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Negotiating custom : colonial lawmaking in the Galle Landraad

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en Jacobus Derwij mitgeaders & mohandirants
Joan Asilva wanniepgere en Don philip
Asilva bahanaighe.

Absent
D^e. Leiden piter Kwal, Johannes Schaen en Jo.
hann. Klein mitgeaders & modicaant Nicolaas
Dial abesinge amressegere en Don Louis li.
vere samersinge.

Wantinge pablinja we
D'wre van sandra mara
kallege maniche en inwoon
Derege van Amblangode reg

Negotiating Custom

Colonial Lawmaking in the

Galle Landraad

Nadeera Seneviratne-Rupesinghe

Staat Kalimoe janna fin
Dorp Amblangode gerege
Emme, over pretentij oren de thijn
gallebadewatti tot am
blangode gelugen.
overschik te komen aanhooren

Nij present
mit occupatie van den
fictures in formisse

H. E. M. R. d.
offits

NEGOTIATING CUSTOM

NEGOTIATING CUSTOM

COLONIAL LAWMAKING IN THE GALLE LANDRAAD

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
op gezag van Rector Magnificus prof. mr. C.J.J.M. Stolker,
volgens besluit van het College voor Promoties
te verdedigen op donderdag 21 januari 2016
klokke 11:15 uur

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Nadeera Tharushi Seneviratne
geboren in Colombo (Sri Lanka) in 1980

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Maps: Suranjan Fernando

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Don't look for the thombos of other people's lands

(A retort in Sinhala)

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Reading the testimony of eighteenth-century southern men and women, I developed an enduring interest in the law. I later read that Marie-Charlotte Le Bailly, whose work I found motivating in writing this thesis, also faced a plethora of friends who chose a legal path while she abstained. With misplaced satisfaction I say that we're both in good company though—Gananath Obeyesekere wrote in his preface that he also had to learn the law for his work on land tenure in Sri Lanka—an early and exemplary publication in the field of legal anthropology that I have drawn much inspiration from.

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A NOTE ON LANGUAGE

For ease of comprehension, proper names have been changed to their current spelling in Dutch and Sinhala where possible, but where there is doubt follow the eighteenth-century spelling in the original documents. Latinised forms such as Joan, Joanna and Joannes used in the sources were replaced in the text with Johan, Johanna and Johannes. Place names are standardised to the current anglicised form. The spelling of proper nouns in the transcriptions follows the original documents, with no attempt to standardise.

For the text, Sri Lanka was preferred over Ceylon as that is the name by which the country is known today. I have also used the terms ‘Sinhalese’ to refer to the people and ‘Sinhala’ for the language. I use a modern Sinhala orthography except when quoting a source in which diacritical marks had not been used. Sinhala, Tamil and Dutch terms are italicised the first time they are used, where they are explained in the text or footnote or in the glossary that follows this note. A word subsequently used often is not then italicised. For the plurals of non-English words I mostly use the plural forms in those languages. Galle refers to the district, Galle town refers to the fort. Land register, land registration, cadastre, cadastral registration all refer to the thombo registration. Council in this text refers to the Landraad, a term more appropriate than the word court with its modern-day sense. Other councils will be referred to more specifically, such as the Governor in Council in Colombo, and the Political Council in Galle. I have also used the words councillor or member instead of judge of the Landraad. Dutch and VOC were used interchangeably, though of course the VOC consisted of more than one European group identity.

Abbreviations used in the thesis are GL (Galle Landraad), SLNA (Sri Lanka National Archives), PLH (Principal Land Holder) and LHG (Land Holdings Group). Sources from the Department of National Archives in Sri Lanka are given as, for example, SLNA 1/2933 (which means lot 1 followed by the volume number), with a description of the volume, the folio number, a short title and date of the cited document. The dates of the reigns of kings follow K M de Silva’s *A History of Sri Lanka*.

Translations from seventeenth- and eighteenth-century Dutch for this research are the author’s own, with much-valued assistance from Lodewijk Wagenaar, Ton Harmsen and Albert van den Belt. Naturally, the responsibility for errors remains mine.

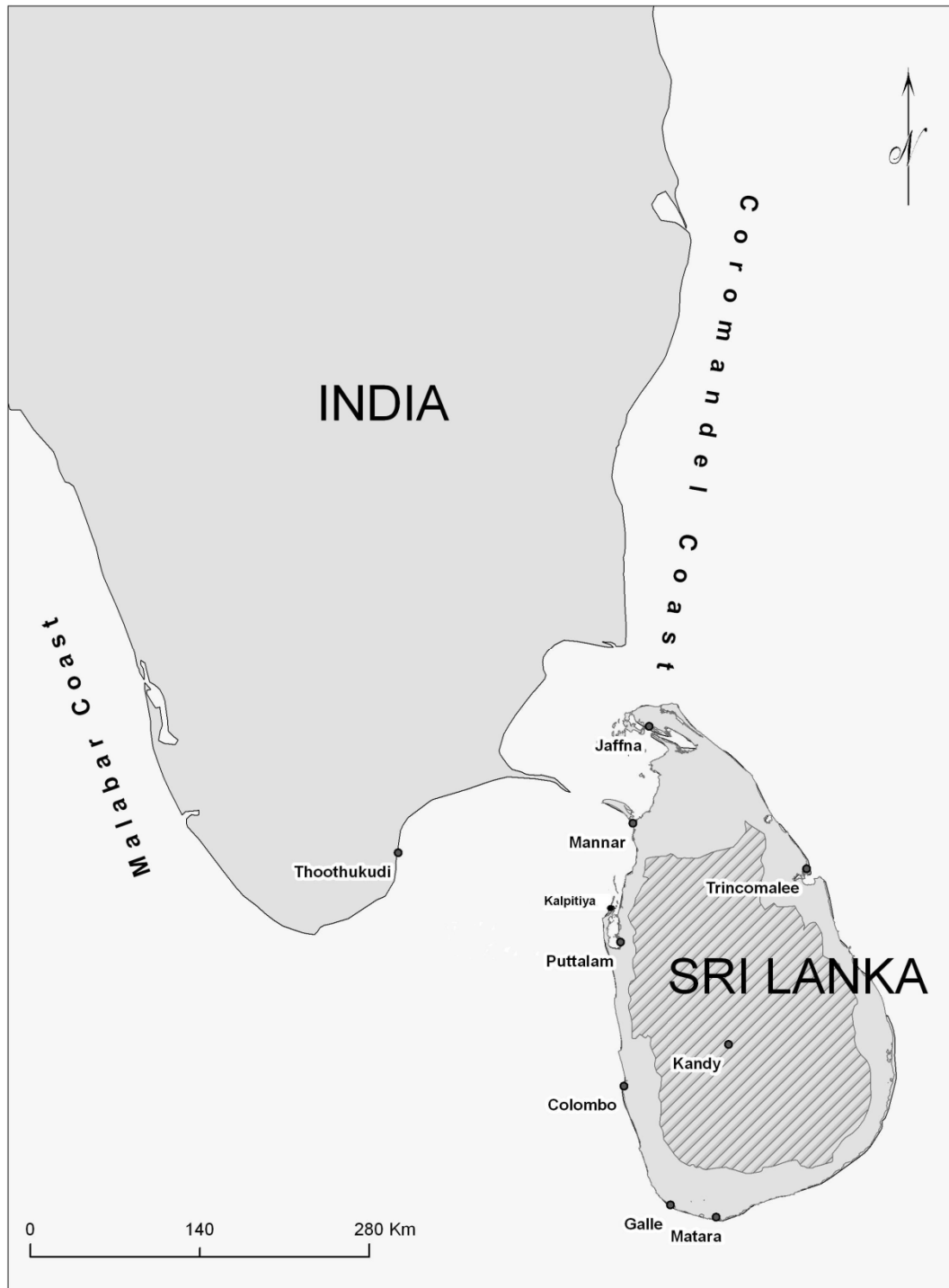
GLOSSARY

<i>accommodessan:</i>	Maintenance grants.
<i>amuna</i> (pl. <i>amunu</i>):	A measurement of sowing capacity in paddy equalling 40 <i>kuruni</i> which is approximately two acres (this may vary from region to region). An <i>amuna</i> of areca nuts ranged from 24,000 to 26,000 nuts. A <i>pela</i> is a quarter of an <i>amuna</i> .
<i>appuhamy</i> (pl. <i>appuhamu</i>):	An honorific usually for an elite member of the <i>goygama</i> caste.
<i>ārachchi:</i>	A minor village official.
<i>atapattu:</i>	Guard of higher functionaries.
<i>atapattu mudaliyār:</i>	<i>Mudaliyār</i> of the <i>dessave</i> .
<i>bellale:</i>	Dutch for <i>vellālar</i> , also used to mean <i>goygama</i> .
<i>binna:</i>	Marriage with uxrilocal residence.
<i>bode:</i>	Messenger.
<i>burger:</i>	Private citizens, or retired servants of the company.
<i>burgerij:</i>	Community of urban citizens who formed a militia.
<i>chando:</i>	Dutch for <i>durāva</i> , a caste group.
Chettiar:	A merchant community of south Indian origin.
Civiele Raad:	Civil Council.
<i>contra-interrogatorieën:</i>	(List of) counter-questions used in a judicial forum.
<i>dessave:</i>	European governor of a district in Dutch-controlled territory.
<i>dēvāla:</i>	Temple complex with shrines for deities.
<i>dictum:</i>	Written request.
<i>dīga:</i>	Marriage with virilocal residence.
<i>disāva:</i>	Governor or minister at court in Kandy.
<i>dessavony:</i>	A Sinhalese term for a province used by the VOC.
<i>durāva:</i>	Dutch: <i>chando</i> ; a caste associated with toddy-tapping.
<i>ekerobekāraya</i>	A peeler who had to deliver a <i>robe</i> (56 to 62 pounds) of cinnamon.
Gamsabhāva:	Village council.
<i>gerechtigheid:</i>	That over which one exercises a right (tax).
<i>gift ola:</i>	Deed of gift written on paper or palm leaf.
<i>guilder:</i>	Dutch currency equal to 20 stivers.
<i>goygama:</i>	Highest caste in the traditional hierarchy among the Sinhalese, numerically the largest and associated with farming.
<i>hakuru:</i>	An agricultural caste also associated with the production of jaggery.
Inlandse Boedelkamer:	A board that managed the estate of deceased natives.
<i>interrogatorieën:</i>	(List of) questions used in a judicial forum.
<i>kangān:</i>	Overseer.
<i>kaneelschiller:</i>	Cinnamon-peeler.
<i>karāva:</i>	A caste primarily associated with fishing. Tamil: <i>karaiyar</i> .
<i>kōrāla:</i>	Head of a <i>kōralē</i> .
<i>kōralē:</i>	Subdivision of a commandment or a <i>dessavony</i> .
<i>koop ola:</i>	Purchase deed written on paper or palm leaf.
Landraad (pl. Landraden):	Land, country, or district council.
<i>lascarin:</i>	Indigenous soldier who also served as guard and messenger.
Mahabadde:	Cinnamon Department.
<i>mahamudaliyār:</i>	An indigenous chief of the highest level; also referred to as gate <i>mudaliyār</i> .
Mahanaduva:	Great Court of the Kandyan Kingdom.
<i>mahavidāne:</i>	Headman of an organised caste or trade, a rank above an <i>ārachchi</i> and below a <i>mohandiram</i> .

Marallas:	Death duties; also annual travelling assizes of Portuguese and local officials under Portuguese rule.
<i>Marelleiros</i> :	Portuguese legal officers who were assigned regions over which they held Marallas.
<i>mayorāl</i> :	A <i>gamarāla</i> (village head) who traditionally organised the compulsory service of <i>rājakāriya</i> . He reported to the Landraad on land matters and provided victuals for visiting VOC commissioners and headmen.
<i>mohandiram</i> :	An indigenous chief below the rank of <i>mudaliyār</i> .
Moor:	Muhammadans of South India and Ceylon.
<i>mudaliyār</i> :	Highest rank of an indigenous chief in the low country.
<i>muttettu</i> :	Land granted by the monarch which the grantee cultivated with the unpaid labour of other cultivators.
<i>nanayakkāraya</i> , (pl: <i>nanayakkārayo</i>):	Permanent native commissioners who inspected gardens and fields.
<i>nainde</i> :	Husbandman who performed menial tasks as service.
<i>onderkoopman</i> :	Junior merchant, the lowest ‘qualified’ rank within the VOC.
<i>ondertrouwd</i> :	Someone who has given notice of marriage.
<i>ondertrouwen</i> :	To give notice of marriage, to grant the banns of a marriage.
<i>onecht</i> :	Illegitimate.
<i>opziender/opziener</i> :	Overseer (e.g. of a district; equivalent to <i>dessave</i> in Galle), also called superintendent.
<i>ottu</i> :	A tax of one-tenth of the produce.
<i>padu</i> :	An agricultural caste.
<i>paravar</i> :	A seafaring caste of south India that settled in coastal Sri Lanka.
<i>paravēni</i> :	Ancestral land.
<i>parra</i> :	A measure of grain equal to 40 Dutch pounds, thus 19.76 kilograms (1 pound being equal to 494 grams).
<i>pattangatijn</i> :	A headman of the fishermen, similar to a <i>mohandiram</i> .
<i>pattu</i> :	An administrative division within a <i>kōralē</i> .
<i>pela</i> :	A quarter of an <i>amuna</i> .
<i>plakkaat</i> (pl. <i>plakkaten</i>):	Proclamation with legal force issued by the Dutch Government.
<i>pottebakker</i> :	Potter.
<i>proberen</i> (<i>bewijzen</i>):	To prove.
<i>probatie</i> :	Proof.
<i>procureur</i> :	Process representative/solicitor.
Raad van Justitie:	Council of Justice.
<i>radā</i> :	Caste group traditionally associated with washing.
<i>rājakāriya</i> :	Obligatory service.
Ratasabhāva:	District-level tribunal in Kandyan Kingdom.
<i>ratmahara</i> :	Wasteland.
<i>recollement</i> :	Confirmation (judicial).
rixdollar (rd):	About 48 stivers. Dutch: <i>rijksdaalder</i> .
<i>rondvraag</i> :	Circulation of documents in the margin of which members of a council or college were asked to note their opinion, in order for the chairman to reach a decision.
<i>sabandar</i> :	A native revenue official of a district.
Sākki Balanda:	A coroner’s court in the Kandyan Kingdom.
<i>salāgama</i> :	A caste traditionally associated with cinnamon peeling. Referred to as <i>sjalia</i> by the Dutch.
Scholarchale Vergadering:	School Board.

<i>schrijver:</i>	Writer.
<i>sittuva</i> (pl. <i>sittu</i>):	Written judicial decree.
<i>soldijboekhouder:</i>	Bookkeeper of the personnel department.
<i>stiver:</i>	A former Dutch coin; twenty stivers equaled a guilder.
<i>tamblinjero:</i>	Drummer/tom-tom beater.
<i>thombo:</i>	Land register of Dutch maritime Sri Lanka.
<i>thombohouder:</i>	Thombo-keeper, the officer who maintained the thombo.
<i>timmerman:</i>	Carpenter.
<i>tombo:</i>	Land register of Portuguese maritime Sri Lanka.
<i>uliyam:</i>	Unpaid public work by Muslims and Chettians.
<i>vaandrig:</i>	An ensign.
<i>vāsagama:</i>	Lineage or ancestral name.
<i>vellālar:</i>	Highest caste among Tamils. See also <i>bellale</i> .
<i>vidāne:</i>	A minor indigenous chief with policing duties, also the administrative area under his jurisdiction.
<i>vidānārachchi:</i>	A revenue collector in charge of one or more villages
<i>visser:</i>	Literally, fisherman, but also a coastal social group known as <i>karāva</i> .
<i>vrijburger/vrijman:</i>	A European or Eurasian citizen no longer in company service.
<i>wasser:</i>	Washerman; Dutch for the <i>radā</i> caste.
<i>wibadde:</i>	A village-level official responsible for collecting paddy revenue from cultivators

MAPS



Map 1 India and Sri Lanka with the Kandyan Kingdom in the middle and coastal Dutch territory in the late eighteenth century.



Map 2 Galle District under Dutch rule shown in dark grey. The Hinidum Pattu border is tentative.

Introduction

When served with summons in the year 1780, Kalegana Bastian Naidelage Maria of Dutch-controlled Galle on the southern coast of Sri Lanka, was reported to have brazenly responded that even her dog would not appear before the judicial forum to which she was summoned. She was to be flogged for that perceived affront. Reference to dogs or a dog's decisional capacity is still a common denigration in Sri Lanka. In very recent times it landed a Sri Lankan politician in trouble for contempt of court. Setting aside democratic concerns over the suitability of contempt laws, his brashness which brought him a jail term is not characteristic of the reception of contemporary judicial courts in Sri Lanka. Similarly, although Maria gives us a glimpse of resistance to an early colonial ruler, from at least the late seventeenth century indigenous litigants in Sri Lanka did bring their lawsuits before panels of Dutch and local judges. The lasting legacy of this practice was evident in the early twentieth-century under British rule as well. In 1904, in the judgement of *Karonchihami v Angohami*, it was said that a body composed largely of native officials called the *Landraad* (variously translated as land, country, or district council; plural *Landraden*) was in operation in Dutch times to try disputes arising among the natives. The importance of that reference is the recognition by the later court that indigenous laws were in use as far back as the eighteenth century. Negotiating with a pre-existing legal order was seen as necessary.¹

This is in contrast to optimistic calls for one law for all in popular politics in Sri Lanka today. Colonial experiences of law instruct us in the adoption of a more inclusive approach in law reform, structural adjustment programmes and human rights advocacy. Empires realised early on that one law for all would inevitably fail in practice. The *Verenigde Oost-Indische Compagnie* (Dutch East India Company or VOC), in its administration of parts of Sri Lanka in the seventeenth and eighteenth century, reluctantly acknowledged the necessity to involve itself in judicial matters and variously adapted to the existing order and changing circumstances.

Whose law was used in the *Landraad*? In a colonial setting, litigation is potentially a means of indoctrinating indigenous inhabitants and directing their energies into new institutions. Yet it also allowed the natives considerable agency in seeking to protect indigenous interests.² In the practices of litigation under Dutch control in eighteenth-century coastal Sri Lanka, it would not be surprising if indigenous litigants and the local elite who served as their representatives underlined distinctive characteristics of the local normative order that were unfamiliar to the Dutch. In proving this hypothesis, this study moves beyond the conventional top-down approach to legal history that focuses primarily on legislation, official correspondence and governmental proceedings. Legal texts, where they exist at all, do not in themselves shed light on the actual functioning of the courts or other legal mechanisms. Instead, through a study of judicial proceedings, I analyse how ordinary people experienced colonial rule in practice through the language of the law. The extent to which negotiation occurred in the practice of law in the *Landraad* is at the centre of this work.

This study gives insight into the workings of an early colonial state at the district level of Galle in southern Sri Lanka, as European rule entered the rhythms of everyday life. How did the *Landraad* function in its day-to-day operations? What was the nature of its institutional development? Who controlled it and who appeared before it? What normative orders did the *Landraad* derive its practices from? Did it draw on the dominant local normative order it

¹ SLNA 1/6513, 'Galle Landraad Minutes' 1780, fol. 29r, 1 Apr 1780; *Karonchihami v Angohami*, 8 New Law Reports 1, 23–24 (1904); 'Five Judge Supreme Court Bench Sentences Former Minister to Two Years' RI', *Daily News*, 8 December 2004, <http://archives.dailynews.lk/2004/12/08/new01.html>. The minister in question was S B Dissanayake.

² Jeremy Ravi Mumford, 'Litigation as Ethnography in Sixteenth-Century Peru: Polo de Ondegardo and the Mitimaes', *Hispanic American Historical Review* 88, no. 1 (2008): 5–40.

encountered in southern Sri Lanka? In what areas of local law was adaptation shown? Were any laws imposed? Drawing on studies of legal pluralism and the nature of colonialism, I have placed Sri Lanka's early colonial legal history in the growing body of these theoretical fields.

Sri Lanka's indigenous lowland polities since 1500 can be interpreted as being 'unprotected' due to European territorial expansion.³ Sri Lanka's prize possession in European eyes was her cinnamon, which they shipped to Europe for international trading. The Portuguese captured and consolidated their power in parts of western Sri Lanka and the northern kingdom of Jaffna over the sixteenth and early seventeenth century. The western lowland kingdom of Kotte was weakened by infighting in the ruling family that led to its division among the sons of King Vijayabāhu VI in the early sixteenth century. Of the indigenous powers, the Kandyan Kingdom in the mountainous interior survived into Dutch times.⁴ Relations between the Portuguese and the internal kingdom of Kandy were strained by repeated wars, and Rājasingha II of Kandy entered into agreement with the VOC in 1638 to drive out the Portuguese and hand over the captured territory to Kandy. Events did not develop in that way: the Portuguese were driven out but the Dutch intended to stay.

Despite being the VOC's first administrative base after it was captured from the Portuguese in 1640, Galle appears less touched culturally than Colombo and thus a more fitting choice to study negotiations between local and external normative orders. The district is situated in the wet zone of the country and the lush terrain begins to be hilly just a few miles from the coast. The monotonous, ritual nature of peasant life based on peasant agriculture would have been more patent in eighteenth-century Galle.⁵ Although Galle is not a natural harbour, it has for long been used as one and since the year 2011 is less than an hour's drive from Colombo on the country's first expressway. The VOC administered its expanding territory on the island for sixteen years (1640-1656) from Galle, which remained the most important port for the company.⁶ This study is set in the eighteenth century after the setting up

³ For an experiment in connecting Sri Lanka to Victor Lieberman's theory of 'protected rimlands' of South-east Asia, which he said shared 'the same historical path from a milieu of warring little kingdoms to increasingly large, solid states', see Alan Strathern, 'Sri Lanka in the Long Early Modern Period: Its Place in a Comparative Theory of Second Millennium Eurasian History', *Modern Asian Studies* 43, no. 4 (2009): 815-69. See also Alicia Schrikker, *Dutch and British Colonial Intervention in Sri Lanka, 1780-1815: Expansion and Reform* (Leiden: Brill, 2007), 15, 20. For other recent and older scholarship of Portuguese and Dutch rule on the island, see Zoltán Biedermann, *The Portuguese in Sri Lanka and South India: Studies in the History of Diplomacy, Empire and Trade, 1500-1650* (Wiesbaden: Harrassowitz Verlag, 2014); Alan Strathern, *Kingship and Conversion in Sixteenth-Century Sri Lanka: Portuguese Imperialism in a Buddhist Land* (New Delhi & Colombo: Cambridge University Press & Vijitha Yapa, 2010); Nirmal Ranjith Dewasiri, *The Adaptable Peasant: Agrarian Society in Western Sri Lanka under Dutch Rule, 1740-1800* (Leiden: Brill, 2008); Jorge Flores, ed., *Re-Exploring the Links: History and Constructed Histories Between Portugal and Sri Lanka* (Wiesbaden: Harrassowitz Verlag, 2007); Chandra Richard De Silva, *The Portuguese in Ceylon 1617-1638* (Colombo: H W Cave, 1972); Kanapathipillai, Valli, 'Dutch Rule in Maritime Ceylon 1766-1796' (PhD dissertation, University of London, 1969); Tikiri Abeyasinghe, *Portuguese Rule in Ceylon, 1594-1612* (Colombo: Lake House, 1966); K W Goonewardena, *The Foundation of Dutch Power in Ceylon, 1638-1658* (Amsterdam: Djambatan, 1958); Sinnappah Arasaratnam, *Dutch Power in Ceylon, 1658-1687* (Amsterdam: Djambatan, 1958). For an overview, see K M de Silva, ed., *University of Peradeniya, History of Sri Lanka (From c1500 to c1800)*, vol. 2 (Peradeniya: University of Peradeniya, 1995).

⁴ Despite its geographical isolation, Kandy was a cosmopolitan kingdom at least at the elite level, as Sujit Sivasundaram argues in *Islanded: Britain, Sri Lanka, and the Bounds of an Indian Ocean Colony* (Chicago: University of Chicago Press, 2013), 41.

⁵ Nirmal Dewasiri has described the everyday life of the peasant in western Sri Lanka in *Adaptable Peasant*, 25-58.

⁶ See L J Wagenaar, *Galle, VOC-Vestiging in Ceylon: Beschrijving van Een Koloniale Samenleving Aan de Vooravond van de Singalese Opstand Tegen Het Nederlandse Gezag, 1760* (Amsterdam: De Bataafsche

of the Landraad in 1741 till the end of Dutch rule in 1796 when the maritime provinces came to be administered by the British East India Company. These became a crown colony in 1802 and the rest of the island was annexed by a covenant with the Sinhalese chiefs (the Kandyan king having been deposed) in 1815.

Conjecture and Deliberation

In the popular imagination in Sri Lanka Roman-Dutch law is given an almost hallowed status. Most Sri Lankans with some general knowledge would say the Dutch introduced their laws to Sri Lanka. At a higher educational level, judges of even recent times may be said to have followed its principles more than of other legal systems, and some appear to have been proud of their contributions to its preservation.⁷ If the Roman-Dutch law was the ‘state’ law or the official law adopted by the colonial power, its dominant image is that of descending on customary ‘nonstate’ laws in a linear way over many decades.

Yet the history of that law in Sri Lanka has its ambiguities and has followed an inconsistent path over the last two centuries. Despite robust claims about adopting Roman-Dutch law as state law in British times, jurisdictional confusion and complexity persisted into the twentieth century. The waxing and waning of its adoption in Sri Lanka has been remarked on. Our understanding of its use in Sri Lanka in Dutch times—usually for the majority Sinhalese population of the low country—is even at best sketchy due to the lack of research. The reference in *Karonchibami v Angohami* to the Landraad mentioned at the beginning of this introduction is brought forward as evidence⁸ that the Dutch had applied the laws of the Sinhalese, the majority community in the country. *Karonchibami v Angohami* shows that the exact extent of the application of customary law by the Dutch posed problems for later British jurists even in the early twentieth century. Incidentally, the judgement stated that the Dutch ordinance of 26 September 1658, prohibiting the marriage of persons who lived in adultery had not been proved to have been applied in Sri Lanka. Evidence from the Dutch archives on this question is still forthcoming. Thambiah Nadaraja, a legal scholar, has opined that the Dutch cases would be especially important in determining how Sinhalese customs were taken into account if at all. Nadaraja says that ‘[w]ithout making a close study of what is still legible in the legal records of the Dutch period no conclusions can be reached regarding the order in which the different kinds of authorities would have been considered by a judge engaged in deciding a case.’⁹ He wrote in the late 1960s, but such a study of the Dutch legal records has not been undertaken yet. This thesis is an attempt to fill that lacuna. As Nadaraja says himself, his ambitious history of the legal system of Sri Lanka spanning nearly three hundred years in six chapters (often with endnotes that are longer than a chapter), lacks the ‘preliminary studies’ that could be the foundation of such a sweeping history.¹⁰ Through this study I reveal for the first time the breadth of knowledge that would be available to us through extensive research into the legal documents produced under Dutch rule.

The application or non-application of the Sinhalese laws or customs in Dutch territory as far as they can be discerned from the discussions surrounding a judgement, requires a full examination of enactments of the Dutch administration and the judgements of the Dutch

Leeuw, 1994), 7; Goonewardena, *Foundation of Dutch Power*, 37. Later, Colombo became the seat of government.

⁷ In a summary of a book written in 1988 in Japanese of the contemporary status of legal pluralism in Sri Lanka Masaji Chiba says: ‘[s]ome high ranking legal agents today speak proudly of their contributions to the preservation of such an old law.’ ‘Legal Pluralism in Sri Lankan Society: Toward a General Theory of Non-Western Law’, *Journal of Legal Pluralism and Unofficial Law* 25, no. 33 (1993): 204.

⁸ See, for example, L J M Cooray, *An Introduction to the Legal System of Sri Lanka* (2003; repr., Pannipitiya: Stamford Lake, 2009), 65.

⁹ T Nadaraja, *The Legal System of Ceylon in Its Historical Setting* (Leiden: Brill, 1972), 14–16.

¹⁰ *Ibid.*, 1.

councils of law. Only a fraction of the legal cases of the Dutch administration have been studied to date. In her study of the law of compensation for improvements, Marleen van den Horst traced the evolution of that law into present times. She states that in the ninety-four volumes from the full range of Dutch legal records she studied, no references to the use of local customary law were found.¹¹ She concludes that even a study of the cases as Nadaraja recommends would not answer the question of the application or non-application of Sinhalese law. The lack of a stated reasoning for the judgements in the council is a key drawback. Van den Horst did not, however, study the Landraad extensively, and a more comprehensive study through case analyses and corroboration with other documents makes it possible to provide better understanding and insight into the design and operation of colonial law in eighteenth-century Sri Lanka.

Nineteenth- and twentieth-century chief justices and other judges have speculated on the question of how far Dutch laws were used in the coastal areas of the island that the company controlled. While hundreds of cases refer to the Roman-Dutch law as being the ‘common law’ of the country, a few judgements contain discussions on its applicability.¹² The controversy arose because the British attempted to employ Roman-Dutch law on the low-country Sinhalese in the belief that they were continuing the practice of the Dutch. Scholars have presented differing views on the question. Some even argued that Roman-Dutch law along the sea coast was always subordinate to Sinhalese law.¹³ In the preamble to a report by Godfried Leonhard De Coste, a high-ranking official in late Dutch times, it was written that ancient Sinhalese laws and customs have been ‘completely obliterated’ but ‘a few of them are still to be traced in their original form for information relatief to the local laws and customs of the western and southern maritime provinces of Ceylon.’¹⁴ Gananath Obeyesekere argues that Roman-Dutch law probably applied only to Dutch residents of Ceylon and to converted Sinhalese Protestants, while the majority of citizens were governed by traditional laws.¹⁵ R W Lee wrote: ‘it has been doubted whether the Dutch ever applied their law to the native race of the low country.’¹⁶ Others contend that Sinhalese law had almost disappeared from the maritime provinces and was replaced by Roman-Dutch law.¹⁷ Nadaraja, although pointing out that the Dutch legal cases had to be studied, believed that the ‘adulteration of the Sinhalese customary law may have been the reason for the Dutch authorities not having undertak-

¹¹ Van den Horst says: ‘Though it is generally admitted that the Dutch respected and applied the local, customary laws, not a single reference to such laws could be discovered.’ However, in one of two volumes of the Galle Landraad that she had examined, she did find a reference to ‘general custom’ in a decision. *Compensation for Improvements: The Roman Dutch Law in Sri Lanka* (Amsterdam: Free University Press, 1989), 121–122.

¹² See *Karonchihami v Angohami*, 2 New Law Reports 276 (1896); *Karonchihami v Angohami*, 8 New Law Reports 1 (1904); *Daniel Silva v Johani Appuhamy*, 67 New Law Reports 457 (1965).

¹³ Among these are Adrian St. Valentine Jayewardene, *The Roman Dutch Law: As It Prevails in Ceylon, How Much of It Is Applicable, and in What Localities?* (Colombo: Ceylon Examine Press, 1901); F A Hayley, *A Treatise on the Laws and Customs of the Sinhalese* (1923; repr., New Delhi: Navrang, 1993), 20–27.

¹⁴ CO 54/124, ‘Ceylon Native Laws and Customs, Part 2 Presented by Sir Alexander Johnston’ 1770, 1, Schedule 8, National Archives, Kew. It is not clear who authored this preamble.

¹⁵ Gananath Obeyesekere, *Land Tenure in Village Ceylon: A Sociological and Historical Study* (Cambridge: Cambridge University Press, 1967), 130.

¹⁶ Robert Warden Lee, *An Introduction to Roman-Dutch Law*, Fourth Edition (Oxford: Clarendon Press, 1946), 11.

¹⁷ See Ivor Jennings and H W Tambiah, *The Dominion of Ceylon: The Development of Its Laws and Constitution* (London: Stevens, 1952), 195–196; A Wood Renton, ‘The Roman-Dutch Law in Ceylon under the British Regime’, *South African Law Journal* 49 (1932): 164. A R B Amerasinghe is not clear on the matter—he says that the Sinhalese customs are likely to have disappeared, but also asks whether the Dutch would have risked sowing the seeds of discord by ignoring Sinhalese law. See ‘The Dutch Influence on the Legal System of Sri Lanka’, in *400 Years of Dutch-Sri Lanka Relations 1602–2002*, ed. Roshan Madawela Saman Kelegama (Colombo: Institute of Policy Studies of Sri Lanka, 2002), 293–294.

en its codification, and the very absence of a code probably contributed further to the disuse of that law.¹⁸ The question has not been satisfactorily answered.

This study, in attempting to unravel evidence of the use of various laws by the company, proposes that the answer to the question does not lie in a dichotomous, either/or proposition. Rather, I argue for a broader understanding that focuses on the jurisdictional pluralities that existed in practice. Such pluralities governed the day-to-day experiences of the early colonial subject. The conceptual framework for such an understanding is provided by the developing literature on legal pluralism, which in Dutch Sri Lanka connects with studies of colonialism.

Conceptualising Colonial Lawmaking

The VOC is believed to have applied at least some customary laws in the legal administration of its territory. Anthony Paviljoen, Commander of Jaffna said in 1665: 'Justice is administered to the Dutch according to the laws in force in the Fatherland and the Statutes of Batavia. The natives are governed according to the customs of the country if these are clear and reasonable, otherwise according to our laws.'¹⁹ This may be true for the Jaffna that he wrote about, where a code of native laws applied. In the course of the eighteenth century some native laws were codified, such as the customs of the Tamils of Jaffna, the Muslims and Mukkuvars of Puttalam, and laws based on the statutes of Batavia for other Muslims. This is the institutionalisation of customs that gives the impression of the existence of a plural legal structure under a European power. A code was understood as a unified statement of law that could be consulted on its own.²⁰ The codification of customs of particular groups tends to reinforce their cultural differences. This happened not only in Sri Lanka but was characteristic of the colonial world: 'the colonial codes remain on the books on the subcontinent today'.²¹

Setting aside a competitive stance, the face-to-face groups considered here are the Dutch and the dominant southern group of the Sinhalese, not pitting both or either of them against the Tamils, Moors or Chettiars (or other smaller groups), which would have been beyond the scope of this study. This is not to assume that monolithic communities or cultures of 'Dutch', 'Sinhalese', 'Tamil', etc. existed then, neither do they exist today. The same applies to their heterogeneous bodies of laws. This thesis does not attempt to achieve the impossible task of representing the entire experience of Dutch colonial law in the island; neither does it represent all Sinhalese areas as it centres on Galle. But this focus on regional phenomena can still inform our understanding of inter-legality or the recognition of two or more legal orders in the eighteenth-century south. 'Custom' in this context consists of the shared social rules of a 'customary normative system' within which the term 'indigenous law' was a label constructed for specific purposes under circumstances of colonisation.²² In the words of Brian Tamanaha, '[o]nce created, these labels have been carried over and continue to the present in some form

¹⁸ Nadaraja, *The Legal System of Ceylon*, 16.

¹⁹ 'Memoir by Anthony Paviljoen to His Successor, 1665', in *Instructions from the Governor-General and Council of India*, trans. Sophia Pieters (Colombo: H C Cottle, Govt. Printer, 1908), 117.

²⁰ James Gordley, 'Comparative Law and Legal History', in *The Oxford Handbook of Comparative Law*, ed. Reinhard Zimmermann and Mathias Reimann (Oxford [etc.]: Oxford University Press, 2006), 760. For the Dutch Sri Lanka context, see Alicia Schrikker, 'Conflict Resolution, Social Control and Law-Making in Eighteenth Century Dutch Sri Lanka', in *Exploring the Dutch Empire: Agents Networks and Institutions, 1600-2000*, by Catia Antunes and Jos Gommans (London: Bloomsbury, 2015), 227-44.

²¹ Elizabeth Kolsky, 'A Note on the Study of Indian Legal History', *Law and History Review* 23, no. 3 (2005): 704.

²² Brian Z. Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global', *Sydney L. Rev.* 30 (2008): 375.

of coexistence with (or within) official legal systems.²³ The customary laws of the Kandyans, Jaffna Tamils and Muslims are now official customary law within Sri Lanka's state law.

By 'negotiating custom' in the title to this thesis I mean both the patent and more subtle discoveries and recognition of the form and content of local custom. In the Landraad, Dutch and native officials were engaged in the task of adjudication and rulemaking, and as an interest group the peasant farmer could not be ignored in this process. It is what Melvin Aron Eisenberg refers to as the 'rulemaking-negotiation' among legislators or between legislators and interest groups as also a norm-bound process of 'dispute-negotiation' where the results depend heavily on the uncovering of the facts.²⁴ How did the company manage the diversity of laws that it encountered? In a relationship generally depicted as that of coloniser and colonised, the parties involved would not have had equal bargaining powers in the establishment of rules. Eisenberg identifies the critical variable in rulemaking-negotiation as dependence between negotiating parties. The use of the word negotiation implies that 'both parties will engage in an effort to reach agreement; that both have a rightful interest in the matter at hand; and that agreement is a rightful way of deciding the matter.'²⁵ In the context of the Landraad, the process of navigating through local and acquired laws was far less predetermined than generally believed.

The vastly developing literature on legal pluralism provides a framework for this inquiry.²⁶ Paul Halliday describes it as 'a device scholars use to impose interpretive order on otherwise chaotic worlds of both present and past.'²⁷ A difficulty of defining law pervades the study of legal pluralism. On that question alone, much has been written. However, as Tamanaha writes after summarising the arguments on what can be regarded as law, 'it is not necessary to construct a social scientific conception of law in order to frame and study legal pluralism'. He shows that it is possible to analyse situations of legal pluralism without defining law—one way of avoiding conceptual problems being to accept 'as "legal" whatever was identified as legal by the social actors'.²⁸ The seeming informality of local family laws can for instance be misleading—but informality of a legal order in itself, is not a disqualification from being a part of an institutionalised normative order. Sally Engle Merry also supported moving away from defining law.²⁹ Legal pluralism has been more recently analysed by Lauren Benton and Richard J Ross as 'encompassing all sources of law or rules of conduct in a given territory or social context.' Such a non-essentialist view would help us better understand the ways in which official and conquered subject dealt with the demands of managing the business of everyday life. A 'normative' legal pluralism could include 'customs, habits, religious precepts and codes of etiquette'.³⁰ The discussions to date on legal history in Sri Lanka have drawn a veil over the flexibility of the various social formations, and exaggerated the insularity of cus-

²³ Ibid., 397.

²⁴ Melvin Aron Eisenberg, 'Private Ordering through Negotiation: Dispute-Settlement and Rulemaking', *Harvard Law Review* 89 (1976): 638, 665. Eisenberg referred to private ordering processes, but the mechanisms of this appear to suit that of the negotiation of customs and informal processes of uncovering facts in the Landraad without taking away from its authoritative legality.

²⁵ Ibid., 674.

²⁶ Classic studies on the topic are John Griffiths, 'What Is Legal Pluralism?', *Journal of Legal Pluralism and Unofficial Law* 24 (1986): 1–55; Sally Engle Merry, 'Legal Pluralism', *Law and Society Review*, 1988, 869–96; Tamanaha, 'Understanding Legal Pluralism'; 'The Folly of the Social Scientific Concept of Legal Pluralism', *Journal of Law and Society* 20 (1993): 192–217.

²⁷ Paul Halliday, 'Laws' Histories: Pluralisms, Pluralities, Diversity', in *Legal Pluralism and Empires, 1500-1850*, ed. Lauren Benton and Richard J Ross, Kindle Edition (NYU Press, 2013), 262.

²⁸ Tamanaha, 'Understanding Legal Pluralism', 396.

²⁹ Merry, 'Legal Pluralism', 889.

³⁰ Lauren Benton and Richard J Ross, 'Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World', in *Legal Pluralism and Empires, 1500-1850*, Kindle Edition (NYU Press, 2013), 4.

tomary laws, especially in relation to the Sinhalese. As Benton and Ross say, opening up ‘a limitless horizon for the study of legal pluralism’ by including ‘all ordered social behaviour’ under its rubric is less dangerous than ‘the representation of imperial orders as comprising sets of neatly stacked and bounded legal spheres.’³¹ The Sinhalese laws, where they were recognised in varying degrees by the Dutch, effectively became official law and thus retained their validity.

Without using the present term, colonial officials studied legal pluralism in early modern times as well.³² Yet we can observe this process only to a limited extent, especially for the early modern period, due to the fact that what remains with us today is what is recorded in code, proclamation, or, as has been studied in this thesis, in judicial records. Thus, the focus is on jurisdictional practices. We observe here what was supported by the institutional structures set up by the Dutch. This is a methodological problem for legal pluralists who are being asked as Benton and Ross argue ‘to uncover elusive subjective beliefs about the applicability and ordering of bodies of law.’ Yet we can only hope to investigate, in that way, the jurisdictional politics of colonial authorities. Benton and Ross advocate studying exactly where conflicts occur in this process and reveal jurisdictional divides, ‘rather than elusive and often inconsistently applied rules or norms.’ They call this a ‘methodological advantage’ for historical research ‘because it becomes possible to analyse structural shifts propelled by the legal strategies of parties to jurisdictional conflicts.’³³ However, by focusing for the most part on the mundane, everyday workings of the Landraad, this study aims to present the lived experience of colonial law in eighteenth-century Galle.

I have attempted ‘locally specific understandings of law and legal complexity as presented and debated by historical actors, including state agents’³⁴ in a way that shows subtle changes or divides in everyday judicial operations. I have omitted the story of structural shifts from the picture and focussed on restrained conflicts and perceptible continuities. The presence of the individual peasant is felt throughout this story in both implicit and explicit ways. The jurisdictional conflicts are seen in the understated responses to the land registrar about tenuous rights that are duly recorded despite being in opposition to company predilections, in the recognition of the Sinhalese practices of marriage, and in the adoption of local practices of the oath and Dutch laws of inheritance. In all this, one constant of ‘elusive and often inconsistently applied rules or norms’ can be seen. The conflicts in the story of Dutch legal intervention in Sri Lanka as represented here may not always be obvious, but show a complexity that deepens our understanding of the everyday workings of jurisdictional politics. Strategies of the indigenous, who were seemingly subordinate to the coloniser, contributed to effecting changes in jurisdictional practices and drove continuities with the past or adherence to the status quo.

Research into legal practice in eighteenth-century Sri Lanka can contribute towards enriching not only our understandings of the complex ways in which legal orders intersected but also provide reflection on how such studies further illustrate theories of European colonialism and its interaction with non-Western practices and ideas. Some scholars of South India, a region close to Sri Lanka geographically and otherwise, argue for continuity with the past, others for transformation. David Ludden’s work emphasises gradual change rather than revolutionary change, with a primary role given to peasants, while Pamela Price’s work on Indian kingship in Ramanad emphasises continuity rather than change. Nicholas Dirks and

³¹ Ibid.

³² Ibid., 1.

³³ Ibid., 5–6; Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge University Press, 2001).

³⁴ Benton and Ross, ‘Empires and Legal Pluralism’, 5.

Arjun Appadurai, however, highlight more radical change in South India under British rule.³⁵ Emphasis on nineteenth-century studies in Sri Lanka's historiography of colonialism has often led to a neglect of the eighteenth century, rectified to some extent by Nirmal Dewasiri through his work on land tenure and caste relations, Alicia Schrikker on colonial policy-making and ideologies and Sujit Sivasundaram on colonial knowledge production, which all emphasise continuities from the eighteenth to the nineteenth centuries.³⁶ Among them Dewasiri in particular draws a picture of structural transformations in peasant life. My focus on indigenous engagement with colonial institutions provides for the first time the framework of legal studies that can enable a more detailed comparison with precolonial practices. This provides deep insight into the nature of early colonial rule.

In comparison with other imperial regimes, relatively less work has been done on the legal history of the Dutch empire.³⁷ Almost the only exceptions are the publications on Indonesian law and Cape society. The adoption of adat law in Indonesia has linked the concept of pluralism to the VOC's legal structures in many territories that it controlled. Without recognising the uniqueness of the Sri Lankan case in Dutch times, Benton for instance says that in South Asia, Dutch strategies 'recognised VOC legal authority over mainly VOC employees, while local rulers continued to preside over their own legal forums.'³⁸ The VOC's predominance may be true for the forts (Colombo, Jaffna, Galle and Matara being some examples in Sri Lanka) which were enclaves that mostly housed its officials, although some writers such as Anjana Singh and Carla van Wamelen have shown adaptability to local circumstances in Cochin and Batavia.³⁹ But local rulers had less authority in Dutch Sri Lanka; the VOC's extensive administrative apparatus on that island by far surpassed that of Java in a contemporary period. Its judicial authority spread beyond the city walls into rural society, requiring intervention in the legal administration of the territory under company control.

Sources and Research Design

The methodology adopted in this study greatly facilitates the development of history from below. I have used an inductive approach by seeking narratives from the sources themselves, which tell stories of individuals, and of as many individuals as possible. Throughout the thesis, I present micro-histories of family life which provide new horizons of recreating rural eighteenth-century Sri Lanka. Sanjay Subrahmanyam has aptly referred to '[t]he saliency of the micro-history (*microstoria*) approach, in particular given the nature of legal records as a privileged source that allows the historian to penetrate into the "community" formations at

³⁵ David Ludden, *Peasant History in South India* (New Jersey: Princeton University Press, 1985); Pamela G. Price, *Kingship and Political Practice in Colonial India* (Cambridge: Cambridge University Press, 1996); Nicholas B Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (New Jersey: Princeton University Press, 2001); *The Hollow Crown: Ethnohistory of an Indian Kingdom* (Michigan: University of Michigan Press, 1993); Arjun Appadurai, *Worship and Conflict under Colonial Rule* (Cambridge: Cambridge University Press, 1981). For continuity with a precolonial past, see also Susan Bayly, *Saints, Goddesses and Kings: Muslims and Christians in South Indian Society, 1700-1900* (Cambridge: Cambridge University Press, 1989).

³⁶ Dewasiri, *Adaptable Peasant*; Schrikker, *Dutch and British Colonial Intervention*; Sujit Sivasundaram, 'Buddhist Kingship, British Archaeology and Historical Narratives in Sri Lanka c.1750-1850', *Past & Present* 197, no. 1 (2007): 111-42.

³⁷ Benton and Ross write of the 'rich new currents of research on the legal history of the Chinese, Ottoman, Spanish, British, French and Russian empires', the lack of such research into the Dutch empire being an obvious reason to exclude it. 'Empires and Legal Pluralism', 2.

³⁸ Benton, *Law and Colonial Cultures*, 131.

³⁹ Anjana Singh, *Fort Cochin in Kerala, 1750-1830: The Social Condition of a Dutch Community in an Indian Milieu* (Leiden: Brill, 2010); Carla van Wamelen, *Family Life onder de VOC: Een Handelscompagnie in Huwelijks- en Gezinszaken* (Hilversum: Uitgeverij Verloren, 2014).

the level of the family, or even the individual peasant.⁴⁰ Sri Lanka has a treasure trove of sources in this regard.⁴¹ Unique among them are the land registers referred to as *thombos*, and the judicial records looked at in this study are some of the earliest extant for Sri Lanka. The Landraad of Galle, set up in the early 1740s to administer land matters, is the focus of the study, and the thombos will be studied alongside judicial documents.

Around sixty volumes from the Galle Landraad are to be found in the Sri Lanka National Archives today. The rolls (*rollen*) or minutes form the bulk of the volumes. Other volumes include draft minutes, depositions, interrogations, sale and transfer deeds, annexes, and correspondence of the council. The annexes have valuable extra information about the cases that came up in the council, including, requests, thombo extracts, *gift olas* and other documents relating to land and debts. Unfortunately they are not bound together with a reference to the meetings they were brought up in, making for time-consuming work to connect them to the relevant cases. In addition, instructions to the Landraad and thombo registrars listed by S A W Mottau under different sections of his inventory of the company's Galle records should actually be considered a part of the archives of the Galle Landraad. Other documents found among the volumes of the secretariat of Colombo are also part of the history of that council. By extension, it can be argued that even the Galle thombos are very much a part of the archives of the Landraad as the thombos were drawn up and maintained by its members.

The thombos are unique for their historical value and socioeconomic information on the eighteenth-century inhabitants and their property in Galle.⁴² They may also be unique in the world for the wealth of information they convey of a pre-1800 Asian society. Primarily a basis for better taxation, the thombos reveal an early colonial example of how 'the fiscal reformer needed a detailed inventory of landownership to realize the maximum, sustainable revenue yield'.⁴³ Over two hundred villages in Galle have thombos which are kept in the archives in Colombo. They record personal details such as name, age, caste, service, residence, illegitimacy and civil status, and details of property held. Family ties in relationship to property, the nature of property rights, partner choice, mortality, migration, marriage patterns, illegitimacy, and diasporas can also be studied through them. My use of the thombos focuses on the nature of the described rights and assumptions made therein and the legal disputes in connection with such rights. An analysis of the nature of rights listed in the thombos, together with the land disputes, reveals a number of legal concepts regarding what gave men and women rights to land. Importantly, issues arising out of the registration process of the thombos had to be dealt with by the Landraad. The thombos lie at the functional core of the Landraad which was responsible for their creation and maintenance.

I use both a quantitative and qualitative methodology where possible. In historical research, census data, employment records and voting data have been the most likely candidates for quantification. Transferring data from legal sources into a database as I attempted is

⁴⁰ Sanjay Subrahmanyam, 'Peasants before the Law: Recent Historiography on Colonial India', *Etudes Rurales*, no. 149–50 (1999): 199.

⁴¹ Incidentally, this is very unlike the case in neighbouring India, where, '[u]ntil 1875, there was no official centralized system of law reporting and after 1875 the only courts of record were the High Courts.' This is a serious methodological obstacle: 'As the field of Indian legal history expands its scope of vision, we as scholars will have to be vigilant and imaginative in the ways we approach the critical issues of law, power and agency.' Kolsky, 'A Note', 706.

⁴² Mottau likened the records to the Domesday Book. Similarities can indeed be observed: In 1085 in England, the Norman conquest required that the new rulers had detailed knowledge of land ownership. 'Documents on Ceylon History (2): Documents Relating to the Tombo Registration of the Dutch Administration in Ceylon: Instructions Issued to the Tombo Commissioners', *The Ceylon Historical Journal* 3, no. 2 (1953): 173.

⁴³ James C Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press, 1999), 38.

less common. It is still debatable whether the methodology of developing a database contributes to the legitimization of the historical interpretations.⁴⁴ How to explore and exploit the data and analyse the relationships between entities are key preoccupations in this process. The main objective of the database was to answer my own research questions. A source of inspiration due to the similarities in the form of the archives used was Marie-Charlotte Le Bailly's database of cases that came up in the Hof van Holland (Court of Holland) in the period 1457-1467, which in turn was partly based on a model for a legal history database developed by H De Schepper and others in 1988.⁴⁵ The Landraad documents examined in this thesis do not readily lend themselves to tabulation in a database. Naturally, the difficulties arise from the fact that the records were not drawn up by the VOC in the first place for the purposes to which I have used them. The necessary information, therefore, is not always in the documents as a mandatory inclusion. Some documents have information that was clearly relevant for the council. Regularity in the texts was mostly in the form of the documents and less often in content such as a consistent record of social background, residence, gender etc.—this makes tabulating data from them at times difficult.

Nevertheless, despite this relative drawback, a wide range of data has been obtained for this study. I reconstructed around one hundred consecutive cases that came up in the Landraad from May 1778 to December 1779. In addition, cases from before and after this period were also analysed, mostly covering the period after 1780. Every effort has been made to trace the beginning and end of these cases in preceding and subsequent volumes of the council minutes.⁴⁶ The analysis required to identify an individual case was done by collating the case documents from the various volumes of minutes, depositions, interrogations and annexes into separate dossiers.⁴⁷ The cases can be identified by the involved parties, subject, and references to previous hearings that appear in such documents. On closer readings of the sample cases it turned out that a few of them while being initially identified as separate cases, actually referred to one case. Thus the maintenance of a manageable number of cases for the study was necessary. The practice of making law reports in Sri Lanka began in the nineteenth century and unlike in the Dutch courts of Holland, summaries (*regesten*) and indexes are not available. Those summaries usually have the names of the litigants, dispute or offence, and at times even the sentence.⁴⁸ Large-scale quantitative studies of legal history

⁴⁴ See Jean-Phillipe Genet, 'Cultural History with a Computer: Measuring Dynamics', in *Information Technology and Scholarship: Applications in the Humanities and Social Sciences*, ed. Terry Coppock (Oxford: The British Academy, 1999).

⁴⁵ Marie-Charlotte Le Bailly, *Recht Voor de Raad* (Haarlem & Hilversum: Historische Vereniging Holland & Uitgeverij Verloren, 2001), 28; H de Schepper et al., 'Prolegomena Voor Onderzoek van Rechtspraak En Bestuur in de Oude Nederlanden', in *Miscellanea Forensia Historica: Ter Gelegenheid van Het Afscheid van Prof. Mr J Th de Smidt*, ed. J Koster van Dijk and A Wijffels (Amsterdam: Werkgroep Grote Raad van Mechelen, 1988), 263–94. In general there is a lacuna in early modern studies of the courts of Holland. Schepper et al. had the intention of developing a common list of questions in the development of a juridical database, so that exchange and comparison of data would be possible. Naturally that is a difficult task even within the legal history of a single country, more so in the study of an attempted transplantation of a legal system on foreign land.

⁴⁶ This method differs from Le Bailly's in that she adopted strict chronological boundaries (1457-1467) for her sample, which resulted in cases at the beginning and end of the period being incomplete. Bailly, *Recht Voor de Raad*, 29.

⁴⁷ Dossiers were made for the higher courts on the island and circulated among the councillors for their opinion. This was not a practice seen in The Netherlands according to B Sirks and J Hallebeek, 'Uit het archief van de Raad van Justitie te Colombo: rechtsbedeling in Ceylon in de 18de eeuw', *Libellus ad Thomasium: Essays in Roman Law, Roman-Dutch Law and Legal History in Honour of Philip J Thomas* (*Fundamina*) 16, no. 1 (2010): 390.

⁴⁸ Bailly, *Recht Voor de Raad*, 123–124.

from elsewhere in the world have also benefitted from summaries of cases and collaborative work, which this study lacked.⁴⁹

The judicial and cadastral sources complement each other in building up our knowledge of litigants and reconstructing eighteenth-century rural families in southern Sri Lanka. When a case came up in the Landraad around the time of the thombo registration, the links are more definite. If the dispute involved a registration matter, often notes on the council decision were made on the thombo. For the cases analysed in this thesis, it was possible to do such linkage manually. A larger database of the Landraad and the thombos would naturally yield a better platform to automate, speed and simplify such record linkage.⁵⁰ This study however has benefited from manual record linkage and it is hoped that there was minimal space for unconscious biases and inconsistencies creeping into a process involving relatively few cases. Other sets of data on meetings, meeting attendance, litigants, witnesses and small-scale prosopographical databases of the thombos of eight villages from Galle have also been used and will be described in more detail in the relevant chapters. The extant minutes quite easily yield a full breakdown of the members and the meetings at which they were present over the period 1759-1796.⁵¹ The Galle thombos selected for detailed study in this thesis were drawn up between the years 1760 and 1784. When compared to the Landraad documents, the thombos present a somewhat easier form of document for transfer to the spreadsheets of a database by lending themselves more readily for tabulation. Page after page of the large folio volumes present similar structures of information as the Dutch government required detailed information on its subjects and resources. The thombos add quantitative data to the type of land rights that were recognised in practice.

With hardly any prior work on the Landraad, this case study is unprecedented. Preliminary work on how the Landraad operated, who the councillors were and who came to the council had to be done as such questions are inherently linked to questions of whose laws were used in the council. This is covered in the first part of the thesis, but the personal involvement in lawmaking of the various stakeholders within a new institutional framework are important considerations for the later chapters in the second part as well. The borders between description and analysis, however, often overlap and the choice of questions that have informed the descriptive parts would be derived from a particular worldview. The wealth of information that can be mined from the Landraad documents that can be tabulated, together with sources such as discussions on property rights, proclamations, minutes of the Governor in Council in Colombo and Galle Political Council, contemporary descriptions of the land services and the much-mined memoirs of the governors provide a rich picture of eighteenth-century Sri Lanka.

