar, French Congo, West Africa, and Morocco, even though land registration in France was very different (Graziadei 2006). Why did this transplantation take place? How did it affect, and how was it affected by, local geographies?

In studying nomospheric movement, attention should be devoted to recent developments in the social science scholarship on mobility. In their editorial in the first volume of *Mobilities*, Hannam, Sheller, and Urry (2006) announced the dawn of a "mobility turn" in the social sciences and called for attention to mobilities, immobilities, and moorings. In a related article, Sheller and Urry (2006) proclaimed the emergence of a "mobility paradigm." The mobility paradigm stems from scholarship rooted in a number of social sciences fields, including anthropology, sociology, cultural, transport, migration, international and political studies, and geography (see also Cochrane and Ward 2012). This scholarship simultaneously emphasizes that "all mobilities entail specific often highly embedded and immobile infrastructures" (Sheller and Urry 2006, 210). This literature investigates therefore not only mobilities but also immobilities (McCann forthcoming).

This emergent paradigm has so far ignored legal mobility and been ignored by legal comparatists. Although much of it tracks movements of persons and objects, it also focuses on the mobility of ideas and policies. Such scholarship is especially inspiring for those interested in nomospheric transfers. McCann and Ward (2013, 3) notice the formulation of a multidisciplinary perspective "on how, why where and with what effects policies are mobilized, circulated, learned, reformulated and reassembled." This emerging scholarship embraces "critical genealogies of policy discourse; the tracking of policy networks, norms and actors; . . . and various forms of transnational, cross-scalar and relational comparativism" (Peck and Theodore 2010, 169). Policy transfer depends on networks of experts and additional protagonists, grounded in local conditions and serving as "links" that are embedded in material places and often in specific temporalities (Garrett, Dobbins, and Simmons 2008, quoted in Peck 2011). Similarly, we should look for nomospheric mobilities in concrete sites—offices of state attorneys; governmental planners; interdepartmental meetings; courts of law; local and international architectural, planning, and law firms; legally and spatially oriented nongovernmental

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

organizations; law schools and planning departments; local governments; academic and professional conference halls—where nomospheric ideas, structures, and practices are constructed, conveyed, and transformed.

Furthermore, we should pay attention to the "dialectical reconstruction of policy landscapes. 'Mobile' policies . . . dynamically reconstitute the terrains across which they travel, at the same time as being embedded within, if not products of, extralocal regimes and circuits" (Peck 2011, 793). Indeed, "mobile policies rarely travel as complete 'packages' they move in bits and pieces—as selective discourses, inchoate ideas, and synthesized models—and they therefore 'arrive' not as replicas but as policies already-in-transformation" (Peck and Theodore 2010, 170). Simultaneously, they are "*co-produced* through concurrent processes of site-specific experimentation, purposeful intermediation, and emulative networking" (171). Mobilities scholarship instructs us not to look so much at incremental and orderly diffusion but instead to devote more attention to "moments of rupture, transition, and transformation" (Peck 2011, 791), such as the partitions, wars, and population transfers.

In the example of the British, Indian/Pakistani, and Palestinian/Israeli triangle offered earlier, we began to track the traces of trading-with-the-enemy legislation, which circulated, in bits and pieces, from London bureaus during World War II to specific offices and officials in postpartition India, Pakistan, British Palestine, and Israel while being restructured in the route. We unraveled a network linked by "immobile infrastructures" such as the Jain Book Agency in New Delhi and the office of Zalman Lifshitz in Jerusalem, which transferred knowledge and practices to Israel. Then in Israel, a local network of different nomospheric actors and technicians reformulated and reassembled that knowledge and thereby facilitated the radical restructuring of post-1948 legal, human, and political Israeli and Palestinian geographies.

