Under Hindu law sons are responsible for the debts of their fathers. In an article in (1981), Dr D A Washbrook suggested that common lawyers developed this institution of Hindu law as means of increasing sources of capital for the British colonial government. The essential idea is that, since both fathers and sons would be liable for debts incurred to the state, there would be a larger pool of debtors against whom the state could have recourse in the case of an individual defaulting on a loan. The state could then sue not just the father, but also the son. Thus, at heart, the thesis argues that the common law development of local Hindu institutions was a means of colonial exploitation.

My paper proposes to test Dr. Washbrook’s thesis by first examining the development of the Hindu law of debt by British common lawyers in Madras in the nineteenth century. For this purpose, it will look at English doctrinal writings and Madras case law. To what extent does a study of such materials suggest that, consciously or sub-consciously, common lawyers developed the Hindu law of debt in a way that favoured European creditors over Indian debtors?

The second part of the paper will test the validity of the conclusions reached in the first half by looking into the development of the Hindu law of debt by civil lawyers in neighbouring Pondicherry at around the same time. For this purpose, the paper will examine French doctrinal writings and Pondicherry jurisprudence. Insofar as there is evidence of “exploitation” in the development of the law of debt in Madras, was this a phenomenon restricted to the common law? Or, did the civil law react to the Hindu institution of debt in similar fashion?

Finally, the paper will seek to draw lessons about limits and dangers of the common law process of adapting to local conditions in light of the conclusions reached in the first and second parts.