The value of the sources used here can be seen through Cornelia Visman's work on the history of files in law and media-technology. The documents of the Landraad and the thombos derive authority 'from the fact that they came into being at the same time as the transactions they record.' In that moment of transmission from the oral to the written, a translation from the vernacular to the Dutch also occurred, which 'enables protocols to enter the sphere of officially recognized and communicated truth.'⁵² Through this process, the voices of social

⁴⁹ See Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law* (Princeton, N.J.: Princeton University Press, 2000), 146.

⁵⁰ See Ian Winchester, 'What Every Historian Needs to Know About Record Linkage for the Microcomputer Era', *Historical Methods* 25, no. 4 (Fall 1992): 149-65.

⁵¹ Records of an earlier period are available sporadically: SLNA 1/3215, 'Copies of Proceedings of Galle and Matara Landraden Sent to Colombo' 1747 to 1748; SLNA 1/3216, 'Copies of Proceedings of Galle and Matara Landraden Sent to Colombo' 1749 to 1752.

⁵² Cornelia Vismann, *Files: Law and Media Technology* (Stanford, CA: Stanford University Press, 2008), 53-54.

actors can be heard. However, legal sources in general contain problems of partiality. There may well be a gap between what is recorded and the actual proceedings of a case, as also between what a judge meant and what was understood by a litigant or witness. The lack of private sources such as letters and diaries is a drawback, but although the council records are in a particular legal language and reflect a selection of the information that is recorded, they do offer a special lens into the everyday lives of the social players involved, if only because they are all that remain.

Change is inherent to an analysis of such everyday lives. Transformations of laws are analysed through what is known of the precolonial past, thus addressing the issue of the interplay of foreign and local laws in a colonial setting. An intersection of legal history, colonial history and social history and the interdisciplinary practices that arise in the context of empirical studies can be seen in this thesis.

Structure of the Thesis

In unravelling the functioning of a small legal body in eighteenth-century Sri Lanka, I have analysed the institutional development and functioning of the Landraad with aspects of procedural and substantive law that came up in the council. The thesis is divided into two parts of six chapters in total, with the first part developing a picture of the Landraad in operation and the second dealing more explicitly with the laws used in the council. Chapter one will outline the available information on the judicial organisations that were in place before the Dutch arrived in order to understand the structure of the local legal order. The setting up of the Landraad, its operation, procedure and caseloads, as also the related development of the thombo registration and sources of the law will be looked at in detail. In this way chapter one looks at the institutional development of the Landraad in the context of the local environment and asks if it was an invention or adaptation.

The members of the council and issues of efficiency will be looked at in chapter two. The backgrounds of the European and indigenous members, their presence at meetings, and the relative powers of the two groups will be examined. Occasional skirmishes for power raised tensions within the council from time to time. Chapter three will give a breakdown of the inhabitants who came to the Landraad. The gender, race and occupation of litigants and witnesses will be examined, along with the geographical location of the council which may have been a factor in determining who appeared in the Landraad. Native women were often found to have flocked to colonial courts around the world, although a statistical survey of this phenomenon has not been done. Moreover, women's agency may have in reality varied from empire to empire and through time. These questions in chapters two and three are important precursors to the larger question of which law was being used in the Landraad.

While the first three chapters discussed the logistics so to speak of the Landraad, the next three will lean more heavily towards an analysis of the content of the law. First, a more procedural aspect will be dealt with through the specific practice of the oath in the Landraad in order to enter the discussion on negotiating custom. The Dutch procedure used in the Landraad was described in chapter one but this did not mean that adaptation to local conditions in procedural aspects did not occur. On the contrary, chapter four will show how as a result of the necessity to establish the 'truth' in the council, the Landraad adapted local customs of oath-giving. The oath including trial by oath in countries around the world has been a traditional part of the law of evidence, and the Dutch incorporation of the local practices of the social actors on site is thus particularly significant.

It was mostly in connection with land matters that establishing the truth became particularly important in the Landraad. As will be the task of chapter five, it is necessary to determine the way in which the land rights of the people were defined. My concerns in this chapter lie mostly with definitions of the terms that were used in the thombo and their reinforcement in Landraad proceedings. The land issue was of importance for inhabitants, indig-

enous headmen and company officials in determining who owned what and in what extents, as conflict was not conducive for a stable economy. On the contrary, negotiating the question of land tenure was a more practical approach. Indigenous ideas and practices of land tenure and Dutch practices of registering lands combined with a new institutional legal framework for dispute settlement. The struggle to possess and control land as property in the late eighteenth century in a part of Dutch Sri Lanka is central to this thesis. Chapter five will consider how the VOC and the indigenous people defined the right to land in the Galle District, by looking at the thombos in some detail. It will list the types of land rights that were recognised in the Galle thombos, and the regulatory role that the Landraad played in maintaining certain definitions. To what extent did company officials who came from different cultural, social, economic and legal environments adapt existing indigenous systems of land tenure? What motivated them in this process? Fiscal extraction, socioeconomic control and legitimising colonial rule are often the primary motives.

The final chapter studies inheritance law in the context of the family. The chapter will start by examining a case that seemingly crosses two cultural systems, and through it discuss the various laws of inheritance that may have been in operation at the time. If even the most primitive of societies have laws regulating how property should be divided after death, the inheritance laws of the Sinhalese could not have escaped observation by VOC officials. The British, for instance, mostly agreed in the nineteenth century on intestate laws in the Kandyan Kingdom. Inheritance cases from the Landraad will be explored in order to seek patterns in the decisions made. As marriage, divorce, the rights of widows and illegitimacy impinge on issues of inheritance, documents of the Scholarchale Vergadering or the School Board which dealt with these issues have been used to understand changes in these areas. In this way, this chapter will attempt to draw a picture of family law in eighteenth-century Sri Lanka with an emphasis on inheritance.

The conclusion will address the ways in which this study contributes to legal and colonial history. I will situate the issues inherent in the question of the application of Sinhalese law in the context of current discussions of legal pluralism that could have a bearing on how we understand that history. In a pluralistic setting, it is difficult to predetermine which areas of the law are most likely to be borrowed. Pluralities are reflected in more than one of the conventional divisions of the law, a discussion that I will not actively engage in. Yet this study helps us to understand how indigenous inhabitants experienced law in eighteenth-century Sri Lanka. The purpose of this work, in essence, is to open up specific features of Sri Lanka's legal legacy of Dutch rule, through an exploration of its practice. Later British, and postcolonial continuities of this legacy are touched upon from time to time in the text, but the focus remains on drawing a picture of an eighteenth-century colonial judicial forum.

PART I

INSTITUTIONS AND PEOPLE

Chapter 1 Building the Landraad

Throughout the Dutch empire, including that of the West India Company (WIC) of The Netherlands, there were varied levels of investments into territorial control and the establishment of commercial networks.¹ The VOC's mandate was a broad one: it could wage war, enter into treaties and alliances with Asian powers and maintain extensive fiscal and legal administrative regimes in the empire it created. Hugo Grotius believed the company was perfectly capable of waging war and signing treaties, which led him to a theory of divisible sovereignty in which individuals and groups outside the state could possess rights to a public legal personality, particularly in the extra-European world.² The Dutch company's administrative apparatus in Sri Lanka was more elaborate than what it established in Java during the same period. The VOC conflicted with the Kandyan Kingdom, which disputed the legitimacy of Dutch territorial rule on parts of the island. By the eighteenth century, the Dutch laid less emphasis on territorial conquest although the wars with Kandy from 1760 to 1765 would prove otherwise. It was not however as prominent as in the seventeenth century, a trend seen in other Dutch territories as well that at the beginning of the Dutch overseas enterprise territorial conquest was central. The administrative structures that the company required on the island proved to be elaborate.

By setting up property rights institutions, the Dutch East India Company developed the structures necessary for its early colonial state formation. This chapter unravels how and why the Galle Landraad was set up and the intertwined development of the land registration. In setting up such institutional arrangements, how responsive was the company to existing practices? Were they invented or adapted to local practices? How did the Landraad, as an administrative encroachment in indigenous society, operate? Structurally the council was a new institution. The thombo that was drawn up by the Landraad was a more home-grown yet considerably altered production of cadastral knowledge.

The institutionalised normative order of the new territory that the VOC occupied could not be ignored. To understand that context and subsequent evolution of the Dutch legal system, this chapter first presents an overview of the existing literature on the judicial organisations that were in place in the Kandyan Kingdom and under Portuguese rule in the low country. Characterising and setting the boundaries of the inherited normative order is no easy task. In other chapters of this thesis, this difficulty has been settled by the examination of phenomena where a potential or real conflict between two systems, i.e. the Dutch and the Sinhalese, could be seen. These interactions at least partially reveal the contours of the local legal order and bring into sharp focus issues of inter-legality. In all that, I have added a story of their operation in practice.

Next, this chapter will present an account of how the Landraad was set up, its operation and procedure. I have also dealt with the legal issues taken up in the Landraad. What type of cases could be heard in the Galle Landraad? Petitioners appeared in connection with certain legal issues. An analysis of the cases shows the working realities of the concerns of local (mostly rural) society in Galle and *ratione materiae*, the council's authority to decide a particular case. The council had exclusive jurisdiction on land matters. In this way an analysis of the setting up and functioning of the institution that maintained the thombos and administered

¹ See for a discussion of the importance of territorial conquest vis a vis the establishment of commercial networks, Philip J Stern, "Bundles of Hyphens": Corporations as Legal Communities in the Early Modern British Empire', in *Legal Pluralism and Empires, 1500-1850*, by Lauren Benton and Richard J Ross (NYU Press, 2013).

² Ibid., 26–27.

justice to eighteenth-century peasants will form the bulk of the chapter. A monumental exercise in documentation, the land registration of Galle will be described next. The company attempted the spatial compression of land rights into large folio volumes that became an integral part of the administration of law.

1.1 The Inherited Order

The available literature on precolonial law in Sri Lanka is scarce, but some ideas on the existing system can be drawn. The relative lack of secondary sources on the topic is striking. In the popular *A History of Sri Lanka* by K M de Silva for instance there are but relatively brief references to the legal regime and the machinery of justice.³ In the history of the country written in three volumes by the University of Ceylon and the University of Peradeniya over the latter half of the twentieth century, only the last two volumes had separate chapters on the administration of justice under Dutch and British rule.⁴ Work on the legal regime under Portuguese rule is still rarer. One exception is the fairly comprehensive account of the Kandyan legal system by the sociologist Ralph Pieris.⁵ This concentration of studies on the early modern and modern is due to the more readily available sources, chiefly European, for those periods and their continuing relevance to Sri Lanka's current legal system. In addition, for what can be termed 'precolonial', there may have been too great a unification of custom and law—a distinction between them arising through modern-day prejudices on the matter—that was an obstacle to research. Setting aside such distinctions, former Justice A R B Amerasinghe provides comprehensive evidence of the legal heritage from before European involvement in the island.⁶ Understanding the role of normative practices in society can facilitate research into legal history where primary sources such as legal texts are rare. Seeing the legal through traces of pluralities broadens our understanding of legal culture.

Our information on the precolonial legal machinery and the sources of the Kandyan law that is part of the country's official customary laws today, is mostly based on nineteenth-century British sources on the Kandyan Kingdom. The low-country, however, had by then already been subjected to European influence for about three hundred years. This thesis is a first step towards a comprehension of Sinhalese law through Dutch sources. The English sources fail to persuasively represent the low-country in pre-Dutch times. Some forms of what was described for the Kandyan Kingdom were also applicable to the low-country or at the least inhabitants were not oblivious to the system in the king's territory given also their tendency to flee to his lands in times of war and maintain marriage relationships. In reality, the division between 'low-country' and 'up-country' was an artificial one, although some space must be allowed for the influence of many years of European rule in the coast. We have no native judicial records, as no tradition of recording judicial proceedings or precedents as in the practice of modern law existed in the Kandyan or precolonial legal system. The following account will necessarily rely on the few Portuguese, Dutch and British observations on Sinhalese law.

The earliest of such European accounts was by the Dutchman Reverend Phillipus Baldaeus, but the section on Ceylon in his book first published in 1672 is predominantly about

³ *A History of Sri Lanka* (Delhi: Oxford University Press, 1981).

⁴ Nicholas Attygalle, ed., *University of Ceylon, History of Ceylon: From the Earliest Times to 1505*, vol. 1 (Colombo: Ceylon University Press, 1959); de Silva, *History of Sri Lanka (Peradeniya)*; K M de Silva, ed., *University of Ceylon, History of Ceylon: From the Beginning of the 19th Century to 1948*, vol. 3 (Peradeniya: University of Ceylon Press Board, 1973).

⁵ *Sinhalese Social Organization: The Kandyan Period* (Colombo: Ceylon University Press Board, 1956). He introduces early nineteenth-century case documents and other manuscript material in London to the discussion on Kandyan law.

⁶ *The Legal Heritage of Sri Lanka* (Colombo: Royal Asiatic Society of Sri Lanka, 1999).

the country's political, administrative and missionary history and the life and customs in Jaffna, his missionary seat for many years. He spent a year in Galle when he arrived in the country in 1656, but his section on the Sinhalese is very brief.⁷ In contrast Robert Knox's work published in Europe in 1681 has been used extensively for the history of Kandy. He is (mis)quoted for saying that the Kandyan Kingdom had no laws in an account of his experience living in the interior of the island for almost twenty years as a captive in the late seventeenth century. He was probably making a comparison to laws as he knew them to exist in post-civil war England, his country of birth. Yet he accepted that the local population had a system of recognising norms: 'here are no Laws, but the Will of the King, and whatsoever proceeds out of his mouth is an immutable Law. Nevertheless they have certain antient usages and Customes that do prevail and are observed as Laws; and Pleading them in their Courts and before their Governors will go a great way.'⁸ Knox may have been inclined to see a distinction between law and custom, but such a distinction, as is the case for many parts of the non-modern world, cannot be argued to have existed in the Kandyan Kingdom where he was imprisoned since 1660. The difference with his English experience would have been that the customs did not have a clear formulation that was apparent to him. By his own admission however he acknowledged that customs were 'observed as laws', which indicates that Knox was an early witness of how social norms *were* law. Popular belief is that the king was the 'fountain of justice' in the local administration of justice. The minister of the Dutch Reformed Church François Valentijn, who used the VOC's administrative documents (and Knox's work among other travel descriptions) to write his early eighteenth-century account of the island that he never visited, follows Knox in not supporting a view of the king's arbitrary power in a more explicit manner: 'There are among them certain permanent land laws or old customs, according to which most matters are directed, except where the Emperor makes any changes.'⁹ As does Knox, he follows this statement with a reference to inheritance law which is a paraphrase of Knox's own. This indicates that Valentijn was most likely to have been influenced by Knox about the king's judicial powers.

Such norms that were recognised appear to have had sources accepted by society. One problem in drawing a picture of the precolonial legal system is the paucity of written legislation for that period in forms that are readily recognisable today. No legal texts for Sri Lanka from before the nineteenth century exist, but references to local rulers adhering to laws are inscribed on stone slabs and given in ancient and modern historical accounts.¹⁰ For example, one inscription of Parākramabāhu VI (1411-1466), who ruled the country from the littoral capital of Kotte, indicates that the king proclaimed edicts that were fit to be enforced.¹¹ The *Girā Sandēsaya*, a pastoral poem written during his reign, stated that he strictly followed the Manusmṛiti or the laws of Manu,¹² which is a Sanskrit text originating from India that deals

⁷ S D Saparamadu, ed., *A True and Exact Description of the Great Island of Ceylon by Phillipis Baldaeus*, trans. Pieter Brohier, vol. 42, The Ceylon Historical Journal Monograph Series (1960; repr., Dehiwala: Tisara Prakasakayo, 2012), 380–386.

⁸ Robert Knox, *An Historical Relation of Ceylon* (1681; repr., Tisara Prakasakayo, 1966), 190. Sarojini Jayawickrama cautions us into understanding that the historical knowledge produced by his work had an ideological investment in the colonial and imperialist discourses of the time. *Writing That Conquers: Re-Reading Knox's An Historical Relation of the Island Ceylon* (Social Scientists' Association, 2004), 2, 286. See also K W Goonewardena, 'Some Comments on Robert Knox and His Writings on Ceylon', *University of Ceylon Review* 16, no. 1/2 (1958): 39–52.

⁹ François Valentijn, *François Valentijn's Description of Ceylon*, trans. Sinnappah Arasaratnam, vol. 149, Hakluyt Society 2 (London: Hakluyt Society, 1978), 169.

¹⁰ See for these examples, M B Ariyapala, *Society in Mediaeval Ceylon: The State of Society in Ceylon as Depicted in the Saddharma-Ratnāvalīya and Other Literature of the Thirteenth Century* (1956; repr., Colombo: Dept. of Cultural Affairs, 1997), 122–132; Amerasinghe, *Legal Heritage*, 11–14.

¹¹ Cooray, *Legal System*, 103.

¹² *Girā Sandēsaya* v. 127, quoted in Amerasinghe, *Legal Heritage*, 12.

with matters of the king, state and judicial procedure. They were based in turn on the Indian *Vedas*. The *Mahāvamsa*, a fifth- or sixth-century historical chronicle, states that King Tissa (209-31) abolished the practice of inflicting torture that had prevailed up to that period and was therefore known as Vohārika-tissa.¹³ F A Hayley however states that ‘such ordinances seem to have been forgotten in course of time, or were disregarded by subsequent kings.’¹⁴ William Knighton, writing in 1845 is convinced that Dappulla III (923-4) compiled a ‘distinct code of laws, which he had transmitted to posterity with the greatest care’,¹⁵ but no mention of such a service by the king is mentioned in the *Mahāvamsa*. As L J M Cooray points out, not everyone agreed. Charles Pridham said in 1849 that a code would go against the grain: ‘[I]n the absence of more conclusive reasoning and evidence, because it is clear that it was equally opposed to the genius of the king and the priesthood—the two fountains of law—to determine by a specific and definitive code, customs, which took their tone as much from the pressure of circumstances and the contingencies of the moment, as from any prescriptive rights.’¹⁶ However, the accounts by Knighton and Pridham drawn up in the first half of the nineteenth-century can hardly be considered authoritative work on the question of a pre-colonial code. A more nuanced interpretation of the administration of justice in precolonial Sri Lanka is necessary. We may not be able to settle the issue of Dappula’s ‘code’ without new evidence, but norms, even if they were subject to whims of certain kings, are likely to have had known sources of law in both religious and secular texts and traditions. Seven sources of early Sinhalese customary laws have been identified: (1) Hindu laws and customs, (2) Canonical writings, practices and rites of Buddhism, (3) Sakyan and Mauryan customs, (4) *Pera Sirit* (former or immemorial customs), (5) *Kula Sirit* (customs of clans and castes), (6) *Gam Sirit* (customs mainly connected with land holding in villages), (7) South Indian customs. These sources of law have not however been comprehensively analysed.¹⁷

My focus here is not on the precolonial evidence as such but on the legal system of the Kandyan Kingdom which ran a parallel administration to the Dutch in the period under study. The following is based, among others, on the early nineteenth-century work of John D’Oyly, Britain’s master spy and civil servant, Simon Sawyers, another civil servant, John Davy, an army doctor, and the early twentieth-century work of Hayley, a lawyer.¹⁸ All prod-

¹³ Vohārika means judge or justice in Pali. Wilhelm Geiger, *The Mahāvamsa* (Colombo: Govt. Press, 1986), chap. 36, l 28.

¹⁴ Hayley, *A Treatise on the Laws and Customs*, 55.

¹⁵ William Knighton, *The History of Ceylon from the Earliest Period to the Present Time* (London: Longman [etc.], 1845), 191.

¹⁶ Charles Pridham, *An Historical, Political, and Statistical Account of Ceylon and Its Dependencies* (London: T and W Boone, 1849), 1: 215.

¹⁷ Detailed accounts of these sources of law are hard to come by except in the case of Buddhist ecclesiastical law. See, among others, Steven Kemper, ‘The Buddhist Monkhood, the Law, and the State in Colonial Sri Lanka’, *Comparative Studies in Society and History* 26, no. 3 (1984): 401–27; Andrew Huxley, ‘Studying Theravada Legal Literature’, *Journal of the International Association of Buddhist Studies* 20, no. 1 (1997): 63–91; R A L H Gunawardana, ‘“Necessary Evil”: The Growth of a System of Judicial Courts and the Responses It Evoked among the Buddhist Monastic Community in Ancient Sri Lanka’, *Buffalo Law Review* 55 (2007): 685–90; Benjamin Schonthal, ‘The Legal Regulation of Buddhism in Contemporary Sri Lanka’, in *Buddhism and Law*, ed. Rebecca Redwood French and Mark A. Nathan (Cambridge: Cambridge University Press, 2014), 150–66; W S Weerasooria, *Buddhist Ecclesiastical Law: A Treatise on Sri Lankan Statute Law and Judicial Decisions on Buddhist Temples and Temporalities* (Colombo: Postgraduate Institute of Management, 2011).

¹⁸ The *Niti Nighanduva* was a publication of 1880 that was said to be a translation of an earlier Sinhala work that is no longer extant, but as it refers more to the laws than to the judicial administrative setup which is the focus here, it will not be referred to here. C J R Le Mesurier and T B Panabokke, trans., *Niti-Nighanduva or the Vocabulary of Law* (1880; repr., New Delhi: Navrang, 1994). John Armour’s grammar of Kandyan law has not been used in this chapter for the same reason. *Armour’s Grammar of the Kandyan Law*, ed. Joseph Martinus Perera (Colombo: Examiner Press, 1861).

ucts of British rule, some were commissioned by the British powers. The Board of Commissioners of Kandyan Affairs (set up in 1816) was asked, for instance, to report on the customs of the Kandyan provinces when there was criticism that the setting up of the board would be a violation of the Kandyan Convention signed in 1815. D'Oyly and Sawyers were the only two persons who as members of the board came forward to record the laws of the local population.¹⁹ Through these sources, I will provide an overview of the infrastructure and organisation of the administration of justice in precolonial Sri Lanka for the purpose of comparison with the Dutch legal system and more particularly the operation of the Landraad. Cooray is of the opinion that there was an 'elaborate judicial system' in ancient Sri Lanka. A certain hierarchy of legal officers connected to the king was maintained together with a system in which a village and district both had jurisdiction over a fixed territory. A direct line of appeal to the king from the lowest judicial body/official was believed to have existed. As civil and criminal law were not clearly demarcated, no explicit distinction in the jurisdictions of the courts between civil or criminal wrongs or the procedures used could be discerned. Cooray states that in the case of a robbery a double penalty covering public and private justice was enforced. Both the wronged individual and the state had to be paid.²⁰

The more important forums that administered justice were the Gamsabhāva, Ratasabhāva, Sākki Balanda and Mahanaduva which consisted of several state officials, and the individual judicial authority of state officials.²¹ The origin of the Gamsabhāva or village tribunal, which was composed of the village elders, is said to date back to the origin of the village itself. D'Oyly said the Gamsabhāva met at an *ambalama* (a kind of resting place) or under a shady tree or other central place.²² It dealt with minor offences such as boundary disputes, small debts, petty thefts and minor quarrels. The Gamsabhāva had a minor punitive jurisdiction to impose fines, but only if the headmen were present.²³ It was not the intention to mete out punishment through the Gamsabhāva, 'their endeavours being directed to compromise', as D'Oyly writes.²⁴ Ralph Pieris shows with examples how the proceedings were 'characterized by admonition, compromise and common sense, unsullied by legal technicality and rigid rules of procedure.'²⁵ Dispute negotiation through compromise was more the order of the day.²⁶ Obeyesekere has also noted the situational nature of judging in the Sinhalese legal order, where the concept of familial assistance was dominant (more on this follows in chapter six).²⁷ Such situational judging was not arbitrary; it still reflected the existence of a significant normative order that cannot be brushed aside as less than 'legal'. Interestingly, we will see that the Dutch also recognised such an order.

Regional differences in the institutional hierarchy must also be considered. These are likely in a situation where power was not centralised, although scholars have expressed differing views on the matter. Hayley, Ivor Jennings and Henry Tambiah believe that it was possible to appeal to the district-level tribunal of the Ratasabhāva from the Gamsabhāva,²⁸ but Ralph Pieris believes this was limited to the dry zone of Nuvarakalaviya and Matale. Pieris points

¹⁹ Earle Modder, 'Memoranda of the Laws of Inheritance &c., and Notes on Sir John D'Oyly's Exposition of the Kandyan Law by Simon Sawers' n.d., SLNA 25. 98/4.

²⁰ Cooray, *Legal System*, 108–112.

²¹ Pieris, *Sinhalese Social Organization*, 149–157; Jennings and Tambiah, *The Dominion of Ceylon*, 91–100.

²² John D'Oyly, *A Sketch of the Constitution of the Kandyan Kingdom*, ed. Lewis James Barnetson Turner, vol. 24, *The Ceylon Historical Journal* (1929; repr., Dehiwala: Tisara Prakasakayo, 1975), 42–43.

²³ Cooray, *Legal System*, 108.

²⁴ D'Oyly, *Constitution of the Kandyan Kingdom*, 24:43.

²⁵ Pieris, *Sinhalese Social Organization*, 149.

²⁶ See, for an overview of the go-between, mediator, arbitration and the courts, Martin Shapiro, *Courts: A Comparative and Political Analysis* (Chicago: University of Chicago Press, 1986).

²⁷ Obeyesekere, *Land Tenure*, 49.

²⁸ Hayley, *A Treatise on the Laws and Customs*, 60; Jennings and Tambiah, *The Dominion of Ceylon*, 92.

out that going by Hayley's own authorities of Pridham and Forbes the Ratasaḥbhāva did not operate in other areas. He believes that in the Nuvarakalaviya villages 'law and order were maintained by institutions which were relatively independent of state control' and that distance from the capital had made the Ratasaḥbhāva important in Matale and the Nuvarakalaviya which were north of Kandy.²⁹ Sujit Sivasundaram goes further in saying that '[w]ithin Nuvarakalaviya, the region in which the ancient capital lay, there was a thriving sense of identity, fed by ancient ruins, the vegetation and legends from the past.' He points out that the Nāyakkara kings of Kandy were keen to engage with that region in which the ancient capital of Anuradhapura lay in order to shore up support for their rule.³⁰ While Anuradhapura was important for its place in a spiritual topography, establishing judicial control in that region from the centre was more difficult. The Vanniyaṛs or chieftains of the Vanni, an imprecisely defined region above the Nuvarakalaviya, wielded judicial and police powers independent of the centre.³¹

The Ratasaḥbhāva was composed of the delegates of each village in a particular district. It had original jurisdiction in matters relating to caste, marriage and social status. Its proceedings were attended with much ceremony: 'The lengthy sessions of the Dry Zone *rata sabhās* were marked by etiquette, decorum, and punctilio, the *gamaṛāla* being responsible for providing meals for all those who assembled for these prolonged deliberations, while the meetings of the *uda rata* [upcountry] village councils were brief and informal.'³² In most areas in the Kandyan Kingdom, the next line of appeal after the Gamsaḥbhāva was likely to have been the state officials who had judicial powers and not another board such as the Ratasaḥbhāva. There is however another judicial forum, the Sākki Balanda,³³ that John Davy believed was in operation under the Kandyan kings.³⁴ Much like a coroner's court, it was tasked with the functions of inquiring into sudden deaths. Davy claimed it was composed of the principal men of a district, including minor officials. He refers to the procedure adopted in the Sākki Balanda in a suicide case.

It seems, then, that after the Gamsaḥbhāva and the Sākki Balanda, we must take into consideration the judicial powers of certain state officials. These state officials with powers of arbitration were *vidānes*, *liyanarālas*, *undirālas* and *korālas*, *mohottālas*, *ārachchis*, *lekams*, *ratema-batayas*, *disāvas* and *adigārs* or *adbikāramas* mostly in ascending order with regard to their status in society. At the highest point were the *adigārs*, who were chief officers of state and at the other end of the spectrum were *vidānes*, who had much less authority in comparison. The jurisdiction of these officials who acted virtually unaided and in some cases possibly unchecked has been dealt with in detail by early British writers and later scholars; I have confined myself to a description of the lowest and highest of such judicial officials.³⁵

²⁹ Pridham, *An Historical, Political, and Statistical Account*, vol. 1: 219; Jonathan Forbes, *Eleven Years in Ceylon* (R Bentley, 1841), vol. 1: 71; Pieris, *Sinhalese Social Organization*, 150, 249.

³⁰ Sivasundaram, 'Buddhist Kingship', 114.

³¹ See for an overview of the administration of the Vanni districts, Lorna S Dewaraja, *The Kandyan Kingdom of Sri Lanka, 1707-1782*, Second Edition (Colombo: Lake House, 1988), 234-240.

³² Pieris, *Sinhalese Social Organization*, 150. See also Hayley, *A Treatise on the Laws and Customs*, 63.

³³ Literarily, this means investigating evidence as *sākki* means evidence and *balanda* means to examine.

³⁴ John Davy, *An Account of the Interior of Ceylon, and of Its Inhabitants* (Longman [etc], 1821), 180-181.

Ralph Pieris and Amerasinghe agree that there is little information on the precise functions of this court except for that of Davy. Pieris, *Sinhalese Social Organization*, 151; Amerasinghe, *Legal Heritage*, 533 note 2. Charles Pridham, for instance, writing in 1849, copied Davy's account of that court almost verbatim.

Despite his denunciation of producing accounts of colonies by the month (but he also wrote an account of Mauritius) as 'the most outrageous form of scissors and paste', Pridham also included 'cut and paste' work that was not uncommon for his times. *An Historical, Political, and Statistical Account*, 1: vi-vii, 220.

³⁵ See for a fuller account of these state officials D'Oyly, *Constitution of the Kandyan Kingdom*, 24:34-42. Also Pieris, *Sinhalese Social Organization*, 152-156; Dewaraja, *Kandyan Kingdom*, 217-251.

The *vidānes* at a village level have been traditionally likened to police officers. D'Oyly believed that they had civil and criminal judicial powers in small claims. They could levy fines that did not exceed two and a half pieces of silver, keeping for themselves two pieces of silver. Higher fines had to be reported and accounted for with the authority above them. They may have resembled the police officers of today to the extent that they had limited authority and could also impose fines, but they had more extended powers on physical punishment. D'Oyly says that they occasionally punished people of low caste 'by a few Blows with the open Hand inflicted standing.'³⁶ Imprisonment had also to be reported to a higher authority except in some royal villages of Kandy. According to D'Oyly the *vidānes* recovered fines by placing debtors in *velākma*, a device of Kandyan procedural law. *Velākma*, which means impeding or hindering, was simply a way of physically detaining a debtor in a confined space till payment was made.³⁷

Almost at the pinnacle of the justice system yet below the king were the *disāvas* and *adigārs*, the latter being next in line to the king. The *disāvas* and *adigārs* had extensive jurisdiction over persons under their rule and could arbitrate over any civil or criminal case. The only exceptions were cases between members of the king's court. Paradoxically, despite their extensive powers, the *adigārs* and *disāvas* were not well versed in the law, being persons drawn from the nobility and they had often to consult their inferior officers.³⁸ It was not new, in that case, that Dutch *dessaves* in the low-country had to seek advice from the headmen as we will see. There was one forum through which the *disāvas* and *adigārs* could act called the Mahanaduva (Great Court), the next sort of board of judges that the people could face apart from the Gamsabhāva, Sākki Balandā and as in some areas the Ratasabhāva. It was perhaps originally a court that was called into action by the king when cases were submitted to him and he did not want to handle a particular case. The *disāvas* and *adigārs* were required to report on the case to the king who would deliver the final verdict. D'Oyly states that there were cases that were originally instituted before it as well, which, as Cooray argues, may have been a later development that was distinct from its earlier function of only advising the king.³⁹ The formal operation of the Mahanaduva is best described in the works of D'Oyly and Ralph Pieris.⁴⁰ The king was the final arbitrator who had extensive jurisdiction in 'suits arising between any principal servant or chief of his court, or where such a person was a defendant, and those relating to royal lands; suits between priests claiming rights to the incumbency of principal temples; serious crimes namely treason, rebellion and conspiracy against the king or his family and all homicides.' The king could be approached with regard

³⁶ D'Oyly, *Constitution of the Kandyan Kingdom*, 24:42.

³⁷ Ralph Pieris gives a summary of D'Oyly's description of the process: 'Confronted by his creditor, the latter stops him and draws a circle round him on the ground with a stick, or without even this ceremony, sits down beside him and forbids him by the King's command to move without discharging his debt. Neither can stir until another person either engages to be answerable for the debt, or undertakes in the presence of witnesses, to call both before the proper chief. This process was also employed by the principal headmen to recover fines. In such cases the culprit was required to sit down in the sun and sometimes obliged to hold with both hands a heavy stone laid on his shoulders, which weight he may shift from one side to another, but not cast off for fear of immediate corporal punishment.' Knox also describes a similar procedure, with an illustration of a man with a great stone on his back. Pieris, *Sinhalese Social Organization*, 158–159; D'Oyly, *Constitution of the Kandyan Kingdom*, 24:40, 87; Knox, *An Historical Relation of Ceylon*, 196–197.

³⁸ Cooray, *Legal System*, 110.

³⁹ D'Oyly, *Constitution of the Kandyan Kingdom*, 24:33; Cooray, *Legal System*, 110.

⁴⁰ D'Oyly, *Constitution of the Kandyan Kingdom*, 24:32–34; Pieris, *Sinhalese Social Organization*, 157. Incidentally, the Board of Commissioners of Kandyan Affairs (in which D'Oyly and Sawyers were members as mentioned above) which was set up in 1816 replaced the Mahanaduva. Silva, *A History of Sri Lanka*, 260.

to solving a case by an official or a petitioner.⁴¹ More detail on such an elaborate indigenous legal system can be found in the sources used here, but it must be kept in mind that any description must leave room for regional differences of which we know little or nothing.

The Portuguese were the first European power to enter this local legal 'system' as it were in the sixteenth and seventeenth centuries when they captured parts of the low-country. They initially attempted to impose their laws, but this met with opposition. The Portuguese Captain João Ribeiro, whose first-hand account of the island was also published a few years after that of Baldaeus and Knox, wrote that Sinhalese delegates who were faced with the prospect of receiving Portuguese laws said

that they were Chingalas, brought up from the beginning in the laws which they possessed and observed: that it would be a very grave matter for them to abandon those laws and take in exchange what were now proposed; the result of so great change would probably be that neither the one law nor the other would be properly observed....and as such they would serve him [the king of Portugal] with the laws in which they had been brought up; but those laws must be preserved by His Majesty and his Ministers without any alteration at any time.

Ribeiro says the agreement was certified by a document that both parties swore on.⁴² For their administrative setup, the Portuguese drew up cadastres that will be discussed below. While some lower level legal institutions of the local system were likely to have been pre-preserved, legal officers at higher levels came to be of Portuguese origin. By the 1620s and 1630s the Portuguese adopted a policy of appointing Portuguese alone to the posts of *disāva* or district heads who had considerable judicial powers including the right of capital punishment.⁴³ Portuguese creations of new posts were those of captain-general, the *vedor da fazenda* or controller of revenue, *ouvidor* or crown judge and a factor who had varying degrees of involvement with the judicial administration at a higher level. The captain general for instance revived the above-mentioned Mahanaduva, which was also a part of the administration of the Kotte kingdom that the Portuguese controlled.⁴⁴ The powers of these judicial officials will not be gone into in detail here, but due to its particular relevance to this study, another Portuguese appointment, the *marelleiros*, will be looked at here.

Marelleiros were Portuguese legal officers who were assigned regions over which they held their own assizes called Marallas once a year and decided cases according to the laws of the people. Ribeiro states that the four *marelleiros* were assisted by four natives each, including two interpreters who knew the laws of the people. As a travelling court, they sent notice to the people of a province to be ready on an appointed day on which they would meet the inhabitants on the road, and be led by the people to their lodgings and receive their hospitality. Ribeiro says that '[a]ll the neighbouring inhabitants who had a complaint or a petition would come and remain there until their business was transacted and the same would be done in all the other provinces.'⁴⁵ If documentation was generated in this process, its survival is doubtful. As they met only annually, the Marallas could not have taken a hold of the imagination of the village, although they are likely to have attempted to influence family life as a result of the conversion to Christianity of many Sinhalese.

⁴¹ Cooray, *Legal System*, 110. See also answers given to Governor Falck in the year 1769 by Kandyan priests on the laws and customs of the country: Anthony Bertolacci, *A View of the Agricultural, Commercial, and Financial Interests of Ceylon* (London: Black, Parbury and Allen, 1817), 461.

⁴² Joao Ribeiro, *The Historic Tragedy of the Island of Ceilao*, trans. P E Pieris (Colombo: The Ceylon Daily News, 1948), 24–25.

⁴³ De Silva, *Portuguese in Ceylon*, 158.

⁴⁴ See Chandra Richard de Silva for an overview of the functions of these officials. *Ibid.*, 159–170.

⁴⁵ Ribeiro, *Historic Tragedy*, 58.

If through this process indigenous customs were transformed, that suggests why the Dutch were silent on some aspects of local law that the British discussed. Hayley is convinced that the ‘laws of Portugal were never introduced to any material extent’.⁴⁶ The people’s engagement with the Catholic religion may not have been to the degree that was expected of them but the Christian deity of the Portuguese faith had much in common with Buddhism as it had been influenced by Hindu practice through the ceremonial making of vows and worship of relics and images.⁴⁷ The subtle manner in which family life was affected by Catholic conversions is under-researched, yet when they arrived, the Dutch appear to have drawn a blank on some laws such as inheritance law as will be discussed in chapter six.

Pluralism was not an introduction of the European powers alone; its origins can be traced further back in Sri Lanka’s legal history. The Dutch, with their Roman-Dutch laws, textual traditions and elaborate court system in the republic, entered a legal environment in Sri Lanka that was already influenced by diverse sources. It is likely that the *Gamsabhāva* continued to function under Portuguese and Dutch rule despite being undermined to some extent by the popularity of the legal forums introduced by the colonial powers. They continued into British times, although they had their ups and downs in the nineteenth century.⁴⁸ At the time of the consolidation of Dutch power, the island had its various sources of law and an elaborate legal system in at least the Kandyan Kingdom, which involved negotiating with indigenous headmen at an institutional level. The situational nature of local judging practices further necessitated this. Under Dutch rule, indigenous inhabitants were repeatedly ordered to first have their disputes heard at a village level by the headmen, failing which they could approach higher officials and eventually the *Landraad*. The gathering of elders under a tree to settle disputes was likely to have continued to be the first means of arbitration. Failing this, the *Landraad* could be approached if higher-level Dutch officials also failed to resolve the case. This process will be discussed in more detail below. On certain land matters however it became mandatory to approach the *Landraad* as a body of original jurisdiction—a change that was tied to the *Landraad*’s acquired task of registering lands. The *Landraad* had unavoidably to include headmen; the Portuguese *Marallas* had already familiarised the inhabitants with the concept of a mixed body of judicial officials. Legal authority was effectively divided, if unequally, between foreign and local powers. A further continuity (with modifications) in precolonial, Portuguese and Dutch times is seen in the practice of land registration. How the cadastres were conceived of and created in the form that we find them in eighteenth-century Galle will be discussed in this chapter, after an introduction to the *Landraad*.

1.2 Setting up the *Landraad*

In the bureaucratic regime set up by the company in parts of the island, the company retained the local administrative arrangements of *dessavony*, *kōralē*, *pattu* and *vidāne*. The overall administration of the colony was carried out by the Dutch governor based in Colombo who answered to the High Government in Batavia and the Gentlemen Seventeen of the VOC in The Netherlands. The three main administrative units in the island were Colombo, Jaffna and Galle. Together with the Matara Dessavony, the Galle *Kōralē* made up the Galle Com-

⁴⁶ Hayley, *A Treatise on the Laws and Customs*, 22.

⁴⁷ See for religiosity in Portuguese times, Strathern, *Kingship and Conversion*, 132–137.

⁴⁸ The *gamsabhāvas* were devalued after the cession of the kingdom to the British in 1815 and the appointment of the Board of Commissioners of Kandyan Affairs in 1816 brought in new machinery for the administration of justice. Although disregarded in that earlier reformist era, in a later time communal machinery such as the *gamsabhāva* was revived. It played a key role in the implementation of the Irrigation Ordinance of 1856 and the Village Communities Ordinance of 1871 which, among other things, also saw the trial of minor offences through the *gamsabhāva*. Silva, *A History of Sri Lanka*, 260, 300, 316, 322–323.

mandment.⁴⁹ The Galle Kōralē (referred to as Galle District in this thesis) consisted of six sub-districts: the Galle Four Gravets, the Gangaboda Pattu, Hinidum Pattu, Talpe Pattu, Walallawiti Kōralē and the Wellaboda Pattu (see map 2 on page xvi).⁵⁰ The district was roughly bordered by the sea to the south and the west, Kalutara district and the Sinharaja rainforest of the present-day Sabaragamuwa Province to the north and the district of Matara to the east. The Matara Dessavony, the Galle District and the Galle Commandment were headed by Europeans. While Matara (and Colombo) had a European governor of a district referred to as a *dessave* for the native administration, the Galle District had an *opsiender* or overseer/superintendent. At the head of the VOC administration in Galle in the eighteenth century was the commander, who was third in rank to the governor of Sri Lanka after the commander of Jaffna. The commander had both civil and military authority and was assisted by a Raad van Politie (Political Council) composed of the principal heads of departments in the town. The commander was also the head of the Raad van Justitie (Council of Justice or High Court), which was the highest appellate judicial body in the commandment. He reported to the Governor in Council in Colombo, which decided matters pertaining to Dutch territory on the island.

In essence, three main legal bodies were setup with some minor variations at different times and in different parts of the coastal area under Dutch rule. These were the Raad van Justitie, the Civiele Raad (Civil Council), and the Landraad. At the pinnacle of the judicial system was the Raad van Justitie in Colombo, to which appeals could be made from the Raden van Justitie in Jaffna and Galle in all civil cases involving sums exceeding certain specified limits, and in certain criminal cases.⁵¹ The Raad van Justitie in Colombo was composed of the highest-ranking company officials and the *advocaat-fiscaal*, equivalent to a public prosecutor. All three Raden van Justitie in Colombo, Jaffna and Galle had an original jurisdiction over company personnel, in all criminal cases and in civil cases involving sums exceeding certain limits within their districts or commandments. They also acted as appeal courts for cases heard in the Civiele Raad and the Landraad under their jurisdiction. The Civiele Raad of the three main towns under Dutch control dealt with cases involving inhabitants of the towns (including natives), while the Landraad reached further inland and was the only judicial body that also had headmen as permanent members. The latter dealt mostly with cases related to land issues, and an appeal lay from a Landraad to the Raad van Justitie of that district, and in the case of the Raden van Justitie of Galle and Jaffna further appeal to the Raad van Justitie of Colombo was possible. In that sense, the Raden van Justities in Galle, Colombo and Jaffna were not on the same level, as cases from Galle and Jaffna could be heard in appeal in Colombo. So it appears that a civil case heard in the Raden van Justitie of Galle and Jaffna had a second chance in Colombo if the value of the action exceeded three hundred rix-dollars, but litigants of the same type of case heard first in the Raad van Justitie of Colombo had to go to Batavia in appeal.

This structure of command view of eighteenth-century colonial law in Sri Lanka is seen particularly well in the charts of the hierarchy of courts drawn up in many conventional works on the subject.⁵² That perspective of a streamlined legal administration obscures the fluidity of the institutional and normative practices in operation. For instance, it largely ignores the role played by the headmen as the first agents the people were required to

⁴⁹ A commandment was an administrative unit created by the VOC.

⁵⁰ The Four Gravets of Colombo, Jaffna, Galle and Matara were inland sub-districts immediately outside the forts of those towns.

⁵¹ In addition, all criminal cases from all over Sri Lanka had to be sent to Batavia yearly to be investigated there. SLNA 1/6497, 'Galle Landraad Minutes' 1759, fol. 33r.

⁵² Marleen van den Horst, *The Roman Dutch Law in Sri Lanka* (Amsterdam: Free University Press, 1985), 39–47; Nadaraja, *The Legal System of Ceylon*, 5–9.

approach. Headmen are likely to have resolved disputes by face-to-face consent, resorting to more or less mediate solutions through rituals or norms that were acceptable to both parties. At the same time, the peasants could approach higher authorities such as the *dessave*, commander or Landraad directly in land matters. At the Landraad, they may have been promised access to justice according to customary law. In the new institutional structure, disputes would have to be ultimately settled by Dutch judges if they were taken beyond the Landraad level to the Raden van Justitie. Going up in appeal to other councils did not hold the same guarantee, as an illegitimacy case highlighted in chapter six will show. The higher judicial councils adjudicated in the last resort by imposing rules rather than by eliciting a consensual decision. The multifaceted, perhaps even confused nature of such authority is combined with a plurality of forms and sources of law.

In 1661, the VOC believed that a favourable result of the havoc and depopulation of the Colombo district in recent years was that they were thereby not required to be bound to Sinhalese laws and customs.⁵³ At the end of the wars with Rājasingha II of Kandy in the late seventeenth century, considerable tracts of Dutch-held territory were depopulated. Governor Rijklof Van Goens the senior (1664-1675) had even imported slaves from south India and settled them in some Dutch territories of Sri Lanka.⁵⁴ It was thought, as Hovy points out, that it was easier to impose a new law in an empty land than in a populated land but such a blank state was a fallacy as the company later had to reverse its neglect of Sinhalese law.⁵⁵ This may have been due to emigrants to the Kandyan territories returning from the late seventeenth century onwards.⁵⁶ Hovy discovered that Governor Cornelis Jan Simons (1703-1707) took steps to grant the native law and the native headmen a more important place in the judicial system. The first *plakkaat* (proclamation issued by the Dutch government; pl. *plakkatén*) in this connection came out in 1706, indicating that the native population had to bring their complaints in the first instance to their headmen and then in the second instance to the Dutch administrators.⁵⁷ Further developments can be seen in the 1740s, following the ‘enlightened’ Governor Baron Van Imhoff’s recommendations as we will see below.

For the most part, the company understood that it had to inquire into existing laws. In the early years in Galle when it was the company’s administrative capital, *commissarissen der dagelijkse zaken* (commissioners of daily affairs) were required to handle minor disputes of a civil and criminal nature among both Europeans and Sinhalese in the first instance. In an ordinance referring to it made in 1648, the company appeared to have resigned itself to the fate of having to adjudicate because, as it said, many quarrels arose in the Galle town and its surroundings, to which the Governor in Council could not attend. At least one or two prominent Sinhalese were also commissioners in this body who could vote, because most matters that arose would concern the Sinhalese. All such members were to be chosen by the Governor in Council. In Sinhalese matters they had ‘in principle to rule according to the old laws and customs of the land, in so far as they could be adopted and were not contrary to any specific plakkatén.’⁵⁸ The appointment of native commissioners is significant in that it

⁵³ L Hovy, *Ceylonees Plakkaatboek: Plakkatén En Andere Wetten Uitgevaardigd Door Het Nederlands Bestuur Op Ceylon, 1638-1796* (Hilversum: Verloren, 1991), vol. 1; nr. 62 (4), Instruction for the *dessave* of Colombo, 21 Jun 1661.

⁵⁴ Arasaratnam, *Dutch Power in Ceylon*, 130–131.

⁵⁵ Hovy, *Ceylonees Plakkaatboek*, vol. 1; cxxiii.

⁵⁶ Arasaratnam, *Dutch Power in Ceylon*, 132. Kotelawele surmises that the population shift from north and north-central Ceylon to the south-west, which had begun after the so-called collapse of the Rajarata civilisation, was still continuing, these migrations being a perpetuation of that shift. D A Kotelawele, ‘Agrarian Policies of the Dutch in South-West Ceylon, 1743-1767’, *A.A.G. Bijdragen* 14 (1967): 21.

⁵⁷ Hovy, *Ceylonees Plakkaatboek*, vol. 1; cxxiii–cxxiv.

⁵⁸ ‘[T]en princepale reguleren na de oude wetten en de coustume des lants, voor zoveel deselve aengenomen connen worden ende geen bijzondere placcatén contrarie dicteren.’ *Ibid.*, vol. 1; ic–c, nr. 16, Ordinance for

was an early recognition of the necessity to settle disputes in an acceptable way and establish continuity with the past. This body of *commissarissen der dagelijkse zaken* that was in operation for ten years, is likely to have later evolved into the Civiele Raad, which may have initially also included local members. Hovy believes that is also likely that with the establishment of the Landraden after 1740 the headmen had stopped being members of the Civiele Raad, which became a judicial forum attending exclusively to civil disputes among Europeans.⁵⁹ Landraden came to be established in Jaffna and Matara by the late seventeenth century. Some indications that they were also established in Colombo and Galle in that time can be seen in plakكاتen, but they do not seem to have operated efficiently.⁶⁰ At times the Civiele Raad adjudicated disputes among the natives, but there is evidence that in Colombo and Galle the task mostly fell on the *dessave*, who in Dutch times was a European district-level officer referred to as an *opziender* (overseer) in the Galle District. Before the reintroduction of the Landraad, the *dessave* and *opziender* tried petty cases that came up outside the town limits in consultation with headmen. Local laws could not be easily brushed aside.

Yet this state of affairs was unsatisfactory for the company. Governor Gustaaf Willem Baron Van Imhoff (1736-1739) believed that the *dessave* had too much work and was unable to navigate all the legal discussions. The German Johann Wolfgang Heydt who served the Dutch company in Sri Lanka in the 1730s commented that '[f]or a small matter or a thing of no consequence [the people] begin a quarrel, so that our Desauwa has always enough to do in settling their disputes.' Heydt said that often twenty to thirty litigants appeared in one day.⁶¹ Van Imhoff believed that at times the *dessave* was so busy that he was forced to leave disputes to be settled by the native officers who engaged in 'underhand dealings'. In recommending the re-establishment of Landraden in Colombo and Galle in 1740, Van Imhoff wished to release that officer from some of the hundreds of small disputes that were presented to him daily and to commission the new Landraden with the verification and registration of the ownership and possession of land. He envisaged that the *dessave* would thereby be less influenced by his native entourage as the Landraad was more difficult to mislead than a single person, and because the council would include natives knowledgeable in traditional law. This was to maintain the peace, which he believed was crucial to safeguard the interests of both the company and the people.⁶²

The Landraad and land registration were thus ways of containing the headmen, which Van Imhoff wished to do. He served as governor-general in Batavia from 1743 to 1750, and was referred to even in the eighteenth century as an 'enlightened' senior employee of the VOC.⁶³ Jonathan Israel writes that Van Imhoff thought it was necessary 'to extend control, rationalize administration, law, and health measures as well as trade'.⁶⁴ In his memoir in which he spells out his proposals for the thombo and the Landraad, Van Imhoff says the subject of his 'treatise' are the interests of the company, which to him consists 'in the right of exclusive occupation and in the peaceful possession of such territory as is necessary for

the commissioners of daily affairs as lawcourt in the first instance in the Galle District, with regulations concerning the registration of the alienation of immovable goods and the prescription law, 16 Jul 1648.

⁵⁹ Ibid., vol. 1: c.

⁶⁰ Ibid., vol. 1: civ, n. 186.

⁶¹ Johann Wolfgang Heydt, *Heydt's Ceylon*, trans. R Raven-Hart (1744; repr., Colombo: Ceylon Govt. Information Dept, 1952), 115.

⁶² Baron van Imhoff, *Memoir Left by Baron van Imhoff to His Successor, 1740*, trans. Sophia Pieters (Colombo: H C Cottle, Govt. Printer, 1911), 19–23; Hovy, *Ceylonees Plakkaatboek*, vol. 1; cv. See also Van Imhoff's 'considerations'. SLNA 1/78, 'Governor in Council Minutes' 1740, 22–26 Feb 1740; SLNA 1/2784 & SLNA 1/2785, 'Considerations by Governor Van Imhoff on the Management of the Island' 1740.

⁶³ Jonathan I. Israel, *Democratic Enlightenment: Philosophy, Revolution, and Human Rights 1750-1790* (Oxford [etc.]: Oxford University Press, 2011), 543.

⁶⁴ Ibid., 544.

obtaining the profits which the country yields, and under suitable administration; so that there may be a surplus and no deficit in these profits.⁶⁵ The expansion of trade was high on his agenda, but he still had wide intellectual interests and administrative and legal matters were important for him.

Van Imhoff's recommendations were passed on till the end of company rule. His ideas for the Landraad were given at the start of volumes of instructions for the Galle Landraad, and were referred to in discussions in proceedings of the council and in reference to the thombo registration as late as 1791.⁶⁶ Alicia Schrikker refers to later use of Van Imhoff's writings when she comments on the *philosophe* Abbé Raynal's advice for the VOC in the 1770s to restore harmony in the colonies by promoting agriculture and redistributing land to the poor: 'Van de Graaff's predecessors like Van Goens and Van Imhoff had also expressed their intention to contain the native headmen and to encourage agricultural development of the island. Although they never succeeded in this, their writings may have served as much as examples for the officials on Ceylon as that of Raynal.' Further reflecting Van Imhoff's wide influence, Raynal himself relied on Van Imhoff's comments on the company.⁶⁷ More research is necessary to determine if Van Imhoff was influenced by contemporary European intellectual thought, but it is possible that extended experience of local considerations led to the promulgation and activation of his reforms.

Although it is seen as Van Imhoff's idea to start a new registration and set up more Landraden on a solid footing, these measures gained momentum under Governor Julius Valentijn Stein van Gollennesse in the 1740s. Van Gollennesse was an official of some merit within the company and was the commander of Malabar before taking up the governorship of Dutch Sri Lanka in 1743. He served there till 1751 and was appointed Director-General in Batavia in 1751.⁶⁸ He had some experience with the administration of justice in Malabar, where he called for diligent work by the members of the court.⁶⁹ Between van Imhoff's departure in 1739 and 1743 Willem Maurits Bruyninck and Daniel Overbeek held office.⁷⁰ Some work on setting up the Landraad and the thombos began in their terms of office, but it was Van Gollennesse who issued the first set of instructions on the thombo registration, and

⁶⁵ Imhoff, *Memoir Left by Van Imhoff*, 6.

⁶⁶ See an early discussion in SLNA 1/2805, 'Galle Landraad Minutes (20 Dec 1745) and Governor's Comments (5 Feb 1746)' 1745. Summaries of his recommendations for the Landraad and thombo are given in SLNA 1/5658, 'Extracts of Resolutions, Orders, Etc. Regarding the Landraad and the Thombo Compilation' 1740 to 1745, fol. 4r–6v; SLNA 1/6204, 'Digest of Orders & Extracts from Council Minutes Etc Received by the Galle Landraad' 1745 to 1779, fol. 1r–6v. In 1791 as well, the Governor in Council cited Governor Van Imhoff's memoir of 12 Mar 1740. SLNA 1/214, 'Governor in Council Minutes' 1791, 9 Apr 1791.

⁶⁷ Schrikker, *Dutch and British Colonial Intervention*, 101. Abbe Raynal's work is the multivolume *Histoire Philosophique et Politique des Établissements et du Commerce des Européens dans les Deux Indes*, first published in 1770.

⁶⁸ A Galletti, *The Dutch in Malabar : Being a Translation of Selections Nos. 1 and 2* (Madras: Govt. Press, 1911), 37. Van Gollennesse is associated in Ceylon mostly with the building of the Wolvendaal Church in Colombo. R. L. Brohier, *De Wolvendaalsche Kerk* (Colombo: Consistory of Wolvendaal Church, 1957), 3.