Likewise, the legal geographies of settler and deeply divided multiethnic societies in general and between such states and their indigenous peoples in particular, can serve as important prisms for comparative critical legal geography of displacement (on the land disputes between Israel and its indigenous Bedouins, see Yiftachel, Kedar, and Amara 2012). By examining the role of law and legal technicians in creating and sustaining differential nomospheric zones and tools of displacement, we can begin forming generalizations about how such nomospheric zones are created and sustained. For instance, a comparative legal geography of the terra nullius doctrine (Daes 2001, Sec. 31; Miller and Ruru 2009) could be particularly promising, as this doctrine served as a prime instrument in displacing indigenous peoples while simultaneously denying the dispossession. Additionally, some countries, such as Canada, New Zealand, and Australia, and

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

emerging international norms are moving away from this and adjacent doctrines and could serve as models for advancing nomospheric transformations.

Once we know more about nomospheric families, we may trace the diffusion and transplantation of specific ideas, institutions, and techniques that facilitated or hampered dispossession and domination within and between nomospheric families—terra nullius doctrines; classifications of "enemy," "evacuee," and "absentee"; settlement of title practices. Likewise, we can trace the movement of and resistance to other nomospheric conceptions, structures, personnel, and practices.

We should not only follow the movement but also compare how nomospheric ideas, concepts, and institutions developed in different settings. A comparative CLG could investigate the networks through which moved the regimes of separation barriers in East and West Germany, Israel/Palestine, India/Pakistan, North/South Cyprus, Northern Ireland, United States/Mexico, Spain/Morocco, and Malaysia/Thailand. What are the commonalities and differences between these mobility or immobility regimes (McCann forthcoming) once in place, and what can we learn from their local transformations? A comparison of legal geography of trees and afforestation is also a promising area. Trees serve as a prime tool in the struggle between Israeli and Palestinians, and earlier the British declared forest reserves to transform them into state lands in Palestine, India, and Cyprus (Braverman 2009b). Mawani (2007, 724) notices the role of colonial forest laws in dispossessing indigenous peoples "from Africa, to Australia, to North America."

With the accumulation of comparative legal geography scholarship, we could imagine a classification along a scale of urban or rural displacements and emplacement or look at the diffusion and transplantation of spatio-legal knowledge and practices between members of global municipal "families" in reaction to social protests such as the Occupy movement. However, hegemony is never complete, and such policies are marked by "contradictions and contestations" (Peck and Theodore 2010, 171). Thus, "anti-poverty movements in Toronto and Mexico City [serve] not only as spaces of resistance to neoliberal rule, but as sites for the production of alternative policy projects, visions and strategies" (171). Peck and Theodore ask whether these alternative models travel differently than those emulating the dominant paradigm, and legal geographers should ask how counterhegemonic, oppositional spatio-legal knowledge and practices move among social activists.

Comparisons should not solely focus on the dark heritage of colonial dispossession but also should look at some contemporary inspiring transformations, which can serve in planning reforms and imagining progressive solutions. Comparisons can contribute to the challenging of existing structures and the destabilization of nomospheric constellations. For instance, some international and national courts have rejected terra nullius (Daes 2001; *Mabo v. Queensland* 1992; Russell 1998;

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

Stavenhagen and Amara 2013; *Western Sahara Advisory Opinion* 1975), and the UN Declaration on the Rights of Indigenous Peoples (UN General Assembly 2007) offers a positive model for transforming nomospheric state-indigenous relations.

Quite a few chapters in this book suggest fascinating directions for comparative work such as studying differing entanglements of law, temporality, and space (Chapters 1 and 2) or the varied habits of territory, jurisdiction, and property (Chapter 3). We could compare the geolegalities of the Western (Chapter 6) and Soviet interventions in Afghanistan. We could study the ways legal disputes concerning the ordering of housing and workplaces for the poor in Mexico City (Chapter 7) compare with other megalopolises in the Global South or Global North and ask whether and how nomospheric knowledge and practices move between them. Similarly, we can compare the spatio-legal constructions of rurality in the United States (Chapter 8) and China. Likewise, we could ask how rules of engagement in civil law systems or in India compare with those described in Chapter 9, or how spatio-legal production of emotions at work looks in Indonesia or in Italy and trace networks and pathways of such know-how (Chapter 10)? We could conduct such comparative CLG while employing different methodologies, such as ethnography (Chapter 5).

