

Transplanting Crisis Legislation: The Case of Forced Money

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Crises create special, temporary legislation to deal with new circumstances. Often this legislation remains after the crisis is gone, leaving a permanent legacy of the crisis. What is less appreciated is that the legacy of crises can spread to other countries through the practice of legal transplantation. This paper considers a law that strikes at the very heart of the freedom of exchange, and how it spread to countries that had nothing to do with the original crisis.

In 1793 the French Republic was in crisis, threatened by foreign and domestic wars. It financed the wars by printing money. Sellers naturally raised prices and later rejected the paper money altogether. Rioting proto-communist Parisians forced the Convention to outlaw such rejections of paper money. Soon this law was enforced by the guillotine. The law later died with the inflated paper money. Napoleon's jurists resurrected that law and made it a section in the 1810 Penal Code. Napoleon was not intending to recreate inflation, but it fit his authoritarian spirit. This section was transplanted, usually with the entire code, in numerous countries. The Ottoman Empire (1858) adopted the section for authoritarian reasons and from there it spread all over the Middle East.

Ottoman Cyprus later became a British colony and it was in its 1928 criminal code that the section was transplanted from one legal family to another. Another transplantation followed to the British Mandate of Palestine (1936). Both adoptions were done, again, for authoritarian reasons. Israel passively inherited the section. Surprisingly, this democracy increased the penalty in 1966. I attribute it to dominant socialism and the permanent military emergency. I conclude that crisis legislation, which naturally infringes on liberties, may spread both over time and across countries because it is happily adopted by dictators, socialists, and other countries in crisis.

Creating Maryland's Paper Money Economy, 1720-1739: Politics, Law, Markets, and the Media

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Colonial Maryland used tobacco as its money of account and medium of exchange. In 1733 it initiated a paper money system to replace tobacco. Paper money was handed out to subjects who destroyed trash tobaccos. The paper money replaced the destroyed tobacco as a means for paying local taxes. Maryland created a unique sinking fund to redeem the paper money at par in sterling in 31 years. A complex set of legal exceptions were passed regarding which of Maryland's current taxes could be paid in its paper money, and when they could be so paid, rather than in tobacco. These laws thwarted the ability to pay taxes in paper money, turning Maryland's paper money into a zero-interest bearer bond with a credible but distant payoff date. The current value of Maryland's paper money, relative to its face value, is shown to track a 6 percent per year discount extending back from the year of its future sterling redemption.

The motivations for Maryland's paper money system began in 1720 with problems in the tobacco export market. Efforts to manage that market led to desires to demonetize tobacco. Differing forecasts over how this paper-money-for-tobacco-destruction scheme would affect the future price of tobacco, given that the government fixed a tobacco-to-paper-money equivalence for paying local taxes, led to unique political alignments within Maryland's legislature regarding pro- and anti-paper money advocates among merchants, large planters, small farmers, and the Proprietor (governor)—Lord Baltimore. An iterative negotiated consensus, influenced by the media, fashioning this new monetary system took a decade to achieve. The language embedded in the monetary laws and their unique performance outcome was driven by the unique web of political and market constituency alignments that arose within Maryland.

Israeli Currency Regulation, 1948-1998 and Practitioner Use of Private Trusts

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Currency regulation in Palestine – prohibiting locals from holding foreign currency and accounts in foreign banks – was emergency legislation, enacted as such by the British Mandate regime in 1941, during the Second World War. It remained in force until 1998, a key instrument in Israel's weathering several economic crises (Prime Minister Rabin's 1977 resignation resulted from the press having exposed his wife's U.S. bank account). Israelis who wanted to hold foreign currency in a way that was not obviously illegal thus had recourse to various stratagems, including another Mandate-era Palestinian survivor, the common law private trust.

While Israel's courts remained, for decades, indecisive and unclear about the private trust's reception into the local legal system (a lack of clarity inherited from the preceding British Mandate phase of the law of Palestine, which I have described in a recent article), Israel's currency control regime and its interest in immigration and investment by wealthy foreign Jews made practitioners develop an inventive national and international trusts practice. As has happened more recently in Italy with the 'trust interno' practice, the trust's difficult reception into Israel's positive legal system made some Israeli practitioners use foreign systems' trust structures. Reflecting interviews with leading trusts practitioners and Bank of Israel personnel, the paper describes the functions, both subversive and constructive, served by trusts in the Israeli context, contextualizes them in Israel's developing financial regulatory regime, and contrasts them with the indifferent reception of the common law express private trust into Israeli positive law. It thus situates a rarely-studied chapter of Israeli legal history in its particular socio-economic context, reflecting the radical divergence of the law in books and the law in action characteristic of the trusts context, as well as the complex interaction of currency regulation and immigration policies in the later 20th Century.