⁶⁹ On leaving Malabar Van Gollennesse states in his memoir: 'Justice was pretty irregularly administered when I arrived here. The Court of Justice has now been provided with good books, among others the Ceylon Blaffert kindly sent to us from that island by the Right Worshipful van Imhoff. Moreover all extracts from political Council Resolutions and Home and Batavia letters are now communicated to the Court of Justice, and are bound together and properly indexed. By this the work of the members of this court is not a little lightened, if they will only take the trouble to go through the papers diligently.' Galletti provides a note on 'blaffert', calling it a list or register and stating that it was probably a collection of ordinances from Batavia. Galletti, *The Dutch in Malabar*, 80.

⁷⁰ Overbeek admits that nothing was done since van Imhoff first gave orders for the registration. Daniel Overbeek, *Memoir of Daniel Overbeek, Governor of Ceylon*, trans. K D Paranavitana (Colombo: Dept of National Archives, 2009), 62.

Mottau remarks that he seemed to strictly adhere to van Imhoff's recommendations.⁷¹ Van Gollennesse, as we will see in his intervention in a discussion that took place in the mid-1740s referred to below, played a key role in the attempt to set up a standardised social and economic regime through the Landraad and the thombo registration.

Landraden came to be established throughout coastal Sri Lanka following further territorial expansion and administrative encroachment after 1766. By 1789 there were ten Landraden in operation in Sri Lanka. The Landraden in Matara and Jaffna were the oldest of them, which were in operation as far back as at least 1661.⁷² The Colombo and Galle Landraden were in operation on a stable footing since 1741. Other locations with Landraden from time to time were Chilaw, Puttalam, Mannar, Mullaitivu, Trincomalee, and Batticaloa. They did not all operate in the same manner; issues of efficiency were brought up with regard to the Matara Landraad by Governor Van Imhoff in his memoir. He wrote that former *dessaves* were negligent in their duties.⁷³ While the smooth functioning of the administration of the indigenous people was vital to the enhancement of the profits of the VOC, aims akin to governmentality behind setting up the Landraden are not absent. Van Imhoff stressed that the purpose of the Landraden was 'to help the people'.⁷⁴ The procedure of the new platform of the Landraad, as faced by inhabitants will be dealt with next.

1.3 The Landraad in Operation

The Landraden had an exclusive authority in disputes that occurred between natives who lived outside the towns, but cases of Europeans were also heard.⁷⁵ It was said that only cases between ten to eighty rixdollars were taken up by the Landraden, but it is possible that they also exercised authority in cases valued at more than eighty rixdollars.⁷⁶ In any case, disputes related to a higher value could be submitted to the Civile Raad or the Raad van Justitie. In general, the Landraad was a sort of court of first instance after the chiefs immediately above the prospective litigants and the overseer (or *dessāve*) had been approached. The authority of the village headmen came first but under some circumstances the people had the opportunity to reject the verdict of the headmen and approach the Landraad. It is possible that headmen of the lower ranks were required to resolve most petty crimes and disputes, whereas in disputes over large amounts of property indigenous litigants could seek out the Landraad if they could not obtain a satisfactory verdict from the lower ranking headmen or the overseer or commander. Furthermore, if the European officials believed they could not handle a case, it could be heard in the Landraad. Governor Schreuder however stipulated that land matters

⁷¹ S A W Mottau, "Documents on Ceylon History (2): Documents Relating to the Tombo Registration of the Dutch Administration in Ceylon: Instructions Issued to the Tombo Commissioners.," *Ceylon Historical Journal* 3, no. 2 (1953): 175. See also Van Gollennesse's memoir: Julius Stein van Gollennesse, *Memoir of Julius Stein van Gollennesse*, trans. Sinnappah Arasaratnam (Colombo: Dept of National Archives, 1974), 53–55.

⁷² Instructions issued in 1661 refer to the re-establishment of the Landraad in Matara, so its inception was at an even earlier date. Sophia Pieters, trans., *Instructions from the Governor-General and Council of India to the Governor of Ceylon, 1656 to 1665* (Colombo: H C Cottle, Govt. Printer, 1908), 55, Instructions for the Guidance of the Dessave of Matura, having authority over the lands of Galle between the rivers Alican and Walawe, 21 Jun 1661. Nadaraja shows that the Matara and Jaffna Landraden may have existed since at least 1661. Marleen van den Horst states that the Matara Landraad was constituted in 1699, but did not function well. Nadaraja, *The Legal System of Ceylon*, 7; van den Horst, *The Roman Dutch Law in Sri Lanka*, 41.

⁷³ Imhoff, *Memoir Left by Van Imhoff*, 19.

⁷⁴ Ibid.

⁷⁵ Most cases involving Europeans were heard in the judicial councils situated in the forts. In 1791, the Governor in Council quoted Governor Van Imhoff's memoir to note that the Landraad was really meant to settle disputes between the natives. SLNA 1/214, 'Governor in Council Minutes', 9 Apr 1791.

⁷⁶ Hovy, *Ceylonees Plakkaatboek*, vol. 1; cvii.

must go to the Landraad.⁷⁷ The Landraad thus acquired an original jurisdiction over land disputes and administering the sale of lands (more on this follows below).

If regarded as a theatre or platform the Landraad was potentially dramatic. In providing a new judicial forum for litigation, rules and regulations strengthened its establishment. The Landraad of Galle was located in Kumbalwella, two kilometres north of Galle Fort. The village was the seat of the overseer of Galle, who was also the president of the Landraad.⁷⁸ The doors of the council were usually closed. Only the councillors, litigants of any particular case and their *procureurs* (process representatives) or special representatives could be present in the room at any given moment. An exception was made when a sentence was pronounced, which had to be done with open doors (*met opene deuren*).

The Landraad members were assigned distinct tasks and had to follow protocol. The councillors took the oath of allegiance on their first appointment to the Landraad and thereafter on a yearly basis.⁷⁹ The registrars of the thombo were also members of the Landraad. The importance of ceremony is seen in a perceived offence committed when introducing two new local members, an incident that will be discussed in chapter two. When the president's duties in the countryside prevented him from attending Landraad meetings, and as that would delay cases, the vice president chosen from among the members of the Galle Political Council would preside in his absence.⁸⁰ Meetings without either the president or vice president were very rare.⁸¹ In the Landraad, the secretary was a pivotal figure and was responsible for the council's administration. He had to maintain the archives and draw up documents such as declarations and copies of orders for litigants. Record keeping was well regulated, if not always followed through properly. The secretary's duties were made clear in the instructions of 1789.⁸² The *bode* (messenger) of the Landraad was tasked with informing members about meetings and circulating documents.

Table 1.1 Galle Landraad meetings 1760-1795

Type	1760-65	1766-71	1772-77*	1778-83	1784-89	1790-95	Total
Full sittings	41	114	88	159	105	93	600
Commissioners	-	-	3	61	38	10	112
Rondvraag	8	-	-	-	10	1	19
Unknown	-	-	3	-	-	-	3
Total	49	114	94	220	153	104	734

*Note: Records for the years 1773 and 1777 are not available.

Sources: SLNA 1/6498-6525, Galle Landraad Minutes from 26 Apr 1760 to 12 Dec 1795.

⁷⁷ Jan Schreuder, *Memoir of Jan Schreuder Governor of Ceylon Delivered to His Successor Lubbert Jan Baron Van Eck on March 17, 1762*, trans. E Reimers (Colombo: Ceylon Govt. Press, 1946), 50.

⁷⁸ The Colombo Landraad was in Hulftsdorp, at the residence of the *dessave* of Colombo.

⁷⁹ S A W Mottau, trans., 'Instructions for the Respective "Landraden" of This Government (Extract from the Dutch Political Council Minutes of 25th June 1789)', *Journal of the Dutch Burger Union of Ceylon* 55, no. 1-4 (1965): 14. The Dutch original is published in Hovy, *Ceylonees Plakkaatboek*, vol. 2; nr. 628, Instructions for the Landraden, including extracts from resolutions, 25 Jun 1789. The formulas of these oaths are given in SLNA 1/5666, 'Miscellaneous Documents of the Galle Landraad Including Instructions' 1761 to 1789, fol. 20v-22v.

⁸⁰ Hovy, *Ceylonees Plakkaatboek*, 2; nr. 488 (21), Instructions for the Overseer of the Galle Kōralē, 28 Jul 1766.

⁸¹ The 1789 instructions state that if the president and the vice president were both unavailable, the oldest member in rank should preside over a meeting. Mottau, 'Instructions for Landraden', 4.

⁸² Other duties included maintaining the council's accounts on fines and taxes on immovable property and the payment of salaries to the councillors. Ibid., 13-14.

Three types of Landraad consultations apart from when the thombo commissioners met for the registration can be seen in the records. They are full sittings, commissioners' meetings and decision-making through *rondvraag* (by circulation of documents). Table 1.1 shows the types of over seven hundred meetings that were held from 1760 to 1795 at six-year intervals.⁸³ This data must be considered keeping in mind that there are some gaps in the available minutes. Full sittings were mostly referred to as ordinary meetings, at which a majority of the members were expected to be present and matters that could only be decided by the full council were taken up. Seven meetings were called extraordinary meetings, and two had the words 'Express' and 'Extraordinary Express'. As all members had full jobs in the administration of the company, some duties were delegated to *beurthebbende leden* (rotated members) of the council who decided on the matter or deferred a decision to the full board. Such commissioners' meetings had two members (usually European), on one rare occasion four. The Landraad minutes reveal that they were mostly responsible for hearing interrogations in connection with the oath (more on this will follow in chapter four). Commissioners also presided over the execution of land transfers.⁸⁴ Minutes that carry the word *rondvraag* contain decisions that were arrived at by circulating papers among the members without a physical meeting. The Landraad usually met on Saturdays (576 times out of 734) with meetings also held on weekdays that seem to have been reserved for commissioners' meetings (94 of 112). No meetings were recorded to have been held on Sundays.

Issues of efficiency did affect the Landraad. Governor Van Imhoff had wished for the council to meet once a week, and the 1789 instructions state that the president could summon the council for both ordinary and extraordinary sessions as often as necessary.⁸⁵ The first six years of the available minutes saw less than half the number of meetings of the following six-year periods. This is to be expected as a result of the instability created during the war with Kandy from 1760 to 1765. The available records throughout the period 1760-1778 contain gaps, with no records at all for 1773 and 1777 if not for which the 1772-1777 period would have a higher number of meetings.⁸⁶ From around May 1778 the available meeting data appears to be continuous and a significant increase in the number of meetings is seen thereafter. Despite Van Imhoff's recommendation, in practice meetings were not held every week and a clear decline in the number of meetings is seen in the last few years. This may be due to the inefficiency discussed below. Meetings of both the full council and commissioners show a sudden increase from 1781 to 1785 and a decline thereafter.⁸⁷ The increase in the first half of the 1780s maybe due to better administration (this was when Anoldus de Lij and Willem Jacob Van de Graaff were commanders and the junior Abraham Samlant was the overseer for more than four years). It may also be due to more thombos

⁸³ In general I use the word meetings, but it must be kept in mind that the few consultations by *rondvraag* were not strictly-speaking physical meetings.

⁸⁴ These were recorded in separate volumes.

⁸⁵ Imhoff, *Memoir Left by Van Imhoff*, 21; SLNA 1/5658, 'Extracts of Orders, GL', fol. 5r-5v, Extracts from Van Imhoff's memoir; Mottau, 'Instructions for Landraden', 4. Cleghorn's minute states that it met five times a week under the Dutch. Ralph Pieris, 'Administration of Justice and Revenue on the Island of Ceylon under the Dutch Government ('The Cleghorn Minute')', *Journal of the Ceylon Branch of the Royal Asiatic Society*, n.s., 3 pt. 2 (1953): 138. That was only required for a certain period of those members who were in charge of the thombo registration. SLNA 1/5658, 'Extracts of Orders, GL', fol. 2v, Index of principle orders regarding the Landraad and thombo registration.

⁸⁶ References to decisions made in the gap periods can be found so the records would have existed at some point.

⁸⁷ In the years for which there is continuous meeting data, the figures are: 1779: 26; 1780: 26; 1781: 41; 1782: 44; 1783: 54; 1784: 35; 1785: 37; 1786: 19; 1787: 29; 1788: 17; 1789: 16; 1790: 14; 1791: 14; 1792: 17; 1793: 21; 1794: 19; 1795: 19.

being registered in those years, which could lead to increased litigation and the resultant pressure on the council to settle disputes.

Colonial courts were often poorly staffed.⁸⁸ The Galle Landraad and its thombo registration work inevitably ran into difficulties due to the lack of commitment, knowledge and time on the part of the members. Concern over the thombo commissioners is detailed below and the issues of non-attendance, especially of ‘white’ members is explained in the next chapter. A case taken up in December 1779 was delayed till the litigants reappeared in July 1784 and complained that the commissioners’ investigation had not been completed.⁸⁹ In 1793 the then secretary of the council, Jan Pieter Simon Cadenski, who had served for almost seven years since October 1786, was demoted and replaced by Pieter Arend de Moor. In subsequent meetings Cadenski is berated for not maintaining proper records and delaying cases unnecessarily. Many litigants come forward in 1793 with complaints over his inefficiency. Cadenski’s superiors are of course also to blame. He was probably made the scapegoat for the lack of efficiency, as the records show that other members of the Landraad were at fault as well. Councillors, not excluding the president, were often absent on *springtochten* (trips) to Colombo and other places, and the office of president saw four changes. Furthermore, eight members died while serving on the Landraad during Cadenski’s tenure. In 1792, when just seventeen meetings were held throughout the year, two consecutive full meetings were cancelled as only two councillors apart from the president and the secretary were present.⁹⁰ Collaboration by headmen also declined that year, as they were absent from the highest number (six) of full meetings. Their absence will be dealt with in more detail in the next chapter. Cadenski’s term as secretary was a low that was not seen before or after (except in a time of war), but the exception reveals how the Landraad’s administration could go unchecked for many years.

The quality of the records maintained during Secretary Cadenski’s term was low.⁹¹ The Landraden are among our first ‘courts’ of record, where oral proceedings were also recorded unlike in the indigenous legal system. In the local system, proceedings were oral without written pleas. At times responses given in the Landraad were written in some detail in the margins of the council minutes providing valuable information (despite being laborious to transcribe) in understanding the stand of a given litigant. Written replies submitted by parties have either not survived in the archives or are difficult to trace among the annexes that remain. In their absence marginal comments (*marginale opmerkingen*) could provide a written record of each party’s version of events. For the first time, peasants were faced with considerable requirements for paperwork at the Landraad.

The language of the council was primarily Dutch, with translations from the vernaculars at sessions involving natives. The introduction of the Dutch language in Sri Lanka was not a success.⁹² Yet some borrowing from administrative (and other) forms of Dutch can be seen in Sinhala—the Landraad was very likely referred to as the *lāntrāduwa* up to the early nine-

⁸⁸ Sally Engle Merry, ‘Colonial Law and Its Uncertainties’, *Law and History Review* 28, no. 4 (2010): 1067.

⁸⁹ Augustinus Ferdinandus Wiresinghe, Christian Hendrik Haartel and Harmanus Engelbregt had been appointed to investigate the matter, but in 1784 only Wiresinghe remained on the council. He said that although the investigation had been carried out, the report had not been written as the other members had left the council. The Landraad ordered a new investigation. SLNA 1/6512, ‘Galle Landraad Minutes’ 1779, fol. 98r, 11 Dec 1779; SLNA 1/6521, ‘Drafts of Galle Landraad Minutes’ 1779 to 1780, fol. 38v, 24 Dec 1779; SLNA 1/6525, ‘Drafts of Galle Landraad Minutes’ 1784 to 1786, fol. 45r, 10 Jul 1784.

⁹⁰ SLNA 1/6515, ‘Galle Landraad Minutes’ 1787 to 1793, fol. 357v–358r, 22 Sept 1792; 358v, 13 Oct 1792.

⁹¹ SLNA 1/6515 is a meeting volume that covers more than five years, and the haphazard and careless manner in which it was maintained appears to have been his particular style.

⁹² J van Goor, *Jan Kompenie as Schoolmaster: Dutch Education in Ceylon 1690-1795* (Groningen: Wolters-Noordhoff, 1978), 41–43.

teenth century and *citatie* (summons) is still *sithāsi* in Sinhala.⁹³ The original *olas* of deeds submitted in Sinhala and Tamil were kept among the annexes of the Landraad, and are thus very visibly present in the archives and testimony to the wide reach of the council. The languages in use at the time—in all the connotations that a single word could arouse in the minds of a speaker, hearer, writer or reader—would be a separate study by itself but some attempt has been made in this thesis where it was most relevant to analyse terminology. If all historians are faced with the task of translating when faced with a document or sample of writing in whatever language, that process is even more complicated when historians are faced with the task of attempting to understand the difficulties that eighteenth-century European officials faced in understanding local customs and land tenure. At least some if not all native councillors, it can be imagined, were conversant in Dutch and could follow proceedings without interpreters.

Thus, the indigenous inhabitants faced a new language of proceedings in the Landraad. The interpreter (*tolk*), who had to be present at sessions of both commissioners and the full council,⁹⁴ had an important role. Most cases, it can be imagined, were heard in at least two languages except where litigants also spoke Dutch and the full proceedings could be carried out in that language (assuming also that all headmen present understood Dutch). Depositions were written out in reported speech in Dutch, and interrogations had to be prepared in advance and the answers were also recorded in reported speech. Other documents produced in the Landraad were also in Dutch, including the thombos and extracts of thombos given out to peasants who did not understand the language.⁹⁵ But that did not mean that they underestimated the importance of the thombo, as chapter five shows. Depositions and interrogations were always signed by an interpreter. In such a setting, the interpreter could have been amenable to bribes.⁹⁶ It is likely that they played a key role in helping the natives understand the new legal space of the Landraad, while councillors were forbidden from counselling or advising litigants or prospective litigants.⁹⁷

The local system had not included lawyers, but in the Landraad, *procureurs* who were European by origin or *burgers* were active to a limited extent. At the least, assistance in drawing up documents was necessary. Litigants were not required to engage a *procureur* unless they wished to.⁹⁸ In contrast to other councils of law where *procureurs* were common, this was not desired for the Landraden but still permissible. Litigants could be represented by *procureurs* at their own cost. In 1794 however it was decided not to allow *procureurs* in the Colombo Landraad.⁹⁹ Justinus Rutgard Visser was one such *procureur* who appeared on behalf of litigants in the Galle Landraad. Born in Colombo, his first appointment was in 1755 as a

⁹³ The word *lānthrāduva* was found among early nineteenth-century documents in the private collection of Siran Deraniyagala at Ekneligoda Walauwa. Carter gives the origin of *sithāsi* as Portuguese, but it is more likely to have spread among the inhabitants in Dutch times. Charles Carter, 'Sithāsi', *A Sinhalese-English Dictionary* (1924; repr., Colombo: M D Gunasena & Co. Ltd, 1965), 679.

⁹⁴ Mottau, 'Instructions for Landraden', 15.

⁹⁵ In Jaffna, the thombos were maintained in both Tamil and Dutch. Alicia Schrikker, "'Op de dijk gezet": Schuld, Onrust en Bestuurlijk Onzekerheid in Jaffna in de Achttiende Eeuw', in *Aan de Overkant: Ontmoetingen in Dienst van de VOC en WIC (1600-1800)* (Leiden: Sidestone Press, 2015), 161.

⁹⁶ The case of the *tolk* Don Bastiaan is found in SLNA 1/2893, 'Diary Kept by the Commissioner Abraham Samlant during an Investigation into the Revolts in the Matara Dessavony' 1757 to 1758, fols 10r–14r, 23–26 Sept 1757. I thank Dr Lodewijk Wagenaar for providing me access to a transcription of this document, due to appear in a *Dutch Sources on South Asia* volume.

⁹⁷ Mottau, 'Instructions for Landraden', 5.

⁹⁸ Ibid., 9. See also Bailly, *Recht Voor de Raad*, 140.

⁹⁹ SLNA 1/226, 'Governor in Council Minutes' 1794, 8 Apr 1794.

hooploper (untrained sailor) and he was an assistant in 1763 and a bookkeeper in 1771.¹⁰⁰ This indicates that a *procureur* is likely to have been self-made. In one case, a pretender to the position was also seen: in 1778 the Landraad instructed the messenger to warn a *vrijman* (a European/Eurasian who had left company service) to not prepare any more documents as they were not understandable.¹⁰¹

Information dissemination is also an important aspect of the operation of a judicial body. In the precolonial or Kandyan system as well, knowing exactly how to approach the king, an official or judicial body in order to receive justice was part of its efficient operation. Such knowledge of the procedure of a legal administration was an essential part of the power structure that enabled a central state to enforce authority. Before sessions dedicated to the thombo registration, villagers were summoned by *tamblinjeros* (drummers), a tool of authority for the company. Plakkaten or proclamations from the Governor in Council, translated into Sinhala and Tamil, were set up in *ambalam*, churches or on prominent trees for the people's information and were read out aloud. A printing press set up in 1737 was important in this regard. The means of transmitting information about the content of law and legal administrative structures were critical in the circulation of law. Headmen were responsible for serving written summons, for which purpose they used *lascarins* (soldiers). Such written traditions thus intermixed with oral traditions within new institutional structures as explained further below.

1.4 Legal Procedure

In today's world, it is taken for granted that any legal system requires rules to ensure that a judicial body can deal with all cases in an equitable manner. English lawyer Sir Jack Jacob argues that the function of civil procedural law is 'to infuse life into all other areas of the law, to bring into actual being and to give reality and effect to all the legal rights and duties of every person and body in society'.¹⁰² Procedural and substantive law tends to be studied individually but the study of law *in* society requires the combination of the two. The Landraad would have been 'new' in so far as its laws *and* methods were new. Knowledge of the procedure on how to sue someone could be vital for a litigant. For an ordinary peasant, what were the hurdles of getting a complaint heard in the Landraad, building up a case with evidence and ensuring the enforcement of a sentence? We may never know the answer to the question in full in all its angles, but some attempt can be made to reconstruct the legal procedure the peasant was willingly or unwillingly subject to. In the local legal order, various devices, including the *veläkma* mentioned above, oaths and ordeals linked to a divine power, and witnesses on trial were used in the pursuit of justice. The overlapping aspects of the two legal orders will be described here and in still more detail in chapter four on the matter of the oath. The norms of different groups in adjudication practices could collide or coexist.

By the company's own admissions, lawsuits were long drawn out and litigants faced financial difficulties. It was the company's stated intention to expedite and simplify legal procedures for the convenience of the poorer indigenous litigants. It was recognised that a primary reason for delays were the procedures followed in the Landraad. The more complicated procedures would have been alien to the natives. Two options of proceeding with a case, in either a summary or non-summary manner, were adopted. These methods resemble the *eigenlijke rechtspraak* and *oneigenlijke rechtspraak* described in Dutch legal literature. In the first, a *cas van oppositie* (case of opposition) followed, in the second, the supplicant re-

¹⁰⁰ S A W Mottau, 'Alphabetical Index to the Registers of the Acts of Appointments of Company's Servants of the Dutch East India Company Issued at the Galle Secretariat (1645-1796)' n.d., Search Room, Sri Lanka National Archives.

¹⁰¹ SLNA 1/6520, 'Drafts of Galle Landraad Minutes' 1778 to 1779, fol. 44v, 31 Oct 1778.

¹⁰² Sir Jack I H Jacob, *The Fabric of English Civil Justice* (London: Stevens & Sons, 1987), 63.

quests the authorities to reach a decision without such a case.¹⁰³ In 1745 it was decided that disputes heard at the Landraad would be heard in a summary (*de plano* or *summier*) method, which was a short oral procedure, and not by producing pleas and counter-pleas.¹⁰⁴ In the summary way, proceedings were mostly oral and decisions quickly delivered. Still, many cases did go through the more complicated non-summary procedure, for which the litigants required assistance. In that process, what the litigants had to say had to be given in writing.

The summary method, as said in the 1789 instructions had 'already been generally observed by some Landraads with good results' and dispensed with the need for 'filing of complaints, answers, counter-pleas and rejoinders, of questions and counter-questions or *reparie* and *salvation*, of deductions, memoranda or inventories, etc.' But it was applicable only in so far as both parties were natives, and if native chiefs and other prominent persons were involved in an important case, they could request for the non-summary method (with due regard for possible exploitation by influential natives). If a company servant or *burger* was a defendant in a case, he or she could choose the method to be followed. If both parties were company servants or *burgers*, either party could opt for the summary method or the usual full procedure would be followed.¹⁰⁵

By arbitrating the matter as fast as possible and at low cost, cases were to be dealt with more economically for the litigants. The summary method was assigned early on in 1745 as said above, but the instructions of 1789 for the Landraad state that the influence of the *procureurs* led to the procedure gradually resembling that of the Raad van Justitie where the non-summary method was in use.¹⁰⁶ This, the Governor in Council believed, was to the disadvantage of the peasants who were sometimes faced with the case itself costing more than the value of the dispute. Litigants would plea for a swift conclusion due to poverty or for consideration for *pro deo*.¹⁰⁷ While in the Landraad the costs increased due to the procedure, in the precolonial system, the absence of a fixed fee payable led to corruption.¹⁰⁸ The fixed charges of the Landraad pre-empted this. Pecuniary difficulties as a result of Landraad procedures were caused by the loss of cultivation rights as well.¹⁰⁹ What follows will detail the procedures followed when a case was referred to the Landraad, presumably by the *dessave* or commander or on the initiative of a litigant.

1.4.1 *From rekest to sententie*

The procedure followed in courts in the Dutch Republic in its essence is likely to have been the ideal type for use in the non-summary procedure in Dutch judicial councils in Sri Lanka as well. However, the exact variations in practice can only be understood through extensive case analysis.¹¹⁰ Prospective litigants first sent in written requests or petitions or presented their cases orally. In Kumbalwella, it appears that the full council would hear the initial petition. Usually, a stamped petition called a *rekest* or *rekwest* (request) from the

¹⁰³ Schepper et al., 'Prolegomena', 279.

¹⁰⁴ SLNA 1/94, 'Governor in Council Minutes' 1745, fol. 111r, 11 Feb 1745; SLNA 1/5658, 'Extracts of Orders, GL', fol. 18r, Extract from the resolution dated 11 Feb 1745.

¹⁰⁵ Mottau, 'Instructions for Landraden', 8–9.

¹⁰⁶ *Ibid.*, 4.

¹⁰⁷ SLNA 1/6513, 'Minutes, GL', fol. 19v, 1 Apr 1780. *Pro deo* was awarded to one woman: SLNA 1/6511, 'Galle Landraad Minutes' 1778, fol. 89v, 28 Nov 1778. Two other requests for *pro deo* were made but decisions on them were delayed: SLNA 1/6514, 'Galle Landraad Minutes' 1781, fol. 94v–95r, 21 Jul 1781.

¹⁰⁸ Cooray, *Legal System*, 111.

¹⁰⁹ In one case, the litigating parties asked that one of them be allowed to cultivate the ground in dispute. SLNA 1/6513, 'Minutes, GL', fol. 23r, 1 Apr 1780.

¹¹⁰ An example of an image from the minutes from the Staatse Raad of Vlaanderen in Middelburg in 1784 closely resembles documentation found in the Landraad. Marie-Charlotte Le Bailly, *Staatse Raad van Vlaanderen Te Middelburg (1599-1795)*, Procegsids 6 (Hilversum: Verloren, 2007), 47.

supplicant or his *procureur* was first addressed to the Landraad's president and other members of the council. The request did not have to be in writing—it could also be delivered orally. Some requests can be found in the annexes of the Landraad.¹¹¹ The precise date on which the petition was brought forward could not always be found. The petition itself may no longer be available and if it is may have been undated, but as Schepper et al. decided, when working with process bundles the date on the *appointement* (decision) or *apostil* (minute) on the petition is the first known date of a case.¹¹² The Landraad often recorded in the minutes of that day that a request was made and summarised it, but its text was not included. If a request involved a complaint against another party, the council was required to issue summons (*citatie* or *dagvaarding*) on both parties and their witnesses and fix a returnable day.¹¹³ The procedure for issuing summons, however, was different if the defendant was a *burger*.¹¹⁴ Non-appearance by plaintiffs and defendants was punished with fines of half a rixdollar or one rixdollar.¹¹⁵ The instructions state that the fines went into a Landraad 'box' but the minutes refer to the diocese poor being the beneficiary.¹¹⁶

According to the 'summary' procedure described in the 1789 instructions, the plaintiff, defendant and witnesses were summoned before the commissioners of the council for a first hearing, during which the commissioners would attempt to settle the case to the satisfaction of both parties. If such mediation was not possible, the commissioners had to examine both parties and their witnesses, and inquire into all the facts of the case as far as possible. A maximum of four hearings before the commissioners could be held for each case, after which a report was submitted to the full council which would decide on a judgement. The commissioners could provide their opinion on the case and make necessary observations.¹¹⁷ In practice however most commissioners' meetings in Galle that I found heard counter-interrogations as said before, and did not hear cases initially and report to the Landraad thereafter. The full council of the Galle Landraad did apply the summary method, possibly by following its own variations of practice.

The summary method was essentially a mix of oral and written practices. While it was meant to be a primarily oral process, pleas and counter-pleas provided the mechanisms through which evidence and statements could be presented in the non-summary method. Yet provision was made for native inhabitants also to file papers including written complaints and depositions of witnesses.¹¹⁸ As evidence, supporting documents such as thombo extracts, *olas* in Sinhala and Tamil and their translations, witnesses or depositions by witnesses were produced. If witnesses were necessary, depositions could be made as required, usually before the secretary of the Landraad at his residence, or they could state their evidence orally in the council. Depositions were signed by the witnesses, the secretary and two other witnesses, and

¹¹¹ See SLNA 1/6526, 'Annexes to Galle Landraad Minutes' 1780 to 1782, fol. 56r. Claas Fontijn's request before the Landraad can be illustrative to some degree of how an individual made a request before the council.

¹¹² Schepper et al., 'Prolegomena', 278.

¹¹³ An example of summons signed by a Landraad clerk can be found in SLNA 7/2353, 'Inward Letters, Galle Landraad' 1778 to 1801, Citatie dated 15 Nov 1782. The parties concerned, the day of the next hearing and the issue at hand is mentioned in this. The 1789 instructions refer to a specimen and state that the Sinhalese and Tamils who had lawsuits before the Landraad were not required to use stamped paper in order to ease the financial burden on them. Mottau, 'Instructions for Landraden', 6, 14. In any case, no money was given to a scribe for writing summons for the thombo compilation as that may have hindered the registration process. SLNA 1/5658, 'Extracts of Orders, GL', fol. 13r–v, Extract resolution from 14 Sept 1744; SLNA 1/92, 'Governor in Council Minutes' 1744, 222v–224v, 14 Sept 1744.

¹¹⁴ Mottau, 'Instructions for Landraden', 6.

¹¹⁵ Ibid., 6–7.

¹¹⁶ See SLNA 1/6512, 'Minutes, GL', fol. 43r, 19 Jun 1779.

¹¹⁷ Mottau, 'Instructions for Landraden', 7–10.

¹¹⁸ Ibid., 8–9.

the interpreter. Depositions were always made on the promise of an oath, but there was another procedure to be followed in order to be allowed to swear on a statement: a deposition had to be brought in *forma probanti*, a process that will be explained in more detail in chapter four. In that process, the opposing parties challenged each other's witnesses by producing *contra-interrogatorieën* (counter-interrogations) that were drawn up before hand by *procureurs*. The aim was to dissuade the council from allowing the oath to be admitted to the witnesses. The list of questions can be quite illuminating of the particulars of the case at hand and the carefully thought-out arguments of both sides aimed to sway the Dutch and indigenous councillors in the Landraad in a particular direction. In the non-summary procedure witnesses may also be summoned along with the parties concerned for the very first hearing, and their oral statements recorded in the minutes.¹¹⁹

In the summary procedure, an *appointement* (decision) was to be arrived at as soon as possible. It was not as formal as when the Landraad produced a *sententie* or sentence, which was heard in public. Before a more formal sentence, the decision to deliver judgement would be announced at the previous meeting and the relevant documents would be circulated among the members of the council. In the sentence, it is made clear who the plaintiff and defendant were. Its format can be seen in Figure 1.1. Decisions were taken on the basis of a majority of the votes. The council was ordered to sentence even if the defendants did not appear.¹²⁰ All judgements had to be made in the name of the 'Hoogmogende' or members of the States General in The Netherlands.¹²¹ The 1789 instructions state that reasons for a judgement had to be provided.¹²² However, the council minutes hardly ever gave justifications for judgements, as Marleen van den Horst has discussed already. A subsequent order made in 1791 allowed the Landraad to keep decisions short and simple.¹²³ In the precolonial legal order, a decree was communicated to the parties orally which was occasionally given in writing.¹²⁴ In land cases decided by the king after referring such cases to the Mahanaduwa, 'Decrees written on Ola called Sittu are signed and given by the Senior Adikar present, or sometimes by the 2nd Adikar, for Lands situated within his general local Jurisdiction.'¹²⁵ The Mahanaduwa did not give a copy of the decree to the losing party or retain one itself, but the Landraad was required to maintain accurate records of all cases brought before it.¹²⁶

¹¹⁹ Ibid., 7.

¹²⁰ SLNA 1/5658, 'Extracts of Orders, GL', fol. 9r, Extract resolution of 7 Mar 1744.

¹²¹ SLNA 1/6497, 'Minutes, GL', fol. 41v.

¹²² Mottau, 'Instructions for Landraden', 5.

¹²³ Horst, *Compensation for Improvements*, 121–122.

¹²⁴ Cooray, *Legal System*, 111.

¹²⁵ The *sittu* mentioned the names of the parties concerned, the name of the land in question, the decision and the date, and the authority of either the king or the *mahanaduwa*. D'Oyly, *Constitution of the Kandyan Kingdom*, 24:34.

¹²⁶ Mottau, 'Instructions for Landraden', 13.

Datum en present als vooren
 Des Secretaris deses Raads, in zijn qualiteit als
 opende jegens
 Alarum de silve, geveede onafhoulmaecten van
 Rogella, Caveneede van zijn lusten goemause
 Lage Sirima; Jtem Salmau goemause Lage
 Jman, Salatantige Abram, moemoseine
 Lantige Daniel: miscondael van mallele,
 gode Eofflaet dea saune:
 Melalege Santje: Lascorijn van de Jman
 en miscondael van Kattetoew: gedaen toe
 andere Jde;
 omme van den raad, op het door Jantijene sul 3. Meij
 de Passate, gientaunen Jpocet, aangaende het natmat
 Jpocet Kappodoenkiffeneie Jijmitise met Jpocet
 te Rome aangevaen,
 Den Raad, na genome Lectura, van de door Jantje
 op den veen gesondeneede Documenten, dese Raad
 bekenende, en met de reysdette optellen kaart
 voerwogen hebbende:
 Jijst op de Jndementale bewyten het natmat
 Lantjeel Kappodoenkiffeneie, tot tittagalle
 gelagen aan de regneranten hievrooren genoot
 alseem door haan gecultioende Ratmareane grond,
 ten verveene vneadige Joffelpe toe:
 En contemneer den genequiseende in de Joffen van
 deit Jantje;
 Alseem gedaen ende gevonnist door den Raad: Lantjeel, op
 de tittagalle, de 22. Meij de leden, Jij den heer Jpocet
 Jictes Jlantje, en de leden Jictes de 22. Johannes
 Jman, Johannes de Haan, Hendrik Brakel, Jean David
 Jantje, Christiaan Huyberts, Hendrik Jantje
 medelen: den Meester van Louis Liraene Jantje, den
 Meester van Don de Silve Jantje, den Jantje
 de Jantje Jantje, den Jantje Jantje, mit gader met op een
 deure Jantje Jantje op haan te Jantje al in
 den Jantje Jantje Jantje:

Mij Jantje,
 Jantje
 Jantje

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Figure 1.1 A sentence from the Galle Landraad Minutes. SLNA 1/6505, fol. 5v, 13 Jun 1767.

The Landraad was encouraged to deal with cases in a summary manner with as little expense as possible to the litigants, but some did go up for appeal. In the precolonial legal order, an appeal on a judgement could be brought up at any point and the procedure was quite simple in that the party who wished to appeal presented the matter to a higher court either in person or through a headman.¹²⁷ In the Dutch system, a defeated party had to give notice of the intention to appeal to the secretary of the Landraad within ten days of the judgement in the Landraad. First, the sentence was stayed, and a petition from the defeated party had to be transferred with a report from the Landraad to the commander of Galle, who in turn would seek the consideration of the Galle Political Council as to whether the appeal should be granted. The decision was to be minuted on the petition and notice of same was given to the president of the Landraad who had to inform the parties concerned. If the appeal was allowed, the minuted petition and all the documents of the case were sent to the Raad van Justitie, before whom the case would be taken up in appeal. If that council found that the papers submitted were comprehensive, it could provide a judgement based on them, but if they were found to be lacking in some way or the parties concerned could provide further evidence, an interlocutory order to produce further evidence was given. The party against whom such evidence was led could produce counter-questions or other evidence.¹²⁸

1.5 Caseloads

What kind of legal matters were brought up in the Landraad? Issues over immovable property form the bulk of the cases. Cases related to land were the principal task assigned to the council, but in practice other civil matters were also heard by that body. In 1743 it was ordered that all civil cases involving natives outside the Four Gravets of Colombo could be brought before the Raad van Justitie of Colombo only after the Landraad had given a decision, and leave to appeal had been granted by the governor. After 1789, this was extended to other Landraden as well. It may have been an extension of jurisdiction that was disputed by Batavia, but was actually a confirmation of the status quo.¹²⁹ All sorts of cases were to be brought before the Landraad.¹³⁰ Later, the spheres of civilian and criminal judicial forums were not made separate; the Landraden in places that were far from Raden van Justitie such as Trincomalee and Batticaloa were authorised with the preliminary hearings of criminal cases.¹³¹ This was also extended to Galle; two volumes of inquiries by Landraad commissioners in cases of theft and other offences dated between 1784 and 1795 remain to be studied in the archives.¹³²

As explained in the introduction, in order to understand the nature of the issues heard in the Galle Landraad, I have mapped out the administration of justice in that council through a sample of almost a hundred cases. The issues all came up in volumes of minutes that cover a period from 1778 to 1779.¹³³ Entries pertaining to various cases and a smaller number of

¹²⁷ Cooray, *Legal System*, 111.

¹²⁸ Mottau, 'Instructions for Landraden', 11–13. See also a resolution of the Governor in Council of 8 Jun 1773 in SLNA 1/5666, 'Documents, GL', fol. 26r.

¹²⁹ Nadaraja, *The Legal System of Ceylon*, 30n.

¹³⁰ SLNA 1/214, 'Governor in Council Minutes', 9 Apr 1791.

¹³¹ Nadaraja, *The Legal System of Ceylon*, 8, 30n.

¹³² SLNA 1/6532, 'Notes of Inquiries by Galle Landraad Commissioners in Cases of Theft & Other Offences' 1784 to 1793; SLNA 1/6533, 'Notes of Inquiries by Galle Landraad Commissioners in Cases of Theft & Other Offences' 1795.

¹³³ SLNA 1/6511, 'Minutes, GL'; SLNA 1/6512, 'Minutes, GL'. Some entries, for unknown reasons, were found only in the draft minutes. SLNA 1/6520, 'Draft Minutes, GL'; SLNA 1/6521, 'Draft Minutes, GL'. A larger sample or samples from before and after the period already studied can show how there was either an increase or decrease of cases or the inclusion of new cases. It would be especially interesting to see what happened during the time of Secretary Cadenski who was recalled for inefficiency. However, a larger sam-

administrative matters were written out in these minutes. Thirteen administrative concerns were taken up; among them notes on various orders that originated from the commander of Galle or the Governor in Council in Colombo and Landraad matters such as changes in appointments of councillors. Matters concerning incoming and outgoing members were taken up throughout the operation of the council, as were issues concerning the attendance, composition and competency of members. These had at times (outside the sample period) to do with the discharge of inefficient members as in the case of Johan Pieter Simon Cadenski mentioned earlier in this chapter. In addition, administrative matters pertaining to the thombos and other land concerns were also noted in the minutes of the Landraad. Thus no sharp differentiation was made in the minutes between the spheres of the administration of justice and administrative matters of the council.¹³⁴

Such administrative matters apart, other concerns that came up were civil issues under the category of private law. I separated the different cases into briefs, by compiling the relevant minutes for each case and adding documents from the volumes of depositions, interrogations, annexes and correspondence. I also traced as far as possible the start and end of each case, thereby effectively extending the period covered by the sample cases to both before and after 1778-1779 in some instances. They include matters that were settled immediately, ones where commissioners from the council were appointed to travel to a village to write a report, others where the petitioners had to provide more evidence, and cases that became full judicial cases with a plaintiff and defendant and at the end of which a sentence was given. The definition of a case thus is any matter involving a litigant that was brought before the Landraad. Not all of them are strictly-speaking judicial cases but have been included as such as the incidence of any issue involving a petitioner or litigant in the council is taken as a historical event in this analysis.

An overview of the nature of these cases is presented here, but I have not attempted to classify them under separate categories of law as the issues of the cases often overlap or are unclear. At times, we only know the names of the parties who appeared in the council. This was possibly due to different factors: the style of the council records; the fact that not all cases resulted in a sentence (high costs of procedure and settlements may have led to their withdrawal); lacunas in the records (particularly in the minutes from 19 October 1776 to 16 May 1778 just before the sample taken here and the available annexes). Although the end result of some cases may not be known, it can be assumed that they were either settled or abandoned.¹³⁵

A majority of cases involved land in some way (86 per cent), the rest being mostly debt issues, some of which were not related to land. Most matters (almost half) concerned the administration by the Dutch government of the transfer of property rights, more on this follows below. Disputes over the inheritance of lands have been dealt with in greater detail in chapter six. Possessory actions to recover lands feature, as do disputes over the provision of labour services. From pre-Dutch times, different social formations performed obligatory

ple than the one attempted here has been beyond the scope of this study, and must be left for a more broad-based project. An expansion of the historical reconstruction attempted on a small scale here depends on the accessibility of high quality archival material in digitized form.

¹³⁴ Cornelis van Bynkershoek, as a judge of the Hoge Raad (Supreme Court) of Holland, Zeeland and West-Friesland made notes in Latin and Dutch of cases that came before that court in the eighteenth century. Lee says many cases 'turn upon intricate questions of procedure'. Although further back in time, this was the case in the Hof van Holland in the fifteenth century as well. Robert Warden Lee, 'Bynkershoek's *Observationes Tumultuariæ*', *Journal of Comparative Legislation and International Law*, Third Series, 17, no. 1 (1935): 41; Bailly, *Recht Voor de Raad*, 248. I thank Egbert Koops for drawing my attention to Bynkershoek's work.

¹³⁵ I have closely followed Le Bailly's solutions for the same problems that she faced in analysing the fifteenth-century Hof van Holland cases. Bailly, *Recht Voor de Raad*, 28-29.

services for the state (known as *rajakāriya*) and a consciousness of such obligations survived into Dutch and British times till at least the 1850s. The new colonial power assumed the administrative duties of such obligations. In return for various services in the roles of high- and low-level headmen, soldiers, artisans and coolies among others, the sovereign awarded fixed extents of land.¹³⁶ In the final analysis, as service issues had to do with access to property, such cases were also connected to land.¹³⁷ The occurrence of service issues is also important in understanding that what was recorded in the thombo as an individual's service was considered to be critical by the inhabitants.

Movable property cases were also brought up in the Landraad. One case concerned the ownership of a cow resulting from a dispute over its purchase.¹³⁸ Yet another case was primarily a debt case, but included a dispute over the ownership of a distillery kettle (and garden) used for the distillation of arrack, and which Cornelis Hendeling claimed back from Pellekettie Christina who had had a son by his late son Matthijs Hendeling. Matthijs had left debts that Cornelis claimed to have settled. Christina, against whom the possessory action was initiated by Cornelis, claimed to have nothing to live on and asked for the case to be defended *pro deo* on her behalf, a request that was granted. Yet finally she lost the case, and had to pay Cornelis all that he had paid as settlement of his son's debts in a sentence that referred to the case as a debt case.¹³⁹

The Landraad frequently acted in an official capacity. It was also active in disposing of property belonging to the deceased, an official of the Inlandse Boedelkamer (native estate board) appearing in the council for that purpose.¹⁴⁰ Another case involved an investigation into the lands belonging to a revenue farmer and subsequent sale of them to recover arrears in rent payments.¹⁴¹ However no cases of revenue farming involving rent payers and farmers were heard, although disputes between them could be heard in the Landraad.¹⁴² In another case, Coenraad Hendeling, a sergeant in the *burgerij* who lived outside the town, was condemned to pay the *mayoral*¹⁴³ of Unawatuna twelve stivers as garden tax (*thuijns gerechtigheid* or *piedie*) that remained in arrears for his garden named Rendewatte for the accounting year of 1778-1779, and the costs of the case. Hendeling absconds on the first and second summons served in September 1779, but appears in November that year. Together with the *procureur* Albertus Hissink, Hendeling hands over a request which is read out in the council

¹³⁶ See Appendix III for this list.

¹³⁷ See for example *Gamage Mathijs v Gamage Andriku et al* in SLNA 1/6511, 'Minutes, GL', fol. 77r, 31 Oct 1778; 84r, 28 Nov 1778.

¹³⁸ Documentation on this case can be found in *Ibid.*, fols 30r, 31r, 9 Jul 1778; 43r, 8 Aug 1778; 49r, 15 Aug 1778; 53r, 12 Sept 1778; 65r, 10 Oct 1778; SLNA 1/6512, 'Minutes, GL', fol. 14v, 6 Mar 1779; 20r, 27 Mar 1779; SLNA 1/6534, 'Galle Landraad Interrogations' 1778 to 1784, fols 2r-10v, 11r-15v, 9 Jul 1778.

¹³⁹ See SLNA 1/6511, 'Minutes, GL', fol. 8r, 6 Jun 1778; 89v, 28 Nov 1778; SLNA 1/6512, 'Minutes, GL', fol. 18r, 27 Mar 1779; 23r, 24 Apr 1779; 84r, 20 Nov 1779; 87r-v, 27 Nov 1779; SLNA 1/6514, 'Minutes, GL', fol. 33r, 24 Feb 1781; SLNA 1/6494, 'Galle Landraad Depositions' 1778 to 1781, fol. 4r, 17 Jul 1778; 43r-44r, 14 Apr 1779.

¹⁴⁰ See for examples SLNA 1/6511, 'Minutes, GL', fol. 71r (10 Oct 1778); SLNA 1/6512, 'Minutes, GL', fol. 11r, 20 Feb 1779; 66v, 11 Sept 1779; 80v, 20 Nov 1779; 91r, 27 Nov 1779; SLNA 1/6521, 'Draft Minutes, GL', fol. 35v, 11 Dec 1779.

¹⁴¹ SLNA 1/6511, 'Minutes, GL', fol. 4r, 23 May 1778; 11r, 6 Jun 1778; 29v, 27 Jun 1778; 40v, 25 Jul 1778; 47r, 8 Aug 1778.

¹⁴² Nadeera Rupesinghe (writing as Seneviratne), 'Strange Cooperation: Revenue Farmers in Eighteenth-Century Sri Lanka' (MPhil Dissertation, Leiden University, 2010).

¹⁴³ A *gamarāla* (village head) who traditionally organised the compulsory service of *rājakāriya*. He reported to the Landraad on land matters and provided victuals for visiting commissioners and headmen.

(unfortunately this is not available in the records).¹⁴⁴ Inhabitants often defaulted on tax payments.¹⁴⁵ This case indicates that the taxes mentioned in the thombo were taken seriously and transgressors could be called up to the council. Yet such cases involving taxes or rents were rare, with only one each in the sample.

The emergence of a share market in plots of land can already be seen at this time. The Galle Political Council expressed concern in 1748 that too many Sinhalese were transferring their lands to Moors, which they feared would lead to the Sinhalese 'losing everything'.¹⁴⁶ Permission for the sale of lands was frequently sought after. The Landraad instructions of 1789 detail the regulations for the sale of land.¹⁴⁷ Land sales required the Landraad's approval as it was necessary to establish that the seller's title was alienable. This, as we will see in more detail in chapter five, is a result of an original feudal nature to shareholdings of land. If entered as a *paravēni* (ancestral) plot in the thombo, a share could be easily sold. Before anyone was given permission to sell gardens, native commissioners had to investigate if there was cinnamon on the land.¹⁴⁸ The need to preserve the existing cinnamon reflects the constant concern of the company regarding the supply of cinnamon from the territory under their control.¹⁴⁹ The investigations appear to have been done in the presence of the village headmen and all the heirs and the prospective seller had to pay the costs of the native commissioners in that operation.¹⁵⁰ Outside my sample in 1783, it was found that twelve cinnamon trees were growing on the land and the sale was permitted on the condition that the buyer lets the trees grow.¹⁵¹ It was also necessary for the *thombobouder* (thombo-keeper) to confirm ownership.¹⁵² In one case an *edictale citatie* (summons with drums in Sri Lanka) was issued for claimants to come forward before a sale was made.¹⁵³ At times disputes over whether a transaction was a sale or mortgage (*verpanding*)¹⁵⁴ arose, although such examples did not occur in my sample. For example, Maria Bouman, who reappears in chapter six, claimed that Jacob Floorman and she had not sold but rather mortgaged the land the opposing party

¹⁴⁴ It possibly held something that was unacceptable to the council, because when Hendeling is ordered to pay the garden tax according to the thombo, Hissink is also advised to abstain from 'such thoughtless expressions'. SLNA 1/6512, 'Minutes, GL', 64r, 11 Sept 1779; 68r, 25 Sept 1779; 76v, 20 Nov 1779.

¹⁴⁵ See Joan Gideon Loten, *Memoir of Joan Gideon Loten, Governor of Ceylon Delivered to His Successor Jan Schreuder 1757*, trans. E Reimers (Colombo: Ceylon Govt. Press, 1935), 23–24.

¹⁴⁶ SLNA 1/104, 'Governor in Council Minutes' 1748, 19 Apr 1748. The Governor in Council decided that Moors and heathens would only be allowed to possess those lands that they had planted, cultivated or legally inherited, but not purchased grounds unless with special consent. It is not clear if this order was followed. In another case, a Moorman was accused of raising the land price unreasonably. SLNA 1/6517, 'Galle Landraad Minutes' 1794, fol. 131v, 13 Dec 1794.

¹⁴⁷ Mottau, 'Instructions for Landraden', 10–11. See for prohibition of sale of lands without the permission of the Landraad: SLNA 1/98, 'Governor in Council Minutes' 1746, fol. 271v–272r, 11 Jul 1746. A new law was passed in 1784 that all transfers of land, whether by last will or otherwise, must be submitted to the Landraad. SLNA 1/188, 'Governor in Council Minutes' 1784, 9 Feb 1784.

¹⁴⁸ SLNA 1/6512, 'Minutes, GL', fol. 76v, 20 Nov 1779. It was said to be the practice in Colombo. See example of *rapport ola* (report on ola leaf) after visit by two commissioned *nanayakkārayo* in SLNA 1/6527, 'Annexes to Galle Landraad Minutes' 1782 to 1785, fol. 9r, 7 Feb 1783.

¹⁴⁹ Kotelawe, 'Agrarian Policies'.

¹⁵⁰ SLNA 1/6511, 'Minutes, GL', fol. 83v, 31 Oct 1778; SLNA 1/6521, 'Draft Minutes, GL', fol. 35v, 11 Dec 1779.

¹⁵¹ SLNA 1/6524, 'Drafts of Galle Landraad Minutes' 1783, fol. 64v, 30 Aug 1783.

¹⁵² SLNA 1/6523, 'Drafts of Galle Landraad Minutes' 1781 to 1782, fol. 64r, 27 Apr 1782.

¹⁵³ SLNA 7/2354, 'Miscellaneous Documents of the Galle Landraad with Conditions of Auction Sales, Notices Etc' 1776 to 1779, 29, 25 Jul 1778.

¹⁵⁴ The translation of the Dutch word *verpanding* is mortgage, but does not represent the more informal agreements entered into by southern villagers by which they posed their lands as collateral in order to borrow money.

was claiming as their own.¹⁵⁵ In another case, the 'sale' of land by Kallehe Paandige Johan to his cousin Francina's husband and cousin Matthijs was challenged by Johan's daughters Edirihami and Punchihami who said that they did not know if their father had actually sold that one *pela* or just mortgaged it.¹⁵⁶ Land sale *olas* (and *gift olas*) had to be approved by the Landraad and entered in the thombo. The thombo had to be updated once a sale went through, and many entries of such sales were made.¹⁵⁷

Land sale matters also shed some light on inheritance law, which leads to a further overlap of issues. Warnesuriepattēbendige Dona Maka was a woman who appeared thrice in the council during the years 1778 and 1779 in connection with the sale of land.¹⁵⁸ She had to prove in September 1778 exactly how many claimants there were to the gardens she wanted to sell by coming to the council with other family members who would corroborate her story. The Landraad gave a decision on the matter, but later that year it was decided that a wedding gift entitled her to sell a greater share of the estate. On both occasions, it was noted that her children also had to agree to the sale. When Don Johan de Silva Wijesiriwardena Dissanayake, a former *mudaliyār* (native headman of high rank) wished to sell a piece of land, he was also asked to secure the approval of all prospective heirs.¹⁵⁹ These cases indicate enforcement of the principle of bilateral inheritance, which will be dealt with in more detail in chapter six.

The cases that came up shed light on the primary preoccupation of the people which was land. The kind of cases that did not come up can also be telling. For instance, public concerns were not raised in the council. This is probably not surprising considering that the Landraad held the whip hand. It could impose corporal punishments on those who breached justice by withholding information or were guilty of contempt, thereby displaying its policing powers.¹⁶⁰ No cases against Landraad procedure, policy or disputes over competency were found. Such resistance was found in a more understated manner, such as through plaintiffs who claimed errors in the registration that resulted in the punishment of thombo-keepers. Other subtle signs of resistance are also described in this thesis. Petitions were more likely to have been the avenue through which people complained directly about governing issues.¹⁶¹

In indicating their relative frequency, we have no parameters by which to assess a hundred cases. Many factors such as social standing, distance and costs would contribute to whether one engaged with a colonial judicial forum. A further complicating fact in Sri Lanka was that when the thombos were being drawn up, the number of disputes from that village would increase. One thombo (Dodampe/Wellaboda) profiled in chapter five has six cases that all came up around 1780 in which year that thombo was drawn up. It is thus likely that there is a correlation between the cadastral registration of a particular village and land-related cases heard in the council. Yet some thombos have no references at all to disputes heard in the Landraad; all of six Hinidum Pattu thombos drawn up in 1760 being an example. Proximity to the centre, which Hinidum did not have, is likely to have led to a predisposition towards

¹⁵⁵ SLNA 1/6513, 'Minutes, GL', 47r, 20 May 1780.

¹⁵⁶ Ibid., fol. 60r, 24 Jun 1780.

¹⁵⁷ One thombo was updated regarding a sale of land years later on 22 Apr 1785 although the Landraad proof was dated 23 Feb 1752. SLNA 1/7557A, 'Unawatuna (Talpe) Thombo' 1748, 13.

¹⁵⁸ SLNA 1/6511, 'Minutes, GL', fol. 52v, 29 Aug 1778; 62r, 26 Sept 1778; SLNA 1/6520, 'Draft Minutes, GL', fol. 45r, Nov 1778; SLNA 1/6512, 'Minutes, GL', fol. 88r, 27 Nov 1779.

¹⁵⁹ SLNA 1/6511, 'Minutes, GL', fol. 57r-v, 12 Sept 1778.

¹⁶⁰ I found three occasions on which the Landraad resorted to judicial corporal punishment. One was a contempt issue described at the start of the introduction to the thesis, punished by a 'firm beating' (*een fris pak slaage*), and the two others involved *mayorāls*, all described in chapter three.

¹⁶¹ Many volumes of petitions from the south, both Galle and Matara, are to be found in the archives. I thank Dr Lodewijk Wagenaar for providing me access to a transcription of some volumes of petitions which however do not reveal issues over the Landraad. These will soon appear as part of a *Dutch Sources on South Asia* volume.

seeking legal redress; this distance factor will be dealt with in chapter three. The significance of the thombos and the process of creating them will be described next.