A comparative CLG project demands proficiency in several academic disciplines and geographical regions. I suggest initiating collaborative comparative research projects. Working in teams of scholars, such as critical legal geographers and critical comparatists, fluent in the legal geographies of the studied regions, would facilitate comparisons based on local and cross-disciplinary knowledge.

Additionally, the project of expanding the horizons of legal geography could entail a much-needed expansion of comparative law. While a renewed infusion of spatiality and an engagement with legal geographical scholarship necessitates a paradigmatic shift in the dominant outlook, it could contribute to setting a new trajectory for comparative law and assist it in recovering from its current malaise and Eurocentrism. Simultaneously, insights of comparatists, particularly critical and postcolonial comparatists could help expand legal geography. At the very least, a timely dialogue between critical comparatists and critical legal geographers could contribute to both groups and to the initiation of a critical comparative legal geography project.

NOTES

I would like to thank Irus Braverman, Nick Blomley, and David Delaney for their constructive comments, as well as Ely Aharonson, Shulamit Almog, Eugene McCann, David Nelken, Deborah Shmueli, Rinat Yitzhaki, and Jonathan Yovel, for their helpful suggestions and advice, as well as the participants of the Haifa Law and Society Forum and the participants

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

of the International Conference of Comparative Law on Diffusion, June 3–4, 2013. For excellent research assistance, I thank Liat Leizer, Uri Sabach, and Irena Nuntenko. As always, my gratitude to Claudia Kedar for her love, wisdom, and support. The research was supported by the German Israeli Foundation Grant No. G-992-247.4/2007 and the Israel Science Foundation Grant No. 920/13.

1. A Lexis/Nexis search on March 5, 2012, in US and Canadian law reviews returned no article in which the terms *comparative law* and *legal geography* appeared in the same sentence, and only three such articles contained the terms in the same paragraph. A similar search on March 5, 2012, in ProQuest Central found only seven articles addressing both *legal geography* and *comparative law,* and only four of those dealt substantially with both concepts. The terms *Geography* and *legal geography* do not appear in the indexes of the following leading books in comparative law: Bussani and Mattei (2012); David and Brierley (1985); De Cruz (2007); Legrand and Munday (2003); Menski (2006); Reimann and Zimmermann (2006); Smits (2006); Zweigert and Kötz (1998). Likewise, the term *comparative law* is absent from the indexes of Benda-Beckmann, Benda-Beckmann, and Griffiths (2009); Blomley (1994); Blomley, Delaney, and Ford (2001); Braverman (2009); Butler (2012); Delaney (2004, 2010); Holder and Harrison (2003); Rosen-Zvi (2004); and Taylor (2006),

2. "The comparative study of transplants and receptions investigates contacts of legal cultures and explores the complex patterns of change triggered by them." Associated terms include *circulation of legal models*, *transfer*, *reception*, and *cross-fertilization* (Graziadei 2006, 441–44; Menski 2006; Twining 2005).

3. This seems to be a more general phenomenon. "Modern sociological accounts of diffusion and modern legal discussions of reception and transplants are a rather clear example of two bodies of literature seemingly addressed to similar phenomena that largely ignore each other" (Twining 2005, 203).

4. The legislation is reproduced in Blum and Roskin-Levy (1940); Gillis, Ball, and Lipschitz (1939); and Kantrovitch (1943), who also offered commentaries.

5. Amendment 1083 P.G 426, supplement no. 2 (March 13, 1941) (reproduced in Kantrovitch 1943).

6. Although "enemy persons" as a rule did not lose their property in the course of the war, some did do so because of the subsequent peace settlement (Mason 1951; McNair and Watts 1966).

7. Development Authority (Transfer of Property) Law, 5710-1950 (1950), *Laws of the State of Israel* 4: 151–53.

8. Absentees' Property Law, 5710-1950 (1950), *Laws of the State of Israel* 4: 68–82.

REFERENCES

American Society of Comparative Law. 2008. *The West and the Rest in Comparative Law—2008 Annual Meeting of the American Society of Comparative Law Event Program*. http://web.archive.org/web/20121016192323/http://uchastings.edu/media-and-news/event/docs/ascl-program.pdf.

Arminjon, Pierre, Boris Nolde, and Martin Wolff. 1950. *Traité de droit comparé*. Paris: Librairie Generale de Droit et de Jurisprudence.

Baxi, Upendra. 2003. "The Colonialist Heritage." In *Comparative Legal Studies: Traditions and Transitions*, edited by Pierre Legrand and Roderick Munday, 46–75. Cambridge: Cambridge University Press.

© *DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION*

Benda-Beckmann, Franz von, Keebet von Benda-Beckmann, and Anne Griffiths, eds. 2009. *Spatializing Law: An Anthropological Geography of Law in Society*. Farnham, UK: Ashgate.

Ben-Shemesh, Aharon. 1949. "Opinion on the Ways to Solve the Problems of the Absentees Remaining in Israel." July 8. Israel State Archives GAL 17116/8 (Hebrew).

Blank, Yishai, and Issi Rosen-Zvi. 2010. "The Spatial Turn in Legal Theory." *Hagar* 10 (1): 37–60.

Blomley, Nicholas K. 1994. *Law, Space and the Geographies of Power*. New York: Guilford Press.

———. 2001. "Law and Geography." In *International Encyclopedia of the Social and Behavioral Sciences*, edited by Neil J. Smelser and Paul B. Baltes, 12:8461–65. New York: Elsevier.

———. 2003a. "From 'What?' to 'So What?' Law and Geography in Retrospect." In *Law and Geography*, edited by Jane Holder and Carolyn M. Harrison, 17–33. Oxford: Oxford University Press.

———. 2003b. "Law, Property, and the Spaces of Violence: The Frontier, the Survey, and the Grid." *Annals of the Association of American Geographers* 93 (1): 121–41.

———. 2009. "Law." In *The Dictionary of Human Geography*, edited by Derek Gregory, Ron Johnston, Geraldine Pratt, Michael Watts, and Sarah Whatmore, 414–15. 5th ed. Malden, MA: Wiley-Blackwell.

Blomley, Nicholas K., David Delaney, and Richard Thompson Ford, eds. 2001. *The Legal Geographies Reader: Law, Power and Space*. Oxford, UK: Blackwell.

Blum, Arno A., and I. Roskin-Levy. 1940. *The Law Relating to Trading with the Enemy*. Tel Aviv: Palestine Publishing.

Braverman, Irus. 2009a. "Loo Law: The Public Washroom as a Hyper-Regulated Space." *Hastings Women's Law Journal* 20 (1): 45–71.

———. 2009b. *Planted Flags: Trees, Land, and Law in Israel/Palestine*. New York: Cambridge University Press.

———. 2012. *Zooland: The Institution of Captivity.* Stanford, CA: Stanford University Press.

Bussani, Mauro, and Ugo Mattei. 2012. *The Cambridge Companion to Comparative Law*. Cambridge: Cambridge University Press.

Butler, Chris. 2009. "Critical Legal Studies and the Politics of Space." *Social and Legal Studies* 18 (3): 313–32.

———. 2012. *Henry Lefebvre: Spatial Politics, Everyday Life and the Right to the City*. New York: Routledge.

Cairns, John. 2006. "Development of Comparative Law in Great Britain." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, 131–73. Oxford: Oxford University Press.

Clark, David. 2006. "Development of Comparative Law in the United States." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, 175–213. Oxford: Oxford University Press.

Cochrane, Allan, and Kevin Ward. 2012. "Guest Editorial—Researching the Geographies of Policy Mobility: Confronting the Methodological Challenges." *Environment and Planning A* 44: 5–12.