1.6 The Thombos

The word *thombo* is Portuguese in origin, meaning register.¹⁶² The Sinhala form of the word is *thombuva*, which entered popular parlance in a way that has retained its use and significance in Dutch times while also extending its meaning.¹⁶³ The Portuguese started their land and revenue registration work in the first decade of the seventeenth century. The first Portuguese *tombo* (spelled differently) completed in 1599 was actually only a *foral* or revenue register listing some ports, coastal settlements and royal villages in Kotte, but a later venture that was completed in 1615 was more ambitious and involved translating Sinhala records and consulting Sinhalese officials. For each village, including those of the Galle District, the land extent, crop type, average yield per acre, number of craftsmen and dues owed to the king were included. To this was added newly subjugated and discovered areas, but no update of the earlier *tombo* was made. The Portuguese, like the Dutch after them, wished to reduce their dependence on native officials through the land registration.¹⁶⁴ José Vicente Serrão writes of how institutional and legal changes to property rights under Portuguese rule were necessarily conservative: ‘despite bearing Portuguese names, they were adapted in order to accommodate to native institutions and traditions.’ Pragmatism was key, as the least possible changes were imposed.¹⁶⁵ For this, it was necessary to tap into the expertise of the headmen and existing Sinhalese records. The Portuguese are widely believed to have consulted the Sinhala *lêkam miti* which were land rolls written on palm leaves.¹⁶⁶ The Dutch thombos had precedents in the Sinhala and Portuguese land registers, the evolution of which would be a noteworthy study.

Whatever its antecedents, the registration of lands in Galle that took place in the seventeenth century was ridden with problems. They were first drawn up in the seventeenth century. Some discussion on the thombo compilation took place in the Galle Political Council in 1663.¹⁶⁷ These older Galle thombos are referred to as the *oude thombo* or old thombo in the newer eighteenth-century thombos. Unfortunately, no trace of the old thombos can be found in the archives although some from the years 1693-1696 have been cata-

¹⁶² The plural form used by the VOC was *thombos*, which will be used in this thesis as well.

¹⁶³ In Sinhala, digging up family histories is referred to as turning the pages of the thombo. Or on making a passionate claim to a concept or item, you could be asked if you have a thombo for it: *Umbata ekata thombuvak thiyanavada?* (Do you have a thombo for that?). The word *thombuva* has acquired the meaning of a ‘right’ as also fault. Such examples include: *ube thombuva mama dannava* (I know your thombo); *ube thombuva man lava ahaganna epa* (Don’t let me recite your thombo); *anunge thombo hoyanne epa* (Don’t look for the thombo of others).

¹⁶⁴ De Silva, *Portuguese in Ceylon*, 171–174. See also S G Perera, ed., *The Tombo of the Two Korales* (Colombo: Ceylon Govt. Press, 1938); Chandra Richard de Silva, ‘The First Portuguese Revenue Register of the Kingdom of Kotte, 1599’, *The Ceylon Journal of Historical and Social Studies* 5 (1975): 69–153.

¹⁶⁵ José Vicente Serrão, ‘The Portuguese Land Policies in Ceylon: On the Possibilities and Limits of a Process of Territorial Occupation’, in *Property Rights, Land and Territory in the European Overseas Empires*, ed. Bárbara Direito et al. (Lisbon: CEHC-IUL, 2014), 193.

¹⁶⁶ See, for an introduction to the *lêkam miti*, H A P Abhayawardhana, *Lêkam Miti Vimarshanaya (A Critical Study of Lekam Miti)* (Colombo: Dept of National Archives, 2009).

¹⁶⁷ Maria Wilhelmina Jurriaanse, *Catalogue of the Archives of the Dutch Central Government of Coastal Ceylon, 1640-1796* (Colombo: Ceylon Govt. Press, 1943), 243. For early developments with regard to the thombo in Jaffna, see also Hendrick Becker, *Memoir of Hendrick Becker, Governor and Director of Ceylon for His Successor Isaac Augustyn Rumpf, 1716*, trans. Sophia Anthonisz (Colombo: H C Cottle, Govt. Printer, 1914), 6–8.

logged.¹⁶⁸ A discussion in the Galle Landraad from 1745/46, which received the governor's marginal comments, indicates that there were many drawbacks in the old thombos, which were never approved by the authorities.¹⁶⁹ The old thombos may have included fraudulent claims of abandoned lands subsequent to a migration of people from the coastal lands to the king's territory during the wars between the Dutch and Rājasinghe II,¹⁷⁰ but we do not have sufficient proof of this. It is said to have been incomplete as evidence of ownership was not recorded: the Landraad lamented that in many places only the single word *paravēni* (ancestral property) was written down. During the new registration in the eighteenth century, it was inconvenient for the company that for the most part the people's only proof was to fall back on the old thombos, so in 1745 extracts from the old thombos were banned while those that had already been issued were honoured. But the governor said they could not let it be known that everything registered in the old thombos was false. He conceded that legally they merited no credit, but if used with discretion they could occasionally shed some light. He did concede that 'till now, they have contributed more towards confusion, than extracting any value or advantage'.¹⁷¹ Yet, for the registrars, the old thombos were a convenience, as it was for some property owners.¹⁷² In practice, many eighteenth-century thombos of Galle referred to the descriptions of the old thombos as authoritative, and references to the lack of an old thombo for a particular village have also been found.¹⁷³ Decades later the people appealed to a colonial creation of a document that may have been initially rejected.

The Galle thombos that remain in the Sri Lanka National Archives in Colombo were recorded and updated over a period of about fifty years in the eighteenth century.¹⁷⁴ The thombos of Colombo were revised on three occasions in the eighteenth century.¹⁷⁵ The Galle thombo compilation followed an altogether different chronology. It is possible that as the

¹⁶⁸ A list of some seventeenth-century thombos of about a hundred and fifty villages and hamlets in Galle from 1693 to 1696 are given in appendix 1 of Mottau's inventory. H W Codrington refers to them in his bibliography in *Ancient Land Tenure and Revenue in Ceylon* (Colombo: Ceylon Govt. Press, 1938). Staff at the Sri Lanka National Archives attempted to trace them in early 2012 but could not locate them.

¹⁶⁹ SLNA 1/2805, 'Minutes (20 Dec 1745), GL', f. 36r. This document which is a discussion of land rights with marginal comments by the governor is looked at in more detail in chapter five.

¹⁷⁰ Cleghorn suggests this in his minute. Pieris, 'The Cleghorn Minute', 138.

¹⁷¹ '[Z]o hebben deselve tot nog toe egter meer gediend, om alles in de war te helpen, dan om enig nut of voordeel daaruit te halen.' SLNA 1/2805, 'Minutes (20 Dec 1745), GL', fols 30v–31v, 33v, 34v. See also SLNA 1/5660, 'Extracts of Resolutions, Orders, Etc. Regarding the Landraad and the Thombo Compilation' 1740 to 1770, fol. 7r, Extract of letter dated 20 July 1745 from Colombo to Galle. As late as in 1757 as well, the registrars had to be reminded not to refer to the old thombos. Ibid., fol. 31v–32r, Letter dated 2 Jun 1757 from Colombo to Galle.

¹⁷² This happened with the Matara registration as well. It turned out that the Matara *dessave* had not stopped giving extracts from the old thombos. The registrars asked that Colombo allow them to use the old thombos, which was permitted if done with the 'utmost secrecy and also for the advantage of the company and not of the inhabitants' (met de uijterste secreteesse en ook tot voordeel van D E comp maar niet van inwoonderen). The inhabitants were not to be allowed to appeal to the old thombos, which Colombo said deserved no merit at all because they had been drawn up inaccurately by 'unsworn' persons who had not signed them. This proves that Matara also had old thombos that are no longer extant. SLNA 1/5660, 'Extracts of Orders, GL', fol. 29r, Letter from Colombo to Galle in July 1757; 32r–v, Letter dated 2 Jun 1757 from Colombo to Galle.

¹⁷³ See SLNA 1/7419A, 'Dadalla (Four Gravets) Thombo' 1782 to 1784.

¹⁷⁴ There are around 175 volumes of Galle thombos at the Colombo archives (SLNA 1/7395 to 1/7570). Note that the numbers given in Mottau's inventory have been replaced since. S A W Mottau, *Inventory of the Archives of the Dutch Government in the Divisions of Galle (Matara) and Jaffnapatnam 1640-1796* (The Hague: General State Archives, 1975).

¹⁷⁵ The volumes of the first registration, which saw the terms of office of five successive governors over a period of seventeen years from 5 Jun 1742 to 6 Aug 1759, are no longer extant, as its files were used for the next revision. The volumes of the next two revisions from 9 Jun 1760 to 13 Nov 1761 and from 5 Sept 1766 to 9 Sept 1771 span a shorter period than the first and are available in the archives.

Galle registration fell back in schedule, they could not keep in line with the Colombo registrations. They were drawn up in various years over the course of the eighteenth century.¹⁷⁶

While it is difficult to say which procedure was used for each of the Galle thombos, two ways of registration, either by calling the people to the Landraad or sending thombo commissioners to the villages were likely to have been used. Three instructions referred to above were used for the Colombo registrations. The first set of instructions issued on 16 November 1745¹⁷⁷ for the compilation was for Colombo, Galle and Matara. Two other instructions for subsequent revisions were issued on 20 December 1759 and 5 September 1766. The first set of 1745 issued by Governor Van Gollennesse required summoning the inhabitants to the Landraad with their deeds of evidence and witnesses, as recommended by Van Imhoff.¹⁷⁸ Van Imhoff believed that sending commissioners with native chiefs to villages was not successful, as it was troublesome to the commissioners and the final decision thereby depended on the honesty of a few headmen and not a whole assembly like the Landraad. Prior notification of the process was published in the plakaten.¹⁷⁹ During the second revision of the Colombo thombos under Governor Schreuder, thombo commissioners, their assistants and native officers were sent out to the villages. For the third revision under Governor Falck from 5 September 1766 to 9 September 1771, it was clear to the company that they should choose the better of the two methods used previously. The council debated as to whether the first or the second method would be best¹⁸⁰ and the first method recommended by Van Imhoff was resorted to.

How far these changes in procedure with regard to the Colombo thombos affected the registration in Galle is unknown. The first and third instructions mentioned above, which called for the inhabitants' presence in the Landraad for the registration, are found in extract books with all instructions and decisions regarding the thombos and the Landraad that were diligently maintained in Galle. Colombo ordered that they were properly foliated, numbered and provided with indexes, and that they were always available for reference on the table during a registration.¹⁸¹ These volumes show that at least the Galle and Matara registrations were closely connected, and an order on 18 May 1743 from Colombo said that the Galle registration should follow the form in Matara.

Whether they operated from the Landraad or were sent out to the villages we know that permanent thombo commissioners or registrars were appointed to the task of carrying out the registration. They were attached to the Galle Landraad and appear to have functioned in that capacity throughout its operation.¹⁸² Jurriaanse says this officer is first mentioned on 16

¹⁷⁶ An overview of the years in which the Galle thombos were drawn up can be seen in Mottau's catalogue of the Galle records. Colombo asked Galle in 1757 to prepare an account of when or in which year the thombos of Galle and Matara were begun, which villages were completed and were being registered at that moment, and what other villages had to be registered. SLNA 1/5660, 'Extracts of Orders, GL', fol. 30v, Letter dated 1 Feb 1757 from Colombo to Galle. It appears that a list of registered thombos came to be included in the compendiums.

¹⁷⁷ Mottau, 'Documents on Ceylon History'.

¹⁷⁸ Imhoff, *Memoir Left by Van Imhoff*, 21–23.

¹⁷⁹ Printed by the VOC press in Colombo. Jurriaanse, *Catalogue*, 245.

¹⁸⁰ SLNA 1/149, 'Governor in Council Minutes' 1766, 5 Sept 1766.

¹⁸¹ SLNA 1/5658, 'Extracts of Orders, GL', fol. 19r, Letter from Colombo dated 20 Aug 1745; 20v, Extract from resolution dated 14 Aug 1745. The instructions of 1789 for the Landraad also refer to the maintenance of a digest of extracts from resolutions and letters including local laws. This was to be maintained by the secretary. Mottau, 'Instructions for Landraden', 5, 13.

¹⁸² In the early years of the new registration, a resolution of 18 May 1743 said the registration should be carried out by commissioned members on five days of the week, and after they had submitted their reports to the full Landraad that council would order the formal registration. On 11 April 1744, another resolution said the registration should be carried out twice a week from 8 to 12 in the morning and 3 to 6 in the evening. SLNA 1/5658, 'Extracts of Orders, GL', fols 7r, 10r. See also Mottau, *Inventory of the Archives*, 56.

August 1759.¹⁸³ Thombo-keepers were required to take the oath. A surveyor was also involved in the process from time to time although not in a uniform manner. In the words of Anthonisz: "The only instances, and these are comparatively few, where measurements are stated are of those lands sold by the Company, and therefore previously surveyed by qualified officers of the Government; and it is in these cases only that the boundaries are mentioned."¹⁸⁴ The thombo of the Colombo Four Gravets, for instance, includes boundaries, but similar thombos were not found for the Galle District. At times there was also a surveyor on the board of the Landraad.¹⁸⁵ His involvement does not seem to have been consistent. Yet the company intended to employ more surveyors in 1743 and instructions to the surveyors were issued in 1745 and 1758.¹⁸⁶ Incidentally, Governor Van Gollennesse was disappointed that surveying was not done according to European methods of measurement but with seed as the unit of measurement.¹⁸⁷ Essentially the way in which inhabitants understood production, following indigenous practice in this regard was unavoidable.

Undoubtedly, the registration suffered from a lack of commitment and effectiveness on the part of the record keepers, headmen and inhabitants. On 4 July 1744, Colombo desired that the thombo work in Galle be carried out with 'more zeal and deliberation' as till then it had been unsatisfactory.¹⁸⁸ Expertise on 'land and legal affairs' was considered to be low among the thombo commissioners.¹⁸⁹ Thombo commissioners were frequently upbraided as seen in the Governor in Council resolutions and letters to Galle.¹⁹⁰ At the meeting held in December 1745 referred to above, the Landraad in Galle was also rather sceptical about the enthusiasm of the locals for the registration process:

...the inhabitants were rather good at appearing for the registration, but when they appeared they left behind a part of their family, whose names they could not report, and sometimes they couldn't produce the necessary evidence of purchase or gift. The case was then left as inconclusive, and they went away and sometimes did not come back for days. Moreover, the inhabitants were, as a rule, so secretive, it was said that the authorities had to force the words out of their mouths so to speak with continuous questioning and requestioning. When the registration of a new village was started, they quite wanted to come forward and make declarations, but towards the end of a registration they showed themselves to be very lazy about it. Even the village headmen keep away under the pretense of being occupied in the service of the company, as a result of which the commissioners sometimes found themselves having to perform the embarrassing task of dispatching the necessary summons to those [headmen] who were absent. The documents that were handed over by the headmen were

¹⁸³ Jurriaanse, *Catalogue*, 245.

¹⁸⁴ R G Anthonisz, *Report on the Dutch Records in the Government Archives at Colombo* (Colombo: H C Cottle, Govt. Printer, 1907), 113.

¹⁸⁵ Surveyor Hartel was said to be too busy and is relieved from his duties at the Landraad. SLNA 7/2353, 'Inward Letters, GL', Letter dated 12 Jun 1781 from Commander Anoldus de Lij to Landraad.

¹⁸⁶ SLNA 1/5658, 'Extracts of Orders, GL', fol. 7v, Extract resolution of 4 Jun 1743; Hovy, *Ceylonees Plakkaatboek*, vol. 2; nr. 345, 10 Apr 1745 & nr. 432, 3 Oct 1758, Instructions for surveyors.

¹⁸⁷ SLNA 1/5659, 'Extracts of Resolutions, Orders, Etc. Regarding the Landraad and the Thombo Compilation' 1743 to 1744, fol. 21r, Extract of Resolution in Council of Ceylon, 23 Oct 1743.

¹⁸⁸ '[M]et wat meer iever en overleg.' SLNA 1/5658, 'Extracts of Orders, GL', fol. 10v–11r, Extract from letter from Colombo dated 4 Jul 1744. Under seven points, the shortcomings of thombos of the Morrua Kōralē (Matara Dessavony) are given in that letter, with a promise to send a model of how the registration was done in Colombo so that it could be followed in Galle and Matara. Similar criticisms followed: Ibid., 11v–12v, Extract from letter dated 28 Aug 1744 from Colombo to Galle.

¹⁸⁹ Governor Van Gollennesse said that the commissioners could not be regarded as 'men having the required experience in land and legal affairs' ('mannen van de vereijste ervaertheit in land en regt zaken').

SLNA 1/2805, 'Minutes (20 Dec 1745), GL', fol. 48v–49r.

¹⁹⁰ See for example, among other orders, an extract from a resolution taken in the council on 1 Dec 1746. SLNA 1/5660, 'Extracts of Orders, GL', fol. 22r–v.

found to be so deficient, that even the interpreter could hardly make them out. He would confess that many a time such old, foolish and decrepit people would be found among those who came forward that the commissioners could not obtain the least amount of explanation from them.¹⁹¹

Resistance to the registration came from both the peasants and the headmen. Regulations ordering the inhabitants to cooperate with the registration or face serious consequences were published so that no one could claim ignorance.¹⁹² On 3 October 1744, all headmen from the lowest to the highest grade had been ordered to ensure that their subjects appeared for the registration at the correct time, failing which they would face a moderate fine or punishment (evidently corporal) as an example to others.¹⁹³ Yet this had not been successful. Van Gollennesse says that complaints of inefficiency were not heard of in Colombo:

It is surprising that we have not heard such complains here, but only in Galle and we cannot even imagine what the presumed foolishness and infirmity of the village headmen signifies that there should be such simple people who would not know what they own. We perceive this rather as a subtle trick to exempt themselves, under the pretext of an appearance of a simple countenance, from providing an accurate declaration of their properties to the aforementioned commissioners.¹⁹⁴

The governor was clearly aware of the possibility that the people were deceiving the company. In Galle, the headmen were also perceived as being reluctant to participate in the registration process. Van Imhoff wrote in 1740 that in Matara the registration was obstructed as ‘the native chiefs do not like it and would rather keep matters in the confusion in which they are at present, in order that they may make as much of it themselves as they can.’¹⁹⁵ This had echoes in other areas of the country as well, where the thombo registration even caused violent resistance.¹⁹⁶ The instructions to the thombo commissioners of 1745 also state that the ‘influential’ actively opposed the registration.¹⁹⁷

¹⁹¹ ‘Aangaande het point dat de inwoonderen tegenwoordig nog al redelik wel compareeren, dog verscheijnende agterlaaten ten deele hunne familie, welkers namen zij niet konnen opgeven, en sommige weder hunne nodige blijken van koop of gifte, en dus onverrichter sake henengaande somwijlen in dagen niet wederom komen, ja dat de inlanderen daarenboven nog doorgaans zo agterhoudende zijn, dat men om zo trespreeken met continueel vragen en hervragen, genoegsaam de woorden als uijt den hals moet trekken, en wanneer een nieuw dorp begonnen word beschreeven te werden, nog alredelik wel willen opkoomen en aangeven, maar ’t selve bijna ten eijnde lopende, seer traag daaromtrent sig toonen, zelfs de dorpshoofden, onder voorgeeven in scomp.^s dienst geoccupeert te sijn, waardoor ged. gecommiteerdens somtijds haar verlegen vinden de nodige citaties af te senden, aan die sig absent houden. En dat ook de overgegevene rollen dier hoofden zo gebreckelik werden bevonden, dat de tolk zelfs beswaarlijk daaruijt kan komen, seggende en bekennde nogtans, dat onder deselve veel tijds zodanige oude onnosele, gebreckige en afgeleefde menschen werden gevonden, dat men geen het minste ligt en elucidatie van haar kan bekomen.’ SLNA 1/2805, ‘Minutes (20 Dec 1745), GL’, fol. 40r–41v.

¹⁹² SLNA 1/5660, ‘Extracts of Orders, GL’, fol. 20v–21r, Extract letter [from Colombo] dated 24 Sept 1746.

¹⁹³ SLNA 1/5658, ‘Extracts of Orders, GL’, fol. 13v, Extract resolution of 3 Oct 1744.

¹⁹⁴ ‘Het is te verwonderen, dat men hier van zulke clagten niet hoord maar alleen op Gale en wat de prentse onnoselheid en gebreckigheid der dorpshoofden belangt zo kan men niet denken, dat er zulke eenvoudige menschen gevonden worden die niet zouden weten wat zij bezitten en men merkt het zelve eerder aan als een subtile streek om onder het pretext van een uiterlijk eenvoudig gelaat zig te onttrekken, om een nauwkeurige opgave van hare eigendommen aan de voorsz. gecommiteerdens te doen.’ SLNA 1/2805, ‘Minutes (20 Dec 1745), GL’, fol. 40r–v.

¹⁹⁵ Imhoff, *Memoir Left by Van Imhoff*, 20.

¹⁹⁶ Governor Van Gollennesse attempted to introduce systematic surveys in the Hina Kōralē (Colombo Des-savony) which were opposed by the people. Sinnappah Arasaratnam, ‘Introduction’, in *Memoir of Julius Stein van Gollennesse*, by Julius Stein van Gollennesse (Colombo: Dept of National Archives, 1974).

¹⁹⁷ Mottau, ‘Documents on Ceylon History’, 180.

Still, men and women came to the Landraaad with extracts of the thombo to prove their rights. Despite opposition and issues of efficiency, the thombos were considered a permanent record and used as such. In 1784, Pieter Sluijsken, a high-level official of the company, said the thombo was the ‘essential law book’¹⁹⁸ and the ultimate reference for property disputes: ‘the settlement of complaints regarding lands, injustice or caste disputes over lands and inheritance law, absolutely requires consulting the land and head thombo which is deposited with the overseer, and is never given away than with the foreknowledge of the whole Landraad, as being a law book according to which the cases are decided.’¹⁹⁹ The extent to which they are used in conflict resolution can be seen in the pages of the Landraad minutes. To give just one example from a sample case used in this study, Totagoda Gamage Kattona et al. v Mandenayake, a thombo extract was taken as the law.²⁰⁰ Litigants recognised the purpose of the thombos and their value, and obtained extracts to prove their case.

That legal use of the thombos is said to continue to date as extracts are still given out by the Sri Lanka National Archives. In 1766, the thombo-keeper was paid 24 stivers for an extract from the thombo (without the stamp).²⁰¹ By being functional to a limited extent the thombo is a kind of evergreen document—it reportedly continues to be used in court today. Till at least the end of Dutch rule when it was still being updated, it was a living document—as also in early British times when marginal notes indicated changes in ownership through land sales. Notes on thombo extracts that were passed on to applicants to various parties were also made on the thombo itself in the nineteenth century.²⁰² The value of these extracts, despite being prized by the inhabitants especially in earlier times, has undoubtedly reduced. R G Anthonisz, a former director of the archives had this to say about their use in the early twentieth century: ‘it is but an inferior title after all which the Thombu Extract, so much prized by the villager even now, enables him to establish. It was a common practice formerly for those in possession of so-called ancestral property, imagining that the Thombo was bound to support their title, to apply for extracts whenever they entered into litigation with the Crown or with their neighbours.’²⁰³ A proper review of their use in court today is timely.

¹⁹⁸ ‘[H]et wesentlijke wet boek.’ Pieter Sluijsken, ‘Eene beschrijving van de landdienst op Ceylon: Zo uyt ondervinding als uyt oude papieren tezaamen gebragt (A Description of the Land Services of Ceylon: Compiled from both investigations and old papers)’ (Colombo, 1784), vol. 1: 307, RP-31/32 Colonial Collection (KIT), Leiden University.

¹⁹⁹ ‘[D]at ’t afdoen van klagten omtrend landerijen, injurie of de kastes dispuut over landerijen en erf regt, absoluut ’t naslaan van de land en hoofd thombo vereijst word, onder den opsiender berust en nooijt uijthanden word gegeven als met voorkennisse van den gehele landraad, als een wetboek zijnde waarnaar de processen gedecideerd worden.’ Ibid., vol 1, 367–368.

²⁰⁰ SLNA 1/6511, ‘Minutes, GL’, fol. 29r, 27 Jun 1778; 44r, 8 Aug 1778.

²⁰¹ SLNA 1/5660, ‘Extracts of Orders, GL’, fol. 38r, ‘Advertisement’ dated 25 Oct 1766. Today, it costs six hundred rupees per translated page.

²⁰² A thombo clerk in charge of the records, who was earlier the thombokeeper, was employed by the British government till at least the mid-nineteenth century. Anthonisz, *Report on the Dutch Records*, 10.

²⁰³ Ibid., 114. Anthonisz further states that the small fee which was affixed to the time-consuming task of searching for ‘supposed entries’ considerably reduced the number of applications for extracts. He writes that the average number of applications for three years in the early 1900s was as little as seventeen applications. The Government Archivist in 1951, J H O Paulusz, reported that there were 519 applications for ‘information centred around entries in the Land Registers and in deeds and instruments affecting property’. J H O Paulusz, *Administration Report of the Government Archivist for 1951* (Colombo: Ceylon Govt. Press, 1952). This higher figure could be due to applications from documents other than the thombos being counted together. Mottau, who was Assistant Government Archivist at one point seems to believe they are all thombo extracts, adding that they were a small source of revenue for the government. Mottau, ‘Documents on Ceylon History’, 174. In 2002 and 2003, the number of requests was 134 in each year, with 101 and 47 completed applications in the respective years. Saroja Wettasinghe, ‘Digitisation of Land Records for Access and Preservation’, in *Public Requirements and National Archives: Archives Week Souvenir* (Colombo: Sri Lanka National Archives, 2004), 5.

The thombo was considered a source of law in a non-technical sense in its heyday, but has suffered some since then in terms of value. The following section will introduce a preliminary discussion on the other sources of the law used in Landraad decisions.

1.7 Sources of the Law

Three sources of law were said to have been employed in the Dutch legal system: the laws in force in The Netherlands, the Statutes of Batavia, and the enactments of the Governor in Council of the VOC in Sri Lanka.²⁰⁴ The last of these were possibly the more important for the inhabitants as they governed local affairs. Such enactments covered matters related to slaves, religion, marriage, concubinage and adultery, theft, Moors and Hindus, *burgers* or city dwellers, and land. However, criminal law is believed to be that of Roman-Dutch law, as was the civil law employed in the *Civiele Raden* of the towns.²⁰⁵ As argued in this thesis, the Landraad was at least one legal body in Dutch times where it was difficult to permanently fix the laws that were in use. The 1789 instructions ordered councillors to be guided by Dutch laws and statutes of the place.²⁰⁶ But in practice, it was not as simple. The presence of the headmen in an advisory role (more on this will follow in chapter two) complicates the picture, and speculation on their role is rife in official and academic literature over the nineteenth and twentieth centuries. This section will offer some preliminary observations on the sources of the law in the Landraad. As this is also the central question of this thesis, much more will be revealed in the course of this work.

Efforts to use the argument of legal tradition in ethnographic writing and official documents were prevalent. Sluijsken writes how '[t]his tax dates from the king's times and is levied till today in the kingdom of Kandy'²⁰⁷ and '[t]his is all customary according to the old ways.'²⁰⁸ The few references to custom in Landraad judgements give some idea of how decisions were made—for custom to have been mentioned at all, it must have been a decisive factor in at least those cases. Indigenous norms are referred to in the counter-interrogations about 'tradition' that the council engaged in. Questions on indigenous customs were put to witnesses in counter-interrogations that were carried out on behalf of the opposing party by the councillors. Litigants and their *procureurs* perhaps believed that if they asked the correct questions on the customary laws, they could influence the councillors in their final decision. For instance, in 1778 it was to Puswellage Johan's advantage to ask the witnesses of the opposing party 'whether it was not a constant custom among the Sinhalese that the owner of animals, which they hand over to someone for raising, gets two-thirds [of the earnings], and the person who looks after the animals gets one third from them'. It was followed up with

²⁰⁴ I will deal with the relevant details of Roman-Dutch law as they arise in the thesis. The Statutes of Batavia were a set of rules and regulations based largely on Dutch practices and laws to be employed by the VOC in the east, first issued in 1642 and updated in 1766. J van Kan, 'Bataviasche Statuten En de Buiten-comptoiren', *Bijdragen Tot de Taal-, Land- En Volkenkunde van Nederlandsch-Indië* 100 (1940): 255–82.

²⁰⁵ It remains to be seen through an examination of the cases in the higher courts whether 'discursive bridges with the religious and social norms of the subject population' were built. Radhika Singha states that this was the case in connection with Thomas Macaulay's draft penal code of 1837 in British India. Even '[t]he criminal law, its machinery and procedure, was therefore tied up with earlier institutions, personnel and legal-sacred texts.' Certain groups in India, such as the Brahmans, for instance, were exempted from capital punishment in British India. Although death sentences were meted out in Dutch courts, they could not be executed without confirmation by the Dutch governor. Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Delhi: Oxford University Press, 1998), viii–x. See for preliminary survey of how Dutch governors in Sri Lanka overturned decisions in criminal cases in consideration of local circumstances, Schrikker, 'Conflict Resolution'.

²⁰⁶ Mottau, 'Instructions for Landraden', 5.

²⁰⁷ 'Deeze geregtigheid is van sconings tijde en word tot heeden nog in 't rijk van Candia geheft.' Sluijsken, 'A Description of the Land Services', vol. 1: 264.

²⁰⁸ 'Zijnde dit alles zoals na d'oude wijze gebruikelijk is geweest.' Ibid., 1: 338.

the question: ‘whether it is also a custom, that the person who looks after the animals can hand over such animals to a third person, and what then the last-mentioned person can profit from them’.²⁰⁹ The answers to the first question were in the affirmative, and to the second that no such custom existed. This would have been the desired outcome of the party asking the question, and would not have been lost on the councillors.²¹⁰

Such inquiries into customs indicate their relevance to the council. Despite the lack of a formal codification of the laws of the Sinhalese, they do not seem to have been eliminated from the Landraad. However, further study into the decisions made by the council as attempted in this thesis is necessary to establish to what extent they were adopted. Van den Horst argues that references to custom by counsel alone do not establish conclusive evidence regarding the law actually applied by the courts.²¹¹ Yet litigants and/or their *procureurs* clearly wished to direct the councillors in a certain direction, and *procureurs* would not have taken the trouble to include such questions if they would not have had a considerable impact on the final decision. What is important to take into account is that a mixed legal system, wherein both local and foreign principles were at work, was in operation.

Evidently, it was a complex situation. Colonial courts often suffered from a lack of understanding of local customs. In 1793 Landraad Secretary Pieter Arend De Moor for instance pleaded for help in explaining to the Raad van Justitie of Galle the basis on which a judgement was made in a case that was to be taken up in appeal—he said he himself had feelings contrary to the judgement and therefore didn’t know how to give the reasons for the judgement.²¹² Official recognition of the need to recognise local customs was also made. If there was an old custom that was contrary to the orders from the government, that had to be communicated to the Governor in Council for further orders. Inherent in this was the understanding that government orders should not be contravened. If there were cases that were not covered by existing orders the issuing of a final decision had to be suspended and approval of the Governor in Council sought in order to prevent any mistreatment.²¹³ The Landraad did not always do this, but a case by case analysis of decision-making is beyond the scope of this study. The second part of this thesis will attempt to shed light on at least three aspects of the law in practice in relation to matters of truth, land rights and inheritance law.

1.8 Conclusion

The development of the Landraad richly illustrates the dilemmas of an early colonial power in advancing legal institutions that are suited to local circumstances. The inheritance of an institutionalised normative order, however alien, could not be brushed aside. Initially, the VOC believed that they had received a free hand to impose foreign laws as a result of seventeenth-century migration (later reversed) of native inhabitants to the Kandyan Kingdom. Inherent in the company’s implied recognition that a territory had to be empty of original inhabitants to introduce new laws was the acceptance that a once sovereign people would have a way of life that could not be ignored. Dutch law could not be introduced into a vacuum; it inevitably had to interact with pre-existing norms. This connected with a sense of

²⁰⁹ ‘Of niet een constant gebruik onder de Sinhalezen is dat de eijgenaer van hunne beesten, die zij aan imand ter opvoeding overgeven, twee derde, en den opvoeder een derde daarvan krijgt’ and ‘[o]f ook zo een gebruik is, dat den opvoeder zulke beesten aan een derde perzoon, weder ter opvoeding kan besteede, en wat dan den laatst gem. voor profijt daarvan heeft.’ SLNA 1/6534, ‘Interrogations, GL’, fol. 15r, 9 Jul 1778.

²¹⁰ The purpose of the questioning of witnesses in this example was to dissuade the councillors from admitting them to the oath. The matter of the oath was referred to the full council in order to decide if the said witnesses could take the oath. More on this practice will follow in chapter four.

²¹¹ Horst, *Compensation for Improvements*, 121.

²¹² SLNA 1/6516, ‘Galle Landraad Minutes’ 1793, fol. 69v–70v, 26 Nov 1793.

²¹³ SLNA 1/5658, ‘Extracts of Orders, GL’, fol. 19v–20r, Extract letters [from Colombo] 8 Oct 1745; 26r–v, 20 Nov 1745.

natural justice which in the legal regime's institutional set up was chiefly achieved through the presence of the native headmen in the Landraad. They gave the new judicial forum an impression of appropriateness. The company had the success of conquest and powers of coercion behind them, but their economic, political and social powers were consolidated through collaboration with the indigenous elite. Yet the fact of their participation in the Landraad alone is inconclusive; the full impact of their role requires the further study attempted in this thesis. The degree of representation afforded to indigenous headmen, however inconsistent in terms of their participation (see chapter two), would have contributed to a long-term commitment on the part of the peasants to the new and adapted institutional structures of the Landraad. For institution building was both handed down from the top and arrived at through a negotiation of received and evolving practice.

For the first time, Sri Lankan peasants faced courts of record through the Dutch legal system. Bhavani Raman made a compelling analysis of the role played in establishing the protocols of law by scribes and their micropractices of writing in south India under the British East India Company, an argument that may well be extended to the textual bureaucracy established by the Dutch in Sri Lanka.²¹⁴ Despite efforts to keep to oral procedures, the textual nature of proceedings in the Landraad would have become increasingly apparent to local inhabitants over the eighteenth century in particular. The image of justice in the Landraad was an enclosed area into which they were sent in and out, and wherein sat foreign figures of authority with a few of their own kind among them. They spoke, for the most part, a foreign language.

The Landraad referred frequently to accompanying documents as evidence and witnesses were often required to provide signed depositions that had to be read out in the council, thus deviating from legal practices under the local normative order. While a written tradition was not wholly absent from that order, as *sannas* for large land deeds and decrees by the king were in writing, judicial proceedings were more oral. Yet the summary nature of proceedings in the Landraad which was facilitated by the Dutch system almost mirrored the oral nature of local legal practices. Resemblances in procedural aspects were thus a potential advantage in introducing an otherwise new institutional development.

An analysis of the caseloads reveals the anxieties of the people seeking adjudication at the Landraad in relation to the ownership of land, their most precious asset. The agricultural and rural character of the Landraad cases can be seen: people used the council to reconfirm what they thought was theirs. This is reflected in the extensive use of the thombos, which are among primary supporting documents used in the Landraad. They were a crucial part of the Landraad. Land registration was a necessary technology of colonial rule. The thombos were a process of setting up a social and economic regime that was clearly defined. That clarity was not limited to the textual; more on that will follow in chapter five. The thombo in its Dutch form may have been an innovation to the people, but its wide acceptance is testimony to its success. Texts can serve different purposes at different moments for both ruler and the ruled, as we saw in the controversy over the old thombo which top level company officials deemed inaccurate, but which both the registrars and the people referred to in practice at the ground level. The new thombo served as an authoritative record over the nineteenth and twentieth centuries and arguably into the twenty-first century as well. The files of the thombo, as also those of the Landraad, thus acquired a claim to truth capable of providing proofs, but changing in value over time.

In all this, the daily, inefficient workings of judicial forums in almost any context should also be kept in mind. The Landraad was an institutional development that introduced struc-

²¹⁴ Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial South India* (Chicago: University of Chicago Press, 2012).

tural innovations within a new space, while retaining certain family resemblances to local conditions and thereby confirming its plural character.

Chapter 2 Negotiating Councillors

In mirror theories that link law to society, ‘law mirrors society or some aspect of it in a consistent, theoretically specifiable way’. Such theories have been challenged by Alan Watson, who claimed among other things that the processes of legal change ‘are largely controlled “internally” within legal systems by legal professional elites such as makers of codes or drafters of legislation, judges or jurists’.¹ Watson’s view suggests that the legal elites of eighteenth-century Dutch Sri Lanka, professional or not, had a potentially significant role. With little or no separation of powers between the legislature, executive and judiciary, this would be especially true for early modern times. Legal formalism, which emphasises the independence of law from externalities and the idea that judging was a mechanical process, was challenged by the realists in the 1920s and 1930s who emphasised the inadequacies of the law and the personal role of the judges.² Watson’s radical theories of the insulation of law from economics, sociology and politics have been challenged in the literature but I will not attempt to elaborate on that debate here.³ At the least, his work shows the importance of studying the legal elites, as attempted in this chapter by focusing on identifying the councillors of the Landraad, their backgrounds, controlling power and worldview. Their capacity to decide over questions of law was more significant than what is projected in formalist ideas of the mechanical application of the law to any particular case.⁴

Who became members of the Landraad? What were their backgrounds? How influential were the indigenous headmen in the decision-making process, which was effectively also the rule-making process? This process occurred between representatives of the two social fields of the Dutch and Sinhalese—was it a mutual interaction among equals? The decision-making capacity of both parties would be nearly equal or prearranged to favour one social field. At the same time, both social fields would have been subject to influences from each other and other social fields. A reality of pluralities, in that case, would not be unprecedented.

A context of the personal in judicial decision making underlines the identity of the councillors and their outlook on local society. Members had the authority to decide on a case, so they were in powerful positions vis-a-vis society when they were appointed to serve in the Galle Landraad. We may not be able to determine to what degree a judge or group of judges had a direct effect on a case, but the presence of indigenous headmen in a colonial body that has been much appraised for including them is important. This chapter first describes the backgrounds and participation in the council of the all-male European and indigenous councillors who served from 1759 to 1796. Thereafter, I will examine the varying levels of influence of the two groups in a discussion of their authority in the council. Dutch representations of the locals, seen particularly through an introduction to the work of Pieter Sluijsken, one-time president of the Galle Landraad, shows the dynamics of the interaction of two social fields.

2.1 European Councillors and their Social Context

Most councillors were white, affluent, and worked closely with the Dutch government. At the beginning of their careers, those who had entered VOC service as a soldier or sailor had

¹ See, for an overview of this debate, Roger Cotterrell, *Law, Culture and Society: Legal Ideas in the Mirror of Society Theory* (Hampshire: Ashgate, 2006), 109–110.

² See Brian Z Tamanaha, *Beyond the Formalist-Realist Divide: The Role of Politics in Judging* (Princeton, N.J.; Oxford: Princeton University Press, 2010), 1–7.

³ See Cotterrell, *Law, Culture and Society*, 109–112.

⁴ New studies evaluating approaches to judging have emerged in recent times. See part three of Tamanaha’s book on studies of judging in *Beyond the Formalist-Realist Divide*.

to serve an apprenticeship of five years.⁵ A few moved into administration and trade as bookkeepers and merchants. Others were already prominent company officials who went on to reach high positions in the administration in Colombo and came from families that represented the old guard of VOC servants. European and local appointments were made by the Governor in Council in Colombo, with some evidence of recommendations from the Political Council of Galle.

The controlling power of the Landraad was in European hands. Presidents, vice presidents and secretaries were Europeans (see Table 2.1). As said in chapter one, the *opziender* (overseer) of Galle was also the president of the Landraad. Pieter Sluijsken, who had served the company since 1758, was president of the Landraad for one and a half years from 1766 to 1767. Sluijsken was a diligent president, attending twenty-seven of twenty-nine meetings held during his term of office, missing just two on the grounds of indisposition. He claimed to have learned much about the country, people and customs through experience (more on this below), and it is likely that his term in the Galle Landraad would have contributed towards that. The junior Abraham Samlant was president of the Landraad from December 1779 to June 1785 and at the time of capitulation by the British in 1796 Samlant was a merchant and *negotie boekhouder* (trade bookkeeper) in Colombo.⁶ His father, the senior Abraham Samlant was commander of Galle and son of Barent Samlant and grandson of Barent Barentsz Samlant of Haarlem, a *vrijburger* in Colombo.⁷ Adriaan Sebastiaan van de Graaff, who was appointed president of the Galle Landraad in May 1785 in his capacity as overseer of the Galle District, was the brother of Governor Willem Jacob van de Graaff.⁸ Other Landraad top brass (presidents and vice presidents in particular) were also from influential families. Diederick Thomas Fretz was president for almost nine years from 1770 to 1779, the longest serving in the records. He was also present at most meetings (160 of 175). At times, the same people ran the council for many years. Petrus Jacobus Rosemale Cocq was a bookkeeper in 1778 when he was appointed secretary of the Landraad by the Dutch government.⁹ He served till 1785 before being transferred as secretary of the Colombo Landraad, but returned as president of the Galle Landraad in December 1790. At times though it was difficult to find a secretary. Wilhelmus Gijsbert van Zitter took the oath as secretary on 8 July 1786 and functioned in that capacity at that meeting, but did not appear again. Some weeks later, in October 1786, Johan Pieter Simon Cadenski assumed duties as secretary at a special meeting held only for his appointment, but his seven-year-long term of office was highly unsatisfactory as seen in chapter one.

⁵ See, for careers of VOC personnel, Albert van den Belt, *Het VOC-Bedrijf Op Ceylon: Een Voorname Vestiging van de Oost-Indische Compagnie in de 18de Eeuw* (Zutphen: Walburg Pers, 2008), 236–239.

⁶ Anthonisz, *Report on the Dutch Records*, 63; Wagenaar, *Galle, VOC-Vestiging in Ceylon*, 30.

⁷ *Ibid.*, 30. He had his first appointment in 1731 as a soldier and was made junior merchant in 1742. He was appointed commander in 1758 and served in that post till 1766.

⁸ See for his first day in the Landraad, SLNA 1/6525, ‘Draft Minutes, GL’, fol. 100v, 14 May 1785. For an account of the family see ‘Willem Jacob Van De Graaff’, *Journal of the Dutch Burger Union of Ceylon* 2, no. 3 (1909): 142.

⁹ SLNA 7/2353, ‘Inward Letters, Galle Landraad’ 1778 to 1801, Letter dated 7 May 1778 from Commander Anoldus de Lij to the Galle Landraad.

Table 2.1 Some Presidents, Vice Presidents and Secretaries 1759-1795

Function and Name	Record in Minutes	
	First	Last
<i>Presidents</i>		
Toussaint, Johannes	29 Sept 1759	6 Dec 1760
Marci, Adolph Fredrik	17 Sept 1762	6 Aug 1764
Balthazar Hendrik Stroebbe	14 Jul 1764	15 Jan 1766
Sluijsken, Peter	15 Jan 1766	27 Jun 1767
Cock, Cornelis de	5 Sept 1767	30 Dec 1769
Fretz, Diederick Thomas	24 Feb 1770	24 Dec 1779
Samlant, Abraham	24 Dec 1779	11 Jun 1785
Graaff, Adriaan Sebastian van den	14 May 1785	24 Mar 1787
Johannes Franciscus Gratiaan	14 Apr 1787	5 Apr 1788
Pieter William Ferdinand Adriaan van Schuler	12 Nov 1788	23 Oct 1790
Roosmale Cocq, Petrus Jacobus	11 Dec 1790	12 Dec 1795
<i>Vice Presidents</i>		
Velde, Egbert van de	29 Sept 1759	6 Dec 1760
Cramer, Hendrik	20 Jul 1763	16 Aug 1766
Velzen, Adriaan van	21 Feb 1767	26 Nov 1768
Bergh, Adrianus van den	15 Jul 1769	7 Jan 1775
Martheze, Nicolaas Bernardus	7 Jan 1775	21 Sept 1776
Conradie, Johan Fredrik	16 May 1778	9 May 1779
Lij, M Andreas Everhardus de	31 Mar 1781	12 Oct 1782
Vos, Pieter de	8 Jun 1765	21 Mar 1772
	16 Nov 1782	2 Feb 1793
Hendrik Anthon Johnson	10 May 1793	12 Dec 1795
<i>Secretaries</i>		
Johannes Stein	26 Apr 1760	15 Jul 1775
Roosmale Cocq, Petrus Jacobus	16 May 1778	19 Aug 1785
Cadenski, Johan Pieter Simon	25 Oct 1786	28 Jun 1793
Pieter Arend de Moor	19 Jul 1793	12 Dec 1795

Sources: SLNA 1/6497 to 6525, Minutes of the Galle Landraad.

At its helm, the Landraad had European officials who served in high-level judicial, executive and legislative capacities. While in Galle, Cornelis de Cock was a junior merchant and overseer of the district.¹⁰ He served in the Galle Landraad from September 1767 to December 1769, and was later *dessave* of Colombo. In his later capacity, he was also chairman of the Colombo Landraad. He was born in Emden, northern Germany and as he had spent much of his thirty years in Asia in Sri Lanka, may have had some understanding of the vernaculars.¹¹ He served in various capacities such as private secretary to the governor at the time of his marriage and chief warehouse keeper during the embassy from Kandy in 1772,

¹⁰ SLNA 1/6503, 'Galle Landraad Minutes' 1768, fol. 53r, 16 Jul 1768.

¹¹ Remco Raben and Max De Bruijn, eds., *The World of Jan Brandes, 1743-1808: Drawings of a Dutch Traveller in Batavia, Ceylon and Southern Africa* (Zwolle, Amsterdam: Waanders Publishers, Rijkmuseum, 2004), 258, 260. See, for extensive details of his career, Frits van Dulm, 'Zonder eigen gewinne en glorie': *Mr. Iman Wilhelm Falck (1736-1785), gouverneur en directeur van Ceylon en onderhorigheden* (Hilversum: Verloren, 2012), 73-74, 21n.

and is depicted in an illustration of that audience by Carel Frederik Reimer.¹² He is also featured in an illustration by the minister Jan Brandes, a Lutheran like him who appears to have struck up a friendship with him soon after his arrival in 1785. De Cock is shown conversing with his Sinhalese officers in a relaxed fashion in the verandah of his office in Hulftsdorp, Colombo, just two months before his departure from Sri Lanka.¹³ The German Diederick Thomas Fretz also became *dessave* in Colombo later on.¹⁴ He was captain of the Mahabadde or the Cinnamon Department, *dessave* of Matara in 1785, and then *dessave* in Colombo in 1787, but returned to Galle as commander in 1792.¹⁵ Fretz was one of the first VOC servants to pledge alliance to the British in 1799 and serve in the civil court of Galle. At the same time he had hopes that the Dutch would regain control of Sri Lanka and wished to be installed as governor.¹⁶ Fretz died in 1815, shortly after the takeover of the Kandyan Kingdom. Sluijsken, who was *hoofd administrateur* (chief administrator) towards the end of his career, may have also had ambitions of being appointed governor in the event of the British returning Sri Lanka to the Dutch,¹⁷ and he did not encourage alliance to the British administration.¹⁸

European councillors were Christian (Dutch Reformed or Lutheran) and are likely to have been privileged inhabitants of the Galle Fort with close political, economic and social ties to each other. The company frequently depended on foreigners to satisfy the requirements of VOC personnel.¹⁹ More than sixty per cent of civil servants in Galle were of mixed parentage, so it is not surprising that some councillors were Eurasians (Abraham Samlant, Egbert van de Velde, Johannes Toussaint, Johannes de Leeuw, Nicolaas Lasge, Hendrik Brakel, Harnanus Engelbregt and Pieter de Vos to name a few).²⁰ For convenience I have used the term

¹² R G Anthonisz, 'Governor Falck's Audience with the Kandyan Ambassadors', *Journal of the Dutch Burger Union of Ceylon* 2 (1909); Carel Frederik Reimer, *Ontvangst van de Gezanten van de Koning van Kandy Door Gouverneur Imam Falck, 1772*, Rijksmuseum, Amsterdam, <https://www.rijksmuseum.nl/nl/collectie/RP-T-1904-18>.

¹³ Although the Rijksmuseum website identifies the image as a scene from the Landraad, probably following Wilhelmus Hermanus Vroom's analysis, Remco Raben and Jan Veenendaal have pointed out that if it was a gathering of that council there would have been other European officers present. Nevertheless, the *dessave*'s residency in Colombo was also the seat of the Landraad. Jan Brandes, *Cornelis de Cock with Sinhalese Officers in Hulftsdorp, Colombo, Seated in His Verandah to Settle the Affairs and Disputes of the Natives*, Watercolour over sketch in pencil, 29 November 1785, Rijksmuseum, Amsterdam, <https://www.rijksmuseum.nl/en/collection/NG-1985-7-1-9>; Wilhelmus Hermanus Vroom, 'Jan Brandes, de Landraad Te Colombo in 1785', *Bulletin van Het Rijksmuseum* 37 (1989): 253–55; Raben and De Bruijn, *The World of Jan Brandes*, 259.

¹⁴ Raben and De Bruijn, *The World of Jan Brandes*, 309.

¹⁵ van den Belt, *Het VOC-Bedrijf Op Ceylon*, 199; J P Lewis, 'Dutch Extracts and the Dutch Company in the Matara District', *Journal of the Dutch Burger Union of Ceylon* 1, no. 4 (1908): 197.

¹⁶ Schrikker, *Dutch and British Colonial Intervention*, 144, 243n.

¹⁷ Personal communication from Alicia Schrikker.

¹⁸ Schrikker, *Dutch and British Colonial Intervention*, 144–145.

¹⁹ Femme Gaastra says that around 1770, 80 per cent of soldiers and 50 per cent of all seamen in company service were born outside The Netherlands. The total number of VOC personnel in Sri Lanka was 4652 in 1753 and 3784 in 1780, the second highest in Asia after Batavia. He further says: 'Around 1786, no less than a quarter of the European Personnel on Ceylon, where there was a considerable European community, had been born in Asia.' *The Dutch East India Company: Expansion and Decline* (Zutphen: Walburg Pers, 2003), 81–82, 87. For 1760, Wagenaar gives a figure of three-quarters of the administrative personnel. *Galle, VOC-Vestiging in Ceylon*, 134. Jan van Goor says that under Governor Falck (1765–1785) who was himself born in Ceylon, 'more than two-thirds of the civil servants had come from the East Indies and Ceylon.' *Jan Kompenie as Schoolmaster*, 17.

²⁰ Raben and De Bruijn, *The World of Jan Brandes*, 342; Wagenaar, *Galle, VOC-Vestiging in Ceylon*, 48–49, 133, 137.

‘European’ to include persons of European birth and mixed descent.²¹ Many VOC officials were born in the towns of Ceylon or other VOC settlements in South India. Figure 2.1 shows a ‘wordle’ of the various birthplaces of a majority (70 out of 75) of the European councillors. The Landraad had many company servants of second and later generations of Europeans. Abraham Samlant and his father, also Abraham Samlant (1713-1766), were born in Colombo and the senior Samlant was described in the records as mixed. They were well established in the company and community.²² Some councillors appeared for long periods in the Landraad, a few died on the job.²³



Figure 2.1 Birthplaces of European Councillors

A majority of the councillors were thus rooted in Sri Lanka and had served in the island for many years before appointment to the Landraad. Movement between Colombo and Galle and other areas in Sri Lanka can be seen, with some movement from south India as well. Robert Ross and Alicia Schrikker have shown that the VOC families in the Cape for instance displayed similar mobility and rootedness.²⁴ Some started as soldiers and sailors; Hendrik Brakel was a ship’s boy when he took up service with the company. At the time of their appointment to the Landraad many had the rank of bookkeeper; among them were Steven Anthonisz, Bernhard Hendrik van Bergheim, Roelof Frits, Dirk François van Gijzel, Hendrik Johannes Hingert, Nicolaas Lasge, Petrus Jacobus Roosmale Cocq, and Lourens Jolles. The Landraad councillor Coenraad Otto for instance was born in the Fort of Mannar and began service in the company as a soldier in 1751. In 1785 he was employed at the *nego-*

²¹ The class of ‘Europeans’ in the general muster-rolls included considerable numbers of company servants born in Asia and people of Eurasian descent in the eighteenth century. Gastra, *The Dutch East India Company*, 87.

²² The senior Samlant was described as ‘poesties’, the offspring of casties (half-European) parents. Wagenaar, *Galle, VOC-Vestiging in Ceylon*, 48, 137.

²³ For example, Floris van Swieten’s last participation in the Landraad was by *rondvraag* dated 15 Oct 1762, and his employment with the VOC ended shortly afterwards on 25 Nov 1762 with his death. SLNA 1/6499, ‘Galle Landraad Minutes’ 1760 to 1763, fol. 63r, 15 Oct 1762; Nationaal Archief at The Hague, ‘VOC Opvarenden (VOC Sea-Voyagers)’, accessed 5 December 2014, <http://vocopvarenden.nationaalarchief.nl>.

²⁴ Alicia Schrikker and Robert Ross, ‘The VOC Official Elite’, in *Cape Town between East and West*, edited by Nigel Worden (Johannesburg: Jacana, 2012), 26–44.

tiékantoor (trade office) as a bookkeeper and earned 30 guilders per month.²⁵ We know from a painting by Jan Brandes that his residence was in Galle Fort.²⁶ Undoubtedly, not many of them had much experience in the law.

The councillors were propertied people who would have lived in houses suitable to their status with access to the best of goods and services made available through proximity to the centre of government. Lodewijk Wagenaar has described life in the Galle Fort as one that was mixed with European and Asian features.²⁷ Pomp and circumstance displayed through the carriage, slaves and servants were important aspects of life in fortified towns such as Batavia and the settlement of Cape Town.²⁸ Galle was probably no exception in the development of this colonial society. Despite the distance, the top brass among the company servants also kept in touch with developments in Europe. An inventory of books at the secretariat at Galle lists a number of legal texts.²⁹ Intellectually, Europe and The Netherlands were not so far from Asia.³⁰

Councillors were not remunerated for serving in the Landraad beyond a small *mantel geld* or 'cloak fee'.³¹ Their salaries as bookkeepers and merchants were low, but private trading and corruption allowed company servants to amass wealth.³² They were also compensated for their costs when inquiries were held at a distance from where the council usually sat.³³ Councillors were commissioned to go to the villages to investigate matters of ownership or to examine whether lands that were to be sold had cinnamon trees. At times European members of the Landraad complained that they were not receiving enough remuneration.³⁴ The acceptance of presents by the Dutch officials and headmen in the Landraad was forbidden from persons who have or are likely to have a case before the council, 'upon the penalty of loss of office and arbitrary disciplinary action'. Members had to take the oath of office where they swore to abstain from any corruption.³⁵ The Landraad was not the only body they served in: the secretary served in other bodies in that capacity,³⁶ the president as we know served primarily as the overseer of the Galle District and some councillors also

²⁵ Raben and De Bruijn, *The World of Jan Brandes*, 342.

²⁶ Ibid., 340–343.

²⁷ Wagenaar, *Galle, VOC-Vestiging in Ceylon*, 67–105. See also Lodewijk Wagenaar, 'The Cultural Dimension of the Dutch East India Company', in *Mediating Netherlandish Art and Material Culture in Asia*, ed. Thomas Da Costa Kaufmann and Michael North (Amsterdam: Amsterdam University Press, 2014).

²⁸ Gaastra, *The Dutch East India Company*, 104; Nigel Worden, 'Introduction', in *Cape Town: Between East and West, Social Identities in a Dutch Colonial Town*, ed. Nigel Worden (Auckland Park & Hilversum: Jacana Media, 2012).

²⁹ Wagenaar, *Galle, VOC-Vestiging in Ceylon*, 139, 214n.

³⁰ Schrikker, *Dutch and British Colonial Intervention*, 100.

³¹ Nadaraja quotes Jacob Burnand, a VOC official who stayed on till British times, who believed that it was 30 or 40 rixdollars a year. *The Legal System of Ceylon*, 33n.

³² Much has been written on this topic. See for an overview Gaastra, *The Dutch East India Company*, 95–101. For a more detailed study, see Chris Nierstrasz, *In the Shadow of the Company: The Dutch East India Company and Its Servants in the Period of Its Decline (1740–1796)* (Leiden, Boston: Brill, 2010).

³³ This appears to have been one or two rixdollars per half a day. See also for the costs of various documents drawn up by the secretary, SLNA 1/6502, 'Galle Landraad Minutes' 1767, fol. 50r, 1 Jun 1767. An earlier listing of this is given in SLNA 1/94, 'Governor in Council Minutes', fol. 111r, 11 Feb 1745.

³⁴ Johan Casper German, Steven Anthonisz and Laurens Jolles said that when two officials from Galle had served on the Matara Landraad, they had been paid a fee of a quarter rixdollar for each sitting, either for *recoleren* (reading out aloud) of a declaration or for hearing an interrogation. SLNA 1/6526, 'Annexes', fols 197r–198r, Letter (n.d.) to the Landraad President from German, Anthonisz & Jolles.

³⁵ Mottau, 'Instructions for Landraden', 5. See the formula of this oath in SLNA 1/5666, 'Documents, GL', fol. 22v, n.d.

³⁶ SLNA 1/6525, 'Draft Minutes, GL', fol. 191r, 8 July 1786. He was also the secretary of the Scholarchale Vergadering.

served in the Galle Political Council, the Raad van Justitie or the Inlandse Boedelkamer to name a few.

The Europeans in the Landraad had close economic connections with the headmen. Sluijsken invested in a project started by the high-ranking local headman Nicolaas Dias Abeysinghe Amarasekera and his son Balthasar to develop a large fertile land northwest of the Galle District called Diviture³⁷ and his business in Galle was headed by a *mohandiram* (native headman below the rank of *mudaliyār*) of the name Simon de Silva.³⁸ Sluijsken was also involved in revenue farming and signed as guarantor to the renter of the chank fishery in 1786.³⁹ When he became *dessave* of Colombo Fretz was among those company officials who attempted to amass some wealth through plantations, justifying it as necessary due to the income of a *dessave* being small and because he was provided with cheap labour, supposedly by native headmen with whom he probably collaborated.⁴⁰ There were private patronage relationships between company servants and native headmen, but at times, VOC officials felt their power was being threatened by the native headmen, as illustrated by Schrikker.⁴¹

Councillors in close family relationships were not allowed to serve together in the Landraden.⁴² But marriages between influential families in Galle and Colombo made the community of VOC servants closely knit. The councillor August Christian Anthon Graaf van Ranzow⁴³ was married to Petronella Anthonica, who was a daughter of Jacobus de Bordes, a trade commissioner also featured in Reimer's illustration of the Kandyan embassy of 1772. Another figure featured in Reimer's illustration, Political Secretary Martinus Mekern, had a daughter who married Johan Frederik Conradi, another councillor of the Galle Landraad.⁴⁴ The councillor Abraham Samlant's sister, Agnita Clara, married Willem Jacob van de Graaff, the later governor.⁴⁵ The list of such connections would be endless.⁴⁶ Many wives of company servants were of mixed origins⁴⁷ including *mestiças* who spoke Portuguese instead of Dutch. We see that their male offspring also took up service with the company; some were sent to The Netherlands to be educated.⁴⁸ Some couples adopted Sinhalese children: Councillor Johannes Stein and his wife Assertia Christoffels adopted Johanna Sophia, a Sinhalese.⁴⁹ In this and other ways such as religious practice and lifestyle, distinctions between so-called Europeans and native headmen were potentially eroded.

³⁷ Schrikker, *Dutch and British Colonial Intervention*, 44.

³⁸ *Ibid.*, 72, 229n.

³⁹ Rupesinghe, 'Strange Cooperation'.

⁴⁰ Schrikker, *Dutch and British Colonial Intervention*, 71–73.

⁴¹ *Ibid.*, 68–69.

⁴² No judicial body could have a father and son, brothers, or a father-in-law and son-in-law serving together. Mottau, 'Instructions for Landraden', 4.

⁴³ He was from the elite Ranzow family, which included Daniel Ditloff Count van Ranzow who was a junior merchant and member of the Landraad in Colombo in 1785. Daniel's manor was drawn by Jan Brandes. Raben and De Bruijn, *The World of Jan Brandes*, 239–241.

⁴⁴ Anthonisz, 'Governor Falck's Audience with the Kandyan Ambassadors', 150–151. These cannot be found in Mottau's index.

⁴⁵ Anthonisz, *Report on the Dutch Records*, 63; Wagenaar, *Galle, VOC-Vestiging in Ceylon*, 30.

⁴⁶ For family networks and social mobility in the VOC world at large see Ulbe Bosma and Remco Raben, *Being 'Dutch' in the Indies: A History of Creolisation and Empire, 1500-1920*, trans. Wendie Shaffer (Singapore: NUS Press, 2008); Jean Gelman Taylor, *The Social World of Batavia: European and Eurasian in Dutch Asia* (Wisconsin & London: Univ of Wisconsin Press, 1983).

⁴⁷ Wagenaar, *Galle, VOC-Vestiging in Ceylon*, 142–145.

⁴⁸ van den Belt, *Het VOC-Bedrijf Op Ceylon*, 260, 266; Gaastra, *The Dutch East India Company*, 104.

⁴⁹ Wagenaar, *Galle, VOC-Vestiging in Ceylon*, 93.

2.2 Native Councillors and their Social Context

The local members of the Landraad were assigned the role of intermediaries between the peasant population and European company servants. They were all high officials in the native department of the colonial government (see Table 2.2). Members of a multicultural elite, they had autonomous power over the majority Sinhalese peasants. Their elite status was dependant on office-holding and the highest of them were members of the Landraad.⁵⁰ The headmen were part of a system of patron-client relations with the peasants, a part of which was debt bondage.⁵¹ Such relations meant that the company was dependent on the headmen. Access to labour was a key factor in this relationship. The indigenous councillors were also large landowners and belonged to families that continued to be influential in British times. The vast estates that they possessed, some of which extended to thirty land holdings, can be seen in their last wills.⁵² Kotelawe and Schrikker agree that their power increased considerably over the eighteenth century.⁵³ For the purpose of office-bearing they adopted the Dutch Reformed religion at least nominally; some may have been practising Calvinists.

Table 2.2 Local members at the Landraad 1759-1796

Name	Title	Record in Minutes	
		First	Last
Adriaan de Silva Jayatilleke Seresinghe	<i>Kōralē mudaliyār</i>	8 Apr 1775	28 May 1785
Augustinus Ferdinandus Wiresinghe	Titular <i>mudaliyār</i>	29 Jan 1774	2 Dec 1786
Don Balthasar Dias Abeysinghe Siriwardene	<i>Mahamudaliyār</i> & Native <i>Sabandar</i>	27 May 1786	12 Dec 1795
Don Bastiaan Wijenaikē	<i>Mobandiram</i>	29 Sept 1759	6 Dec 1760
Don Bastiaan Jayatilleke Gooneratne	<i>Atapattu mudaliyār</i>	18 Jun 1791	12 Dec 1795
Don Constantine de Saram Wijesinghe	<i>Mobandiram</i>	29 Jan 1774	11 Mar 1780
Don Johan Anthony Alwis Abeyesiriwickreme Jayawardene	<i>Kōralē mudaliyār</i>	27 May 1786	12 Dec 1795
Don Johan de Silva Wanigasekera	<i>Mobandiram</i>	29 Sept 1759	11 Dec 1779
Don Louis Livere Wickremenaikē Samarasinge	<i>Mobandiram</i>	29 Sept 1759	25 Mar 1775
Don Matthijs de Silva Abeyewardene Wijeyesekere	<i>Kōralē Mobandiram</i>	1 Apr 1780	4 Jun 1791
Don Philip de Silva Wickremesinge Dahanayake	<i>Mobandiram</i>	14 Jul 1764	26 Jul 1788
Nicolaas Dias Abeysinghe Amarasekera	<i>Mahamudaliyār</i>	14 Jul 1764	12 Nov 1788

Sources: SLNA 1/6497-6525, Minutes of the Galle Landraad.

Nicolaas Dias Abeysinghe Amarasekera, who served in the Galle Landraad for more than twenty years from 1764 to 1785, rose high in the native department of government. He was born on 8 May 1719 and it was in his forties, during the war with Kandy (1760-1765), that he began his rise to eminence. At the time, other Sinhalese officials were defecting to the king of Kandy and those who remained were rewarded for their loyalty to the company. Abeysinghe was apparently an educated man as he was keeper of the school thombos when he was promoted to the high rank of *mahamudaliyār* to the commander of Galle. Hereditary appointments to the native department were otherwise the norm (Abeysinghe's father was a *mobandiram*, a rank below that of *mudaliyār*). His allegiance to the VOC was rewarded with two gold medals that he received from governors Schreuder and Van de Graaff in 1762 and 1785. In 1764, he began to appear in the Galle Landraad minutes. His involvement with the

⁵⁰ D A Kotelawe, 'Nineteenth-Century Elites and Their Antecedents', *Ceylon Historical Journal* 25, no. 1-4 (1978): 211.

⁵¹ Schrikker, *Dutch and British Colonial Intervention*, 68.

⁵² Kotelawe, 'Agrarian Policies', 16. For numerous references to large estates see P E Pieris, *Notes on Some Sinhalese Families: Ilangakon*, vol. 4 (Colombo: Times of Ceylon, n.d.).

⁵³ D A Kotelawe, 'Some Aspects of Social Change in the South West of Sri Lanka C. 1700-1833', *Social Science Review* 4 (1988): 96-97; Schrikker, *Dutch and British Colonial Intervention*, 67.

council stopped in 1785 when Governor Van de Graaff appointed him *mahamudaliyār* of the governor's gate in which capacity he served for more than nine years till his death. As was apparently the practice for a *mahamudaliyār* and other headmen, Abeysinghe may not have been allowed to wear shoes or sit in the presence of the governor,⁵⁴ but that did not deter a belief that he was Van de Graaff's confidante.⁵⁵

Abeysinghe's power has been analysed most recently by Schrikker in an in-depth account of his influence over the governor.⁵⁶ Van de Graaff undermined the Galle commander by extending his own authority over the native department through Abeysinghe. One commander who was affected by this was Pieter Sluijsken. In earlier work, Sluijsken's staunch criticism of Abeysinghe's growing power in Colombo went unquestioned by the historian Kanapathipillai.⁵⁷ Sluijsken went so far as to suggest treason by Van de Graaff and Abeysinghe. The *mahamudaliyār* was in charge of correspondence between Kandy and the governor, and Sluijsken said that there was a great deal of secrecy in the process. He said Abeysinghe and his accomplices in Kandy had maintained a façade of cordiality between the VOC and the Kandyans and that he had instigated war and unrest in the country for fear of being exposed. Anthony Bertolacci, a civil servant under the first British governor Frederick North, also gives a disparaging account of the *mahamudaliyār*. He says Abeysinghe was fabricating letters addressed to the governor from the *adigār* and that he retained the governor's expensive presents to the *adigār*.⁵⁸ Schrikker points out that Sluijsken's accusations must be seen in the context of his troubled relationship with Van de Graaff. She suggests that Sluijsken's status was adversely affected by the governor's policy of side-lining his authority as commander of Galle, that Sluijsken failed to assign credible motives for treason on the part of the governor and his trusted *mahamudaliyār*, and that he was badly informed. Van de Graaff appears to have been aware that Abeysinghe was corresponding secretly with the first *adigār* of Kandy. We may never know the truth, but speculation over Nicolaas's power shows that high-ranking headmen and company servants struggled for power.

Caste headmen such as Augustinus Ferdinandus Wiresinghe⁵⁹ were also prominent figures in Galle society. Wiresinghe was a titular *mudaliyār* of the *karāva* caste and the Tamil interpreter at the Political and Judicial Secretariat. He obtained his promotion from *mohandiram* to *mudaliyār* on the strength of his loyalty to Governor Lubbert Jan Baron van Eck (1762–1765) in the war with Kandy.⁶⁰ He was from Negombo, and a widower when in January 1774 he gave notice of marriage to Elizabeth Maria van Houten of Galle, a *burger* going by her name.⁶¹ He appears in the Landraad records from 1774 till his death in 1786.⁶²

⁵⁴ The first British Governor of Ceylon, Frederick North refers to this practice. Quoted in Rajpal Kumar de Silva and Willemina G M Beumer, *Illustrations and Views of Dutch Ceylon 1602-1796: A Comprehensive Work of Pictorial Reference With Selected Eye-Witness Accounts* (Brill Archive, 1988), 477, n. 6. Depictions of embassies from Kandy by C F Reimer and Jan Brandes show the headmen going barefoot. Raben and De Bruijn, *The World of Jan Brandes*, 308; Reimer, *Ontvangst van de Gezanten*.

⁵⁵ Biographical details for this account were taken from P E Pieris, *Notes on Some Sinhalese Families: Being the Diary of Adirian de Alwis Goonetilleke Samaranaike*, vol. 3 (Colombo: The Colombo Apothecaries Co., 1911); Raben and De Bruijn, *The World of Jan Brandes*, 311.

⁵⁶ Schrikker, *Dutch and British Colonial Intervention*, 68–71, 118–121.

⁵⁷ Kanapathipillai, Valli, 'Dutch Rule in Maritime Ceylon 1766-1796', 161–162.

⁵⁸ Bertolacci, *A View of the Agricultural, Commercial, and Financial Interests of Ceylon*, 53.

⁵⁹ His name is given as Augustinus Ferdinandus Kurukula Surawiresinghe in another source. SLNA 1/193, 'Governor in Council Minutes' 1786, 18 Feb 1786.

⁶⁰ SLNA 1/5713, 'Register of Acts of Appointment of Native Officials' 1767 to 1775, fol. 66r–v, 1 Feb 1772.

⁶¹ New No. 5/2, 'Marriage Register, Dutch Reformed Church, Galle' 1774 to 1789, Christian Reformed Church.

⁶² The secretary of the Inlandse Boedelkamer came before the Landraad in connection with Wiresinghe's estate in 1793. SLNA 1/6516, 'Minutes, GL', f. 4v–5r, 28 Jun 1793.



Figure 2.2: Mahamudaliyār Nicolaas Dias Abeysinghe Amarasekera. Water-colour over sketch in pencil, 41.4 × 32.6 cm. Rijksmuseum Amsterdam, inv.nr. NG-1985-7-3-124 (detail). Jan Brandes, the artist, appears to have written the following: 'Mudaliyār or interpreter of the governor of Ceylon wearing a green velvet coat and golden bandoleer with a golden sword, and a golden chain.' Translation from Remco Raben and Max de Bruijn, *The World of Jan Brandes* (Amsterdam: Waanders Publishers), 309.

A few months before he died, Wiresinghe was in trouble. He was accused of instigating a riot among the *karāva* and *durāva* castes against the company, and was convicted in December 1785 by the Raad van Justitie in Galle along with three others while nine other accused were released. Wiresinghe's punishment was demotion from his post of Tamil interpreter. Yet Colombo softened its stance on all four who were sentenced, stating that the case involved 'more carelessness than bad intention'. Wiresinghe was only to be suspended

for six months. He was absent from Landraad meetings during the crisis and suspension, but does reappear towards the end of 1786 for five meetings from September to November till his death. It is possible that his services were necessary to the company which led to the changed sentence. Wiresinghe's influence over his caste is seen in the riot case. The issue arose over instructions to the native headmen of Galle and Matara. Galle Commander Kraijenhoff informed Colombo that the *karāva* and *durāva* castes in the Galle District were troubled that they were assigned among the lower castes in those instructions.⁶³ Kraijenhoff and Fretz, *dessave* of Colombo, were appointed to examine the instruction and recommend the necessary changes; their proposal to remove some phrases from the instruction was approved.⁶⁴ Wiresinghe worked for his caste, but at least some caste divisions did not seem to have been so acute that he could not preside over sessions that heard evidence by members of the *goygama* farmer caste who had a higher ritual status.⁶⁵

The headmen networked closely with different groups on the island. Abeysinghe himself was willing to associate closely with *karāvas* and Europeans alike. As executors of his will, he appointed among others a free merchant called Philip Solomon de Waas, *mahamudaliyār* Johannes de Saram, *mohandiram* of the guard Louis de Saram, and the *mudaliyār* of the *karāvas* named Renaldus de Andrado.⁶⁶ Matara *mahamudaliyār* Don Johan Abeysiriwardena Ilangakoon was also known to collaborate closely with Chettiars and Moors, appointing them as executors to his will.⁶⁷ His will with his second wife was attested by Pieter Arend de Moor, most probably the councillor of the Landraad by that name who was said to be close to the family.⁶⁸ Economic cooperation between diverse groups of office holders was not unknown, but it did not extend to marriage alliances and sharing of places of worship beyond those who had adopted Calvinism.⁶⁹ High-ranking *goygamas*, Europeans, Chettiars, Moors and a few non-*goygama* caste headmen were closely connected on various fronts. This elite group shared many lifestyle features.

It is not surprising that the *mudaliyārs* were closely linked through marriage. Nicolaas Dias Abeysinghe Amarasekera's second marriage was to Ilangakoon's daughter by his first wife, Dona Adriana Gertruyda. Nicolaas was also an executor to Ilangakoon's will with his first wife.⁷⁰ In a cross-cousin union, Abeysinghe's daughter Anne Gertruyda married Don Bastiaan Jayatilleke Gooneratne (1758-1812), another Landraad councillor and member of a prominent southern family, whose mother was Abeysinghe's sister.⁷¹ Abeysinghe's first wife was Gooneratne's aunt. Such closely knit family connections⁷² among Sinhalese headmen

⁶³ SLNA 1/191, 'Governor in Council Minutes' 1785, 1 Aug 1785.

⁶⁴ Ibid., 9 Aug 1785; SLNA 1/192, 'Governor in Council Minutes' 1785, 13 Sept 1785.

⁶⁵ See, for just one example, SLNA 1/6525, 'Draft Minutes, GL', f. 50v, 16 Aug 1784; 58v, 23 Sept 1784.

⁶⁶ Nicolaas also named his sons Don Balthazar Dias and Johannes Wilhelmus Dias, his son-in-law the *atapattu mudaliyār* Don Bastiaan Gooneratne, and *mudaliyār* of the Belligam *Kōralē* Johannes Wijewardene as executors. Pieris, *Notes on Some Sinhalese Families*, 3:24. Sluijsken also mentioned Nicolaas's executors. See Schrikker, *Dutch and British Colonial Intervention*, 73, 229n.

⁶⁷ See Pieris, *Notes on Some Sinhalese Families: Ilangakon*, 4:90–91. Recently published private correspondence also shows close connections between Chettiars and some Sinhalese. Herman Tieken, *Between Colombo and the Cape: Letters in Tamil, Dutch and Sinhala Sent to Nicolaas Ondaatje from Ceylon*, vol. 6, Dutch Sources of South Asia (Manohar, 2015).

⁶⁸ Pieris, *Notes on Some Sinhalese Families: Ilangakon*, 4:110.

⁶⁹ Rupesinghe, 'Strange Cooperation'.

⁷⁰ Pieris, *Notes on Some Sinhalese Families: Ilangakon*, 4:91, 114.

⁷¹ More details about the family can be found in a coffee-table book about the house they lived in half a mile from the Galle Fort. Janaka Goonetilleke, ed., *Atapattu Walawwa: Residence of the Gooneratne & Dias Abeysinghe Families of Galle* (Galle: Atapattu Walawwa, 2012). Don Bastiaan Jayatilleke Gooneratne is said to have had the house constructed towards the end of the eighteenth century and which is for the most part in tact.

⁷² These involved cross-cousin marriages and siblings marrying other sibling pairs.

were referred to by a British official in the early nineteenth century as ‘an imperium in imperio’ and the *durava* caste objected to the formation of a subordinate government of *goygamas* consisting of the likes of the Abeysinghes and Ilangakoons.⁷³

The high-level Sinhalese headmen were wealthy and their lifestyle resembled the European-Europeans. It is uncertain if this increased their prestige among eighteenth-century peasants, whose understanding of foreign material culture has not been researched. The tendency of the local elites to emulate the Europeans is seen in a statement made by an early nineteenth-century observer. Jacob Burnand, a Swiss official of the VOC who served in the 1780s and 1790s and who remained on the island in British times remarked that the higher ranks of the Sinhalese headmen ‘fit up their houses in the European style and burn wax candles in silver candlesticks, instead of the lamp which served them before’.⁷⁴ A 1797 inventory of the property of Nicolaas Dias Abeysinghe lists among other items more than nine thousand rixdollars worth of jewellery, and eleven slaves valued at more than a thousand rixdollars.⁷⁵ Lists of movable property belonging to high-ranking headmen show that silver spoons, Japanese crockery, teapots, cups and saucers, other porcelain items, wine glasses and the like were common possessions among them.⁷⁶ Dutch-style architecture and furniture were also widespread among them. In further imitation of company servants, the higher ranks of the native department also had slaves. They apparently had considerable sums of money at their disposal. In one list a single set of gold ornaments with Sri Lankan rubies was valued at over four thousand rixdollars but the cash allowance of the *mahamudaliyār* was just eight rixdollars.⁷⁷ A cash surplus appears to have been within their reach as the company paid in cash for plantation produce.⁷⁸ Dutch rule brought in new wealth and the new institutional space of the Landraad within which to exert their power over the rural population and potentially consolidate their influence over company officials.

2.3 Divided Authority

The intermediaries in this story who could provide access to the laws and customs of local society were the headmen described above. The Landraad purportedly provided a space where the peasants, through the intermediary, could be heard by the dominant European power. The intermediary, in turn, was supposedly checked by the peasant farmers. Yet it was the Europeans who exercised control over the council. As said before, the majority of councillors and the president, vice president and secretary of the Landraad were always European. From 1759 to 1796, 86 per cent (75 in total) of the members were European. Thus, the intermediary’s influence in the case of the Landraad was likely to be limited.

The company attached great value to the indigenous councillors in theory, but whose word was recognised most? It has been repeated in the existing literature on the Landraad that a sitting had to include native members if it were to decide on land matters.⁷⁹ Despite lofty principles of engaging indigenous headmen espoused in the early days of its inception, in 1747 the Landraad of Colombo asked for permission from the governor to pronounce judgements in the absence of native members in order to expedite the resolution of cases. This was expressly forbidden as the local chiefs were ‘well versed in the language and often

⁷³ Kotelawe, ‘Nineteenth-Century Elites’, 207–208.

⁷⁴ Jacob Burnand, ‘Fragments on Ceylon’, *Asiatic Journal* 12 (June 1821): 560.

⁷⁵ ‘Inventory of Nicolaas Dias Abeysinghe’ 1797, Private collection of Siran Deraniyagala at Ekneligoda Walauwa.

⁷⁶ Pieris, *Notes on Some Sinhalese Families: Ilangakon*, 4:67–69, 92–107. For a mid nineteenth-century list of movable and immovable property see *Ibid.*, 4:150–175.

⁷⁷ Pieris, *Notes on Some Sinhalese Families: Ilangakon*, 4:91.

⁷⁸ Schrikker, *Dutch and British Colonial Intervention*, 67; Kotelawe, ‘Agrarian Policies’, 15–16.

⁷⁹ Jurriaanse, *Catalogue*, 245.

gave explanations of the cases and usually knew the litigating parties'.⁸⁰ Van Imhoff also intended the headmen to be present in the Landraden, recommending that they be partly, if not half, composed of natives.⁸¹ It was Nadaraja who first asked the question: 'Did the Asian members of the *Landraad* have the same powers as the European?' Nadaraja quotes Jacob Burnand, who said that the native members in the Landraad of Colombo could advise but not take part in the decision.⁸² The Landraad records confirm that they worked in an advisory capacity, but did not have the power of the vote.

The company favoured the presence of more European members in the council. Emphasis was not laid exclusively on 'Europeanness' but included 'whiteness'. For example, 'whites' were contrasted with 'blacks' in a letter from Colombo to Galle in 1745. All too often, it was written, there were only a few 'white' members at the thombo registration due to all kinds of excuses, which had made their numbers weaker than that of the 'blacks'. The letter said that at least three Europeans ought to be present with two natives and because they absolutely did not desire it to happen again, the permanent members of the registration had to be replaced by other assigned members in case of absence.⁸³ The land registration, the Dutch believed, had to be supervised closely by their own kind given the opposition of the headmen to the process. The same preference is seen in the Landraad meetings. President Fretz, Secretary Roosmale Cocq and Kersse and the locals Abeysinghe, Wiresinghe, Wanigasekere and Dahanayake attended a meeting held on 30 May 1778. The indigenous councillors outnumbered the European members present that day. After the customary prayer was said, the first matter to be decided on the president's proposal was to urge the commander of Galle to

equip the body with some European or white members because many members generally excuse themselves as sick, by which the gathering becomes so weak, that there is a danger that sometimes matters must stay unfinished, and thus the natives are unnecessarily held back, as it happened in this meeting when only the hon. president and two European members were present, so that there was just the correct number to be able to give a judgement. But it is very necessary and advantageous that the disputes be settled by more members.⁸⁴

It thus appears that the headmen did not have the power of the vote in the Landraad, and that a quorum of three European or white members was sufficient to give a judgement.⁸⁵ The presence of more European members was considered so important that a decision on a case was delayed till the next meeting due to the scarcity (*geringeheijd*) of members.⁸⁶ A vote was taken over the case at the next meeting, which was attended by five European members and

⁸⁰ '[D]ie inlandse hoofden als taalkundig zijnde dikwils veel tot ophelderinge der zaaken doen en partijen ook doorgaans bij hun bekend zijn.' SLNA 1/273, 'Governor in Council Draft Ordinary Minutes' 1747, fol. 236r-v, 31 Oct 1747.

⁸¹ Imhoff, *Memoir Left by Van Imhoff*, 21.

⁸² Nadaraja, *The Legal System of Ceylon*, 33.

⁸³ SLNA 1/5660, 'Extracts of Orders, GL', fol. 9v, Extract of letter dated 24 Dec 1745 from Colombo to Galle.

⁸⁴ '[O]m dit collegie met eenige Europese of blanke leeden te voorsien wyl verscheijde leeden, zig meest door ziekte doorgaens laten excuseeren waardoor de bijeenkomste zo zwak word, dat het te dugten is dat somwijlen de zaaken onafgedaen zouden moeten blijven, en dus den inlander nodeloos worden opgehouden, gelijk in deese laatste vergadering is gebleeken als wanneer eenlijk den E. president nevens twee Europese leeden zijn present geweest, zodat er maar net het juijste getal was om uijtspraake te konnen doen, behalven dat het zeer noodzakelijk en dienstig is dat de questien door meerdere leeden worden beslist.' SLNA 1/6511, 'Minutes, GL', fol. 5r-v, 30 May 1778.

⁸⁵ When the vote was equally divided between members, the 1789 instructions said the dispute should be decided in favour of the defendant. Mottau, 'Instructions for Landraden', 4.

⁸⁶ SLNA 1/6511, 'Minutes, GL', fol. 7v, 30 May 1778.

three headmen.⁸⁷ The issue of a shortage of European members was taken up again the following year in July 1779 when reference was made again to the shortage of members. Four European members—President Fretz, Huijberts, Engelbregt and Kersse along with the headmen Seresinghe, Wanigasekere and Dahanayake were present. Two cases were not decided upon due to the shortage and a hope that the members would attend was expressed.⁸⁸ But the next meeting also saw just four European members and three headmen, again referred to as a minority of members. It was decided that the members should hand in their votes in writing and in case of absence send in their vote.⁸⁹ Some admonitions for absence must have been made because at the next meeting the Europeans attending were double the number of locals.⁹⁰ Much earlier in 1760, a meeting was cancelled because all European members would be absent. No mention was made of the local members.⁹¹

The Europeans were thus crucial in the operation of the Landraad. The headmen, we may assume, played a significant role in advising them. But for that purpose, their presence would have been necessary. From 1759 to 1795, the full bench of the Landraad or sessions with two commissioners (less often) met at erratic intervals with longer gaps during periods of conflict as in the 1760s during the war with Kandy.⁹² The council had thirteen to seventeen members at times including the president and vice president. Three to six members were headmen. On some occasions there were as little as six members present, very often those were also meetings at which the headmen were absent. From 1759 to 1795, no headmen were present at 37 (5 per cent) of 737 consultations, seven of which were by *rondvraag* or circulation of documents. In 1792 and 1793, as many as six and five meetings respectively were not attended by indigenous councillors. A common reason for their absence was engagement elsewhere, referred to as being in service, in the company's service, or in his 'actual' service. Indisposition was also an oft-cited excuse. Incidentally, European councillors made the same excuses for their absence, so much so that the council decided they should not entertain such frivolous explanations.⁹³ Hendrik Koene once told the council's messenger that he had no time to attend.⁹⁴ Hendrik Aldons was fined ten rixdollars for staying away without excusing himself from the council.⁹⁵ Apart from full sittings of the council, the Landraad also had sessions led usually by two councillors as seen in chapter one. Only ten such meetings included an indigenous councillor from 1781 to 1788, while none were appointed to such meetings in other years.⁹⁶ The influence of the headmen as decision makers in the judicial body is therefore questionable.

The judicial powers of the headmen were questionable to at least one local Landraad councillor. Don Adriaan Goonewardene Ponnamparuma, a *mudaliyar* in Galle and member of

⁸⁷ Ibid., fol. 12v, 6 Jun 1778.

⁸⁸ SLNA 1/6512, 'Minutes, GL', fols 52r, 56v, 24 Jul 1779.

⁸⁹ Ibid., fol. 63r, 21 Aug 1779. Other matters were decided on at such meetings where the shortage was referred to, but on certain matters that required a final decision they were reluctant to take one without more members. In the 1779 examples the Landraad refused to decide on two cases against the same person without more members being present.

⁹⁰ Ibid., fol. 64r, 11 Sept 1779.

⁹¹ SLNA 1/6498, 'Galle Landraad Minutes' 1760, fol. 45r, 9 Aug 1760.

⁹² See Table 1.1 in chapter one.

⁹³ In February 1780, it was noted in the Galle Landraad minutes that local and European members often gave frivolous excuses which they decided not to tolerate anymore. The commander could be asked to stop such activities as they claimed to be occupied in on Saturdays. A resolution in this regard had been passed on 2 Jun 1758. SLNA 1/6513, 'Minutes, GL', fol. 15r, 19 Feb 1780.

⁹⁴ SLNA 1/6507, 'Galle Landraad Minutes' 1772, fol. 107v, 26 Sept 1772.

⁹⁵ SLNA 1/6524, 'Draft Minutes, GL', fol. 45v, 12 Jul 1783.

⁹⁶ Don Matthijs de Silva Abeywardene Wijesekere, Don Johan Anthony Alvis and Augustinus Ferdinandus Wiresinghe were assigned to such sessions.

the Landraad,⁹⁷ clashed critically with the president at the time, Robbert Cornelis Bagilet. On taking the vote on a case in September 1744, the president did not agree with the councillors and attempted to influence them to allow the litigants to reach an agreement. Ponnampere-Ponnampereuma reacted angrily to this by speaking out of turn in a raised voice and slamming his hand on the table. A long drawn out argument followed. The Governor in Council believed that Bagilet should not have delayed the case on realising that it would not be settled to his liking, and warned him to exercise caution. Ponnampereuma's complaint following the incident, which included among other things a condemnation of the inefficiency of the thombo registration, was to be investigated.⁹⁸ Around the beginning of the year 1745, Ponnampereuma made another complaint to Governor Van Gollennesse against the overseer of the Galle District Robbert Cornelis Bagilet. He said the thombo registration could have easily been completed in two or three years if not for self-interest preventing it. He adds a searing attack on the native members of the Landraad:

The white members of the Galle Landraad, seeing that the native headmen who have seats in that body are foolish, inexperienced and ignorant in the cases that are heard in that body, take little notice of the latter's opinions, which are also not recorded. But they use their names in the written decisions, just as if they had also voted. A Sinhalese who has knowledge of the gospel is not seen as a good person by the aforementioned Landraad.

When the sun comes up in the morning it overpowers by the power of her glow all that had given some light during the night, but the aforementioned body, without knowing this, has excluded me from it, saying afterwards whatever pleases them. And despite the infinite laws and ordinances that the god the lord has given the people in order to maintain law and order, that gathering commits much injustice.⁹⁹

Ponnampereuma had an axe to grind with Bagilet, who was the president of the Landraad in his capacity as overseer of Galle, and appeared to have believed that he would provide much illumination to the council.¹⁰⁰ His complaint of twenty-four points is replete with self-promotion. He is right in saying that the headmen's names were misleadingly inserted in the list of those who pronounced judgement as if they had also voted (see an image of a sentence

⁹⁷ A list of members of various Galle institutions gives Ponnampereuma as a replacement for the deceased *mudaliyār* Denijs Alvis. SLNA 1/5046, 'Galle Political Council Minutes' 1743 to 1746, fol. 24r, 3 Mar 1744.

⁹⁸ SLNA 1/93, 'Governor in Council Minutes' 1744, fol. 73r–78v, 3 Nov 1744; SLNA 1/5658, 'Extracts of Orders, GL', fol. 16v, Extract resolution of 3 Nov 1744. No Landraad meetings for this period are available, but extracts from the relevant minutes are included in the Governor in Council minutes.

⁹⁹ 'De blanke lieden van den Gaalsen Landraad, ziende de onnoselheyd onbedreventheijd en onkunde der inlandse hoofden die zitting in dat collegie hebben in de zaken die daarin getraceert worden, stooren zig aan dezer laatste gevoelens weijnig, worden ook niet aangetekend, maar gebruiken egter derzelver namen in de appointementen, eveneens of se mede gevoteert hadden; een Singalees die kennisse van het Evangelium heeft word bij gedagte Landraad niet voor goed g'oordeelt.

'Wanneer des morgens de zon opgaat verdrijfe dezelve door de kragt van haren glans al het geene des nagts eenig ligt heeft gegeven, dog meermelte collegie, zonder zulk te weeten, heeft mij daar uijt verstoten, zeggende naderhand wat haar behaagt, en niettegenstaande de oneijndige wetten en inzettingen die god de heere de menschen gegeven heeft om regt en geregtigheijd te handhaven, pleegt die vergadering veele ongeregtigheijd.' SLNA 1/94, 'Governor in Council Minutes', fol. 95r–v, 5 Feb 1745.

¹⁰⁰ In Dec 1744, a list of ten native headmen were drawn up with the comments that three of them, including Ponnampereuma, were often out in the countryside and that six of them had a blood relationship to at least one other headman on the list. Ponnampereuma's 'full' brother, Salomon Ponnampereuma was also a *mohandiram* on the list. As a solution, one *mahamudaliyār* on the list (Jan Alwis Wickremesinghe) was appointed a permanent member of the Landraad while the others were rotated on a monthly basis between the Landraad and thombo registration in a way that would not bring blood relations together. SLNA 1/5046, 'Galle Political Council Minutes', fol. 60r–61r, 4 Dec 1744. This may have been a stopgap measure to limit Adriaan Ponnampereuma's presence in the Landraad.

in Figure 1.1). His statement, which may have some truth to it, is damning of the headmen's influence in the Landraad.

On the other hand, if the indigenous councillors had any power at all, however limited, the evidence supports it. In some cases, reference is made to local custom in the final judgement as an explanation for the sentence. At one point a direct reference to their advice was made: 'the fellow native members of this body being the *mudaliyār* of the gate Nicolaas Dias Abeysinghe Amarasekera, the *korale mudaliyār* Seresinge, the titular *mudaliyār* Augustinus Ferdinandus and the *mohandiram* Wanigasekere affirmed that it is an old practice and a custom of the country, that when there are no *mayorāls* in the villages, *naindes* are allowed to perform that service.'¹⁰¹ Questions on local customs posed to witnesses also point to the importance of local influence on the judgement. Moving into the village, *mayorāls* were important in investigating cases and could be called to the council. And we know that at least on a few occasions, the indigenous councillors were also appointed to such weekly duty. The power of the headmen is a question about the degree to which local customs were used in the council, an issue that is central to this study.

A seemingly minor incident over protocol in the Landraad shows the tensions between the European and indigenous councillors. No indigenous councillors were present at the meeting held on 27 May 1786. Two new local members had been chosen and appeared in the antechamber to the council hall. Don Balthasar Dias Abeysinghe Siriwardene and Don Johan Anthony Alvis Abeyesiriwickreme Jayawardene should have been led in as new members. The president being absent, vice president Pieter de Vos led a decision to call them in on the basis that the session had no native members who could lead them in and as it was believed that European members were not authorised to accompany them into the hall. Balthasar, whose father was the *mahamudaliyār* Nicolaas Dias Abeysinghe Amarasekera, questioned the manner in which they were introduced. After the two new members took the oath and were shown their seats by the vice president, Balthasar asked why they had not being introduced by two members 'as it is always customary on the election of new members here'. The vice president's recorded answer is a perfunctory 'it happened thus because it was determined and decided by the gathering'. Balthasar would have been displeased.¹⁰²

Balthasar and Alvis did not appear at the next full sitting on 10 June 1786; it is possible that they were affronted and boycotted the meeting.¹⁰³ The manner of their introduction was the first matter that President Adriaan Sebastian van de Graaff took up. He asked the members why they had not introduced the new members at the previous meeting with two of the younger members accompanying them inside as was the custom. He asked if they were ready to address that omission at the next meeting in order to prevent all unpleasantness and to introduce the two new members, who had been 'scorned so badly' ('zoo seer versmaade'), by being denied 'the honour that they are entitled to' ('met het hooner dat hun toekomt'). The members said that they had meant no contempt at all to the new members, but that they had presumed that native members must be introduced by their kind and that there had been no native members present that day. They said they would be very pleased to rectify the 'unwittingly committed mistake' ('onbedagt begaane abuijs') by

¹⁰¹ '[D]e meede inlandse leeden van dit collegie zijnde den modliaar der guarde Nicolaas Dias Abesinge Ammerezegere, den Korle modliaar Seresinge, den titulair dito Augustinus Ferdinandus en den Mohandiram Wannigesegere betuijgden, dat het een oud gebruik en 'slands kostume is, dat wanneer er in de dorpen geen maijoraals zijn, dat als dan naijndes daartoe worden aangenoomen om dien dienste te verrigten.' SLNA 1/6511, 'Minutes, GL', fol. 37r, 11 Jul 1778.

¹⁰² '[G]elijk zulx altijd bij verkiesing van nieuwe leden alhier gebruikelijk is... dat zulks geschied was omdat bij de vergadering zulks goed geoordeeld en beslooten was.' SLNA 1/6525, 'Draft Minutes, GL', fol. 172r-v, 27 May 1786.

¹⁰³ No excuses were recorded at the meeting.

following the president's proposal.¹⁰⁴ At the following meeting Balthasar appeared in the antechamber for the second time. The other headmen were absent (as was Alvis) and he was led inside by the two European members Pieter Simons de Silva and Dirk Francois van Gijzel, congratulated by the president in the name of the gathering and shown his seat. The president announced that the new introduction was to pay Balthasar the honour that was denied him previously.¹⁰⁵ No mention was made of formally introducing Alvis when he finally attended a meeting on 25 October 1786 after the first ignominious day on 27 May 1786.¹⁰⁶ It was possibly only Balthasar who had wished to rake up the issue for the most part.

Balthasar's personal influence over the president must be factored in as well. Adriaan Sebastiaan van de Graaff was the brother of Governor Van de Graaff, who in turn held Balthasar's father Nicolaas Dias Abeysinghe Amarasekera in great trust. Abeysinghe had just been appointed to Colombo as *mahamudaliyār* the year before the incident in the Galle Landraad. The European members were quick to realise the significance of the president's insistence on rectifying a perceived dishonour. Yet, their assumption that two native members would usually introduce a new native was not without precedent.¹⁰⁷ Later on, Balthasar and Alvis also introduced another headman.¹⁰⁸ In Balthasar's assertiveness, we see the familiarity between one European family and a high ranking headman that was very likely at play.

There were teething problems, and more serious issues of the value attached to local opinion. The story that emerges is that the headmen were not inconsequential to the operation of the Landraad and yet easily dispensable. From time to time the company realised the political value of their presence, but would ignore their absence as well. Yet headmen could also assert themselves and be heard on legal matters. In this way, the cross-cultural space of the Landraad saw subtle struggles for power among its councillors.

2.4 Dutch Representations of Inhabitants

Company servants and clergy engaged in ethnographic descriptions of the natives of VOC territory. Femme Gaastra writes of a 'cultural awakening' among company servants in the late seventeenth century.¹⁰⁹ Some early descriptions of the natives in Sri Lanka were made by the Dutch Reverend Phillipus Baldeaus, the English Captain Robert Knox, Portuguese Captain Joao Ribeiro, the Dutch clergyman Francois Valentijn and the German Johann Wolfgang Heydt who served in the VOC. Governors in their memoirs to the succeeding governor also engaged in such knowledge production. Pieter Sluijsken, one time president of the Galle Landraad and a top-level VOC official attempted this as well. Some of these texts played a significant role in forming an impression of local society among company servants. It was necessary that they understood the intricate social formations within local society in order to exploit the services they offered and to govern them well.

VOC servants generally had a low opinion of the natives who were perceived as unreliable, indolent, unenterprising and irreligious. The Galle Landraad in 1745, commenting on those who came forward for the thombo registration, said the inhabitants were secretive and very

¹⁰⁴ SLNA 1/6525, 'Draft Minutes, GL', fol. 182r, 10 Jun 1786.

¹⁰⁵ Ibid., fol. 191v, 8 Jul 1786.

¹⁰⁶ Ibid., fol. 205r, 25 Oct 1786.

¹⁰⁷ Don Matthijs de Silva Abeyewardene Wijeyesekere who was appointed to replace the late *mohandiram* Wanigasekera, was introduced by two 'native' members. SLNA 1/6513, 'Minutes, GL', fol. 19r, 1 Apr 1780. The native members' names were not mentioned. But the members present at Balthasar and Anthony's first meeting on 27 May 1786 were not part of that meeting in 1780. There were so few local members, their appointments were few and far between and Matthijs's introduction was the last before Balthasar and Alvis were appointed.

¹⁰⁸ SLNA 1/6515, 'Minutes, GL', fol. 313r, 18 Jun 1791.

¹⁰⁹ Gaastra, *The Dutch East India Company*, 106.

lazy and that 'old, foolish, infirm and decrepit people' came forward many a time.¹¹⁰ Governor Van Imhoff referred to the 'capricious nature and deceitful character' of the natives.¹¹¹ Sluijsken was not the first to say that the Sinhalese have a 'lazy character'.¹¹² As his work is little known, the following is an account of his description of the Dutch encounter with the various social fields of eighteenth-century Sri Lanka.

Sluijsken argued that to govern the subjects well and profitably, it was necessary to rule them according to their own laws. His work was an attempt to sensitise European officials to cultural norms, for which he knew that ethnographic description was necessary. Ethnography is simply defined here as an interest in other cultures. It was seen as a useful tool for colonialism in other parts of the world as well.¹¹³ Sluijsken saw his descriptions of the land services as being important for judges operating on the island. Without using the term pluralism, he also recognised pluralities in the legal sphere as a central organising concept when dealing with indigenous difference. In his two-volume description of the customs of the people under VOC control in Sri Lanka, he says '[i]t is well known that every country has special privileges, laws and customs and is inhabited by special kinds of people who are divided into classes by which one can differentiate the lower from the higher' and that '[t]here is no greater advantage for the landowner than peace and order among his subjects but what is peace and order after all than that the lower judges are very well-versed in the prerogatives and customs of the subjects'.¹¹⁴ The VOC's experience in Sri Lanka in connection with Sinhalese law relied on their local informants to define practice. In Sluijsken's case, it is possible that he spoke and understood Sinhala and/or Tamil. He had learned what he knew, he wrote, as much from experience as from (unspecified) old documents handed over to the land regents as law. He had a wide knowledge of the island at the time he wrote his account in 1784. When he was president of the Landraad from 1766-1767, he had been in the country for around eight years already and his diligence suggests that his quest for knowledge could not have escaped him in that period. Litigation, through the access it provided to a discussion of local customs, was an effective forum for investigating indigenous practices.

The bulk of Sluijsken's 1784 account of the land services is of the customs of the various caste groups among the Sinhalese and a detailed description of the native administrative system. It is followed by an account of the customs of the inhabitants of Chilaw, Puttalam, and Jaffna (including the codification of laws known as the Thesavalamai), special laws concerning the Moors and other non-Christians including the 'jentiven' and Indonesians, and the Muslim code. The Thesavalamai or laws of the Jaffna Tamils was commissioned in 1706 and approved by Governor C J Simons and the Governor in Council in 1707 while the Muslim code is from the New Statutes of Batavia of 1766, which Governor I W Falck is said to have received from Batavia in 1770 as Muslims in Sri Lanka at the time were ignorant of their laws according to Falck.¹¹⁵ The section on 'jentiven', by which Sluijsken very likely re-

¹¹⁰ '[O]ude, onnosele, gebreckige en afgeleefde menschen.' SLNA 1/2805, 'Minutes (20 Dec 1745), GL', 40r-41v.

¹¹¹ Imhoff, *Memoir Left by Van Imhoff*, 12.

¹¹² Sluijsken, 'A Description of the Land Services', vol. 1: 20.

¹¹³ See comments on this by Jeremy Ravi Mumford, "Litigation as Ethnography in Sixteenth-Century Peru: Polo De Ondegardo and the Mitimaes," *The Hispanic American Historical Review* 88, no. 1 (2008).

¹¹⁴ 'Het is al te wel bekend dat ijder de land besondere voorregten, wetten en costumes heeft ook door veele besondere soorten van volkeren word bewoond die in classes zijn afgedeelt waar door men de minder van de meerdere kan onderscheiden.' ... 'Geen grooter voordeel voor den landheer als vrede en Rust onder zijne ondersaten (maar wat gehoord hiertoe) immers zijn het minderen regters die van de prerogatieve en costumes der onderhoorige ten eenemale onderlegt zijn.' Sluijsken, 'A Description of the Land Services', vol. 1: 3-5.

¹¹⁵ Nadaraja, *The Legal System of Ceylon*, 13-14.

ferred to Hindus,¹¹⁶ is a manual cut and paste from the Batavian plakaten.¹¹⁷ This appears to be sloppy work but on the other hand, he may have seen similarities in the customs of the Hindus in Sri Lanka, which is not impossible to imagine. Sluijsken gives the most comprehensive account of the coastal inhabitants in Dutch times and the only compilation of what he believed to be the laws of certain groups on the coast. His aim was to facilitate governance as effectively as possible for the VOC. Thus, practical reasons drove the administrative description that he attempted. We do not know if the VOC used his work, but it is significant as an attempt (if only that) to (mis)understand 'other' cultures. Sluijsken embodies the colonial enterprise of identifying cultural difference, a task that was seen to be necessary for its economic advantages and one he performed in practice in the Landraad.

2.5 Conclusion

It is no easy task to determine the importance of the role of councillors in the law-making and decision-making process for a period and place in history such as eighteenth-century Sri Lanka that lacks private accounts. Watson's emphasis on the role of the legal elites cannot be fully explored in that scenario. A brief introduction was attempted here, and a more comprehensive analysis may be possible if a wide range of decisions are studied. For, '[a]s judges and attorneys give life to the law, their backgrounds, training, and social location shape the way they impose meaning on the stream of litigants they encounter.'¹¹⁸ This is applicable to both civil and criminal cases. Did the councillors show concern for careful evidentiary assessments? Justifying the refusal of an appeal from the Galle Landraad to the Raad van Justitie of Colombo, the Governor in Council said that the Landraden consisted of 'people instructed on the country's laws, practices and customs'.¹¹⁹ Their role in creating the practices by which the Landraad functioned cannot be underestimated.

The relationship of law to the dominant classes is evident. A small, closely-knit group with cross-cultural connections controlled the Landraad. Marriage ties, affluence and race separated the majority of the members (as also the *procureurs*) from the majority of litigants and witnesses. The Europeans on the council who could determine judicial decision-making represented the old guard in the region. As Wagenaar has pointed out, politics and the judiciary were mixed up. Those who engaged in the exploitation of the countryside and attended Landraad sittings were the same. In fact, the balance between trade and government was difficult to achieve.¹²⁰ There was an overlap between those at the political level of the company and those holding the public duties of the Landraad. The lack of a division in law and politics was non-existent in both the indigenous system and The Netherlands. The indigenous headmen on the council worked in an advisory capacity, but did not have the power of the vote. Councillors carried out their tasks in the Landraad with a keen awareness of social categories of identity among themselves and those of the litigants and witnesses, the subject of the next chapter.

¹¹⁶ Jentiven is a variant spelling of the Portuguese adjective *gentio* or 'heathen'. The Portuguese in India used the word *gentio* or 'heathen' for the non-Muslim indigenous people, that is, the Hindus. The VOC generally referred to Hindu tradesmen and non-Christian Chettiars by the term, which they used in opposition to Moors in India. See also Hans Martin Kramer, Jenny Rahel Oesterle, and Ulrike Vordermark, *Labeling the Religious Self and Others: Reciprocal Perceptions of Christians, Muslims, Hindus, Buddhists, and Confucians in Medieval and Early Modern Times* (Leipzig: Leipziger Universitätsverlag, 2010).

¹¹⁷ Jacobus Anne van der Chijs, *Nederlandsch-Indisch plakaatboek, 1602-1811*, vol. 6 (1750-54) (Batavia: Landsdrukkerij, 1885), 164, <http://archive.org/details/nederlandschind12chijgoog>.

¹¹⁸ Merry, *Colonizing Hawai'i*, 118.

¹¹⁹ '[M]ensen van s'lands wetten, zeeden en gewoonten onderrigt.' SLNA 1/165, 'Governor in Council Minutes' 1772, 24 Nov 1772. This case is discussed further in the next chapter.

¹²⁰ Wagenaar, *Galle, VOC-Vestiging in Ceylon*, 147.

If the Landraad was authorised to favour the Sinhalese normative order, a relationship marked by domination by the headmen is not observable. It is not the case as suggested in the early twentieth-century case *Karonchihami v Angohami*¹²¹ that the Landraad was composed of mostly native officials. On the contrary, a majority of VOC officials and a smaller number of headmen presided. The presence of the headmen was secondary to that of the European members although subtle skirmishes for consolidating power were seen. These were articulations of indigenous difference played out in the council room. The *mudaliyār* Ponnampereuma, himself a Landraad member, vehemently condemned native participation as a farce and alluded to requirements for the headmen to rule by Christian laws. European members, he said, took no notice of the headmen even though they were well-versed in the gospel. Native participation was stressed in the early days of the Landraad's operation, but at a number of later meetings no headmen were present. This may indicate a dominance of the official Dutch laws espoused by European members of the council, but that is a question to be further explored in this thesis. In the following chapter, I will first explore who appeared before the motley collection of councillors described here.

¹²¹ *Karonchihami v Angohami*, 8 New Law Reports 1 (1904).

Chapter 3 Facing the Law

The rise of a colonial power and its implications for the structure of power in society is reflected in the execution of the law by the authorities. Law practices may by themselves be either inclusive or exclusive, or deliberately made so by those in power. Colonial judicial bodies are known to have stimulated relatively powerless groups in society to come forward.¹ Supplicants, in the form of litigants or petitioners, sought justice. This chapter presents the numerical data culled from sample used for this thesis on questions relating to the reception of the Landraad. More than just theory or conclusions based on limited evidence, the samples of litigants and witnesses analysed here present deep insight into the everyday workings of the Landraad. This would be more revealing about its competency in practice than only a consideration of higher level administrative documents.

Who appeared in the council that was located in Kumbalwella? Who made reference to privileged status? Issues such as female agency, occupation and social background provide insights into the reach of the Landraad. Did the legal framework under Dutch rule encourage women to come forward to access justice? Was there gender inequality in access to justice?² Questions of how important relative power was in participating in legal processes, and what being powerful in eighteenth-century Sri Lanka meant also arise at this point. These central questions may appear to be a search for victimhood, while an overarching issue of whose preoccupations such questions are, invariably surface as well.

Personal jurisdiction over litigants who lived outside the Galle town but within the Galle District was potentially the most important factor in selecting the jurisdiction of the Galle Landraad; this was to some extent overridden by dispute location if it was regarding lands that were registered in the thombos, in which case inhabitants of the town who had claims to land outside the town also had to approach the Landraad. Naturally, witnesses did not appear in the council for the same reason as the litigants and would not have felt the same exigencies, but their acquired knowledge of the process through their participation and their preferred status to be chosen as a witness are important aspects in fully understanding societal participation in the Landraad. The Dutch legal regime in Sri Lanka would have had universal jurisdiction over witnesses within its territory,³ so the Galle council's authority to summon them was not exclusive. Both litigants and witnesses faced the law in the new legal institution of the Landraad.

What does this reveal of the legal consciousness of the people? Were local power structures replicated in the council? What power did women in southern Sri Lanka have in asserting their rights to land? I will attempt to unravel structures of power as seen in the Landraad in order to understand representations of social hierarchies in judicial matters. Distance from residence to the council also either hampered or facilitated involvement with the council. The residence of litigants is difficult to enumerate, but this chapter will deal with the geographical reach of the council through an analysis of *ratione loci*, which refers to jurisdiction over a dispute location, and the residence of witnesses. The Landraad was required to settle disputes regarding lands registered in the thombo. First, I will explore an understanding of the various groups on the island whose identities were essentially in flux.

¹ Merry, 'Colonial Law and Its Uncertainties', 1068.

² A related question, which cannot be answered here, is whether there were differences between regulations made for female inhabitants of the towns and the countryside.

³ The Dutch are very unlikely to have successfully summoned a witness from the Kandyan Kingdom.

3.1 Social Formations in Eighteenth-century Sri Lanka

Coastal inhabitants survived by fishing, construction work, boat-building and cultivation. Inhabitants of the more rural hinterland survived through peasant agriculture alone. Many villages would have been self-sufficient in the production of rice, and interdependent in the provision of essential services. The majority of the inhabitants were Sinhalese, but the larger villages in the south seem to have been economic centres with diverse groups of people including Moors and Chettiars, traditionally associated with trade. Being a coastal region, it was naturally diverse. Migrants from south India in particular inhabited the region apart from Europeans who mostly lived in the Galle Fort or in proximity to it and were either part of company rule or interacted with it closely. Racial and caste-based divisions are clearly defined in current day Sri Lanka, but it would be anachronistic to apply such clarity to eighteenth-century Galle. Based on thombo data, the total population was roughly about 95,000 individuals.⁴

Among the Sinhalese, the *goygama* caste was the largest and was made up of agriculturalists and headmen for the most part. As reliable census data from the eighteenth-century is not available, the earliest figures emerge from British rule. A census taken in 1824 of the Sinhalese caste composition of the low-country reveals that 54.3 per cent were of the *goygama* (farmer) caste, and together three non-farmer castes, which were traditionally believed to have a lower status, the *karāva* (15.7 per cent), *salāgama* (7.5 per cent) and *durāva* (5.6 per cent) constituted almost 30 per cent of the low-country population.⁵ Sinhalese names consist usually of the *vāsagama* or *gē-nama* (sometimes omitted), which is the lineage or ancestral name, usually given to a family in the low-country or maritime provinces according to the service or *rājakāriya* (duty due to the king) the family performed in the past or continued to perform. Among the Sinhalese, the *goygama* caste had a higher ritual status than other castes such as the *karāva*, *salāgama* and *durāva*. They were also situated above the *bakuru* and *padu* (agricultural) castes in the social hierarchy and Dewasiri argues that they had easier access to the better paddy lands in a village.⁶ The *goygama* caste, who were Buddhists but converted to Christianity under Portuguese and Dutch rule at least nominally for legal and administrative purposes, remained the most influential on the island. They are likely to have been the largest group that appealed to the Landraad.