Cotterrell, Roger. 2003. "Comparatists and Sociology." In *Comparative Legal Studies: Traditions and Transitions*, edited by Pierre Legrand and Roderick Munday, 131–53. Cambridge: Cambridge University Press.

*© **DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION***

———. 2006. "Comparative Law and Legal Culture." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, 709–38. Oxford: Oxford University Press.

Counselor on Arab Affairs. 1949. "Pakistan and India: Problems of Refugee Rehabilitation." Israel State Archives, GAL 17114/8 (Hebrew).

Daes, A. Erica-Irene. 2001. "Prevention of Discrimination and Protection of Indigenous Peoples and Minorities: Indigenous Peoples and Their Relationship to Land." Working paper prepared by the Special Rapporteur submitted to the Commission on Human Rights, UN Doc. E/CN.4/Sub.2/2001/21. http://www1.umn.edu/humanrts/demo/RelationshiptoLand_Daes.pdf.

Das Gupta, Jyoti Bhusan. 1958. *Indo-Pakistan Relations, 1947–1955*. Amsterdam: Djambatan.

David, René, and John Brierley. 1985. *Major Legal Systems in the World Today.* 3rd ed. London: Stevens.

De Cruz, Peter. 2007. *Comparative Law in a Changing World*. 3rd ed. Oxon, UK: Routledge-Cavendish.

Delaney, David. 2004. "Tracing Displacements: Or Evictions in the Nomosphere." *Environment and Planning D: Society and Space* 22: 847–60.

———. 2009. "Law and Law Enforcement." In *International Encyclopedia of Human Geography*, edited by Nigel Thrift and Rob Kitchin, 165–71. Amsterdam: Elsevier.

———. 2010. *The Spatial, the Legal and the Pragmatics of World-Making: Nomospheric Investigations*. New York: Routledge.

Divrei HaKnesset [Knesset Records]. 1949. 88th meeting of the 1st Knesset, November 22. 3:136–145.

Domke, Martin. 1943. *Trading with the Enemy in World War II*. New York: Central Book.

Donahue, Charles. 2006. "Comparative Law Before the Code Napoléon." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, 3–32. Oxford: Oxford University Press.

Economides, Kim, Mark Blacksell, and Charles Watkins. 1986. "The Spatial Analysis of Legal Systems: Towards a Geography of Law?" *Journal of Law and Society* 13 (2): 163–81.

Fauvarque-Cosson, Bénédicte. 2006. "Development of Comparative Law in France." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, 35–67. Oxford: Oxford University Press.

Fischbach, Michael R. 2003. *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict*. New York: Columbia University Press.

Foreign and Commonwealth Office. 1998. *History Notes: British Policy Towards Enemy Property During and After Second World War*. http://www.enemyproperty.bis.gov.uk/fcoreport.pdf.

Forman, Geremy, and Alexander (Sandy) Kedar. 2004. "From Arab Land to 'Israel Lands': The Legal Dispossession of the Palestinians Displaced by Israel in the Wake of 1948." *Environment and Planning D: Society and Space* 22: 809–30.

Frankenberg, Günter. 1985. "Critical Comparisons: Rethinking Comparative Law." *Harvard International Law Journal* 26 (2): 411–55.

Frazer, T. G. 1988. "The Transfer of Power in Divided Societies: Partition in India, Ireland and Palestine." *Indo-British Review* 14: 61.

Gillis F., K. Ball, and H. Lipschitz. 1939. *The ABC of the Emergency Legislation of Palestine: Part I: Trading with the Enemy*. Tel Aviv: F. Gillis and K. Ball.

© ***DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION***

Glenn, Patrick H. 2006. "Legal Families and Legal Traditions." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, 421–40. Oxford: Oxford University Press.

Grathii, James Thuo. 2006. "Commerce, Conquest and Wartime Confiscation." *Brooklyn Journal of International Law* 31: 709–40.