Their influence did not go unchallenged. The *salāgama* group gained political power and the right to govern their affairs in Dutch times through their headmen, and *karāva* headmen as we saw in chapter two were present among the councillors of the Landraad. However real power was vested with male, *goygama* chiefs, and proximity to the Galle town gave them a further advantage. The company understood the nuances within such identities to some degree, as is apparent from contemporary classifications made by company officials and in the thombo registration process. The Dutch knew that the *karāvas* (mostly referred to as *vissers* or fishermen by them) engaged in a variety of activities such as carpentry, construction and transport services that were important to the colonial power, apart from activities more directly related to fishing. They knew also that the *salāgama* caste (called *sjalia* by them) would not only engage in cinnamon peeling as their traditional occupation but also go to sea. Various grades of fishermen, divided by birth on what fishing equipment they may use, were recognised by the company. Pieter Sluijsken, whose description of the land services in areas under VOC control was written in 1784, identified nine ‘classes’ of *vissers* according to the

⁴ Albert van den Belt, Jan Kok, and Kees Mandemakers, ‘Digital Thombos: A New Source for 18th Century Sri Lankan Family History’, *The History of the Family* 16, no. 4 (24 October 2011): 481–89.

⁵ Kumari Jayawardena, *Nobodies to Somebodies: The Rise of the Colonial Bourgeoisie in Sri Lanka* (London: Zed Books, 2000), 164; Bryce F Ryan, *Caste in Modern Ceylon: The Sinhalese System in Transition*. (New Brunswick: Rutgers University Press, 1953), 264.

⁶ Dewasiri, *Adaptable Peasant*, 143, 167.

fishing equipment that they were permitted to use: *orru karāva*, *madel karāva*, *dandu karāva*, *kespa karāva*, *baddudel karāva*, *porrewekarean*, *godekeula*, *tokkenula*, and *indimalkeula*.⁷ Sluijsken also observed that the first five divisions despised the lower four groups. The last group of *indimalkeulas*, who fished with casting nets and baskets, were allowed to decorate their wedding huts with certain wild flowers only in contrast to the highest groups that could decorate more elaborately. These were inherent divisions within the caste that helped maintain a particular *status quo*—a kind of intra-caste hierarchy.

Social identities were in flux at this time. The *visser* identification of the eighteenth century is associated with the *karāva* caste group of present-day Sri Lanka. Said to have been of Dravidian origin from south India,⁸ their assimilation into coastal society in the western, south-western and southern seaboard was quite significant. Tamil may have been a language they had to master for their commercial activities on the coast. This would indicate linguistic diversity *within* a so-called ‘group’. Sluijsken’s work also shows a merging of seemingly caste identities with linguistic and ethnic identities. In such a situation it is problematic to use the Sinhalese term *karāva* for all those who are called *visser* by the company, or even ‘Sinhalese’. I have used the terms *visser* and *karāva* interchangeably, keeping in mind that our understanding of the classification should be necessarily nuanced.

Another identity that seemed to be in flux at the time was that of the *burgers*. In Dutch times they were, generally speaking, European settlers, but also ‘respectable’ families of Portuguese descent who had been included into the *Hollandsche* (Dutch) clan before British rule began,⁹ and *burgers* whose parents had married local women (often of Portuguese descent) and settled down in Asia. Company officials who left the service became *vrijburgers* (free citizens). These *burgers* who later mixed with the British as well, came to be referred to as ‘Burghers’ by the British and form a separate ethnic group in the country today. Many *burgers* became tavern keepers, butchers, tailors, bakers and shopkeepers and some even became overseas merchants.¹⁰ Furthermore, Remco Raben writes of how manumitted slaves and *karāvas* were granted *burger* status on petitions made by them.¹¹ To avoid associations with the distinctly ethnic category of Burghers, I will use the spelling *burger* in the text. It is also the spelling that appears in the Landraad documents and thombos.

Yet another identity that was clearly in a state of flux at the time was that of the Chettiers, traditionally known as traders of south Indian origin. Chettiar or chetty is interpreted as *setthi* in Pali, *beti* or *situ* in Sinhala and *etti* in Tamil. Nirmal Dewasiri briefly examined the integration of the Chettiar community with the *goygama* agricultural caste in *The Adaptable Peasant*, and presented his more extensive work in progress on it at a conference.¹² He examined thombo records to show how the term *sitty* used by the Dutch may have changed into parts of present-day *goygama* (and some *karāva*) names. Intermarriages of *burgers* and Chettiers with locals rendered such identities more mobile and ambiguous during early colonial rule, a

⁷ Sluijsken, ‘A Description of the Land Services’, vol. 1: 39.

⁸ Michael Roberts, *Caste Conflict and Elite Formation: The Rise of a Karāva Elite in Sri Lanka, 1500-1931* (Cambridge: Cambridge University Press, 1982), 21ff.

⁹ As early as 1694, the Portuguese name-group of people constituted 10.5 per cent of the population in the Colombo Fort and town. Michael Roberts, Ismeth Raheem, and Percy Colin-Thomé, *People Inbetween: The Burghers and the Middle Class in the Transformations within Sri Lanka, 1790s-1960* (Ratmalana: Sarvodaya Book Pub. Services, 1989), 40–42.

¹⁰ Ibid., 38. Most signed revenue farming contracts in roman characters, some in Sinhala. Adriaan Perera, a *burger* in Negombo signed in Sinhala. Rupesinghe, ‘Strange Cooperation’.

¹¹ Remco Raben, ‘Batavia and Colombo: The Ethnic and Spatial Order of Two Colonial Cities 1600-1800’ (PhD Thesis, University of Leiden, 1996), 270.

¹² Dewasiri, *Adaptable Peasant*, 201–2; Nirmal Ranjith Dewasiri, ‘Chetties in Early-Modern Sri Lanka: Some Aspects of the Social History of Sri Lanka’ (Monsoon Asia in the Age of Revolutions: Changes of Regime and their Aftermath, 12–14 Jan 2010, Mumbai, 13 January 2010).

feature that in fact continued well into the nineteenth century as reflected in the diverse categorisations that the British employed in that century. During the Portuguese presence on the island the Chettiars also acquired Portuguese surnames which they added to their own such as Rodrigo Candappa, Silva Pulle, Tissera Pulle, Nonis Candappa, Fernandopulle, Perera Pulle. In revenue farming contracts, they signed almost exclusively in Tamil and occasionally in Roman characters.¹³ Unlike Chettiars in the north, most Chettiars in Colombo and Chilaw were Christians.¹⁴ To those who were not, the company attached the word *heidense* or heathen. New research by Herman Tieken into letters sent by Chettiars and others on the island with a Chettiar who was exiled by the VOC to South Africa in 1727 gives a few rare insights into the social life of the group. Title and company positions were clearly considered lucrative.¹⁵

The status of the Moors and Chettiars on the island was somewhat ambiguous. Both groups who used Tamil, had a shared fate in Dutch times, being required to perform *uliyam* service. This was the performance of some manual service such as public maintenance or carrying palanquins as a sort of payment for residence every three months.¹⁶ It was unpaid public work. The tax on the *absente uliaamers* was a poll tax imposed on all those who were absconding from the service. Lists of all Moors and Chettiars in the coastal areas were drawn up. It is possible that such lists were only of those who lived on the island temporarily. A more settled community of Moors and Chettiars also lived on the island and often appear in the thombos. Regulations that were not always enforced by the Dutch prohibited Moor ownership of immovable property from the seventeenth century onwards, but were lifted in the mid-eighteenth century.¹⁷ Some were also involved in the collection of paddy rents in the hinterland.¹⁸ Raben writes of how Moors and Chettiars from the Coromandel settled in Colombo, encouraged by the 'gradual and partial liberalization of trade'.¹⁹

¹³ Rupesinghe, 'Strange Cooperation'.

¹⁴ Sinnappah Arasaratnam, 'Social History of a Dominant Caste Society', in *Ceylon and the Dutch, 1600-1800: External Influences and Internal Change in Early Modern Sri Lanka* (Brookfield, Vt.: Variorum, 1996), 390.

¹⁵ Tieken, *Between Colombo and the Cape*, 6:14-20.

¹⁶ See for interesting accounts of both these communities, Raben, 'Batavia and Colombo'.

¹⁷ See K W Goonewardena, 'Muslims under Dutch Rule up to the Mid-Eighteenth Century', in *Muslims of Sri Lanka: Avenues to Antiquity* (Beruwala: Jamiah Naleemia Inst., 1986), 189-210.

¹⁸ Rupesinghe, 'Strange Cooperation', 76.

¹⁹ Raben, 'Batavia and Colombo', 106.



Figure 3.1 *Villagers and a hut* by Jan Brandes, 1785-1786, Rijksmuseum NG-1985-7-2-16

By the late seventeenth century the Dutch appointed Muslim headmen to facilitate dealings with the Muslim community.²⁰ Such Moor headmen would have settled disputes, but debt and land matters involving Moors did come up in the Landraad. Many land sales also were to Moors. More research than is available at present into the Moor presence on the island can be done with the use of Dutch sources that would contribute greatly to an understanding of their history. The Muslims have gone through phases of being presented by their leaders as either a religious or race group from the nineteenth century onwards. In the popular imagination, they are regarded as having been persecuted by not just the Portuguese but by the Dutch as well, although this was not always the case. A Muslim elite and consciousness of a Muslim identity are said to have arisen with the expansion of merchant capital in the nineteenth century.²¹ However, from precolonial times, Muslims settled on the

²⁰ D A Kotelawele, 'Muslims under Dutch Rule in Sri Lanka', in *Muslims of Sri Lanka: Avenues to Antiquity*, ed. M A M Shukri (Beruwala: Jamiah Naleemia Inst., 1986), 176.

²¹ Jayawardena, *Nobodies to Somebodies*, 220–224.

island, married local women and engaged in trade and agriculture. Lorna Dewaraja writes of how Kandyan Muslims could cultivate Buddhist temple lands and provide services to temples as part of their rent.²² Others have been temporary traders, such as Indian merchants from Golconda, Bengal and Coromandel. By at least the late eighteenth century, the Dutch had fully recognised the need to work with the Moors.

In addition to the dominant peasant agriculture, Galle was a centre of a 'sizeable seaborne trade and concentrations of non-farmer social elements'.²³ The Moors and Chettians being essentially Tamil-speaking groups, other groups from south India are also likely to have resided in the south retaining their language and Hindu religion.²⁴ Galle also saw groups such as the Malays who served in the Eastern militia, slaves from further across the Indian Ocean from Madagascar to South East Asia, and manumitted slaves who were already appearing in the Landraad in defence of their rights to property. Galle was part of a wide political and economic network that was linked to the Cape, Colombo and Batavia.

That group identities were vague is without doubt. The company recognised classifications based on caste (eg. *bellale*, *visser*, *sjalia*, *chando*, *wasser*), which were used in conjunction (or not) with terms signifying occupational specialisations and title-holding (*kaneelschiller*, *timmerman*, *schrijver*, *mudaliyar*, *mohandiram*, *lascarin*, *mayoral* etc) and there was little mutual exclusivity among them as occupational diversity was high. While the ethnicity of groups such as the Jaffna Tamils, Moors, Chettians and Malays received official recognition to the point of codification of their laws in some cases, the social identities that came to be essentialised by the Dutch in relation to the Sinhalese were what John D Rogers called the 'caste-like groups' that had also been used by the Portuguese.²⁵ As the historian Robert J Morris argues, '[t]he purpose of the document is the likeliest guide to the risks being taken in making an inference about occupation from occupational title'.²⁶ It must be kept in mind that there was little agreement in the company bureaucracy on the criteria of a social group or on a group's name. The Dutch term *geslacht* was often used interchangeably to mean caste, race, nation or lineage by VOC officials in Sri Lanka and could refer to a present-day racial or caste group alike. How such identifications panned out in the Landraad forms the bulk of this chapter.

3.1 Litigants and Witnesses

The litigiousness of the natives in Sri Lanka has often been commented on, but while it may be a stereotyping it is a difficult conclusion to arrive at as many factors affect involvement in a judicial forum. Ninety-eight cases in my sample involved a total of 243 litigants. Their involvement with the Landraad was in the years 1778 and 1779, as also before and after those years in connection with their cases. At times the same persons reappeared in the council (occasionally on the same day) in connection with different cases and in such cases they were enumerated only once. Following Le Bailly's practice, I have taken a case, and not a legal issue as the point of departure, as someone involved in a process that in-

²² Lorna S Dewaraja, 'The Muslims in the Kandyan Kingdom (c. 1600–1815): A Study of Ethnic Integration', in *Muslims of Sri Lanka: Avenues to Antiquity*, ed. M A M Shukri (Beruwala: Jamiah Naleemia Institute, 1986), 218–22.

²³ Dewasiri, *Adaptable Peasant*, 85.

²⁴ Cleghorn remarks on the 'litigious disposition' of the Malabar inhabitants of Jaffnapatnam, where they were mostly concentrated, 'surpassing that of the Cingalese' that 'rendered the establishment of the court of Land Raad more necessary here, than at any other place.' Pieris, 'The Cleghorn Minute', 139.

²⁵ John D. Rogers, 'Early British Rule and Social Classification in Lanka', *Modern Asian Studies* 38, no. 03 (2004): 625–47.

²⁶ Robert J Morris, 'Occupational Coding: Principles and Examples', *Historical Social Research* 15, no. 1 (1990): 9.

volved two or more legal issues would otherwise be counted more than once.²⁷ A small number (18) appeared in two cases, and a smaller number (8) in more than a couple.

Defining a 'litigant' is not an easy task. *Ratione personae* is the particular jurisdiction of a judicial body over plaintiffs or defendants living in a territorial area. A litigant may have appeared a number of times in connection with a case, ranging from a single appearance to many times over several years. Those who were called defendants or plaintiffs or supplicants did not always appear in the council at every hearing, especially in cases with collectives as parties. In general, they had all to be present when the sentence was heard. I have not attempted to remove from the count those who were not physically present despite being mentioned as litigants—in any case, their numbers are small. Principle litigants from a collective, or husbands, *procureurs* or other authorised persons appeared on their behalf. I have assumed that these litigants were aware of the proceedings even tangentially and included them in the count, as also their special representatives while leaving out only the *procureurs*. Occasionally people appeared in their official capacity as part of the VOC government or the native department—such as the clerk of the Inlandse Boedelkamer and in particular *mayorals*, who gave oral evidence at the council. They have not been included in the count of those who came to the council as litigants or participants outside of their official duties. Where their names are known, each individual in collectives of litigants were counted separately, although this differs from the practice of Schepper et al.,²⁸ as it was important to build an image of the people involved with the Landraad in a certain period. Some litigants referred to collectively (for example, as the heirs of a certain person with no further details) were counted as one litigant for the sake of convenience.²⁹

For this analysis of the reach of the Landraad, I have included a sample of witnesses from one volume of depositions.³⁰ They appeared in the years 1778-1781. Depositions almost always recorded the age, occupation, residence village and religion of the witnesses, thereby yielding a wealth of information on witness participation and the use of evidence. All witnesses had to promise to take the oath, which had a discrete form for different groups. As explained further in chapter four, the record of the (official) religious identity of the witnesses was consistent, it being important practically for the purpose of the oath. The recorded personal information of the witnesses including occupational title had a direct bearing on their credibility. Most witnesses were adults (some as old as ninety years old), while the youngest I found was fifteen years old. At times they would appear in more than one case. Recurring witnesses were eliminated as far as possible from the sample, although name variations and possible changes in residence made this process particularly problematic. Not surprisingly for a society that displayed pronounced age heaping³¹—in brief, the rounding off of ages to the nearest five or ten—the recorded ages from deposition to deposition of a single person often did not match. If one matches name, occupation and village, as many as twenty-one witnesses (8 per cent) appeared twice. Haputantrige Johan appeared four times and Haputantrige Michiel thrice. VOC officials were not blind to the incidence of professional witnesses, as discussed further in chapter four.

²⁷ Bailly, *Recht Voor de Raad*, 219.

²⁸ In a collective of litigants, only the first-mentioned person's details were recorded by them. Schepper et al., 'Prolegomena', 272–274.

²⁹ It is difficult to identify them through the thombos as the relevant thombo may have been drawn up in an earlier or later period and we do not know which of the heirs appeared in the Landraad. As in the Galle Landraad, it appears that in The Netherlands as well parties were at times referred to as the children or heirs (or wife, widow etc.) of a certain person and not individually named. Ibid., 271.

³⁰ Some witnesses who came to the council to provide evidence were recorded in the minutes, but they have not been included in my sample.

³¹ See F F Drixler and Jan Kok, 'A Lost Family-Planning Regime in Eighteenth-Century Ceylon', *Population Studies: A Journal of Demography*, (Forthcoming).

The litigants and witnesses involved in cases were chosen thus, and I have classified them according to four criteria in order to bring to the analysis a picture of their backgrounds.³² The first is their gender, which will be discussed in the next section with a focus on the female litigants in the sample. Next, I have categorised them according to the social formation of race. Thirdly, where the information is available, the services rendered to the company and titles held have been studied. Lastly, I use the witness data to consider the factor of distance to the council from residence, as also data on dispute location from the sample cases.

The choice of data included in the Landraad minutes and depositions reveals to us the preoccupations of an early colonial judicial council on social categories. It is possible to piece together more information about the litigants by analysing their names—as also by searching for more details of them in the thombos where possible. While race was hardly mentioned, the titles and caste-like identities held by litigants and witnesses are more readily available in the records. The various documents produced by the Landraad reveal differing categories of information. The thombos carry data on both caste and service in separate columns, important in identifying the land parcels due to them. The company at times also identified persons as ‘Sinhalese’ in the Landraad, curiously without any mention of what could be called their caste identity.³³ Classifications of religion, caste-like group, title, and resident village are more readily available in the witness information in depositions. The Landraad minutes are not always explicit about age, ethnicity or religion, and very rarely mentioned caste. No consistency for instance in recording the social formation to which a litigant belonged, residence or occupation can be seen. The current and former service-holdings such as *mayorāl*, *lascarin* and *vidāne* and other titles were mentioned in the minutes of about one-fifth of litigants. Title showed credibility and rank in society, an important factor with regard to both litigants and witnesses. The legal production of such socioeconomic identities through the land holdings attached to them must be considered; a factor that made it non-essential to articulate a ‘Sinhalese’ identity in the daily workings of the Landraad.

3.2 Gender: Women and Law

The Dutch colonial regime in Sri Lanka affected the lives of urban and rural women in civil matters such as marriage, legitimacy of children and property in ordinances and practice. It is possible that it was intimidating for women to approach a justice system that was exclusively male-dominated. Unsurprisingly for those times and a phenomenon found across cultures, there were no female members at any level of the company government, let alone the Landraad or, for that matter, at the level of the native department of government. They were absent from public life. How willing were they to use such male-dominated public institutions? One imagines that land disputes were as important for men as for women. Were women informed of the paths to justice and educated about the procedure? Was there adequate circulation of information? For instance, villagers had to be informed fourteen days prior to a thombo registration by the beat of drums that the process would start. Did women have the resources and time to participate? Such details for the time-space context of eighteenth-century Galle may be hard to come by, but the documents have indicated more than expected.

The majority of the litigants and witnesses who appeared were men, but women were significant participants in the Galle Landraad. Eighteenth-century names were mostly gender specific, but company officials are likely to have needed guidance on local names. Females were either mentioned as such (*vrouw*) or inferred in this study through their civil status and

³² I have not separated the litigants according to whether they were plaintiffs or defendants as that is not always possible to identify correctly.

³³ Dewasiri has also noticed this phenomenon in some thombos, *Adaptable Peasant*, 200.

names. Where there were no further clues on gender, I interpreted the names in the database that informs this study from my worldview—there may have been decisions in that process that cannot be verified.³⁴ In the sample of men and women who came to the Landraad or were represented in that council, 174 (73%) were men and 64 (27%) women. Five collectives of litigants, referred to as heirs, children and/or grandchildren, have not been counted in these figures. The women, who were mostly Sinhalese, came in connection with fifty-one cases (52% of the sample cases).³⁵ It must be kept in mind that the legal position of women in seventeenth and eighteenth century Holland was subordinate to that of her husband.³⁶ A married woman could not appear before the judiciary without her husband's support. Women 'except a mother and grandmother, and they only so long as they have not contracted a second marriage' were also prohibited from being guardians.³⁷ Six husbands appeared for their wives in the sample cases. The widow Jemoniga Jebel was represented by a former *kangān*, and another indisposed woman by her son.³⁸ Thus, on occasion women in the Galle Landraad were not free agents in the process of going before the law, others actively participated in the procedures of the council. Twenty or almost one-third of the women were widows. But married women also displayed some agency and came alone. Kosmulage Lisa, whose case is described in more detail in chapter six, appeared in the council without her husband, the *vidāne* of Hinatigala Willalege Janis, although it appears that she had his active support. She was defending a gift of land that she claimed from her mother against her sisters' opposition. The Dutch system enclosed women under the authority of males in the family and a transfer of this control over women's bodies was attempted, but not fully achieved in Sri Lanka.

Femaleness was at times coupled with widowhood and social inferiority. Many women who came to the Landraad were widows. By the seventeenth century, widows were majors according to the law of Holland.³⁹ Widows often came to the council in connection with property that belonged to their late husbands. In a case outside my sample but taken up shortly afterwards, Gamage Livina of Dodampe made claims in the Landraad on property that she believed to have been unlawfully written in her cousin's name in the thombo. She was the widow of a *kangān*, but came to the Landraad not in connection with her husband's property but what she believed was her legacy from her father. A cousin had had the property registered in the thombo under his name alone. The case is discussed further in chapters five and six. Lower caste women also made representations to the Landraad. Sepala Hakuruge Dominga of Kumbalwella was a Sinhalese woman from the socially inferior group of the *bakuru* caste, whose case against a fellow caste member in the Landraad was approved for appeal to the Raad van Justitie in Galle.⁴⁰ A former female slave also had a lawsuit heard in the Landraad: Rachel, a freed slave who lived in Kumbalwella appeared against Constanti-

³⁴ This process of coding in digital history clearly has pitfalls. It is apt to keep in mind the experience of Alison Prentice, who found that the physicist she thought was a female was actually a man. "Vivian Pound was a Man? The Unfolding of a Research Project," *Historical Studies in Education/Revue d'histoire de l'éducation*, 13, 2 (2001): 99-112.

³⁵ Forty-nine of the 64 women were Sinhalese, three were Moors and one a European. The race of eleven of them however could not be identified—six of them had the name de Silva which is ambiguous and two were only identified as the wives of their husbands who represented them in the Landraad.

³⁶ Donald Haks, *Huwelijk en gezin in Holland in de 17de en 18de eeuw (Marriage and Family in Holland in the 17th and 18th centuries)*, Second Edition (Utrecht: HES, 1985), 153; Lee, *An Introduction to Roman-Dutch Law*, 65.

³⁷ Lee, *An Introduction to Roman-Dutch Law*, 106.

³⁸ SLNA 1/6512, 'Minutes, GL', fol. 89r, 27 Nov 1779; SLNA 1/6514, 'Minutes, GL', fol. 2r, 6 Jan 1781.

³⁹ J W Wessels, *History of the Roman-Dutch Law* (Grahamstown, Cape Colony: African Book Co., 1908), 428.

⁴⁰ SLNA 1/6516, 'Minutes, GL', fol. 4r, 28 Jun 1793. Another case involving a *hakuru* caste person can be found in SLNA 1/6515, 'Minutes, GL', fol. 371r, 10 May 1793.

no De Costa, a Chettiar who lived in the same village.⁴¹ In another case, the emancipated slaves Roselij and Benjamin proceeded over a Sinhalese man whom they accused of forcibly appropriating their land.⁴² Sramata, a freed slave woman made claims on the property of a revenue farmer in arrears that was to be sold by the Landraad.⁴³ Proximity to the colonial government through residence in villages such as the Landraad seat in Kumbalwella, helped such groups to acquire greater agency in their lives.⁴⁴ Warnesuriepattēbendige Dona Maka, a *karāva* woman from Galupiadde (Four Gravets) whom we met earlier in chapter one in connection with matters concerning the sale of land, was unusually active in appearing in the Landraad in connection with land sale matters as both a litigant and witness. In 1781, she was reported as being 62 years-old to the best of her memory, a Christian, and a widow appearing as a witness for the thombo copyist Josua Hopman in a debt case.⁴⁵ Female identity was thus differentiated by socioeconomic status, social formation and residence in a coastal urban area or rural setting.

In stark contrast to their frequency as litigants, very few women appeared as witnesses. Only ten, which is about four per cent of the total number of witnesses from the sample, were female. They all gave affidavits from 13 July 1778 to 14 August 1781. One rare occasion when a deposition had mostly female witnesses was a case where it was necessary to prove that a woman died at childbirth before her just-born son.⁴⁶ This could indicate that they were not considered as the best choice to verify evidence in other matters, which were mostly related to confirming ownership of land. Very few females were assigned credibility; the striking male dominance indicates a control over judicial truth held by service-holders such as *lascarins* who, as explained below, formed the majority of witnesses.

Still women were not lacking in agency in their participation in the Landraad. In a remarkable display of boldness and subtle subversion, one woman came out strongly against the Landraad. As mentioned in the introduction to this study, Kalegana Bastian Naidelage Maria was a litigant who was reportedly brazen. She is said to have told the *lascarin* who served her summons that the names on the document were wrong, adding that even her dog would not appear in the council. The *lascarin* himself came to the council to complain against her. The ‘impertinent expression’ was considered, by a majority of votes in the council, to be an insult to the gathering, and Maria, who was in fact present that day in connection with her case, was ordered to be beaten after the council adjourned for the day. She was most probably punished on that day of 1 April 1780 (we have no confirmation of the flogging itself).⁴⁷ Her rebuttal to the summons, if it were true, is a revealing challenge to Dutch legal authority. Yet it must not be seen in isolation of all the men and women who appeared in the council. In another case, the widow Godage Mienga appealed her case against Don Pedru Bastiaan de Silva over a property dispute from the Landraad to the Raad van Justitie of Galle, which refused her appeal. That didn’t stop her—she then appealed to the Raad van Justitie in Colombo, which however also rejected her request.⁴⁸ Her perseverance is noteworthy.

I have attempted a gendered interpretation of the data by focusing here on the women who came to the Landraad. I have taken gender to signify women, but my focus is on gender relations, the position of men and women vis à vis each other. The practice of ‘doing gen-

⁴¹ SLNA 1/6501, ‘Galle Landraad Minutes’ 1765 to 1766, fols 117r–v, 119r, 20 Dec 1766; SLNA 1/6502, ‘Minutes, GL’, 4v, 7 Feb 1767. Other documents in this case were not traced.

⁴² SLNA 1/6525, ‘Draft Minutes, GL’, fol. 201r, 30 Sept 1786.

⁴³ SLNA 1/6511, ‘Minutes, GL’, fol. 40v, 25 Jul 1778.

⁴⁴ Dewasiri points out that the *hakuru* caste showed a tendency to concentrate around the colonial centre. *Adaptable Peasant*, 210.

⁴⁵ SLNA 1/6494, ‘Depositions, GL’, fol. 95r, 16 Feb 1781.

⁴⁶ This case is described in detail in chapter six.

⁴⁷ SLNA 1/6513, ‘Minutes, GL’, fol. 29r, 1 Apr 1780.

⁴⁸ SLNA 1/165, ‘Governor in Council Minutes’, 24 Nov 1772.

der',⁴⁹ i.e. socially constructing gender, in ways that are described for the West may have been alien to Sri Lankan society, which had different social constructions of establishing gender relations. Studies of early modern rural women in Sri Lanka are non-existent, but many Dutch sources at a lower administrative level can be utilised for the purpose. These include the Landraad documents, thombos, documents of the Scholarchale Vergadering (School Board) and church records.

The general belief, supported by ancient and medieval sources, is that the teachings of Buddhism were instrumental in promoting the relative independence of women.⁵⁰ Early European observers such as Robert Knox recorded female participation in agricultural work and harvest rituals that were ingrained in rural society.⁵¹ The relationship between husband and wife was presented as that of equals; the protection of the man being assumed but not restricting the wife.⁵² Was then their participation in the legal arena a non-issue? The attention to women is paid on the presumption that they were of the weaker sex, that their voices were among those of the oppressed and disempowered, that their understanding of their legal rights was limited. Yet, it seems obvious that specific legal issues, such as the rights of widows, would bring women to the Landraad. Women as heirs were of special importance in inheritance law. Women are, in the histories of Sri Lanka as well, usually disassociated from positions of political power and strenuous physical activity (for instance in the waging of war). But we cannot make assumptions about the meaning of such exclusion to an eighteenth-century peasant woman in rural Galle or assume that the society was a patriarchy.⁵³ In fact, it is almost impossible to gauge to what degree this analysis is anachronistic without anthropological studies of the eighteenth century.

Yet, I have asked certain questions in the area of women's property rights, which, even if they are not helpful for understanding masculinity and femininity in eighteenth-century peasant life in Sri Lanka, are expressive of the kind of preoccupations of a certain (gendered) scholarship seemingly inherited from a western tradition. However, 'western' scholarship also lends some credence to this doubt on the validity of the gendered question for early modern Sri Lanka, for it has been said that the deterioration of gender relations was a colonial construction. There is a dearth of work on gender in Sri Lankan history that prevents a fuller understanding of the issue, but Carla Risseuw's work on the nineteenth century points to this conclusion.⁵⁴ In that case, if that century saw more changes in gender relations, also called gender transformation (due in part to macro-economic and legislative changes) the early modern world may have been a period in which women enjoyed more freedom. On the other hand, we see the beginnings of gender transformation in coastal Sri Lanka through the introduction of ideas of female subordination through Roman-Dutch law.

3.3 Social Status of Local Actors

To what social and socioeconomic groups did those who come to the council belong? Categorising group identity data is necessary to facilitate easy reference but full of pitfalls in practice. There are semantic problems in the process, as our understanding of caste,

⁴⁹ See for a popular study on the socially constructed aspects of gender, see Judith Butler, *Gender Trouble* (1990; repr., New York: Routledge, 2007).

⁵⁰ Indrani Munasinghe, *Sri Lankan Woman in Antiquity (Sixth Century B.C. to Fifteenth Century A.C.)*, trans. S. B. Herath (Colombo: Indrani Munasinghe, 2004), 179; Barbara Watson Andaya, *The Flaming Womb: Repositioning Women in Early Modern Southeast Asia* (Honolulu: University of Hawai'i Press, 2006), 32–33.

⁵¹ Knox, *An Historical Relation of Ceylon*, 19–22.

⁵² Munasinghe, *Woman in Antiquity*, 147–149.

⁵³ The binary of matriarchy/patriarchy in relation to Sri Lanka has not been explored here.

⁵⁴ Carla Risseuw, *Gender Transformation, Power, and Resistance among Women in Sri Lanka: The Fish Don't Talk about the Water* (New Delhi: Manohar, 1991).

occupational and racial differences today cannot be the same as in eighteenth-century Sri Lanka. In the eighteenth century, occupational categories were not mutually exclusive. Cinnamon peeling, for instance, was not the exclusive occupation of the *salagama* caste nor was fishing and carpentry handled exclusively by the *karāvas*. As Morris has pointed out on the topic of occupational coding, differences of judgements and the purpose of a document or economic context could also lead to considerable variation of classification practices.⁵⁵ In addition, variations within a region must be accommodated; a classification scheme devised for the Colombo thombos may not fit the Galle context. It may be convenient for comparison purposes and to regard the two provinces as one area to have a standard scheme, but then regional differences may be lost. Maintaining flexibility is thus important. The purpose of the source of the data must be taken into account very carefully as there could be certain peculiarities and limitations in them. With these considerations in mind, it is possible to approach the data in the Landraad and thombo documents.

Table 3.1 Social formation of litigants and witnesses

<i>Social Formation</i>	<i>Litigants</i> <i>1778-79</i>	<i>%</i>	<i>Witnesses</i> <i>1778-81</i>	<i>%</i>
Sinhalese	191	79.0	246	93.0
Moor	19	7.8	5	2.0
European	14	5.8	8	3.2
Chettiar	1	0.4	1	0.4
Paravar	-	-	1	0.4
Unknown	18	7.0	3	1.0
Total	243	100	264	100

Sources: SLNA 1/6494, Depositions; SLNA 1/6511, 1/6512, 1/6520, 1/6521, Minutes.

The majority of the litigants and witnesses were Sinhalese with 79 and 93 per cent respectively. Race was infrequently mentioned in Landraad documents and the data in Table 3.1 was mostly deduced from names. If the litigants were Sinhalese, it is likely that the witnesses they produced would also be of that group. When appearing in collectives, rarely did such parties consist of litigants and witnesses from different racial backgrounds. There was little diversity among witnesses as well, with only around ten per cent of sixty-seven depositions most evidently involving groups of witnesses from different racial formations.⁵⁶ Those present at a hearing may have easily differentiated Europeans and natives by their appearance and dress. Moors were often mentioned as such, but in general race categories had hardly any mention in the records.

The more privileged category of *burger*, European or Eurasian (indicated here as European) were insignificant in numbers: they comprised 5.8 per cent of litigants and 3.2 per cent of witnesses. Names such as De Silva and Perera under the 'unknown' category perhaps refer to Europeans, but they could have also been Sinhalese or manumitted slaves. Cases involving Europeans, where they did not concern land matters outside the fort, would have been heard in the Civile Raad of Galle. Yet we see that Europeans were increasingly involved in property matters outside Galle Fort. Evidently, the Landraad was a legal space that reached out to rural folk, but also had exclusive jurisdiction over land matters registered in the Galle thombos.

⁵⁵ Morris, 'Occupational Coding: Principles and Examples', 11.

⁵⁶ SLNA 1/6494, 'Depositions, GL'.

The literature has identified caste as a category through which the indigenous population could be rendered economically ‘useful’ to the company.⁵⁷ Caste identities were hardly mentioned in the Landraad minutes, indicating a low interest in that social formation for its own sake in the council. In some cases it was possible to find or gauge the caste of the litigants from their names or the thombos, which as we know generally gives caste information although they could not be consistently traced. Non-*goygama* caste members were not absent from the Landraad. We saw above how a *hakuru* caste woman was granted leave to proceed with an appeal to the Raad van Justitie. *Karāva* men and women and *salāgamas* also came to the Landraad. Caste, because of its associated mandatory services to the company, was a way of ‘thinking about natives within the framework of productivity’.⁵⁸ Even more than caste, service titles were an important inclusion in the land registers which recorded a shareholder’s service rendered in return for the property holding. It was of importance in Landraad proceedings where the rendering of a service such as *mayorāl*, *lascarin* or grain measurer was at stake or petitioners were threatened with demotion to coolie or *nainde* status. They were all assigned fixed amounts of *accommodessan* (maintenance grants) as seen in appendix three. Some services or titles however were seen across castes in practice. Service positions or title-holding was not the exclusive prerogative of the *goygama* caste. Such positions were important for the economic activities of the colonial government. In land litigation, race and strictly caste identifications were replaced by other categories of status such as title-holding and service.

Table 3.2 presents the data on the services and occupations of the litigants and witnesses. Strikingly, the number of litigants for whom no social identity was assigned is 68 per cent of the total number of litigants. It can be assumed that if they held title it would have been claimed and recorded. However, we saw also that the lack of status was not a setback in approaching the Landraad. Coolies, who performed menial labour and belonged to the lower ranks of the *goygama* caste or a lower-status group such as the Padu caste, came to the council and won. A dispute between two coolies and *mayorāls* resulted in a judgement in favour of the former; and in another case in my sample, the conclusion of which was not found, a coolie moved against the *mohandiram* and *mahavidāne* Sameradiwakere Jayasundara.⁵⁹ In contrast, there is a clear dominance among the witnesses of persons of some rank in a village, who would have been considered most capable of providing credibility to a litigant’s claims. Litigants were aware of the advantages of bringing the testimony of rank and file to the council, almost forty per cent of witnesses were (at that time or formerly) headmen of high and low ranks and persons of higher standing in the village such as *mayorāls*, schoolmasters and writers. The absence of a high-ritual birth could be remarked on—one witness was ridiculed by the opposing party for his occupation of tile-making and asked if that wasn’t a very low service that is disgraceful for honourable *goygamas*, to which he was recorded as answering in the affirmative.⁶⁰ While some *mudaliyārs* and *korālas* also appeared, *mayorāls* appeared frequently as witnesses. With some lower-level responsibilities in a village setting, *lascarins*, *kangāns* and former *kangāns* were frequently regarded favourably with the ability to provide credibility, amounting to 34 per cent of the witnesses. Clearly, service to the company was important for the purpose of supporting a case and recording it was therefore necessary. In the case of litigants, this was especially important as appeals to changes in titles registered in the thombo were made to the Landraad.⁶¹ It was important to gain affluence,

⁵⁷ See for example Dewasiri, *Adaptable Peasant*; Rogers, ‘Early British Rule and Social Classification’.

⁵⁸ Benton and Ross, ‘Empires and Legal Pluralism’, 11.

⁵⁹ SLNA 1/6511, ‘Minutes, GL’, fol. 5v, 30 May 1778; 6v, 30 May 1778; 11r, 6 Jun 1778; 12v, 6 Jun 1778.

⁶⁰ SLNA 1/6534, ‘Interrogations, GL’, fol. 38r, 18 Dec 1778.

⁶¹ Two cases from my sample heard in 1778 illustrate this point. In one, the Kandege family asked to be recognised as *mayorāls* in the thombo and not *naines*, a request that is granted. In yet another case, a father

particularly as service holding was connected to land holdings. Furthermore, Landraad members were also litigants or witnesses on occasion.⁶² It is possible that indigenous councilors and other headmen were privileged when they became litigants in the council.

Table 3.2: Service and occupation of litigants and witnesses

<i>Service & Occupation</i>	<i>Litigants 1778-79</i>	<i>Witnesses 1778-81</i>
<i>Arachchi</i> / Former <i>arachchi</i>	2	4
<i>Baddeturaya</i>		2
Carpenter / Head of Carpenters	1	3
Cinnamon peeler		6
Coolie	1	3
<i>Kangān</i> /Former <i>kangān</i>	3	18
Former <i>kōrāla</i>		2
<i>Vidāne</i> /Former <i>vidāne</i> / <i>Vidānārachchi</i>	3	15
Grain measurer		6
<i>Lascarīn</i>	7	72
Limeburner		2
<i>Mayorāl</i>	9	48
<i>Mayorāl's helper</i>		2
<i>Mohandīram</i>	4	
<i>Mudaliyār</i> /Former <i>mudaliyār</i>	4	3
<i>Nainde</i>	4	5
<i>Nanayakkārāyā</i>	1	16
<i>Pattangatiñ</i> / Former <i>Pattangatiñ</i>		2
Schoolmaster / Former under-schoolmaster	3	4
Smith/Silversmith	1	3
Toddy Tapper		2
Writer / Former writer	1	9
<i>Wasser</i>	2	2
Company office-holder (European)	10	1
Other	21	10*
Not mentioned**	166	24
Total	243	264

Source: SLNA 1/6494, Depositions; SLNA 1/6511-12, Galle Landraad Minutes.

*This figure includes a mason, chief of the Sinhalese laademaakers, messenger, cattle breeder, *eijkmeester*, head of the Chettiars and interpreter, medicine-master, huntsman, *ekerobekārāyā*, and a helper.

**The women who came to the Landraad are included in this figure, as they had no recorded service or occupation.

Status through caste and office also had a significant role in the precolonial legal and administrative orders. Officials had to be aware of the caste of the wrongdoer before such a

successfully requested that his son by his first wife be registered as a *mayorāl*. SLNA 1/6511, 'Minutes, GL', fol. 37r, 11 Jul 1778; 41r, 25 Jul 1778. Much earlier in 1760, a *vidāne* took *mayorāls* in Udalamatte to task for registering his mother as a coolie in the thombo. SLNA 1/6498, 'Minutes, GL', fol. 14r, 3 May 1760.

⁶² For example, Seresinghe was a witness in one case. SLNA 1/6494, 'Depositions, GL', fol. 14r, 18 Oct 1782.

punishment as *veläkema* (see chapter one) was meted out, as persons of a higher caste could not be punished in that way. Certain ranks of people were also exempt from such punishment. John D'Oyly wrote that corporal punishment was not inflicted on persons of noble families and other high-level title holders, and they could also not be imprisoned in the *Maha Hirage* (Great Prison). On the other hand, he said that headmen with a lower rank could be punished with the 'open hand' and lower-level *goygama* caste members and persons of low caste were punished with rods called *ipal* (twigs).⁶³ Such corporal punishment for lower level headmen continued in the Landraad: when the councillors decided that Manodara Acharige Simon had sought to mislead the council by claiming that his wife was dead, he was ordered forty lashes from the *sjambok* (a stiff leather whip) for the misdemeanour.⁶⁴ In another case the Landraad found the *mayoral* at fault in a case over a disputed land sale *ola* and directed that he be flogged after the meeting dispersed because they believed that it was quite likely that he had in fact signed the *ola* which he denied and moreover that he should know what happens in his village.⁶⁵ The Landraad thus continued the practice of punishing lower ranks of personnel. It had repeatedly to pull up high-level headmen for non-corporation with the thombo registration, but there is no evidence that corporal punishments were meted out to them. Evidently, headmen and service holders were not a monolithic body that was equally privileged.

A fair range of social groups came as litigants or witnesses to the council. The story is mostly about rural inhabitants who lived in thatched houses on their lands: a paddyfield with a harvest of 5 *kuruni* of rice maybe all that they had to defend. The costs of bringing an issue to the council could rise considerably but litigants could ask for *pro deo* as we saw in chapter one. Non-headmen came to the council on a regular basis and these included persons belonging to a lower caste formation. The clergy do not appear in the sample cases, but in 1794 a Buddhist monk, traditionally not known to have private holdings of land except as part of a temple, asked for a *ratmahara* garden and paddyfield that he had cultivated in 1786 and for which he had paid the required taxes (*ottu* and garden tax), to be registered in the thombo under his name in the thombo.⁶⁶ As land ownership could become divided among different racial groups, some cases involved cross-cultural litigation. Europeans also appeared in connection with rural property recorded in the thombo. Moors appeared mostly against each other, occasionally against a Sinhalese inhabitant. This is testimony to how natives, Europeans and other groups interacted in society and its inevitable reflection in a judicial forum.

3.4 Distance to the Council

In practice, how far did the jurisdiction of the Galle Landraad extend geographically? The geographical origin of the disputes in the almost twenty months from 1778 to 1779 is represented in Table 3.3. The *ratione loci* (by reason of place) I considered in this analysis is the location of the paddyfields and gardens in question, which constitute the majority (83) of the 99 cases in my sample. There were more dispute locations (93) than the number of cases involving land (83) because some cases dealt with fields and gardens in more than one village. While the original residence of the litigants would be important in ascertaining how close to the centre of government the litigants lived, that information is not always available. For the around 240 litigants from my sample, I do not have this information for over fifty per cent

⁶³ D'Oyly, *Constitution of the Kandyan Kingdom*, 24:37.

⁶⁴ SLNA 1/6512, 'Minutes, GL', fol. 12r, 20 Feb 1779. His fellow litigant, Waddusikuge Francisku, was condemned to a fine of two rixdollars for the poor because he had withheld the information. This is also the first case in my sample where a litigant is fined for misdemeanour.

⁶⁵ SLNA 1/6513, 'Minutes, GL', fol. 104r, 9 Sept 1780.

⁶⁶ SLNA 1/6517, 'Minutes, GL', fol. 116r, 22 Nov 1794.

of them. The high incidence of absentee ownership makes the residence of the litigants more important, as those who had moved towards more urban areas while retaining their rights to land in other villages may have been influenced by the changes at the centre and tended more towards initiating legal action. Such an analysis is beyond the scope of this study, but an analysis of the residence of witnesses gives us some indication of how accessible Kumbalwella was.

Table 3.3 Geographical origins of land disputes 1778-1779

<i>Sub-district</i>	<i>Disputes</i>
Four Gravets	36
Wellaboda	11
Gangaboda	12
Walallawiti	8
Talpe	7
Hinidum	0
Unknown	19
<i>Total</i>	93

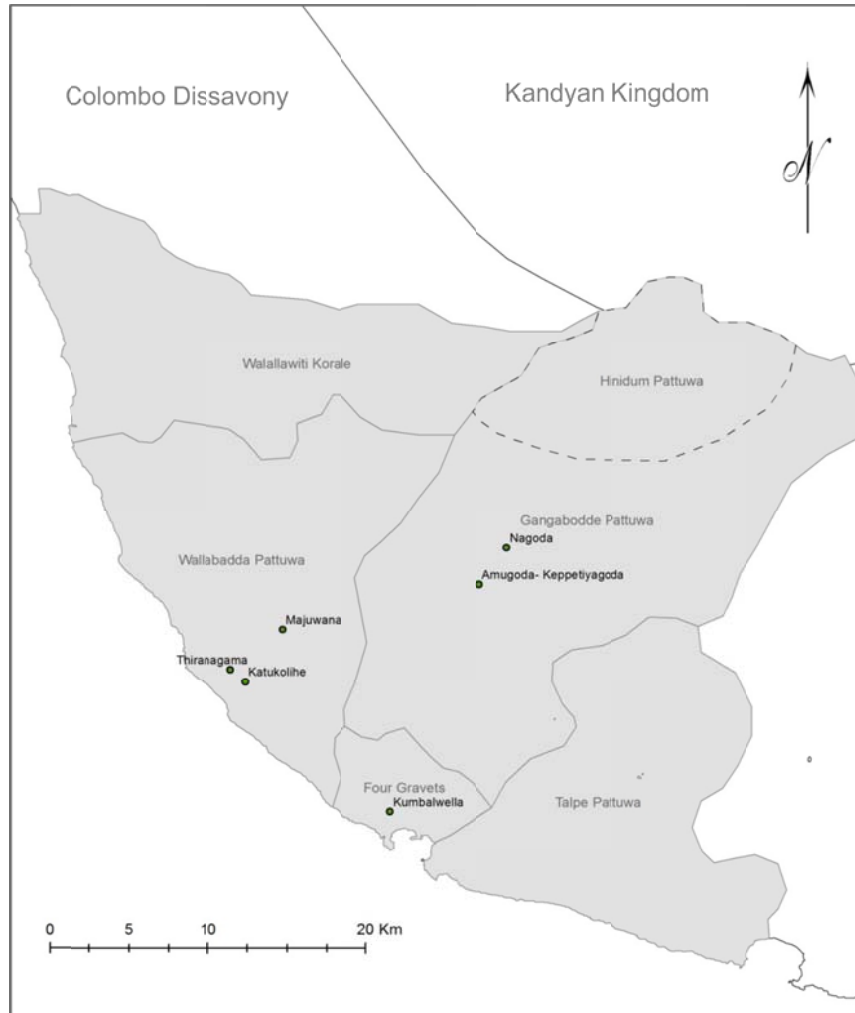
Table 3.4 Residence of witnesses 1778-1781

<i>Sub-district</i>	<i>No</i>
Four Gravets	54
Wellaboda	51
Gangaboda	49
Walallawiti	5
Talpe	61
Hinidum	0
Unknown	44
<i>Total</i>	264

At first glance, proximity to the centre appears to have been an important determinant on the question of who came to the council. Galle Fort, and the sub-district of the Four Gravets within which Kumbalwella was the seat of the Landraad, the thombo office and the overseer of the Galle District, were pivotal locales that connected the residents of Galle District to Colombo, the centre of Dutch administration in Sri Lanka. They were relatively more 'urban' than the surrounding hinterland. Many of the disputed lands were located in villages in the Four Gravets, as shown in Table 3.3. Kumbalwella had at least ten dispute locations. It is likely to have also been a more populated and urban area within the Galle District. Leonard Woolf, a British civil servant who also served as a magistrate in Sri Lanka wrote on the difficulties of travelling in the region even in the early twentieth century.⁶⁷ A phenomenon of a coastal urban area versus the rural hinterland may apply here, although distinct categories of town and rural as seen in European studies were of little consequence in Dutch Sri Lanka. Considerable parallels rather than dissimilarity of life patterns among inhabitants of the coast and the hinterland were very likely. At the same time, the relationship between proximity to the Dutch government and legal action may be overrated. For instance, if witnesses could travel the distances that they did, this is very likely representative of the distance that litigants

⁶⁷ Leonard Woolf, *The Village in the Jungle* (1913; repr., Oxford, Chennai: Oxford University Press, 1981), 53–54, 60.

could travel as well. The residence of the witnesses is likely to have been close to that of the litigants and the dispute location. Witness participation cannot be seen in the same light as that of the litigants, but their participation in the legal process is significant. Their residences were frequently recorded in the depositions as shown in Table 3.4 for the period 1778-1781.⁶⁸ Commissioners of the Landraad were also required to travel to the village of land dispute to conduct investigations, indicating that distance was an important but unavoidable factor for them as well.



Map 3: Villages in Galle District (shown in grey) considered 'far' by the Landraad located in Kumbalwella, all between 12 and 18 km away.

⁶⁸ The 'unknown' figure includes villages which are located in two sub-districts thereby making it impossible to know which part of the village the witness belonged without accurately locating him or her in the thombo. Fifteen of them were from Hinatigala, which is in both the Talpe Pattu and Four Gravets.

The Landraad was required to pay due regard to the distance to Kumbalwella from the residence of the litigants and witnesses.⁶⁹ In one example, a group of eight witnesses were supposedly inconvenienced by the great distance to the council. First, the case was not taken up on the stipulated day in December 1779 as the sitting was postponed for the next day. The witnesses were to be cross-examined by the opposing party, who did not have a coun-
counter-interrogation ready. The litigant for whom they appeared pleaded that they could not stay because they lived far away and could not interrupt their services to the company. The commissioners who presided over the meeting asked the opposing party to be ready with his papers in the morning the next day or within twenty-four hours 'because the witnesses could not be delayed longer as they lived faraway in the country', so they were forced to stay a third day as well.⁷⁰ The next day, the errant litigant was said to have informed the council that on leaving the sitting the day before he had been attacked by piercing pains in the stomach and was still in confinement.⁷¹ Despite the distance, however, the witnesses reappeared twenty days later to be successfully cross-examined.⁷² These witnesses were from Amugoda-
Keppitiyagoda (Gangaboda Pattu), Nagoda (Gangaboda Pattu), Tiranagama (Wellaboda Pattu), Katukolihe (Wellaboda) and Majuwana (Gangaboda Pattu), which are between twelve and eighteen kilometres away (see Map 3). This was considered far by both the councillors and the litigant, but they still appeared in the Landraad as did other witnesses from locations further away.

The evidence suggests that in the hinterlands bordering the Kandyan Kingdom, where jurisdiction may have been contested, there was less participation in colonial rule. Apart from the Four Gravets, if the sub-districts of Wellaboda, Gangaboda, Talpe and Walallawiti are considered together, they had in total only around forty dispute locations, similar to the number of disputes from the Four Gravets. The population in these so-called hinterland areas may have also been low. Yet when a witness was necessary or during a thombo registration travelling to Kumbalwella was to be expected. It is striking that there were no cases from the Hinidum Pattu, its considerable remoteness being an obvious reason. From the available data, Hinidum also did not produce any witnesses. The area was remote from the administrative heart of Galle and was in fact on the border of the Kandyan Kingdom. This suggests that if particularly long distances were involved, litigants were not keen to make representations to the Landraad over legal issues. In all six well drawn up thombos of the Hinidum Pattu, no references to council decisions can be found. The commissioners, if they travelled to the pattu for the registration, may have settled all disputes, preventing an issue from having to be heard by the full council.⁷³ This is in contrast to other thombos such as Dodampe and Ganegoda of the Wellaboda Pattu (very close to the coast), where disputes arose at the time of registration. These two examples of villages had at least ten recorded issues between them from 1780 to 1781.

From this representation of *ratione loci* it appears that while in areas close to Galle Fort the company's new legal regime and by extension its sovereignty was not in dispute; in other inaccessible locations that were less densely populated and close to the local powers litigation was rare. If the company's jurisdiction was controversial, it was still not contentious enough

⁶⁹ Mottau, 'Instructions for Landraden', 6.

⁷⁰ SLNA 1/6512, 'Minutes, GL', fol. 94v, 1 Dec 1779.

⁷¹ Ibid., fol. 95r, 2 Dec 1779.

⁷² SLNA 1/6521, 'Draft Minutes, GL', fol. 37v, 22 Dec 1779.

⁷³ It is not known if residents of the Hinidum Pattu travelled to the Landraad for the registration or whether commissioners travelled to that remote area. Given that they were all drawn up in the year 1760, and it would have been difficult to mobilise so many inhabitants to travel several miles, the latter is likely. There were no references to the Hinidum villages in the Landraad minutes from 1760. In contrast, there were cases from Mapalagama (Gangaboda Pattu), a thombo that was also drawn up in 1760. SLNA 1/6498, 'Minutes, GL'.

for people to refrain from making a fairly long journey from the sub-districts around the council seat, but not so long that they'd go through thick jungle and other difficult terrain further north. This suggests that litigation, where it could be relatively easily accessed, led the peasant to the Landraad in their efforts to secure justice.

3.5 Conclusion

First Colonial Secretary Hugh Cleghorn, in the minute of 1799 that is now infamous for promoting the idea of a 'two-nation' theory of Sinhalese and Tamils had a glowing report to make of the Landraad. He said it was 'extremely popular, and its decisions were generally respected.'⁷⁴ Cleghorn, however, may have overrated the power of the *mudaliyār*: 'He is the only judge in the first instance of the disputes among the natives, he is a constituent member of the Land Raad, and few of the natives venture to appeal from his decision to a court where one of the judges may have been his oppressor.'⁷⁵ By regarding the Landraad's use of Sinhalese customary law as fact and stressing the regulation that made their presence compulsory, Kotelawele also exaggerates the role of the headmen in the Landraad, which he states may have added to their power.⁷⁶ If correct, and we know otherwise from chapter two which showed that headmen were not always present at meetings, the locals would have been reluctant to appear in the council. On the contrary, the evidence proves that the Landraad and the thombo provided a means for the Dutch government to connect directly with the inhabitants of the Galle District.

Men and women entered extensively into the colonial legal system where distance was not a heavy deterrent. Witnesses from what were considered 'far' locations (between 12 to 18 kilometres away) by the council did appear, sometimes on several occasions. Yet, the further away from the administrative heart of the south, participation in the Landraad decreased. It may not be novel that women and lower-ranking persons came to the Landraad, as they would have been accustomed to appealing to the indigenous legal system as well. Relatively higher status groups who held service titles appeared in the Landraad, but the lack of title-holding was not an eliminating factor in coming forward to face the law. Attempts to control the legal representation of women through their husbands could not be fully realised in a rural setting. Evidently, the Landraad had a wide social reach and became part of the imagination of the villagers. By the mid-eighteenth-century, the indigenous inhabitants were acquainted with the Landraad and its thombo registration, and were able to use that knowledge in settling disputes. Litigants had to have knowledge of the procedures and best practices of strategy.

The recording of identities in the Landraad documents and thombos reflected the realities of colonial preoccupations that eventually led to further essentialisation of such identities. In the identification of litigants, title was mentioned more frequently than race, caste, religion and gender. Service and occupational categories were preferred to strictly caste classifications—it was more important due to its legal implications in connection with land holdings to explicitly mention a *goygama* villager's *mayorāl* status than his caste. Distinctions of rank, ranging from that of a *lascarin* to a *mahamudaliyār*, were important and Dewasiri has shown how increased opportunities for land ownership by such groups under the colonial government gave rise to a new class formation.⁷⁷

Such class distinctions are visible in the Landraad records. Identities based on service to the company were a feature of the cultural order that emerged at the end of the eighteenth century. This focus reveals the economic interests of the VOC in the task of essentialising

⁷⁴ Pieris, 'The Cleghorn Minute', 134.

⁷⁵ Ibid., 145. Cleghorn seems to have believed that the power of the *mudaliyār* was hardly ever challenged.

⁷⁶ Kotelawele, 'Some Aspects of Social Change', 96.

⁷⁷ Dewasiri, *Adaptable Peasant*, 141–183.

identities. The Landraad represented a colonial legal system that both responded to and reshaped cultural categories of identity. Notions of essentialised difference through caste ideology were prescribed through the thombos. The purpose of the thombos, to record property holdings which in turn were closely related to service categories, ensured that correct occupations were recorded in order to retain land rights. Peasants were keen to rectify mistakes on this front, as seen in the service issues described in chapter one. For litigants with plural identities, the Landraad was a site for negotiating a changing legal landscape, as part two of this thesis will reveal.

PART II

ASPECTS OF THE LAW

Chapter 4 Marshalling Unseen Forces

In 2007, in a North Carolina lawsuit about the use of the Koran for the oath, the judge cited a decision based on a case heard in England in 1744, *Omychund v Barker*.¹ The latter case had its origins in British Calcutta, showing how imperial encounters prompted changes in the practice of the oath in the metropole. The case concerned a debt owed to an Indian, Omychund, by Barker, who was an East India Company official. Omychund filed a case in the Calcutta Mayor's Court. Barker fled India, and the case was eventually heard in the High Court of Chancery in England. Barker's defence moved to have the depositions of two Hindu witnesses taken in Calcutta dismissed because the witnesses had been sworn in by a Brahmin priest. The court in England held in favour of the plaintiff, Omychund, and thereafter the testimony of witnesses sworn according to their own customs could be received as evidence in English courts.² In arguing the case, Attorney-General Sir Dudley Rider for the plaintiff quoted the Dutch jurists Grotius and Voet to say that 'the best writers of Christian morality have gone so far as to admit the oath to false gods.'³ *Omychund v Barker* led to the rationalization of the oath into a legal practice, allowing the expansion of the admissibility of witnesses in court. Reform of the oath in England eventually led to the adoption of an affirmation. Legal practices in the colonies also had an effect on more than one metropole. References were made in The Netherlands to alternative forms of the oath among the Nagas in British Assam and the Chinese in the Dutch East Indies who were allowed to behead chicken as part of the oath in the courts.⁴ Alternative forms of the oath were likewise accommodated in the VOC's colony in Sri Lanka.

The ideal principle behind an oath in legal practice is that the swearer finds it binding on his or her conscience. This connects to the idea that a legal rule must have meaning to the people—that is the 'ruleness of the rule'.⁵ The meaning is essential, and without it the oath loses its value and applicability in the local normative order that it is applied. Testimonies and a perception of trust are still inherently interconnected. Oaths may have lost the full force of their divine value over time but in eighteenth-century Sri Lanka perceptions of trust were connected to the supernatural. It will come as no surprise that there was an inherent lack of trust of locals displayed by the European powers. This could be due to one or both of two reasons—racism towards black people (bias) and the conflict of socioeconomic interests between the coloniser and colonised or among the colonised that led to dishonesty.

The administration of the oath shows the subtle dynamics of the relationship between coloniser and colonised in eighteenth-century Sri Lanka. First, I will examine the history of the oath in precolonial Sri Lanka, followed by a description of developments in Dutch times and the backgrounds of the witnesses who were required to take the oath. The nature of articulations of trust is examined in this chapter through the records of the Landraad and other administrative documents of the company. Interrogations are the written traces of a process in the Landraad where social values were expressed. They provide an invaluable source for social history through the voices of the peasants that have remained unexplored

¹ See Frederick B. Jonassen, 'So Help Me: Religious Expression and Artifacts in the Oath of Office and the Courtroom Oath', *Cardozo Public Law, Policy & Ethics Journal* 12, no. 2 (2014): 350–353.

² Elizabeth Kolsky, *Colonial Justice in British India* (Cambridge: Cambridge University Press, 2010), 111–112.

³ *Omychund v Barker*, 1 Atkyn's Reports 22, 28–29 (English Chancery 1744).

⁴ W J L van Es, *Het Eedsvraagstuk* (Leiden: Eduard Ijdo, 1911), 11, 22–23.

⁵ Pierre Legrand, 'What "Legal Transplants"?', in *Adapting Legal Cultures*, ed. David Nelken and Johannes Feest (Oxford: Hart Publishing, 2001), 57.

till now. Dutch colonial ideas of local mendacity and idolatry link up with the relative failure of the Dutch reformed church in meaningfully converting the local population, as will be discussed in the penultimate section of this chapter. The potential swearers, in turn, were engaged in a subtle exercise of subversion. For the most part they claimed to be genuine Christians, but Dutch officials were almost resigned to the fate of duplicity. In the end, the indifferent attitude of the local population to Calvinism necessitated changes in the performance of the oath, as this chapter will show.

4.1 The Oath in Precolonial Sri Lanka

Much value was attached to the meaning of the oath in its premodern administrations, the Sri Lankan experience being no exception. In precolonial legal spaces in Sri Lanka, a decision was arrived at in two ways: by means of testimonial evidence—also referred to as trials by witnesses—or trials by oath. As in other premodern societies around the world, Sri Lanka saw trials by invoking supernatural forces through the oath or ordeal. Oft quoted sources for such oaths that included trials by ordeal and calling on the gods to reveal the truth are Sir John D'Oyly's early nineteenth-century work on the Kandyan Kingdom and Sir Archibald C Lawrie's notes on Kandyan law. John Davy gives a brief account of the oath as well. They are also described by such early writers as Joao Ribeiro and Robert Knox and more recently analysed by F A Hayley, Ralph Pieris and Vijaya Samaraweera.⁶ Furthermore, this account will use the earliest administrative reports that were produced in Dutch times of the local oaths. A trial by oath was referred to in Sinhala as the *diviya* (plural: *divi*), the purpose of which was to secure divine or supernatural judgement. The ceremonial of the oath at times involved grave risk to the litigants and such instances have been termed ordeals. The oath was deemed to be necessary in the local practice if a case was complicated or if there were no witnesses to pursue a secular mode of trial. In the local practice if a *diviya* was admitted, the case was concluded through those means. Thus, it was a 'decisory oath' that served as evidence in itself.

There were various forms of *divi*: the oath taken in the *dēvala* (temple), the oath by or upon paddy, the oath by earthen vessels, by drawing white *olas*, by striking the earth and casting mud and water, or the oath by kitul (palm) trees.⁷ Not all of them can be described here, but the first, the oath that invoked the gods made at the *dēvala*, was a simple and possibly more frequently practised form. In general, both the plaintiff and the defendant took this particular form of the oath.⁸ Each swearer asked for divine intervention in the production of a sign in the form of some disaster or misfortune befalling him or her within a specific time frame if what has been testified to is untrue. Knox gives an amusing example, perhaps an anecdote he had heard, of two parties, a slave and a merchant, who took such oaths at a temple. The slave himself burnt down the merchant's house as a 'divine sign' of

⁶ D'Oyly, *Constitution of the Kandyan Kingdom*, 24:57–62; Ivor Jennings, 'Notes on Kandyan Law Collected by Sir Archibald C. Lawrie LL.D', *University of Ceylon Review* 10, no. 3 (1952): 200–205; Davy, *An Account of the Interior of Ceylon*, 183–184; Ribeiro, *Historic Tragedy*, 58–60; Knox, *An Historical Relation of Ceylon*, 194–196; Hayley, *A Treatise on the Laws and Customs*, 85–94; Pieris, *Sinhalese Social Organization*, 159–163; Vijaya Samaraweera, 'An "Act of Truth" in a Sinhala Court of Law: On Truth, Lies and Judicial Proof Among the Sinhala Buddhists', *Cardoza Journal of International and Comparative Law* 5 (1997): 133–63.

⁷ Hayley, *A Treatise on the Laws and Customs*, 85–90; Pieris, *Sinhalese Social Organization*, 160–163; Jennings, 'Lawrie's Notes on Kandyan Law', 201–203. *Caryota urens* is known as kitul in Sri Lanka.

⁸ It appears that social hierarchies were preserved in this process: Ralph Pieris quotes two cases where the oath was not admitted as it was not customary for the nobility to swear with low-caste men. Pieris, *Sinhalese Social Organization*, 159, n. 62. See also Lawrie's notes Jennings, 'Lawrie's Notes on Kandyan Law', 200.

the merchant's guilt in making a false accusation.⁹ Other signs could involve the death of a relation, the loss of an animal or damage to the harvest or house. In an early nineteenth-century case quoted by Ralph Pieris, it was said that the oath at the *dēvala* 'is considered as most binding on the conscience of persons professing the Buddhist religion'.¹⁰ These oaths were closely connected to an 'act of truth' (Sinhala: *satyakṛiya*) which was a 'belief that a solemn assertion of one's righteousness in a very particular respect can, by its truth, produce a specific desired result'.¹¹ In essence, trials by oath relied on the intervention of a divine power to secure judgement. Evidently, this worked as a result of a widespread belief that justice could be invoked through the divine.

Another form of the oath involving blood relatives was common to certain parts of the country and was also detailed by Ribeiro as an oath carried out under Portuguese rule. The reports (mentioned above) requested by the Dutch governor from headmen reveal the indigen- indigenous practices relating to the oath in three areas in the country, namely Colombo, Galle and Matara.¹² A version of the oath involving relatives described in all three reports involved the children or other close relative of the oath-taker. From Galle, only one type of oath among the 'heathens' was reported. First, the one who swears had to purify himself, wear new clothes and take one of his children to the special place stipulated for swearing. Standing opposite the child, he had to raise his right hand thrice to heaven, call the name of god thrice and lay his hand on the child's head saying, with the addition of a time limit: 'what I said was the pure truth; if it is not so let god's righteous wrath and punishment befall upon me'. If there was no child any other next of kin could be produced. Versions of the same oath were reported in the reports sent from Colombo and Matara.¹³ In the examples from Colombo and Galle, the visitation of evil was wished upon the swearer, but in Matara, if punishment was meted out to the blood relative, the swearer lost the case. Clearly, what would be perceived as irrational today could also be part of trials when secular methods failed in eighteenth-century Sri Lanka. Such instances saw a passive awaiting of divine judgement through the visitation of evil.

In other versions of the trial by oath, an ordeal was included in the ceremonial of the oath's procedure. Awaiting action by unseen forces was combined with the conscious activation of a great likelihood of effecting physical harm. The Sinhalese ordeal, as Hayley points out, bears a resemblance to its English counterpart. Emerging unscathed from a physically challenging or near-impossible task or experience would be proof of innocence. Hayley described three forms of the ordeal: the red hot iron, the cobra, and hot oil. In the first, the adversarial parties carried hot metal placed upon a leaf for seven paces and the party

⁹ Knox, *An Historial Relation of Ceylon*, 194–195.

¹⁰ Pieris, *Sinhalese Social Organization*, 160. An example of local accommodation of other forms of the oath, the mosque could take the place of the *dēvala*. Jennings, 'Lawrie's Notes on Kandyan Law', 201.

¹¹ Samaraweera, 'Act of Truth', 133. Such acts of truth were in their most distinctive form plain statements of fact. K de B Codrington, 'An Act of Truth in a Cingalese Court of Law', *Man* 33 (June 1933): 95.

¹² SLNA 1/93, 'Governor in Council Minutes', 24 Dec 1744; Sluijsken, 'A Description of the Land Services', vol. 1: 160–191. See, for translations (I have used Kotelawe's free translation), Alexander Johnston, 'Alexander Johnston Papers 1643–1817' (Manuscripts and Archives Division, The New York Public Library, n.d.); D A Kotelawe, 'Realms of Law: Judicial Procedures of the Low Country Sinhalese during Dutch Rule in Sri Lanka', *Modern Sri Lanka Studies* 2, no. 1 (1990): 117–120. These reports are from an earlier period than the British records and are possibly the only such record for the region on the subject. Among other oaths, the settling of boundary disputes in a ritual manner is described in detail in the reports. It is possible that the sort of 'trials by oath' with regard to settling boundary issues detailed in the reports were carried out when a case was first taken up with the headmen before they appealed to the Landraad. Kotelawe briefly studies the incorporation of the native oath by the Dutch, but misunderstands the function of the Dutch oath as explained later.

¹³ Incidentally, the Matara report says that the oaths described were prevalent in the Kandyan Kingdom as well.

whose hand was burnt lost the case. The second ordeal involved a cobra inside a narrow-necked vessel with some silver coins, which each party had to retrieve with his or her hands. The party that was bitten lost the suit. The third form of ordeal was that of the ordeal by oil. D'Oyly details the elaborate ceremony carried out prior to the ordeal itself, after which the parties to the case would each dip his or her fingers in burning oil.¹⁴ The party whose fingers are burnt lost the case. If the fingers of both parties are burnt or if neither of them are burnt, and if it was a plot of land that was in question, it would be divided equally between them. The oath by hot oil was also taken 'in cases of debt in which the debtor denied his liability, in sorcery, and in robbery'. In civil cases, both parties took the oath but in the case of a robbery the defendant alone had to take the oath.¹⁵ Oaths that included an ordeal could also involve a visit to a *devāla*.

In all likelihood the use of such ordeals went out of practice. The red hot iron and the cobra, Hayley says, were not in use by the beginning of the nineteenth century.¹⁶ Ralph Pieris believes that such dangerous ordeals had become obsolete in late Kandyan times.¹⁷ It is unlikely that they were in use in coastal Sri Lanka during Dutch rule, but there is one reference to it from Portuguese times. Ribeiro describes the ordeal of the red hot iron as in use in the Portuguese judicial forums of the Marallas under Portuguese rule.¹⁸ In the reports commissioned by the Dutch in the eighteenth century referred to above, an oath while holding a hot iron, burning oil or cow dung is described by a local headman of Colombo with the note that he had never seen such an oath being performed or described in a Sinhalese book of laws. He says he had only heard of it. In the report from Matara however references are made to oaths that included ordeals involving hot oil, hot iron, a snake and thorns, but no mention of their use was made.

Belief in the divine associations of the law also had written sanction in precolonial Sri Lanka. Ralph Pieris describes how 'a deed of gift invariably contained imprecations upon whomsoever disputed the ownership of the property gifted.' He quoted from a deed made in the first decade of the nineteenth century which said: 'If any person of the family or any other disputes regarding the land, the wrath of god will come upon them. This I pronounce once, twice, thrice. But Aluvihāre Mahatmayō and any daughters or sons descending from her may give the land, confirming the right by the five oaths without falling to the wrath of god. This I pronounce once, twice, thrice.'¹⁹ Such written evidence shows the importance of the supernatural for local society.

Fear of divine power was such that false accusations and false testimony were probably not easy options for most Sri Lankans. The fourth precept of the five precepts of good conduct in Buddhism, which have a powerful hold on the people, is to abstain from falsehoods. The concept of *divi-dōsa* (evils of false oaths) refers to the 'awful misfortune that would befall individuals and their immediate descendants as a consequence of falsely taking oaths'.²⁰ Yet if Knox's story of the slave and merchant were true, some swearers may have exploited the oath-taking practice of the local judiciary. It was into this scenario that the Dutch entered in the seventeenth and eighteenth centuries.

¹⁴ D'Oyly, *Constitution of the Kandyan Kingdom*, 24:57.

¹⁵ Pieris, *Sinhalese Social Organization*, 160.

¹⁶ Hayley, *A Treatise on the Laws and Customs*.

¹⁷ Pieris, *Sinhalese Social Organization*, 160.

¹⁸ Ribeiro, *Historic Tragedy*, 60.

¹⁹ Pieris, *Sinhalese Social Organization*, 159–160.

²⁰ Samaraweera, 'Act of Truth', 145.

4.2 The Dutch Oath in Sri Lanka

The oath as I have found it in most frequent use in the Landraad was intended to be taken to validate a deposition (*verklaring* or *depositie*)²¹ in support of a case. The depositions were made by one or more witnesses at the residence of the secretary to the Landraad in his presence and were translated by a sworn interpreter. They were formally signed by the witnesses producing the deposition, and two clerks (Europeans) as professional witnesses confirming the validity of the document and the secretary. Much of what was said where repetitious was omitted from the content. Each deposition thus contains the interpretations of the interpreter from either Tamil or Sinhala to Dutch, as most declarants were not conversant in that language. The interpreter's version had to be accepted by the document creator, who was probably the (European) secretary in most cases. The depositions, in effect, were third person summaries of witness testimony (as opposed to first person accounts). It is important to understand that they were not written *by* the peasants, but in the style of reported speech by a clerical officer. A typical deposition states that the listed witnesses 'declared as true as follows', and each witness is referred to in the order in which they were listed as the first, second, third etc. One example states: 'The first witness [declared] that he knew very well that when Wadumeestrige Philippu had come to live in the garden Dombegahawatte there were only 15 to 20 old coconut trees, but since then it was planted by him and owned till his death and after his death his wife and children had possessed it to this date.'²² It is most likely that the reliance on witness evidence through such depositions was greater than on a back and forth in a live council sitting. The depositions may be a reflection of the voice of the declarants, but it is difficult to know how close the text followed the oral expression. Samaraweera stresses the importance of knowing the local language in court, quoting James Alwis who said in 1852 that the Sinhala language was 'the key to the heart of the native'.²³ However, standard lines given at the end of each deposition stated that the witnesses claimed to be stating the pure and genuine truth and promised to swear under oath.²⁴ The format of these depositions is similar to those under the VOC at the Cape.²⁵

It was to *bekrachtigen* (authenticate) depositions or claims that the oath was offered. In this process, there are similarities between the local and Dutch practices. In the Dutch practice of the eighteenth-century in The Netherlands, the oath was also a kind of proof in court. It can be referred to as a decisory oath, which is one that is given in support of a deposition or

²¹ Mottau mistakenly uses the word affidavit in his inventory, but they were not sworn statements as that term implies. The word deposition has also been used in the South African context. Mottau, *Inventory of the Archives*; Nigel Worden and Gerald Groenewald, *Trials of Slavery: Selected Documents Concerning Slaves from the Criminal Records of the Council of Justice at the Cape of Good Hope, 1705-1794* (Cape Town: Van Riebeeck Society, 2005), xxiii. The word depositie was also used in the Landraad records in SLNA 1/6511, 'Minutes, GL', fols 30r, 31r, 9 Jul 1778; 63r, 5 Oct 1778.

²² 'Den eersten attestant dat hij zeer wel weet dat toen Waddomeestrige Philippoe in de thuijn Dombegahawatte is koomen woonen in dezelve maar 15 a 20 oude kokus boomen gestaan hebben, dog zedert door hem beplant en dezelve tot zijn dood toe bezeeten en na zijn dood desselfs vrouw en kinderen tot dato dezes gepossiedeerd word.' SLNA 1/6494, 'Depositions, GL', fol. 8r, 22 Jul 1778.

²³ James De Alwis, *Sidath Sangarawa: A Grammar of the Sinhalese Language* (Colombo: W. Skeen, 1852), v, ccli; Samaraweera, 'Act of Truth', 160.

²⁴ The full paragraph reads: 'The witnesses ended their declaration which they stated contained the pure and genuine truth, indicating that the accuracy of their testimony is as given in the text, while being ready to further confirm what was attested to with the oath if necessary.' ('Eijndigende hiermeede de attestanten hunne gegevene verklaring die zij betuijgen te behelsen de suijsere en opregte waarheid, gevende voor reeden van wetenschap als in den text, overzulx berijdt blijvende het g'attesteerde nader met eede gestand te doen.') In many depositions this was condensed to 'Ending herewith etc...' ('Eijndigende hiermeede etc...'). See SLNA 1/6494, 'Depositions, GL'.

²⁵ Worden and Groenewald, *Trials of Slavery*.

statement after it is made. The judicial oath, in contrast, is given before a testimony and is practised in the modern world. The decisory oath that was used in the Landraad in eighteenth-century Sri Lanka was similar to the local practice described above. The Dutch jurist Johannes Van der Linden says: ‘Such an offer or tender of oath by one of the parties, does not become evidence in the cause before the judge has admitted it, but when it has been taken, the facts sworn to are held as proved between the parties.’²⁶ Dutch jurists seem to agree that it was made use of by the plaintiff to support his evidence when incomplete, or by the defendant to strengthen his case when there was insufficient evidence against him. It was in this way that the oath was used in the Landraad in eighteenth-century Sri Lanka.

Council members were careful to follow procedure in admitting a witness to the oath. In the language used in the minutes, one party, the *intbimant* (offerer), would *intbimeeren* (offer) the oath of their witnesses to the opposing litigant, the *g’intbimeerde*. The councillors or the litigant asked that the oath be administered to a deposition, a process referred to as *recollement onder eede* (confirmation under oath) or *in forma probanti te brengen* (to bring in the form of legal proof).²⁷ It was a formal procedure in which the reading out aloud of the text and the utterance of the oath stressed the oral process.²⁸ Most examples of offers of the oath were by witnesses. Either the councillors ordered the process of admittance to the oath (usually giving a term of fourteen days for the purpose), or the litigant wished it to be administered to his witnesses in order to strengthen his case if it was complicated. *Gecommitteerden* (council delegates) assigned to a two-member commissioners’ sitting (see chapter one for more on this) did not ask for the oath from the parties or the witnesses. Instructions for the Landraad state that if in the course of their inquiry it was found to be necessary, they had to report the circumstances to the next Landraad session along with the record of the proceedings and seek their opinion on whether the oath should be taken. When the council deemed it necessary, heavy warnings on the enormity of the oath were to be given before a swearing.²⁹

Given the evidentiary nature of the oath, it was in the interests of the litigants to object by producing *contra-interrogatorieën* (counter-interrogations) that sought to prove the unsuitability of admitting them to the oath. In fact I suspect that all interrogations and counter-interrogations found in at least the Galle records of the Landraad concern the stalling of the oath. Often, both adversarial parties presented counter-interrogations of each other’s witnesses and objected to the oath being administered on the basis that the

²⁶ Johannes van der Linden, *Institutes of the Laws of Holland*, trans. Jabez Henry (London: J & W T Clerk, 1828), 262.

²⁷ This is a process of verifying or confirming testimonies delivered earlier. The verb *recolleeren* (*recoleren* in modern Dutch) means re-stating and thereby confirming by the defendant or witness of statements made earlier. If the statement was read aloud and followed by an oath taken by the defendant or witnesses, it would be *recollement onder eede*. Johannes van der Linden said in 1806: ‘If certificates or declarations of individuals, as to the facts in the case, are filed with the inventory, then, in cases before the town tribunals, follows the *hearing of witnesses*, since, according to law, no witness can be attended to who is not sworn, and an opportunity afforded to the opposite party to cross-examine him. This in practice is termed *examining witnesses in forma probanti*. The witnesses must appear personally before the judge to confirm their declaration or certificate by oath, and at the same time answer upon *counter* interrogatories, which are put to them by the judge in the name of the opposite party. With respect to the framing of these counter interrogatories, we must be particularly careful to confine them to the matter contained in the certificate or declaration, without questioning the witness to matters *de hors*, and which have no relation thereto, and we must also carefully avoid all unnecessary, impertinent, and especially entrapping or leading questions, which if they *strike* the judge as such, he is bound to expunge’ [italics JvdL]. Ibid., 473–474. In his notes van der Linden refers to Johannes Voet and Simon Van Leeuwen.

²⁸ This was not without parallels in the rest of the world. See Miles Ogborn, ‘The Power of Speech: Orality, Oaths and Evidence in the British Atlantic World, 1650–1800’, *Transactions of the Institute of British Geographers* 36, no. 1 (2011): 109–25.

²⁹ Mottau, ‘Instructions for Landraden’, 8.

depositions were proven to be false during the counter-interrogations. The opposing party was invited to see the deposition introduced in *forma probanti* and if they so wished to object to the oath by producing a counter-interrogation. In one Landraad case, it was said that they were sent a copy of the deposition well in advance in order for them to handover a counter-interrogation. The opposition was also told that whether they appeared or not, the process would continue according to practice. In that way, it was stressed that the oath was a serious matter. In practice, the Landraad was lenient on the matter. We see how the failure to produce a counter-interrogation was not condemned and allowed to delay the same case over many weeks.³⁰ If a party did not present a counter-interrogation of the opposing party's witnesses, that could be used against them. The *procureur* Albertus Hissink once proposed to the commissioners that the failure to present one clearly established that the opposing party had no proof to challenge the witnesses.³¹ In another example, a party could not ask their witnesses to swear, due, as they said, to the witnesses being engaged in company work.³² Typically, the opposing party would produce a counter-interrogation,³³ seeking to prove the dishonesty of the witnesses.

The counter-interrogations were carried out in a clear, pre-determined way. The questions were prepared in advance, so do not reflect the potentially more spontaneous nature of modern-day court room questioning. Two commissioners of the Landraad would execute the process by which the various witnesses would be cross-examined. First the deposition had to be read out aloud. Thereafter, during the cross examination of witnesses by an opposing party, the litigant for whom the witnesses appeared was sent out of the room and recalled when the counter-interrogation was concluded. As each witness was asked the set of pre-determined questions, one would imagine that they were called in individually. The answers were jotted down in reported speech next to the questions, some of which aimed to prove that the witnesses were unsuitable candidates for the oath because of their impiousness, or their personal or other obligatory interests. A standard summary of the counter-interrogation written out in the minutes over the years was: 'And the opposing party accusing the witnesses of being corrupt people who in their depositions contradicted and refuted themselves, requested that they must not be admitted to the oath' to which the litigant for whom the witnesses appeared is said to have 'salvaged' his witnesses 'as men of honour' or 'about

³⁰ In October 1778, Matere Happuhannedige Johan twice pleaded for his party that their *procureur* (Albertus Hissink) had fallen sick and therefore could not prepare a counter-interrogation. He was given three days initially and then eight days. But Johan failed to produce yet again, and at the next meeting of the *gecommitteerden*, he asked for another 14 days. The opposing party, led by Kahingellege Matthees, requested that Johan not be allowed to present a counter-interrogation and that their witnesses be admitted to the oath as three deadlines had already passed. The council delegates deferred the matter to the full council, which decided that Johan and his party must bring *their* deposition *in forma probanti*, seeming to ignore the opposing party's own deposition and oath and Johan's failure to produce a counter-interrogation for it. SLNA 1/6511, 'Minutes, GL', fol. 63r, 5 Oct 1778; 71v, 10 Oct 1778; 76r, 21 Oct 1778; 89r, 28 Nov 1778. Unlike Johan and his party, the opposing party is prompt in producing a counter-interrogation and their offer of the oath was deferred to the full council. SLNA 1/6520, 'Draft Minutes, GL', fol. 53r, 18 Dec 1778; SLNA 1/6534, 'Interrogations, GL', fol. 32r–38v, 18 Dec 1778. Some six months later, Matthees's party handed over a counter-interrogation with answers, a deed of *recollement* and a written request (*dictum*). SLNA 1/6512, 'Minutes, GL', fol. 38r, 5 Jun 1779. No mention of the oath or the depositions was made thereafter in the records, let alone of Johan's failure to produce a counter-interrogation. A sentence is pronounced in 1783 in Johan's favour, but a matter concerning the costs of the case drags on till 1794. SLNA 1/6524, 'Draft Minutes, GL', fol. 79v, 15 Nov 1783; SLNA 1/6517, 'Minutes, GL', fol. 118r, 22 Nov 1794.

³¹ SLNA 1/6514, 'Minutes, GL', fol. 9r, 6 Jan 1781.

³² *Ibid.*, fol. 115r, 28 Aug 1781.

³³ At times, the opposing party presents a *dictum* (written request). SLNA 1/6512, 'Minutes, GL', fol. 94r, 1 Dec 1779. Outside my sample: SLNA 1/6513, 'Minutes, GL', fol. 68r, 1 Jul 1780.

whom there was nothing to be said' and requested headway with the oath.³⁴ All the turns and phrases of the language repeated in the process of being admitted to the oath may have escaped most litigants and witnesses, but are testimony to the textual nature of the new practices of establishing truth.

To give one example from 1778, Pussewellege Johan and Ganegama Radāge Punchi were fighting over the rights to a cow in the Galle Landraad. They both wanted the depositions of their witnesses to be supported by the oath, and both presented counter-interrogations of each other's witnesses and objected to the oath being administered on the basis that the depositions were proven to be false during the counter-interrogations. After each counter-interrogation, the parties *persisteerd voor replicq* and *duplicq* (insisted on replies and rejoinders) and a decision on the oath was finally referred to the full bench of the Landraad.³⁵ But nothing more on the matter of the oath was found in the available records in connection with this case. In the following months, the parties hand over a written statement, condemnation of witnesses, an answered counter-interrogation and *gerecolleerd verklaring* with an *akte* (deed) of *recollement*.³⁶ The case ended the following year.

In records of over three years, the oath was not admitted to the witnesses. I found no mention of the oath being allowed in all of the minutes from May 1778 to August 1781 that I studied in search of the oath.³⁷ Neither the two delegates who heard the interrogations nor the council permitted the oath in this period. At an earlier period however, in 1769, a deposition given in a volume of minutes ends with Don Adriaan Gunawardena Ponnampereuma, the *mudaliyar* of Bentota we met in chapter two, taking the oath.³⁸ An intriguing example of an oath taken by a plaintiff to prove a debt came up later in 1775. The plaintiff, Bastiaan Christobu, claimed that Don Apponsu Wannige Chintamunie Mohotti Appuhamy, *vidānārachchi* of Akmeemana owed him 50 rixdollars. The defendant claimed that the due amount was only 40 rixdollars. He said that if the plaintiff proved with the oath that he had lent him 50 rixdollars, he would return it. The plaintiff, who was a Chettiar and claimed to be of the Dutch Reformed Church, took the Dutch form of the oath (more on this later) and his claim was recorded as confirmed and the defendant had to pay him 50 rixdollars, interest of one per cent per month, and the costs of the lawsuit.³⁹ This is in keeping with the Dutch use of the oath, and resembles the local usage except for the absence of a call for divine intervention after the swearing. An example of three *mayorāls* taking the oath in support of a deposition and a *gift ola* was also found for a later period in 1784.⁴⁰ On many occasions the two councillors who heard the interrogations decided that the oath will not be administered,⁴¹ or deferred the decision to the full bench.⁴² Where such cases were deferred

³⁴ 'En den geintheerde reproceerde de getuijgen als omgekogte luijden die in haare depositionen zelfs contrarieeren en teegenspreken, versogte dat ze tot den eed niet mogten geadmitteerd worden.

'Den inthimant salverende zijne getuijgen als mannen van eere en verzogte voortgang van den eed.' A slight variation was: 'Den inthimant salverende de getuijgen, beweerde dat ze waaren persoonen daar niets op te seggen viel en versogte voortgang van den eed.' SLNA 1/6511, 'Minutes, GL', fol. 30r–31r, 9 Jul 1778.

³⁵ Ibid.

³⁶ Ibid., fol. 49r, 15 Aug 1778; 65r, 10 Oct 1778. *Recollement* of the deposition was documented in a deed.

³⁷ Minutes of the Galle Landraad from 16 May 1778 to 28 August 1781 are covered in the volumes SLNA 1/6511, 1/6512, 1/6513, 1/6514. I studied these volumes in detail as they cover the samples of cases, litigants and witnesses used in the first part of the thesis.

³⁸ SLNA 1/6504, 'Galle Landraad Minutes' 1769, fol. 29r, 18 Mar 1769. Ponnampereuma, who was the litigant in the case, took the Dutch form of the oath.

³⁹ SLNA 1/6509, 'Galle Landraad Minutes' 1775, fol. 53r–55v, 27 May 1775.

⁴⁰ SLNA 1/6525, 'Draft Minutes, GL', fol. 57v, 11 Sept 1784; 58v–59r, 23 Sept 1784.

⁴¹ 'The Hon. commissioned members decide to leave the declaration under *recollement*' ('D'E gecommiteerde leeden vinden goed de verklaring onder *recollement* te laten') SLNA 1/6520, 'Draft Minutes, GL', fol. 51v (9 Dec 1778). See also SLNA 1/6513, 'Minutes, GL', fol. 18v, 14 Mar 1780. Other

to the full council, the decision was not in favour of the parties wishing to take the oath. In one case, when deferred to the council it decided to circulate the papers of the case among the members to decide, still without meeting with a favourable response.⁴³ Examples of the oath being performed are undoubtedly rare, being more the exception than the rule. Evidently, a lot of people were not considered trustworthy enough to be admitted to the oath. It would be interesting to see how litigants responded to a rejection of the oath, but this may be beyond the scope of the available sources. Such insights would have told us more about how at least certain aspects of the Roman-Dutch law practice were received by the locals.

What a rejection of the oath meant for the evidence in the council is unclear. No direct mention of the non-admittance of the oath affecting a decision in the council was forthcoming in the records I looked at. If the evidence had been taken as accepted by the parties if the oath was admitted, the councillors had to formally pronounce legal judgement based on that evidence. Dutch jurist Simon van Leeuwen says: 'The oath having been taken, judgment at once follows thereon, for it is of such effect that the result of the case depends upon it.'⁴⁴ It is not known if other considerations, such as custom or the authorities of Roman-Dutch law would have superseded supernatural considerations in the practice of the oath in the Landraad. We may no longer think of an oath as part of legal action, and in eighteenth-century Sri Lanka, the fact that it was hardly allowed in the Landraad is a sign of it going out of practice.

There are some conceptual similarities between the attempted Dutch transplant and the local practice. The local practice was mostly an oral one,⁴⁵ whereas the new Dutch procedure was a fully recorded one. It was based on documents every step of the way.⁴⁶ In the transplant, there was also a requirement for counter-interrogations. That would have been difficult for the locals to conceive of without the help of the interpreters, in this case the sworn interpreter and the *procureur*. In both the local and Dutch practices the oath was a ritual act, and was used as evidence. In the Dutch practice, swearing by god made it all true, in the local practice, visitation of evil either passively or actively was a determining factor. The gods or the supernatural are conceived of as operating *through* the administration of the oath. D A

examples of the oath not being allowed: 'The council decides to let the witnesses remain under *recollement*, ordering the parties to continue according to form' ('De Raad vind goed de getuigens onder het recollement te laten berusten ordonneerende parthijen stilo voort te procederen') SLNA 1/6514, 'Minutes, GL', fol. 73r, 2 Jun 1781. 'The Hon. members decided to leave the declaration under *recollement* without admitting the oath' ('E. leeden vonden goed de verklaring onbeedigt bij recolement te laten') SLNA 1/6515, 'Minutes, GL', fol. 145r, 29 Apr 1788. See also *Ibid.*, fol. 179v, 4 Aug 1788; 182r, 25 Aug 1788; 249r, 27 Aug 1789.

⁴² In one case where the decision had been deferred in that way, the *gecommitteerden* had in fact presented documentation of the *recolleeren* and examination of the witnesses to the full council. The oath, however, was not permitted: 'It was thus decided to leave the said evidence under *recollement* and the said Moor to be ordered to continue in principle' ('Zo wierd beslooten gemelte getuigens onder recollement te laten en gem. Moor te ordonneeren ten principaale voort te vaaren'). SLNA 1/6513, 'Minutes, GL', fol. 84r, 12 Aug 1780. In another example as well the witnesses were only allowed *recollement*: 'so it was decided to keep the mentioned witnesses under *recollement*' ('zo wierd besloten gem. getuijgen onder recollement te laten'). SLNA 1/6514, 'Minutes, GL', fol. 28r, 10 Feb 1781. After a counter-interrogation, the party in question may handover the counter-interrogation with answers, the verified deposition with a deed of *recollement*, and a statement or request. See for example SLNA 1/6512, 'Minutes, GL', fol. 42r, 19 Jun 1779. See for another example of the commissioners deferring the decision to the council SLNA 1/6515, 'Minutes, GL', fol. 115r-v, 10 Dec 1787.

⁴³ SLNA 1/6514, 'Minutes, GL', fol. 48r, 21 Apr 1781; 73r, 2 Jun 1781.

⁴⁴ Simon van Leeuwen, *Simon van Leeuwen's Commentaries on Roman-Dutch Law*, ed. Cornelis Willem Decker and J. G. (John Gilbert) Kotzé, vol. 2 (London: Sweet and Maxwell, 1923), 494.

⁴⁵ Except where one takes into consideration the *sittu* mentioned in chapter one.

⁴⁶ Oaths of office were recorded in writing as well, and the example given above of the Chettiar who took the oath was recorded in the minutes with the words that he said out aloud. I have not found such a verbatim record of the individual oaths of witnesses.

Kotelawele says the Dutch form of the oath as used in Sri Lanka was conceptually different to the local trial by oath. He believed that oaths played a different role in the indigenous legal system—an oath invoking the gods was itself a form of trial—whereas the Dutch oath was ‘merely the affirmation by the litigants to be truthful’ or ‘merely a preliminary to a judicial procedure’. Kotelawele calls this a ‘systematic misunderstanding’ of colonial situations following Paul Bohannon.⁴⁷ He believed that the Dutch oath in the courts of law in Sri Lanka was a judicial oath when in fact it was not such a preliminary oath. As we saw above the oath was a kind of proof in Roman-Dutch Law. This shows how important it is to study the legal practice in the donor country to fully understand its meaning and its transplantation to a foreign country. I argue that the function of the oath in the Roman-Dutch practice was not in conflict with the function of the ‘trial by oath’ in the local practice. What was in discord, on the other hand, was the *form* of the oath as discussed below. In the way of the Dutch Reformed Church, and as taken by the Christian Chettiar mentioned above, it involved holding up the second and third fingers of the right hand, and saying ‘so help me god almighty’ (*so waarlijk helpe mij god almachtig*). Incidentally, it is still this form of the oath that is in use in The Netherlands.⁴⁸ How this form of the oath was changed in eighteenth-century Sri Lanka will be discussed below. In the adaptation of a new form of the oath, more local features of the oath were admitted to the oath.

4.3 Disputing Form

The manner in which litigating parties or their witnesses offered the oath was of special issue to the company. For the Landraad councillors, witness evidence was mostly inadmissible under oath as shown above. Sluijsken wrote in 1784 in his description of the land services of the island that ‘their complaints seldom saw a lack of witnesses, but even less seldom were there witnesses who could be approved, because when they profess to be Christians they are so flippant in the performance of the oath’.⁴⁹ The company doubted the level of sanctity that natives attached to taking the Christian oath, and their understanding of what it meant to be Christian when they would profess to be of that faith. It was an issue that the company had been aware of for a long time. Questions of truth, as Samaraweera points out, were of little importance in the Gamsabhāva (village council) of the precolonial system as there was ‘general familiarity of the assembly as a whole of the individuals and events that came before it’.⁵⁰ For a foreign power, however, it was far more important. As far back as 1679, Laurens Pijl wrote: ‘Great care must be exercised in the administration of justice, because the people are a troublesome and dishonest race. They do not scruple to take a false oath to gain any profit, and the rich are able to get as many of the common people as they desire to give evidence in their behalf for their profit.’⁵¹ In 1696, two *mudaliyārs* of Jaffna were ordered by Colombo to

⁴⁷ Kotelawele, ‘Realms of Law’, 112; Paul Bohannon, ed., *Law and Warfare: Studies in the Anthropology of Conflict* (New York: Natural History Press, 1967).

⁴⁸ On the oath and affirmation in the courts of law today in The Netherlands, as in most other countries, a witness can choose between the oath and the promise. If the oath is chosen, he or she has to raise the second and third fingers of his right hand and say the words ‘*So waarlijk helpe mij god almachtig*’ (So truly help me god almighty). A witness is also permitted to take the oath in a form prescribed by his religious identity. Apparently this is made little use of in court today.

⁴⁹ ‘Bij hunne klagten manqueren seldom getuijgen, dog seer seldom die g’approbeert konnen worden, want wanneer sij sig voor Christenen opgeven, sijn se al seer ligtveerdig in ’t presenteeren van den eed.’ Sluijsken, ‘A Description of the Land Services’, vol. 1: 160.

⁵⁰ Samaraweera, ‘Act of Truth’, 143.

⁵¹ This section written by Pijl to Ruthgaart de Heyde, his succeeding commander in Jaffna, appears in Governor Rijcloff van Goens’s memoir to Pijl who was taking over as governor. Rijcloff van Goens, *Memoir Left by Rycloff van Goens to Laurens Pijl*, trans. Sophia Pieters (Colombo: H C Cottle, Govt. Printer, 1910), 27–28. Knox’s ideas of local mendacity perhaps prejudiced many Europeans as his work was available in print in Europe in different languages. Samaraweera points out that this was due to the fact that locals were not

take their oath (requested by a litigant in the Raad van Justitie of Jaffna) in the heathen way. Commander of Jaffna Hendrick Zwaarddecroon cites Pijl's statement as an explanation for why it was allowed 'only in the heathen fashion, although this seemed out of keeping with the principles of the Christian religion (*Salva Reverentia*), as these people are recognised as baptised Christians, and therefore the taking of this oath is not practised here.'⁵² The local oath form was not officially accepted in Jaffna at the time, but Colombo was aware of the need for its use. In 1746, however, the taking of the 'heathen' oath form in Jaffna from baptised Christians who professed to be Christians in public was banned by Colombo.⁵³

Many witnesses were ready to swear to the possession or cultivation of lands by others for the purpose of the cadastral registration, but cultural differences lay at the base of the little value they attached to the Christian oath. As the Roman-Dutch practice of the oath constituted the evidence itself, as we saw above, quite naturally the flippancy with which the natives took the Dutch oath troubled the VOC. Yet it is almost theatrical that they attempted to transplant an oath of holding up two fingers that was meaningless to the Sinhalese. This sense of absurdity was echoed in London in *Omychund v Barker* in 1744, when the issue of the infidel oath was debated: 'it would be absurd for him to swear according to the Christian oath, which he does not believe; and therefore, out of necessity, he must be allowed to swear according to his own notion of an oath.'⁵⁴ That same year, Governor Van Gollennesse in Sri Lanka called for a reform of the oath form, which, unsurprisingly, had become an issue.

Mistrust as to who could effectively give their word prevailed, but rather than entirely barring witnesses from giving evidence because they were not true Christians, the company reached a compromise with the native system. In 1744, four years after the Landraden of Colombo and Galle were set up, some form of an indigenous practice was adopted by the Governor in Council as the practice of the Landraad and all other judicial bodies and institutions after discussion with indigenous headmen. First, Governor Van Gollennesse called for the reports mentioned above on the oath of the 'Sinhalese heathens' from the headmen of Colombo, Galle and Matara.⁵⁵ In December 1744, two reports from Colombo and one each from Galle and Matara were submitted, and the headmen were asked to give further advice. Having received this advice, in 1745, indigenous swearing-in practices that were acceptable to 'heathens' were adopted. In the legal system, it was obviously necessary to be able to accept evidence, so the need for evidence dictated a change in procedural aspects. As Sluijsken shows in his memoir, it was understood that the indigenous inhabitants of the country retained their own customary laws. As a basic step towards recognising this, it is self-evident that it was necessary to be able to accept their evidence in judicial procedures, as the early colonial state had appropriated the right to settle disputes among the natives.

The company accepted plural forms of the oath.⁵⁶ Many different forms of the oath were described in the reports of 1744, but as pointed out before one aspect that was in common

allowed to communicate to Knox on how to leave the Kandyan Kingdom where he was imprisoned for many years. Knox, *An Historial Relation of Ceylon*, 120–121; 'Act of Truth', 137–138.

⁵² Hendrick Zwaarddecroon, *Memoir of Hendrick Zwaarddecroon, Commandeur of Jaffnapatam, 1697*, trans. Sophia Pieters (Colombo: H C Cottle, Govt. Printer, 1911), 50.

⁵³ SLNA 1/98, 'Governor in Council Minutes', fol. 270r, 11 Jul 1746.

⁵⁴ *Omychund v Barker*, 1 Atkyn's Reports 22, 46 (English Chancery 1744).

⁵⁵ SLNA 1/93, 'Governor in Council Minutes', fol. 147r, 21 Nov 1744.

⁵⁶ When a Mennonite refused to take the oath in the way of the Dutch Reformed Church before the Raad van Justitie in Colombo, the company adopted oaths that were acceptable to Roman Catholics, Mennonites and Jews in 1758. SLNA 1/125, 'Governor in Council Minutes' 1758, 19 May 1758. An undated list of the oaths used in the Landraad for officials, litigants and witnesses includes the oath for Mennonites, Roman Catholics, Jews, Moors and 'heathens'. The oath of the Dutch Reformed Church was also the oath for Lutherans. SLNA 1/5666, 'Documents, GL', fol. 20v–23v. A reference to a Tamil form of the oath was found in the council minutes but not traced. SLNA 1/211, 'Governor in Council Minutes' 1790, 27 Nov 1790.

involved the children or other close relative of the oath-taker. Other sources confirm the use of this oath as well. In petitions to the Dutch government, for instance, appeal was made to the veracity of their statements by offering the oath on the head of their children.⁵⁷ It was such an oath involving a child or other relative that the company finally settled on as well. On reading the reports, the governor proposed that form of the oath on 24 December 1744 in order to prevent and do away with ‘many inconveniences’ and ‘falsities’ resulting from imposing the Dutch form. Each ‘heathen’ had to swear, after the usual cleansing process and with their right hand on the head of any of their children or if there were no children of another of their blood relatives, saying out aloud the words in essence: ‘I swear by the true god of heaven and earth that so truly as I lay my hand today on the head of my child (father, mother or other blood relative), that which I have declared and testified is true, and if I lie, the same god (in such and such a time) must punish me severely.’ The governor asked the Landraden to consider the matter and in March 1745 the December minutes were made a permanent order.⁵⁸ Provision was also made to accommodate other forms of the oath practised by the Sinhalese.⁵⁹ But the standard form became the one involving a relative and when a litigant or witness offered to take the oath in the ‘heathen’ way, they had to appear at the council with family members.⁶⁰ It is most likely that it was not the Christian god, but the pantheon of gods worshipped by the locals that the Sinhalese referred to.⁶¹ What mattered was that the witness believed in whichever god he chose to refer to, because then he could be guilty of perjury in the eyes of the law. Paradoxically, this indigenous form of the oath, referred to as the Sinhalese or ‘heathen’ oath was introduced primarily to address the issue of so-called Christians taking false oaths (more on this will follow). Incidentally, I have not found the local form of the oath in use in the Landraad.

The propriety of adopting the local form did prick the conscience of the company. In 1790, the Governor in Council raised the issue of Christians regarding the Dutch form of the oath with little reverence.⁶² It deliberated on whether it would not be advisable to use local

⁵⁷ Personal communication from Lodewijk Wagenaar, based on petition reports from Galle in 1758.

⁵⁸ ‘Ik zweere bij den waren God van hemel en aarde dat zo waarlijk als ik tegenwoordig mijne hand legge op het hoofd van mijn kind (vader, moeder of ander bloed verwant) zo waragtig is, het geene ik hebbe verklaart ende getuijgt, en zo ik liege, moet die zelve god mij (in zo of zo veel teijds) zwaarlijk straffen.’ SLNA 1/93, ‘Governor in Council Minutes’, 24 Dec 1744; SLNA 1/94, ‘Governor in Council Minutes’, 22 Mar 1745. The undated list of the oaths mentioned in note 56 gives this slightly varied version, where punishment is invited on both the swearer and the relative: ‘Ik sweere bij den waeren God van Hemel en aarde, dat zoo waeragtig als ik mijn hand legge op ’t hoofd van mijn zoon (of wie hij ook zijn mag) zoo waaragtig is ’t geen ik heb verklaard, en indien ik in eenige deelen liege, moet die zelve God mij en deezzen mijnen zoon (of wie hij anders zij) binnen korten swaarlijk straffen.’ SLNA 1/5666, ‘Documents, GL’, fol. 23v. An extract of the 24 Dec 1744 minutes on the oath is also given in SLNA 1/5658, ‘Extracts of Orders, GL’, fol. 17v–18r.

⁵⁹ It was also said: ‘But in places where the heathens are in the habit of swearing in a different way, the country’s custom must be followed’ (‘Dog op plaetsen, daar de heijdenen gewoon zijn anders te zweeren, moet slands gebruik gevolgt worden’). SLNA 1/5666, ‘Documents, GL’, fol. 23v. It appears that the headmen’s reports given in the Dec 1744 minutes were also approved, as for instance Sluijsken copies them out verbatim in his account of the land services. See note 12.

⁶⁰ On one occasion reference is made to some witnesses being required to bring their nearest family members to be able to offer the oath in the ‘heathen’ way. The oath, however, was not allowed. SLNA 1/6514, ‘Minutes, GL’, fol. 105r–v, 7 Aug 1781.

⁶¹ As Samaraweera writes of the local oaths: ‘The god or goddess was chosen by the swearer, who then became the witness to the deed and acted as the arbiter of justice by determining whether the oath was false or not.’ ‘Act of Truth’, 145.

⁶² See documents in this connection in SLNA 1/211, ‘Governor in Council Minutes’, 27 Nov 1790; SLNA 1/213, ‘Governor in Council Minutes’ 1791, 9 Feb 1791; Klaus Koschorke, ed., *The Dutch Reformed Church in Colonial Ceylon (18th Century): Minutes of the Consistory of the Dutch Reformed Church in*

forms of the oath (evidently it was still a matter of contention) with the church council.⁶³ It is not clear why the church council was engaged at this point (it was not called upon to comment in 1744 when the Sinhalese oaths were adopted). Moral support for political and administrative reasons may have been necessary.⁶⁴ The Governor in Council inquired of the Church Consistory in Colombo whether it was in keeping with the Christian religion if Sinhalese and Tamils who were Christians took the oath in customary forms, excluding idolatry ceremonies or those involving injury. The reports of 1744 with the Sinhalese oath forms and a report on how non-Christian Tamils swore were attached to the query. The church council did not object but proposed a form of swearing by raising the hands up to heaven and lowering them to the ground, which was similar to the first form of the oath from Colombo mentioned in the 1744 reports. The Governor in Council recognised that it was not a form that was in common use among the 'heathens', and would not be effective for use by Christians either. They recommended keeping to the old practice. The church council's advice was ignored in order to preserve the plural oath forms that were already recognised. The governing body realised that the meaning of the oath for the people, and the fact that there were diverse oaths going by location, could not be compromised.

Dutch concerns over the oath were widespread. The VOC in Sri Lanka recognised that they could not impose a form of the oath on the local population that was alien to them and had no value among local cultural beliefs that could not be easily changed. The importance of belief was stressed in The Netherlands as well. W J L Van Es defended a thesis in Leiden on the question of the oath in The Netherlands in 1911. He analyses the debate between those for and against the oath. Supporters of the oath, he said, think that their special oath is as old as the world itself and that those against do not seem to fully appreciate the truly deep perception of sin that can lie in the act of swearing. Van Es gives examples from Assam in British India, Ostyaks (Finno-Ugric people inhabiting western Siberia); New Guinea among others as examples of other forms of the oath and the subjectivity of the value of the oath. He makes the observation that 'I can only convince a Papua or a Buddhist that his understanding of the oath is wrong, if I first change his worldview.' The colonial experience of the VOC in Sri Lanka was not something he seemed to be aware of, but Van Es does refer to a 'pseudo-ritual' oath of the Chinese in the courts of the Dutch Indies that involved the beheading of a chicken. He stresses that example to conclude that the oath was only a measure to create an attitude as serious as possible but does not objectively offer any lofty guarantee of truth.⁶⁵

Questions on the form of the oath were not confined to the Dutch experience. The British, when they took over from the Dutch, were uncertain about which form of the oath to use in Sri Lanka. The multitude of oath-taking practices of the natives that emerged on investigation is seen among the papers of Alexander Johnston.⁶⁶ Although he had a translation of the same reports that the Dutch had commissioned in 1744 regarding the oath, they settled on very different forms of the oath. They introduced the judicial oath of swearing before the evidence was given quite early on in the littoral. Thus the function of the oath for the British was different to that of Roman-Dutch law, but conflicts remained. They retained a version of

Colombo, trans. S A W Mottau (Wiesbaden: Harrassowitz Verlag, 2011), 648–649, Extraordinary Meeting held on 14 Jan 1791.

⁶³ The Landraad instructions of 1789 also reflect this continuing concern when it states 'it is not so much the form of the oath or the manner in which it is taken, as in the act itself, and the terrible fate that awaits the person who dares to summon the Almighty God to witness any matter which they do not fully know, or, which is still worse, which they know to be untrue'. Mottau, 'Instructions for Landraden', 8.

⁶⁴ The necessity for endorsement by the church council could have also been due to that council discouraging converts from taking the non-Christian oath, but this must be supported by evidence.

⁶⁵ Es, *Het Eedsvraagstuk*, 11–12, 20, 23, 25.

⁶⁶ Johnston, 'Johnston Papers (NYC)'.

the ‘trial by oath’ or *divi* in the Kandyan provinces after 1815, but extended the judicial oath of the littoral in 1818 to the interior at least on paper.⁶⁷ In practice, the trial by oath including the oath by hot oil as a decisory process continued to be used by individual judges in both the littoral and the interior. The Supreme Court looked on with disapproval, and by the late nineteenth century, it deemed the decisory oath ‘as being both contrary to law and against public policy’.⁶⁸ The legislature, however, ruled otherwise and a litigant can still challenge an opposing party to an oath under the Oaths Ordinance No. 9 of 1895.⁶⁹ This rather muddled state of affairs—as in British India—shows the uncertainties of colonial authority experienced by the coloniser.

The particular forms of the judicial oath adopted by the British were at times problematic. The insignia of the goddess Pattini was used in court for Buddhists to swear on. Basil leaves and water symbolic of the Ganges were used for Hindus, and Muslims swore on the Koran.⁷⁰ The anklets of Pattini were used as a form of the decisory oath, but they were not revered by all Sinhalese Buddhists in the country.⁷¹ Its adoption outside of its ritual context had little meaning to the people. Incidentally, such conflicts between the oath form imposed by a colonial power and local beliefs were also seen in India, where, among other oaths, basil leaves, Ganges water and the Koran were used by the British in the local courts. Indians believed that the British courts were places where they had to commit many wrongs.⁷² In Bengal for instance the oath came into dispute—the Hindu oath on the Ganges was considered a sin and was also rejected on the grounds that it assumed equality across rank and caste through uniformity in application. Ram Mohan Roy reportedly objected to swearing on the water of the Ganges and asked that he be allowed to swear on the Vedas.⁷³ Swearing by one’s children was likewise used by the Hindus in India. In fact, using a relative to swear by may be a South Asian phenomenon. An oath was not a part of Indian Islamic Law⁷⁴ but was allowed by the

⁶⁷ Samaraweera, ‘Act of Truth’, 147–148.

⁶⁸ Hayley, *A Treatise on the Laws and Customs*, 92–93; Samaraweera, ‘Act of Truth’, 151–153. See also John D. Rogers, *Crime, Justice, and Society in Colonial Sri Lanka* (Curzon Press, 1987), 71–72.

⁶⁹ See section 8 of the ordinance and E R S R Coomaraswamy, *A Textbook of the Law of Evidence in Ceylon* (Colombo: Noel E Hamer, 1955), 395–396. The last reported case available that refers to the decisory oath was in 1949. Where one party refused to take the oath when asked to do so by the opponent, an interesting question arose of ‘whether a judge in weighing the evidence is entitled to draw any inference from the refusal of a party, without sufficient reason, to take a decisory oath when challenged to do so by the opponent.’ Court was split on the matter: One judge, interpreting the law literally, responded positively, the other said no. *Sinnapody et al. v Mannikan et al.*, 53 New Law Reports (1949).

⁷⁰ John Whitchurch Bennett, *Ceylon and Its Capabilities: An Account of Its Natural Resources, Indigenous Productions, and Commercial Facilities* (1843; repr., New Delhi: Asian Educational Services, 1998), 55.

⁷¹ Bennet, when he was a magistrate in the Galle district from 1823 to 1826, had been told by Buddhist priests there that swearing by the insignia of the goddess Pattini was anything but sacred in the eyes of true Buddhists. He gives an example of a defendant who wished the plaintiff to swear on the sacred books of the Buddhists or under the sacred Bo tree in a temple instead of the insignia of the goddess Pattini. This had the desired effect of the plaintiff withdrawing his plaint. Apparently the defendant had known that the plaintiff did not follow Pattini. *Ibid.*, 55–56. For an 1817 case in which Pattini’s ornaments were used see Jennings, ‘Lawrie’s Notes on Kandyan Law’, 202–203. Incidentally, the insignia of Pattini is not described in the Dutch reports of local oath forms compiled in 1744. In the trial by oath of the local system, it was important that the swearer be able to select the deity that they wished to witness the oath. See Samaraweera who uses Obeyesekere’s work to explore inherent issues in the adoption of the insignia of Pattini as the only oath form for Buddhists. ‘Act of Truth’, 154–158; Gananath Obeyesekere, *The Cult of the Goddess Pattini* (University of Chicago Press, 1984).