Graziadei, Michele. 2003. "The Functionalist Heritage." In *Comparative Legal Studies: Traditions and Transitions*, edited by Pierre Legrand and Roderick Munday, 100–127. Cambridge: Cambridge University Press.

———. 2006. "Comparative Law as the Study of Transplants and Reception." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, 441–75. Oxford: Oxford University Press.

———. 2009. "Legal Transplants and the Frontiers of Legal Knowledge." *Theoretical Inquiries in Law* 10 (2): 723–44.

Greenspan, Morris. 1959. *The Modern Law of Land Warfare*. Berkeley: University of California Press.

Gross, Ariela J. 2011. "Race, Law, and Comparative History." *Law and History Review* 29 (2): 549–65.

Grossfeld, Bernhard. 1984. "Geography and Law." *Michigan Law Review* 82 (5–6): 1510–19.

Hannam, Kevin, Mimi Sheller, and John Urry. 2006. "Editorial: Mobilities, Immobilities and Moorings." *Mobilities* 1: 1–22.

Harris, Ron. 2001. "Why and How to Teach Comparative Law in Israel?" *Tel Aviv University Law Review* 25: 443–66 (Hebrew).

Holder, Jane, and Carolyn M. Harrison, eds. 2003. *Law and Geography*. Oxford: Oxford University Press.

Hug, Walter. 1932. "The History of Comparative Law." *Harvard Law Review* 45: 1027–70.

Husa, Jaakko. 2004. "Classification of Legal Families Today: Is It Time for Memorial Hymn?" *Revue Internationale de Droit Comparé* 56 (1): 11–38. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1865050.

———. 2006. "Legal Families." In *Elgar Encyclopedia of Comparative Law*, edited by Jan M. Smits, 382–93. Cheltenham, UK: Edward Elgar.

International Academy of Comparative Law and American Society of Comparative Law. 2010. *Program of the XVIIIth International Congress of Comparative Law*. July 25–August 1, Washington, DC. http://www.wcl.american.edu/events/2010congress/agenda.en.cfm.

Jiryis, Sabri. 1976. *The Arabs in Israel*. New York: Monthly Review Press.

Kantrovitch H., ed. 1943. *War Legislation in Force on the 15th Day of April 1943*. Tel Aviv: Mizpah.

Kedar, Alexandre (Sandy). 2001. "The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948–1967." *NYU Journal of International Law and Politics* 33 (4): 923–1000.

———. 2003. "On the Legal Geography of Ethnocratic Settler States." *Current Legal Issues*: *Law and Geography* 5: 404–41.

Kennedy, Duncan. 2012. "Political Ideology and Comparative Law." In *The Cambridge Companion to Comparative Law*, edited by Mauro Bussani and Ugo Mattei, 35–56. Cambridge: Cambridge University Press.

Legrand, Pierre. 1997. "The Impossibility of 'Legal Transplants.'" *Maastricht Journal of European and Comparative Law* 4: 111–24.

© ***DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION***

04_ch04_fn.indd 116 27/01/14 2:07 PM

———. 2003. "The Same and the Different." In *Comparative Legal Studies: Traditions and Transitions*, edited by Pierre Legrand and Roderick Munday, 240–311. Cambridge: Cambridge University Press.

Legrand, Pierre, and Roderick Munday, eds. 2003. *Comparative Legal Studies: Traditions and Transitions*. Cambridge: Cambridge University Press.

Lifshitz, Zalman. 1949. "Report on the Need for a Legal Settlement of the Issue of Absentee Property." March 18. Israel State Archives, Jerusalem (130) 2401/21 I (Hebrew).

Mabo v. Queensland [no. 2]. [1992] 175 C.L.R. 1. High Court of Australia.

Mason, Malcolm S. 1951. "Relationship of Vested Assets to War Claims." *Law and Contemporary Problems* 16 (3): 395–406.

Mattei, Ugo. 2006. "Comparative Law and CLS." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, 816–36. Oxford: Oxford University Press.

Mawani, Renisa. 2007. "Legalities of Nature: Law, Empire, and Wilderness Landscapes in Canada." *Social Identities* 13 (6): 715–34.

McCann, Eugene. Forthcoming. "Situated Knowledge on the Move? Reflections on Urban Policy Mobilities/Immobilities."

McCann, Eugene, and Kevin Ward. 2013. "A Multi-Disciplinary Approach to Policy Transfer Research: Geographies, Assemblages, Mobilities and Mutations." *Policy Studies* 34: 2–18.

McNair, Duncan, and Arthur Watts. 1966. *The Legal Effects of War*. 4th ed. Cambridge: Cambridge University Press.

Menski, Werner F. 2006. *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*. New York: Cambridge University Press.

Merryman, John Henry. 1997. "Comparative Law Scholarship." *Hastings International and Comparative Law Review* 21: 771–84.

Miller, Robert J., and Jacinta Ruru. 2009. "An Indigenous Lens into Comparative Law: The Doctrine of Discovery in the United States and New Zealand." *West Virginia Law Review* 111: 849–918.

Moore, R. J. 1988. "The Transfer of Power: An Historiographical Survey." *Indo-British Review* 14: 108.

Morris, Benny. 1987. *The Birth of the Palestinian Refugee Problem, 1947–1949*. Cambridge: Cambridge University Press.

———. 2008. *1948: The First Israeli-Arab War*. New Haven, CT: Yale University Press.

Munday, Roderick. 2003. "Accounting for an Encounter." In *Comparative Legal Studies: Traditions and Transitions*, edited by Pierre Legrand and Roderick Munday, 3–28. Cambridge: Cambridge University Press.

Naqvi, Tahir Hasnain. 2007. "The Politics of Commensuration: The Violence of Partition and the Making of the Pakistani State." *Journal of Historical Sociology* 20 (1–2): 44–71.

Nelken, David. 2003. "Comparatists and Transferability." In *Comparative Legal Studies: Traditions and Transitions*, edited by Pierre Legrand and Roderick Munday, 437–66. Cambridge: Cambridge University Press.

———. 2010. *Comparative Criminal Justice: Making Sense of Difference*. Los Angeles: Sage.

Patai, Raphael, ed. 1971. *Encyclopedia of Zionism and Israel*. New York: Herzl Press.

Peck, Jamie. 2011. "Geographies of Policy: From Transfer-Diffusion to Mobility-Mutation." *Progress in Human Geography* 35: 773–97.

Peck, Jamie, and Nick Theodore. 2010. "Mobilizing Policy: Models, Methods and Mutations." *Geoforum* 41: 169–74.

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION

Reimann, Mathias. 2002. "The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century." *American Journal of Comparative Law* 50: 671–700.

Reimann, Mathias, and Reinhard Zimmermann, eds. 2006. *The Oxford Handbook of Comparative Law*. Oxford: Oxford University Press.

Riles, Annelise. 2001. "Introduction: The Projects of Comparison." In *Rethinking the Masters of Comparative Law*, edited by Annelise Riles, 1–18. Oxford, UK: Hart Publishing.

———. 2006. "Comparative Law and Socio-Legal Studies." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, 775–814. Oxford: Oxford University Press.

Rosen-Zvi, Issachar. 2004. *Taking Space Seriously: Law, Space, and Society in Contemporary Israel*. Aldershot, UK: Ashgate.

Russell, Peter. 1998. "High Courts and the Rights of Aboriginal Peoples: The Limits of Judicial Independence." *Saskatchewan Law Review* 61: 247–76.

Said, Edward W. 1980. *The Question of Palestine*. London: Routledge and Kegan Paul.

Schechtman, Joseph B. 1951. "Evacuee Property in India and Pakistan." *Pacific Affairs* 24 (4): 406–13.

Schwenzer, Ingeborg. 2006. "Development of Comparative Law in Germany, Switzerland and Austria." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, 69–106. Oxford: Oxford University Press.

Sheller, Mimi, and John Urry. 2006. "The New Mobilities Paradigm." *Environment and Planning A* 38: 206–26.

Smandych, Russell. 2010. "Mapping Imperial Legal Connections: Toward a Comparative Historical Sociology of Colonial Law." *Adelaide Law Review* 31: 187–228.

Smits, Jan M., ed. 2006. *Elgar Encyclopedia of Comparative Law*. Cheltenham, UK: Edward Elgar.

Stavenhagen, Rodolfo, and Ahmad Amara. 2013. "International Law of Indigenous Peoples and the Naqab Bedouin Arabs." In *Indigenous (In)Justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev*, edited by Ahmad Amara, Ismael Abu-Saad, and Oren Yiftachel, 161–93. Cambridge, MA: Harvard University Press.

Talbot, Ian. 2011. "The 1947 Partition of India and Migration: A Comparative Study of Punjab and Bengal." In *Removing Peoples: Forced Removal in the Modern World*, edited by Richard Bessel and Claudia Haake, 321–49. Oxford: Oxford University Press.

Talbot, Ian, and Gurharpal Singh. 2009. *The Partition of India*. Cambridge: Cambridge University Press.

Taylor, William M., ed. 2006. *The Geography of Law: Landscape, Identity and Regulation*. Oxford, UK: Hart Publishing.

Twining, William. 2005. "Social Science and Diffusion of Law." *Journal of Law and Society* 32 (2): 203–40.

———. 2006. "Diffusion and Globalization Discourse." *Harvard International Law Journal* 47 (2): 507–16.

———. 2009. *General Jurisprudence: Understanding Law from a Global Perspective*. Cambridge: Cambridge University Press.

UN Development Group. 2008. *Guidelines on Indigenous People' Issues.* February. http://www.un.org/esa/socdev/unpfii/documents/UNDG_Guidelines_indigenous_FINAL.pdf.

UN General Assembly. 2007. *United Nations Declaration on the Rights of Indigenous Peoples*. Resolution 61/295. October 2. http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

© *DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION*

Vakil, C. N. 1950. *Economic Consequences of Divided India: A Study of the Economy of India and Pakistan*. Bombay: Vora.

Vernant, Jacques. 1953. *The Refugee in the Post-War World*. New Haven, CT: Yale University Press.

Watson, Alan. 1974. *Legal Transplants: An Approach to Comparative Law*. Charlottesville: University Press of Virginia.

———. 1993. *Legal Transplants: An Approach to Comparative Law.* 2nd ed. Athens: University of Georgia Press.

———. 2000a. *The Evolution of Western Private Law.* Baltimore: John Hopkins University Press.

———. 2000b. *Law out of Context.* Athens: University of Georgia Press.

Watt, Horatia Muir. 2006. "Globalization and Comparative Law." In *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, 579–607. Oxford: Oxford University Press.

Western Sahara, Advisory Opinion, I.C.J. Reports [1975]. http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=69&case=61&code=sa&p3=4.

Wigmore, John H. 1929. "A Map of the World's Law." *Geographical Review* 19 (1): 114–20.

Yiftachel, Oren. 2006. *Ethnocracy: Land and Identity Politics in Israel/Palestine*. Philadelphia: University of Pennsylvania Press.

Yiftachel, Oren, Alexandre (Sandy) Kedar, and Ahmad Amara. 2012. "Re-Examining the 'Dead Negev Doctrine': Property Rights in Arab Bedouin Regions." *Law and Government* 14: 7–147 (Hebrew).

Zamindar, Vazira Fazila-Yacoobali. 2007. *The Long Partition and the Making of Modern South Asia: Refugees, Boundaries Histories*. New York: Columbia University Press.

Zweigert, Konwrad, and Hein Kötz. 1998. *Introduction to Comparative Law*. Translated by Tony Weir. 3rd ed. New York: University Press.

© DRAFT PLEASE DO NOT CIRCULATE WITHOUT EXPRESS WRITTEN AUTHORIZATION