⁷² Kolsky, *Colonial Justice in British India*, 112–113.

⁷³ James E Tyler, *Oaths, Their Origine, Nature, and History* (London: John W Parker, 1835), 168.

⁷⁴ Kolsky, *Colonial Justice in British India*, 112–113.

Dutch for the Moors of Sri Lanka.⁷⁵ The ritualistic meaning attached to the oath was thus crucial to its successful use in court.

Elizabeth Kolsky, in her study of the oath in British India, raised the question of whether the corporal oath forms were ‘invented colonial traditions’ and states that at times it ‘reflects how the colonial state reconstructed Indian society even as it endeavoured to rule in a fashion that was congruous with indigenous institutions.’⁷⁶ She draws this conclusion as a result of the mirroring in the Indian forms of the corporal form of the Christian oath in which a swearer lays his or her hand on the Bible. British use of the sacred Buddhist books in Sri Lanka is further confirmation of this, as that is not an oath form found in accounts of the local oath or in Dutch sources.⁷⁷ Yet such significant transformations of the Sinhalese oath were not seen in Dutch Sri Lanka.

Colonial administrations commonly made mistakes on what they thought were the best forms of the oath. The disregard shown towards the Dutch forms of the oath, links up with a more general disrespect for colonial authority. They may have engaged in a process of standardising the oath but at the core of this effort lies the fact that the company recognised the relationship between faith and truth. The adoption of local oaths would have led to a sense of inclusion among the people and encouraged them to say the truth. The extent to which this was necessary can be seen in the next section which profiles the witnesses and their professed Christianity which the company doubted.

4.4 The Witnesses: Promising the Oath

Most witnesses in the Landraad were male, Sinhalese, and nominal Christians. They warrant special attention as they offered the oath most often in the Landraad. As we saw in chapter one, producing witnesses was a primary form of legal proof and argumentation. Without such means, many litigants could not have protected their property rights. It was a way in which they could regain or hold on to their land. Table 4.1 gives a breakdown of witnesses in the Landraad from 1778 to 1781 based on their religion.⁷⁸ The vast majority were Christians, the others being ‘heathen’, Mohammedan and Roman Catholic while a handful were described as belonging to the Kataragama belief (*Kataragamse geloof*), which is the worship of god Skanda or Kataragama of the Sinhala-Buddhist pantheon.⁷⁹

The attention paid to introducing a non-Christian form of the oath, despite the fact that most witnesses were Christians, can be seen as paradoxical. A flippant attitude when delivering the Dutch form of the oath was seen among so-called ‘Christians’. Being an overwhelm-

⁷⁵ ‘A Mohammedan swears with his right hand lying on the koran, in the presence of a Mohammedan priest, without saying anything’ (‘Een Mahometaan doet den Eed met zijn regterhand, ten bijwezen van een Mahometaanse priester, te leggen op de alkoran, zonder dat hij daarbij iets zegt’). SLNA 1/5666, ‘Documents, GL’, fol. 23v, n.d.

⁷⁶ Kolsky, *Colonial Justice in British India*, 113.

⁷⁷ Nevertheless, this is likely to have held some value among Buddhists, perhaps signifying the influence of the use of the Bible by Christians.

⁷⁸ More on their backgrounds is given in chapter three. In one deposition it appeared that a clear distinction was made between Christian and Gereformeerd: ‘De twee eerste Christenen en de laatste gereformeerd van religie.’ SLNA 1/6495, ‘Galle Landraad Depositions’ 1783 to 1793, fol. 5r, 7 Feb 1783. For some there wasn’t such a difference as the witnesses were referred to as ‘Christian and Gereformeerd’. See, for example, SLNA 1/6492, ‘Galle Landraad Depositions’ 1760 to 1770, fol. 13r, 30 Sept 1760. G J Schutte points out that the Europeans were all thought to be Christians, which I have followed as a small number of witnesses with European names did not have their religion stated on the deposition. G J Schutte, ‘Een Hutje in Den Wijngaard: Gereformeerd Ceylon’, in *Het Indische Sion: De Gereformeerde Kerk Onder de Verenigde Oost-Indische Compagnie*, ed. G J Schutte (Hilversum: Verloren, 2002), 180.

⁷⁹ See for further details of this cult Gananath Obeyesekere, ‘Social Change and the Deities: Rise of the Kataragama Cult in Modern Sri Lanka’, *Man* 12, no. 3/4 (1977): 377–96; Elizabeth Nissani, ‘Polity and Pilgrimage Centres in Sri Lanka’, *Man*, n.s., 23, no. 2 (1988): 253–74.

ing majority in Galle, 'Christians', in fact, were the primary targets of the changes to the oath form. For it was common knowledge that they were only Christians by name: 'Government Christians' and 'Christian Buddhists' were some of the terms used in British times⁸⁰. In the Landraad the conflict between theory (i.e. large numbers of conversions on paper) and practice (actual belief) reached a climax. The inconsistency was used by all parties to their benefit as shown below. Finally, hardly anyone was allowed to verify their statements with what would be considered a sacred oath.

The majority of residents in Galle were baptized subjects. Galle was one of three separate church communities on the island, the other two being Colombo and Jaffna.⁸¹ The members of the Dutch Reformed Church consisted of diverse ethnic and social groups. Church services in Dutch, mostly in the forts, were attended by Europeans and Eurasians, but the reformed church in Sri Lanka comprised of a much larger population of Portuguese-, Tamil- and Sinhala-speakers.⁸² They were under a church council, and the church was not independent of company power. The Dutch initially attempted to obliterate the institutional structures of the Roman Catholic establishment (a legacy of Portuguese power) and replace it with Protestantism.⁸³ Yet by the late eighteenth century the Catholic faith was hardly persecuted; maps from that time show a 'Roomse Kerk' on the high ground to the north-west of Galle Fort.⁸⁴ Together with education, the reformed religion of Calvin had to be propagated. Schoolmasters played an important role in this process. G J Schutte points out that just as in the Moluccas, they had to conduct a church service on Sundays and read out a sermon. Ministers would visit regularly to conduct baptisms. The Calvinist church in Sri Lanka was never as well staffed as the Roman Catholic church even in later Dutch times, but the late eighteenth-century saw a growth in the ecclesiastical body, due perhaps to the Eurasian and native element of the local population, as Schutte suggests.⁸⁵

⁸⁰ Sir James Emerson Tennent, *Christianity in Ceylon* (London: John Murray, 1850), 89.

⁸¹ Schutte, 'Een Hutje in Den Wijngaard', 179.

⁸² Ibid., 179–180. The Moors alone, it appears, did not convert. Tennent, *Christianity in Ceylon*, 64.

⁸³ An early account of the rivalry with Roman Catholicism is found in Tennent, *Christianity in Ceylon*, 39 ff. The company attempted to persecute that religion by penal laws till it was removed from the island, but such a policy could not be fully followed in reality. By the late eighteenth century, the Dutch were resigned to the fate of the existence of Roman Catholic subjects and allowed Catholic priests to reside in Dutch territory. In the archives of the Landraad, I found that they allowed the Roman Catholic oath of office and permitted Dutch Protestant or Lutheran marriage alliances with Roman Catholics on the production of a deposition that the offspring would not be raised as Roman Catholics but according to the reformed religion. SLNA 1/125, 'Governor in Council Minutes', 19 May 1758; SLNA 1/5666, 'Documents, GL', 22v, n.d.; SLNA 1/6496, 'Galle Landraad Depositions' 1780 to 1799.

⁸⁴ Rob van Diessen, *Grote Atlas van de Verenigde Oost-Indische Compagnie: Deel IV: Ceylon* (Asia Maior, 2008), 200–201. This is the present St Mary's Cathedral. Roman Catholicism remained a tangible force, as it does today. See also Goor, *Jan Kompenie as Schoolmaster*, 145–146.

⁸⁵ Schutte, 'Een Hutje in Den Wijngaard', 179, 186.

Figure 4.1: Indigenous Christians in Galle and Matara, 1693-1794



Source: Van Goor, *Jan Kompenie*, 160-161.

Table 4.1 Religion of witnesses at the Galle Landraad 1778-1781

<i>Religion</i>	
Christian	244
Heathen	1
Kataragama	6
Mohammedan	5
Roman Catholic	3
Other/Not mentioned	5
<i>Total</i>	264

Source: SLNA 1/6494, Depositions from 13 Jul 1778 to 14 Aug 1781

Few demographic studies have been carried out on Dutch Sri Lanka in order to properly estimate what proportion of the population these Christian witnesses constituted. In the latest attempt, Pim de Zwart has shown that in 1684, the number of Christians in Galle appears to have been 56 per cent of the total population.⁸⁶ In both Galle and Matara, they grew in numbers in the mid-eighteenth century from 25,827 in 1693 to 92,313 in 1753.⁸⁷ Thereafter there was a decline to 60,000 at the end of the century, as shown in Figure 4.1. Due to the lack of demographic data encompassing the Galle District, it is not possible to easily represent these figures as a percentage of the population.⁸⁸ The thombos also do not provide us with reliable data on the population of Galle. An estimate of a population of 95,000 individuals⁸⁹ was based on the land registers, but the Galle thombos have inherent characteristics

⁸⁶ Pim de Zwart, 'Population, Labour and Living Standards in Early Modern Ceylon: An Empirical Contribution to the Divergence Debate', *Indian Economic & Social History Review* 49, no. 3 (2012): 378.

⁸⁷ Goor, *Jan Kompenie as Schoolmaster*, 160-161.

⁸⁸ De Zwart has made some attempt at representing the population of Ceylon. 'Population, Labour and Living'.

⁸⁹ Belt, Kok, and Mandemakers, 'Digital Thombos', 484.

(explained in chapter five) that question the reliability of this figure. Until more reliable data surfaces in the archives, suffice to say that over the seventeenth and eighteenth centuries the numbers of indigenous Christians in Galle, as well as in other areas controlled by the Dutch, were undoubtedly high. Tennent says in the nineteenth century that there were 'large districts in which it would be difficult to discover an unbaptized Sinhalese'.⁹⁰ This predominance of Christians would be in keeping with the majority of witnesses also being Christian.

Conversions to Christianity and baptisms of children have been linked not to a true understanding of that religion, but to political and economic benefits such as holding high office and establishing property rights. One crucial reason for such high numbers of Christians at least on paper was a belief among the inhabitants that they had to be baptized to have their property rights entered in the thombo. However, this is not to say that all those who were entered in the Galle thombos were Christians. On the contrary, in some thombos of the Hinidum Pattu, out of almost 500 listed individuals, 34 first-mentioned persons of a thombo group were described as 'heathen' (and only three as Christians). Given that their immediate families would have also been 'heathens' this figure increases substantially. It is however rare for the thombos to include an individual's religion—from the many thombos that I have perused for this study, no other thombo outside the Hinidum Pattu mentions an individual's religion. The Hinidum Pattu however was a remote area in the borderlands between colonial and indigenous rule where control over religious beliefs was not always possible. Setting aside this exception, it is of course still possible that many of those who were included in the thombo were baptized. Tennent writes of a proclamation that no native could hold office or farm land unless he had converted, to which there was a positive response. There also appears to have been a threat of losing one-third of one's property on the failure to be baptized. The Sinhala term for baptisms was *christiani-karenema* or Christian-making and it was not revered as a sacred process. The process was intrinsically linked in the minds of the local populations to the texts of the thombo (thus their inheritance) and the baptism register. A parent could then threaten a child with disinheritance, saying he will 'blot out his baptism from the thombo'.⁹¹ Obeyesekere has highlighted how the emergence of Sinhalese who were not Buddhists created a split in Sinhalese identity.⁹² This may be applicable to the nineteenth century that he describes, but not to Dutch rule when a strong Buddhist identity that opposed Christianity was not forthcoming.

The history of Dutch persecution of local beliefs and engagement with conversions to Calvinism had its ups and downs. Initially, Dutch persecution of Roman Catholicism took precedence over interfering with local beliefs. The resurgence of Buddhism in the eighteenth century and a desire to not anger the Kandyan king led to a more tolerant attitude towards Buddhism.⁹³ A resurgence of Hinduism also occurred in the course of the eighteenth century, perhaps inspired by the Buddhist revivals of the Kandyan Kingdom. K M de Silva says that Buddhist and Hindu worship was not allowed in towns but, it would appear, the ban did not apply to the villages.⁹⁴ This is confirmed by the references to *heidense geloof* (heathen belief) found in the Landraad records. The Dutch initially had an enthusiasm for conversion that waned over time. It was thought important that baptized Christians should conform to Calvinism and practice that faith regularly and pecuniary fines were imposed on parents for non-

⁹⁰ Tennent, *Christianity in Ceylon*, 89.

⁹¹ *Ibid.*, 45–46; 55–56; 87–88.

⁹² Gananath Obeyesekere, 'On Buddhist Identity in Sri Lanka', in *Ethnic Identity: Creation, Conflict and Accommodation*, ed. Lola Romanucci-Ross and George De Vos (California: AltaMira Press, 1995), 236.

⁹³ Van Goor opines that '[t]here had never been any question of persecution whatsoever' of Asian religions. *Jan Kompenie as Schoolmaster*, 37.

⁹⁴ Silva, *A History of Sri Lanka*, 196.

attendance of children in the church schools.⁹⁵ Such coercions, including that of declaring that those who are not baptized have forfeited a third of their property, were frowned upon by the Classis of Amsterdam in 1700.⁹⁶ As Van Gollennesse said, '[t]he aim... of holding together the native converts of the 17th Century and of keeping the Dutch community on the straight and narrow path of godly devotion'⁹⁷ took precedence in time.

Thus, the majority of Christians among the witnesses were not looked upon by the company as true believers and it was necessary to resort to unreligious methods such as imposing fines to produce and keep converts. Most converted inhabitants practised Buddhism. The Christian oath, in such a setting, could not have been one that the company believed was given in any sincerity. Intriguingly, the adoption of the local form of the oath for converted subjects was an institutional necessity that gave official recognition to the nominal status of Christians. This perception of native deceit is also seen in British Sri Lanka and British India; colonial officials in both territories often complained that the natives were quick to lie in court. Belief in their mendacity was so pronounced, it was used by litigants to their advantage as shown below.

4.5 Mistrust, Idolatry and Local Mendacity

Judicial truth was not always connected to fact as litigants saw it. Obeyesekere says the 'Buddhist conscience, insofar as it contains a set of internalized norms, is not a punishing one, so that there is little in the literature that deals with a tormented religious conscience.'⁹⁸ Richard Gombrich writes that the idea of truth as an autonomous secular value has no hold on Sinhalese villagers.⁹⁹ False testimony, according to John Rogers, 'was not necessarily regarded as morally wrong.... False testimony in support of a just cause was moral; for an unjust cause it was immoral. In many cases, especially those which were related to long-standing feuds, both sides no doubt viewed themselves as in the right. In such instances court cases were like contests.'¹⁰⁰ Borrowing from Clifford Geertz, Samaraweera says 'the Sinhala question of fact and law had to do with how to get them together, whereas the British saw it as having to do with how to tell them apart.'¹⁰¹ Such disregard for untruths in a colonial court may well be the case, but the threat of an oath that was binding (as in Dutch times) may have been a deterrent. In theory, if a swearer's conscience was to be pricked by the telling of a falsehood, it had to be followed by a meaningful oath. An oath that followed ritual also held the threat of negative reprisals in the future, if not immediate, as reflected in the concept of *divi-dōsa* (evils of false oaths) as described above. It may well be that if witnesses took the Dutch form of the oath, which they continued to do up to 1790 at least, a falsehood was easily delivered.

With most witnesses being Christians of a dubious nature, their degree of faith continued to be an issue of contention at the Landraad. Suspicion continued and indigenous litigants knew how to profit from it. Counter-interrogations prepared by opposing parties that paid much attention to the value that a witness attached to the oath remained well into the late 1780s at least. Questions over the sanctity of being admitted to the Christian oath remained in all likelihood till the end of Dutch rule in coastal Sri Lanka. As said before, it was to the

⁹⁵ Tennent, *Christianity in Ceylon*, 46–49.

⁹⁶ *Ibid.*, 55–56.

⁹⁷ Gollennesse, *Memoir of van Gollennesse*, 38.

⁹⁸ Gananath Obeyesekere, 'Buddhism and Conscience: An Exploratory Essay', *Daedalus* 120, no. 3 (1 July 1991): 236.

⁹⁹ Richard F. Gombrich, *Buddhist Precept and Practice: Traditional Buddhism in the Rural Highlands of Ceylon* (1971; repr., Delhi: Motilal Banarsidass Publishers, 1991), 263–4.

¹⁰⁰ Rogers, *Crime, Justice, and Society*, 74–75.

¹⁰¹ Samaraweera, 'Act of Truth', 162–163.

opposing party's advantage to prove that the other party's witnesses were un-Christian and therefore unsuitable to take the Christian oath. Native litigants and their *procureurs* knew how to exploit the Dutch procedure and benefit from it by using it against each other.

Such character smears as they were regarded at the time, bias as a result of being related to a litigant and other issues tended to disqualify the evidence of a witness. In one case, the *procureur* Albertus Hissink asked that the oath not be admitted as, apart from the witnesses having no knowledge of the case, one witness was an *aangehuwde zwager* (brother-in-law by marriage) of the opposing litigant.¹⁰² In yet another case as well, it was alleged that the witnesses actually knew nothing about the case. The commissioners refused to admit them to the oath.¹⁰³ It is possibly also true that the company was faced with professional tricksters on property issues. The sample of witnesses from 1778 to 1781 analysed in this thesis had eight per cent of witnesses who are likely to have attested in more than one deposition.¹⁰⁴ One witness was asked whether he wasn't known everywhere to be a fake witness because he would give false testimony in exchange for alcohol.¹⁰⁵ False witnesses could get six years in chains.¹⁰⁶ Such 'professional' witnesses engaged in the truth business contributed to a general perception among company officials that the locals did not value truth.

The primary mode of disqualifying a potential swearer was by throwing his or her Christian-ness into doubt. Each litigating party usually questioned the witnesses of the opposing party on their sincerity in taking the oath in such a way that the oath would not be administered. Such a line of questioning usually began with asking them if it is known to them that there is an all seeing god who tests the hearts and souls of all men, and looks into all that they do and throws into eternal damnation all those who are guilty of perjury and lies. The first of six witnesses who appeared for Pussewellege Johan answered that he was aware of it and that he would speak to his heart when answering the questions. He turned out to be of the *boeddose geloof* (Buddhist belief). The others, of the Christian faith, all answered in the affirmative. As in other counter-interrogations the next question was whether, if they said yes to the first question, they were willing to keep that 'frightening chief justice' before their eyes and answer the following questions truthfully. Ironically but not surprisingly they all said yes—that being the standard answer.¹⁰⁷ In 1789, the first four questions of an interrogation of four witnesses were about whether they knew what a valued task the oath was, and what would happen if they lied.¹⁰⁸ Often, witnesses said yes, no, or pleaded ignorance to questions that were asked. Occasionally, they answered in unexpected ways.

Significantly, the power of the local oath form was acknowledged in council proceedings. Unlike later British forms of the oath, in Dutch times the adoption of the local oath form did not lack for cultural meaning. The Dutch adoption fulfilled certain requirements of an oath: '[t]hey were embodied and localized in that for them to be meaningful they had to be spoken by these people in the right places, with the right audience and the right accompanying objects, rituals and gestures.'¹⁰⁹ The oath could only be performed to full effect by true believers. Company officials attempted to encourage the use of the native oath, but unexpectedly, this was also not a success. On a visit to schools in Galle and Matara, two European members of the Scholarchale Vergadering (School Board) said that when litigants were asked to take the

¹⁰² SLNA 1/6514, 'Minutes, GL', fol. 41r, 18 Apr 1781.

¹⁰³ Ibid., fol. 100v, 31 Jul 1781.

¹⁰⁴ See chapter three for more on this.

¹⁰⁵ SLNA 1/6534, 'Interrogations, GL', fol. 133v, 14 Jan 1782.

¹⁰⁶ SLNA 1/5658, 'Extracts of Orders, GL', fol. 9r, Extract resolution of 7 Mar 1744; 16r, Resolution of 14 Sept 1744.

¹⁰⁷ SLNA 1/6534, 'Interrogations, GL', fol. 3r–6r, 9 Jul 1778.

¹⁰⁸ SLNA 1/6535, 'Galle Landraad Interrogations' 1785 to 1793, fol. 38r–39v, 27 Aug 1789.

¹⁰⁹ Ogborn, 'The Power of Speech', 114.

oath in the 'heathen style' ('heathen trant'), their answer had been 'We are Christians!' ('Wij zijn Christenen'). The board members said that the locals did not know what a Christian oath is, because they were not Christians and had no love or desire for it.¹¹⁰

It is likely that witnesses, if they were not being truthful, would opt for the Christian oath that they did not believe in. In the counter-interrogation carried out on behalf of the above-mentioned Pussewellege Johan, of his opponent Ganegame Radāge Punched's five witnesses who all professed to be Christians, three of the five witnesses had said that they would prefer to take the Sinhalese oath when asked. Next, they were asked what the *regtvaardigen god* (just god) would do if they gave false evidence. Three witnesses answered that they would have to expect punishment by god, and two witnesses said by both god and the devils. The next question was on what the Christian oath signified. Three of them said it indicated that they spoke the truth, but the first witness had not 'dared' to answer the question and another witness did not answer either. Clearly, the question stumped them. It was then directly asked of them why they were more afraid of taking the Sinhalese oath by laying their hands on the heads of their children than swearing in the Christian way. This they denied, one witness adding that he was not afraid to take the oath in any manner.¹¹¹ The confused answers to the trap laid in the questions, which potentially provide insights into witness psychology, indicate that they were unprepared for questions on the sanctity of the oath form of their choice. The opposing party which produced the questions was fully aware of how to expose the witnesses through their choice of the form of the oath, knowing the sensitivity of the Dutch officials to false oaths. This had the undesired effect (from the point of view of the company and judicial process), of the failure of both forms of the oath and non-admittance of the oath.

It was also often in question whether witnesses to whom the Christian oath would be administered were telling the truth when they said they were Christians. In the same case quoted above, the second witness was asked whether he was baptised, and if not why he had lied and said he was a Christian when in fact he was a heathen. He was asked if he had imagined that such an 'audacity' would go unpunished, and whether it wasn't true that for that reason his deposition should be regarded as false. The witness in question answered that as he had been baptised, he had duly claimed to be a Christian.¹¹² It is possible that baptism records were examined as to whether litigants and their witnesses were in fact actually Christians—one witness admitted that he had not been baptised as his father had died before he could marry his mother.¹¹³ In 1788, a witness (who didn't appear on the day of the hearing) had a question on his religion prepared for him: wasn't he actually a 'heathen', it was to be asked, because he had not received the holy baptism.¹¹⁴ The baptism process was central to local understandings of Christianity, which for most was an inconsequential association.

The witnesses' understanding of Christianity was closely questioned. In a counter-interrogation that was meant to prevent six witnesses from swearing on their deposition, they were closely questioned on their knowledge of the Christian religion. The first question was on what they understood by the word 'Christian'. While the first witness answered that it meant someone who lives without lies and sincerely and the last witness said that it meant having faith in god, for three witnesses it tellingly meant *doop* (baptism). Other witnesses said it meant going to 'school' before marriage, going to church after marriage and having the children baptised. They were asked in whom Christians should have faith, what obligations they had as Christians, what god's orders were, and what they could expect if they did not abide by them. When asked next if their claim that they were Christians could be believed if

¹¹⁰ SLNA 1/6220, 'Scholarchale Vergadering Minutes' 1768 to 1770, fol. 24r, 4 Jul 1770.

¹¹¹ SLNA 1/6534, 'Interrogations, GL', fol. 11r–12v, 9 Jul 1778.

¹¹² Ibid., fol. 12r–v, 9 Jul 1778.

¹¹³ Ibid., fol. 105v, 18 Aug 1781.

¹¹⁴ SLNA 1/6535, 'Interrogations, GL', fol. 26v, 29 Apr 1788.

they had no understanding of god and his injunctions, the first witness answered that what he had declared was the truth, but the second witness answered that he had not been sufficiently educated to answer such trick questions. Another said that he did not know and only two unabashedly said no. But the interrogation on their knowledge of Christianity did not stop there. They were asked if Christians are not obliged to do the Christian work, and what that is. One said he didn't know, another said it was to praise god.¹¹⁵ In yet another case, more than twenty witnesses were asked whether they knew the ten commandments and what the ninth commandment was. Some knew, others said they could not remember. One witness was reported to have said that he knew the ten commandments, but could not recall the ninth commandment in particular. Another said that he did not know because from the time he was young he had had to perform the 'company's service', and yet another that he had not learned the ten commandments, only 'Our Father'.¹¹⁶ In 1788, five Christians (one of them said he was baptized in the Roman Catholic Church), were asked what their obligations as Christians were. They all said that they had heard from their schoolmasters that it was to 'do good and avoid evil'.¹¹⁷ The Governor in Council pointed out in 1790 that baptism was the only distinguishing characteristic of Christians on the island.¹¹⁸

The spectre of idolatry loomed large for the company as well. The worship of heathen gods was banned by plakaten, but not successfully implemented.¹¹⁹ In a counter-interrogation from 1778, witnesses were called upon to say which religion they *wezentlijke belijden* (actually professed) and although they all said they were Christians, one witness was asked whether he hadn't gone to the Kataragama temple for the last twenty-five years, to which he replied in the affirmative. He also confirmed that he had gone there the previous year with fellow believers.¹²⁰ In yet another case, the witnesses were asked how they could be 'so shameless as to claim to be Christians, when they are devoted to exorcisms of devils and other idolatrous ceremonies'. They all denied it. They were then asked if it weren't true that there is some exorcism of devils in the Christian reformed religion as well, which they all negated. Then they were asked whether it wasn't the case that in Buddhism as well such devil exorcisms were detested and were completely forbidden. They all agreed, except for one witness who said that he did not know of such a thing. After some questions pertaining to the case at hand, they were asked what they thought the evidence of such exorcists, drunkards and whores legally merited.¹²¹ The council also kept tabs on past associations with 'heathenism'. In one interrogation, the witnesses were asked if it became a Christian to become a 'heathen' priest. The first witness rebelled at such questions, answering that he did not know but that those who have done such a thing should know. His answer to the next question, as to whether one who moved from Christianity to heathenism did not merit punishment, was that the 'gentlemen'—most probably the councillors—should know. The issue was that the

¹¹⁵ SLNA 1/6534, 'Interrogations, GL', fols 89r–91r, Mar & Jul 1780.

¹¹⁶ Ibid., fols 143v–144r, May & Jun 1782. Some other reported answers were: 'that he knows the ten commandments, and that the ninth commandment says not to give false testimony' ('dat hij de thien geboden weet, en dat in 't negende gebod staat geen valsche getuijgenis te geven') and 'that it has gone out of his memory' ('dat de zelve hem uijt 't geheuge zijn gegaan').

¹¹⁷ '[O]m 't goede te doen en het quaade te laeten.' SLNA 1/6535, 'Interrogations, GL', fol. 24v, 29 Apr 1788.

¹¹⁸ SLNA 1/211, 'Governor in Council Minutes', 27 Nov 1790.

¹¹⁹ Hovy, *Ceylonees Plakkaatboek*, vol. 1; nr. 145, 1 Jul/12 Aug 1682, Plakkaat against heathen idolatry; 21 Jun 1692; nr. 229, 6 Jun/11 Jul 1711, Plakkaat forbidding idolatry.

¹²⁰ SLNA 1/6534, 'Interrogations, GL', fols 26v, 31r–v, 9 Dec 1778.

¹²¹ Ibid., fol. 32r–38r, 18 Dec 1778. The quote reads: 'hoe zij zo onbeschaamd kunnen wezen om zig voor Christenen uijt te geven, daar zij aan duijvels banderijen en andere afgodische plegtigheeden verslaaft zijn.'

third witness had been a 'heathen priest' at some point, to which he answered that he had been a priest for one year when he was young.¹²²

The interrogations examined for the first time here bring out, in reported speech, the ways in which the locals navigated the murky waters of their real and professed belief systems in the new forum of the Landraad. The witnesses displayed a degree of irreverence and disrespect that did not go unnoticed by company officials. In eighteenth-century Sri Lanka, indigenous litigants knew how to play into Dutch fears on whether witnesses were true Christians and whether they attached any value to taking the Christian oath. They were also able to show resistance to power in subtle but significant ways. I have attempted an exploration of the local experience of colonial authority in this chapter through the subject of the oath. The colonial state was shaped by the interactions between government and subjects.

4.6 Conclusion

As a part of procedural law, the oath is an object of diffusion in comparative legal studies. Despite apparent failure in usage as the oath was hardly admitted, the function of the Dutch oath had family resemblances to local practice as they were both decisory oaths, if not always a decisory factor in the Landraad in the final analysis. The conflict over the form of the oath illustrates debates on how far a 'legal transplant' is a valid phenomenon. The study of the donor and recipient contexts of such a legal transplant is in essence a comparative exercise—it is 'the study of the relationships of one legal system and its rules with another'.¹²³ Pierre Legrand argues that it is impossible to have legal transplants because when rules are transferred to a new social context they are bound to lose the cultural meaning assigned to them in the donor country. All that would be displaced from the one jurisdiction to the other was a 'meaningless form of words'.¹²⁴ The adoption of the Dutch form of the oath in eighteenth-century Sri Lanka is an example of a foreign rule that resulted in such a 'meaningless form of words'. As Jacques du Plessis says, '[t]he more foreign the new cultural environment (and especially legal culture), the greater the possibility that a rule will lose its meaning in such a new environment'.¹²⁵ The North Carolina example of contemporary disputes over the form of the oath mentioned in the introduction to this chapter shows the importance of the meaning attached to the oath as a legal practice for at least some cultural groups. This occurred in eighteenth-century Sri Lanka as well with regard to the ways in which the powers of the unseen world were marshalled in a judicial council.

Colonial agents saw the value of improvising the local custom of the oath for the smoother functioning of judicial bodies. In British India, the particular circumstances of the colony were deemed to demand special legislation that departed from contemporary legal rules and practices in England.¹²⁶ This is no less true for Dutch and British Sri Lanka. Both colonial powers were aware of the need to incorporate difference. They politicised cultural difference. The prompting for the change in the form of the oath came indirectly from the colonised themselves when they almost silently rejected the Dutch form of the oath. The colonised showed their resistance in subtle ways by being flippant and dismissive; it did not go unnoticed as it amounted to a rejection of the legal regime that the coloniser was attempt-

¹²² Ibid., fol. 141r, 7 Feb 1782. It is not clear if he had been a Hindu or Buddhist priest.

¹²³ Alan Watson, *Legal Transplants*, Second Edition (Athens: University of Georgia Press, 1993), 6. Quoted in Legrand, 'What "Legal Transplants"?', 56.

¹²⁴ Legrand, 'What "Legal Transplants"?', 63.

¹²⁵ The question of whether to call a transfer of rules from foreign law a legal transplant or legal borrowing is mostly about terminology. Jacques du Plessis, 'Comparative Law and the Study of Mixed Legal Systems', in *The Oxford Handbook of Comparative Law*, ed. Mathias Reimann and Reinhard Zimmermann (Oxford: Oxford University Press, 2006), 488.

¹²⁶ Kolsky, *Colonial Justice in British India*, 116.

ing to introduce. Negotiating with the local normative order was then inevitable. The Roman-Dutch practice of the decisory oath fell in line with the local decisory oath to a great extent, but this was more a coincidence than an effort to incorporate a local judicial procedure. What appeared to jar the minds of company officials most was that potential swearers were chiefly Christians who had little or no scruples about giving false oaths—addressing the practical reality of the nominal status of such Christians, and the quest for establishing truth in the legal system led to the adoption of local forms of the oath.

Establishing the truth amidst perceived local mendacity was a source of anxiety for the new rulers. Yet the adoption of pluralities was of little use finally as the mutual discrediting of potential oath-takers by litigant parties contributed to the persistence of a belief in native untrustworthiness. The oath was hardly ever admitted in the Galle Landraad. A ‘Christian’ witness’s refusal to take the Dutch oath and preference for the local oath (itself a sign that its adoption was meaningful) was used to discredit him by the opposing party, in the full knowledge that any acceptance of the Dutch form would also be criticised. Christianisation, and the reluctant acceptance of the failure of that Christianisation through the adoption of the local oath forms, finally did not produce truthful subjects. The decision to include a native form of the oath appeared to have followed the path of least resistance in comparison to the contemporary case of *Omychund v Barker* in London in 1744, where long deliberations on the admissibility of witnesses who observed a different faith were held. Notwithstanding such adaptability, the full function of the oath could not be realised due to deserved or undeserved discrediting of those who offered the oath. The agency of the natives themselves in furthering this result is a perspective that is not often observed, but is an inevitable understanding on a close reading of the company sources. Pluralities thus adopted, did not always provide the desired effect, but rebounded on both coloniser and colonised in unexpected ways.

Chapter 5 Defining Property Rights

Any state, whether colonial or not, seeks to acquire a grip on its subjects and the resources under its jurisdiction. Creating a standard grid of land tenure involved looking at ‘exceptionally complex, illegible and local social practices’ as James C Scott has observed.¹ Despite the difficulties in coding land tenure it was a necessary step to render the terrain more understandable and its produce and its subjects more controllable. This was the case with both local and foreign rulers in Sri Lanka. The Dutch power paid special attention to the standardisation of the legal aspects of land rights, although not always achieved in practice. The cadastral survey was important for the VOC in dealing with its subjects and resources in coastal Sri Lanka. Legality and simplicity were clearly difficult to ensure, yet quite diligently attempted by company officials as this chapter will demonstrate. The primary institution through which this was attempted was the Landraad, and its main instrument the thombo. The eighteenth-century agrarian regime in Sri Lanka included both the written and oral forms of the thombo and Landraad and the accompanying translation processes that such institutional development gave rise to, as will be seen. The Landraad and the thombo are said to have been necessary given the ‘infinite variety’ of tenures in Sri Lanka.²

This chapter is a study of land rights in southern Sri Lanka, providing a quantitative and qualitative analysis of the types of holdings recognised by the VOC. The company wished to define who could do what in which piece of land and what it could extract in return. Local terms relating to land tenure were adopted in the thombo, the Landraad and other official discussions. Despite the complexities of the local land tenure system, the VOC attempted to enforce rules and regulations that would create a neat, circumscribed system that followed specific legal procedures and written forms.

The important role in this process played by the non-elite actors who appear in this study for the first time can also be seen. Understanding land rights in eighteenth-century Sri Lanka has hitherto involved piecing together information from the few potentially partial and western-influenced sources at a higher administrative level of company rule. In his PhD thesis (which is the most recent work on the subject of land tenure in Sri Lanka), Nirmal Dewasiri was the first to innovatively study land rights through the thombos, which were generated at a lower administrative level in conversation with peasants. Concentrating on some areas of the southwest, he proposes that the land tenure system was a platform for the conflict between the peasants and the ruling class that included both the colonial rulers and native headmen. This chapter introduces a legal turn and focuses on the agency of the peasants that is missing in existing work, while exploring in more depth the classifications in southern areas of Sri Lanka.

The land rights of eight villages from two sub-districts in the Galle District, the Hinidum and Wellaboda Pattus, have been taken as case studies to seek answers to the following questions: In what way was the legal intervention of the thombo and the Landraad organised in relation to land tenure? What local practices did the VOC attempt to standardise and how successful was that attempt? How did the inhabitants of coastal Sri Lanka engage with the legal discourse pertaining to land rights? First, I will consider the sample villages through the information in the thombos and discuss the reliability of the land registers and thereby their nature and organisation. The chapter is supported by Landraad documents, including a discussion from 1745/46 which will be discussed next. Thereafter I will consider three types of classifications of land found in the Galle thombos in detail. The complexity of such classifi-

¹ Scott, *Seeing Like a State*, 2.

² Pieris, ‘The Cleghorn Minute’, 136, 138.

cations on the ground can be seen through their seeming co-existence in the example of a single garden as described in the final section of this chapter.

I will show that there was an almost discreet interaction between colonial subjects and the process of determining the law in practice. The complex ensemble of the existing agrarian regime and the VOC regulations and mechanisms as practised through the thombo registration and the Landraad lay at the foundation of property rights in Dutch Sri Lanka. Most importantly, this chapter will explain the ways in which subjects themselves went about defining land rights, albeit as read between the lines from Dutch sources. The data is of Dutch origin but with unique traces left by the peasant farmers and their headmen.

5.1 Villages Viewed from the Thombos

Most inhabitants of the Galle district are likely to have been registered in the thombos. It seems to have been the unrealised intention of the company to record everyone living under Dutch territory: 'in all civilized countries nothing is so proper and natural than that the particulars regarding one's own territory and subjects should be noted down in writing in such a manner that it would not be possible for a child to be born or a greybeard however old he may be to die without some mention being made thereof.'³ The thombos reveal that some villages in the district were disproportionately larger than others in demographic terms. A thombo village was closer to the idea of the Dutch village (*dorp*) in a modern administrative sense than to the Sinhala term *gama*, which as Codrington says 'normally signifies a village, but can also be applied to an estate or even to one field.'⁴ In the Kandyan country as well it was applied to a single estate or field.⁵ Gananath Obeyesekere proposes that it could mean an estate or a parcel of rights, a hamlet with geographical boundaries and people within them, or a number of such hamlets loosely related through kinship.⁶ A plan found among the Landraad documents of Galle (Figure 5.1) presents us a view of how paddyfields and gardens would have been set up in a village.

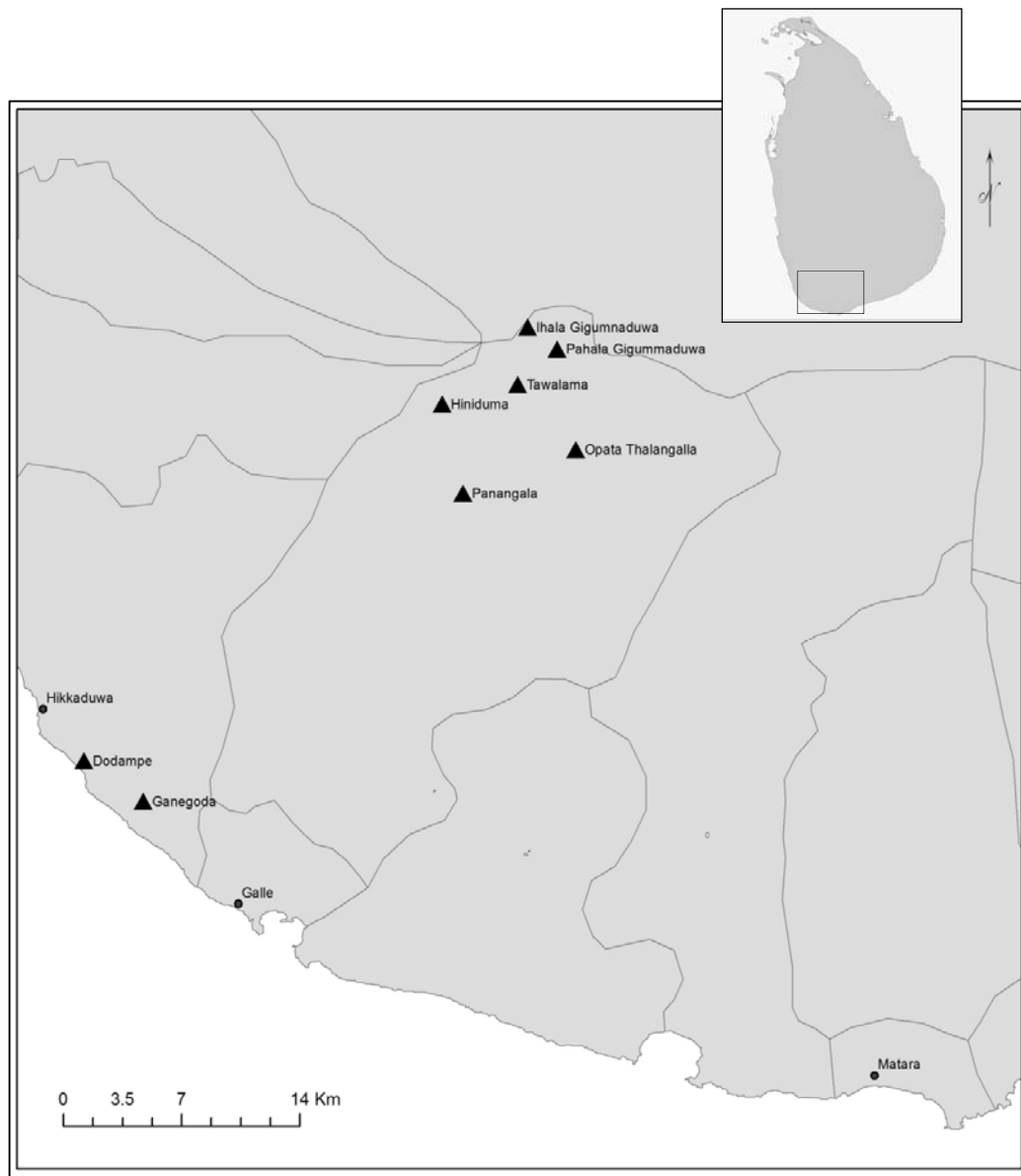
While the thombos of Colombo consist of separate so-called 'land' and 'head' volumes, those of the Galle District contain the people's names and relationship to each other (the 'head' section), and their land holdings (the 'land' section) alongside each other on facing pages. A 'thombo group' named persons who were either directly or indirectly connected to each other and did not always live together. The first-mentioned person of a group was referred to as the principal land holder (PLH) by Dewasiri, a practice that I follow with some modifications as explained below. Since each person held individually or jointly with each other the property rights mentioned within each group, I use the term 'land holdings group' or LHG for at least the Galle thombos. The terms 'land holdings group' or the less analytical 'thombo group' are to be preferred over household, as there is little evidence to support the use of the latter term in a uniform manner. A holdings group consisted of persons related to each other and therefore part of an extended family unit. It represents a compound family, with nuclear families within that larger family. It is unclear if there was an intertwining of Dutch and local concepts, at the least it could be said that family relationships had to be defined in the thombos for Dutch bureaucratic purposes. Such a record was necessary for use in lawsuits.

³ Schreuder, *Memoir*, 63.

⁴ Codrington, *Ancient Land Tenure*, 1.

⁵ Le Mesurier and Panabokke, *Niti-Nighanduva or the Vocabulary of Law*, 119.

⁶ Obeyesekere, *Land Tenure*, 13–14. See also Dewasiri, *Adaptable Peasant*, 43–47.



Map 4 Some locations in the south in eighteenth-century Sri Lanka.
Note: The thombo villages chosen as case studies for an examination of land tenure are marked by triangles.



*Figure 5.1:
Layout of pad-
dyfields and
villages in an
(unidentifiable)
village. SLNA
1/6526, An-
nexes to the
Galle Landruad
Minutes, fol.
34r, c. 1780*

Spatially the case studies of registration used in this chapter are located in two sub-districts of Galle that are roughly forty kilometres apart and temporally around twenty years apart. The sample thombos are from two limited geographic areas in the Hinidum and Wellaboda Pattu of the eighteenth-century Galle District. In addition, the discussion from 1745/46 (also referred to in chapter one) provides a longer term view of approaches to land tenure practices. These sources provide a somewhat broad perspective of the situation in the latter half of the eighteenth century. The Hinidum Pattu is more inland than the villages selected from the Wellaboda Pattu, and remained in the backwoods of the south well into the twentieth century. We also have considerably more information about the Hinidum Pattu due to Obeyesekere's study of the village Mādagama which does not appear among the Dutch thombos but was included in that pattu in British times.⁷ The relative isolation of the Hinidum Pattu made it an interesting region for Obeyesekere's field work in the 1960s, a fact that is even more relevant for the eighteenth century and for the other villages chosen for this chapter as well. There are six extant thombo villages for the pattu in Dutch times—Hiniduma, Ihala/Uda Gigungmaduva, Opata Talangala, Pahala Gigungmaduva, Panangala and Tawalama. Their thombos (given in SLNA 1/7542, 1/7569, 1/7519 and 1/7472) were all drawn up in 1760 and have been for the most part carefully formulated according to regulations.⁸ The larger villages looked at in this chapter are Dodampe and Ganegoda of the Wellaboda Pattu (SLNA 1/7442 and 1/7428), the thombos of which were drawn up in 1780. They were referred to as the new thombos in council records and a few additions were made in 1784 and 1785. All sample thombos have references to an older thombo, and extracts from them were presented in the council.⁹ Dodampe was an annex of Totagamuva, the largest village in the Wellaboda Pattu which had more than 170 land holdings groups. The Wellaboda Pattu villages were probably more prosperous and undoubtedly more accessible than the Hinidum Pattu due to their proximity to the sea.

The Galle thombos, it must be said, have inherent issues that question their reliability. Some remarks on the compilation process have already been made in chapter one. The issues can be highlighted further when attempting to enumerate population through them, a task that I argue is virtually impossible with the Galle thombos. According to Van den Belt et al, the Galle thombos describe roughly 95,000 individuals and 30,000 shares of land.¹⁰ The demographic patterns in the district were highly varied. Some thombos with over a hundred groups were Bope, Ettiligoda, Galupiadde, Kumbalwella (the seat of the Landraad), Ganegama, Salagama, Habaraduwa, Mipe, Bentota, Induruwa, Ambalangoda, Totagamuwa and Weragoda. Akmeemana had ninety-nine groups so can also be considered a large village.

⁷ Obeyesekere says the inception of Mādagama was in 1790, just six years before the end of Dutch rule on the island. In British times the sub-district of Hinidum was considerably larger, a result of about fifteen villages to the north of those six villages, situated even closer to the Sinharaja rainforest, being incorporated into the Hinidum Pattu. They were previously part of the Kandyan Kingdom. This had some impact on the law, as pointed out by Obeyesekere, for the inhabitants of the villages that were incorporated into the pattu later were permitted to marry under Kandyan law while the villages previously of the low-country had to use the general law that was based on Roman-Dutch law. In practice, the general law gradually came to prevail as most marriages were contracted between inhabitants of villages of both types. Obeyesekere concludes that Kandyan (Sinhalese) law was probably used in the whole pattu in pre-British times. *Land Tenure*, 5–6. This is further testimony to the fact that there was no difference in the Kandyan and local low-country marriage laws except for that which was imposed by the European powers.

⁸ They have been certified by officers, which I have not seen yet in other Galle thombos but follows regulations stipulated in instructions given to the Landraad.

⁹ See for example SLNA 1/6513, 'Minutes, GL', fol. 150r, 2 Dec 1780.

¹⁰ Belt, Kok, and Mandemakers, 'Digital Thombos', 484. These figures are estimates.

Eight villages had just one land holdings group (LHG).¹¹ This can give some impression of the population of the district but it is a problematic figure due to three reasons.

First, most thombos of Galle were not drawn up together or even within a short period of each other. In at least the last two revisions in Colombo (around 1760 and 1770) this was somewhat different in that the thombos were drawn up fairly close to each other. This facilitates enumeration of both revisions and an analysis of changes with a smaller margin of error. Among the eighteenth-century Galle thombos, the earliest thombo for Galle appear to be from 1742 (Bataduwa, Milidduwa and Wakwella of the sub-district of Four Gravets) and the latest from 1784 (Ambana, Degalle and Pitiwella of the Wellaboda Pattu and Metiwiliya in the Walallawiti Kōralē). In some thombos additions were made (usually at the end of a volume) as late as 1789.¹² This temporal disparity in the registration of villages naturally cannot provide a credible census figure of individuals and holdings.

The second reason is that providing an average figure for a rough calculation of the population of the district is problematic as the number of people in an LHG could differ widely. For instance in Dodampe of the Wellaboda Pattu there were ninety persons mentioned in thombo group 30. This brings into question the composition of an LHG, and reflects our lack of understanding of a thombo group—how was a thombo group chosen? Those included had to have a legal claim to certain estates. Each individual mentioned in an LHG usually had a connection to the first-mentioned person. First-named (*eerstgenoemde*) is a phrase frequently used in the Galle thombos, whereas *hoofd* or head is not used although he or she is generally referred to as the ‘head’ of a group in secondary literature. Yet ‘head’ has associations with the concept of a head of the household or family which LHGs do not fulfil. References were also made in the thombo to the second-mentioned, third-mentioned etc. and those numbered in this manner in the thombo were usually of the same generation or older than the first-mentioned person. The nuclear families of the first-mentioned or second-mentioned etc. were not included in this count but were represented under the husband/father. The first-mentioned person appears to have had a special connection to the property held by the LHG, mainly by virtue of being the senior-most member of a family that held the same name as an ancestor from whom the lands were inherited.

Dewasiri has coined the more analytical term of principal land holder or PLH for the first-mentioned person, which I follow in my text due to its suitability at least in part and as it facilitates establishing continuity between the Galle and Colombo thombos. I propose certain modifications to its understanding, but these do not challenge its use in a significant way. The term may be misleading as often when large numbers of people were listed in one group there is no evidence to say that the first-mentioned had claims on all the listed property. In reality, the PLHs in the Galle thombos did not have special rights to the holdings mentioned in the thombo group. In fact, a variety of people actually held the rights to the holdings, which included general rights to fields, gardens and trees together with individual and joint rights as will be explained further in this chapter. Within a land holdings group of the thombo, there could be exclusive rights to part of an estate held by individuals or groups of individuals mentioned in the group. In fact, cases involving a few family members of a large family show that the PLH is often not mentioned in Landraad proceedings. In *Waduge Ille-nainde v Waduge Raphiel*, no reference is made in the council documents to the first-

¹¹ Dewasiri explains the phenomenon of villages of just one thombo group as a probable consequence of settlements initially been one-family villages. *Adaptable Peasant*, 51. These may be the neo-local residences described by Obeyesekere, which however are unusual as he says because family help for cultivation would be limited, or the founding of a new hamlet and *vāsagama*. They occur if at all due to the scarcity of land combined with an abundance of people. Obeyesekere, *Land Tenure*, 59.

¹² These changes are different to those made in the Colombo revision of 1766-1770. In the Galle thombos, a few new families were added but no changes were made to the existing groups.

mentioned Witanege Donas of the thombo, although the land in dispute is given in his group.¹³ In another case, when a litigant claimed that two members of a family in Dodampe sold him their shares to a garden, the PLH of the thombo group did not appear in the Landraad nor is any reference made to him.¹⁴ The ‘ownership’ rights of the PLH are thus brought into question; clearly members of a thombo group could alienate their shares independent of him. Dewasiri also uses the term ‘PLH group’, but as this unnecessarily focuses attention on the first-mentioned person when referring to the group I use the term land holdings group or LHG which emphasises that a thombo group was centred on property rights. The ‘land’ factor in both PLH and LHG is also disputable in the light of ‘planter’s shares’ that exclude rights to the ground (more on this below), but this can be ignored for the sake of brevity.

The thombo commissioners are likely to have chosen a PLH if they were descendants of the founders of an estate.¹⁵ Obeyesekere refers to how ‘in theory a hamlet comes into existence when a man, a founding ancestor, leaves his hamlet of origin, and with the permission of some traditional authority demarcates a space of forest or waste as his *gama*.’¹⁶ *Gama* in Sinhala could also mean a common estate. A connection to this ancestor could be established through a part of the name of the PLH, referred to as *vāsagama* and usually made with the suffix ‘-ge’. It was shared by the other members except in the case of in-laws.¹⁷ In the thombo what mattered was that a PLH still bore the same *vāsagama* or was a widow of a man with that name. In that way, a connection to an ancestor from whom the lands were passed down was established. D’Oyly, an early nineteenth-century observer of Kandyan society said that in the Mahanaduva or great court of Kandy, ‘[i]n Land Cases, which are by far the most numerous, it is the General Practice to commence with the Original Proprietor, 3 or 4 Generations in Ascent, and thence to trace downwards by Inheritance or Transfer the Title of the Suitors.’¹⁸ As Obeyesekere says, ‘[a]ncestors are important in so far as they provided a charter depicting how and when a particular individual obtained his “share”’.¹⁹ Arumaperuma Achchige Johannes of Dodampe was thirty-five years old in 1780, and was given at the head of a family that had possession over the service paravēni (lands held as subsistence in return for service) of his great-grandfather Arumaperuma Achchige Johan.²⁰ The old thombo was regarded as proof for the claim, which implies that relationship to a person mentioned in it was a qualification to become the PLH. There are numerous examples of this kind which refer to the old thombo. Dewasiri shows that persons with the same *vāsagama* in the Colombo thom-

¹³ SLNA 1/6511, ‘Minutes, GL’, fol. 50r, 15 Aug 1778.

¹⁴ SLNA 1/6513, ‘Minutes, GL’, fol. 47r, 20 May 1780; SLNA 1/7428A, ‘Dodampe (Wellaboda) Thombo’ 1780, 15.

¹⁵ It is unlikely that the family member who was present at the registration was made the PLH, as some thombo entries indicate that this was not a rule. In the Hinidum thombos, individuals were recorded as ‘present’, which probably meant present at the registration, but they were mentioned below another PLH. SLNA 1/7472A, ‘Ihala/Uda Gigungmaduwa (Hinidum) Thombo’ 1760, fol. 4v; SLNA 1/7519B, ‘Pahala Gigungmaduwa (Hinidum) Thombo’ 1760, 31.

¹⁶ Obeyesekere, *Land Tenure*, 17.

¹⁷ Dewasiri, *Adaptable Peasant*, 55. Dewasiri’s understanding of Obeyesekere’s interpretation of a *vāsagama* group is that it involves a mythical ancestor and rights to a common estate. Dewasiri says that this does not fit the Colombo thombos because the PLH is alive in the thombos and therefore the bond between the PLH and the rest of the group is a living one. This is somewhat complicated in the Colombo thombos by the fact that the PLH hardly ever dies in the revision done roughly ten years later around 1770. See Drixler and Kok, ‘Family Planning in 18th-Century Ceylon’. Perhaps the idea was to retain reference to a senior member of the family, dead or alive, who may have had the same name as an ancestor who first owned the land. As a revision similar to that of Colombo did not occur in Galle, such a comparison is not possible for the Galle thombos.

¹⁸ D’Oyly, *Constitution of the Kandyan Kingdom*, 24:33.

¹⁹ Obeyesekere, *Land Tenure*, 162.

²⁰ SLNA 1/7428A, ‘Dodampe Thombo’, 4.

bos did not necessarily share a common estate or have a 'charter of right' as Obeyesekere states, as those with the same *vāsagama* and with family connections were included in more than one holdings group. This is seen in the Galle thombos as well. In most cases where two thombo groups in Galle had the same *vāsagama*, the connection between them is not mentioned but can be imagined as they also appear to have parts of the same lands.²¹ Thus, a thombo group was clearly not exclusively linked to a *vāsagama*, but LHGs with the same *vāsagama* are likely to have had kinship associations that were important in the organisation of labour and rituals.²² The *vāsagama* group as in Obeyesekere's understanding may not fit the thombos, but this indicates the division of estates and recognition of such divisions as separate groups of land holdings by the Dutch administration.

To return to the question of enumerating population through the thombos, the third reason for doubting the figures is that there was frequent repetition of names. Many were reported as belonging to more than one thombo group within a village. For example, in Dodampe, of the around 470 names written down, almost ten per cent were repeated names. Those who were repeated could range from the first-mentioned to his or her more distant relatives.²³ At times, the first-mentioned person was repeated under other groups, sometimes in the same village or in other villages. Such repetition across villages is connected to 'absentee' landownership, a phenomenon that will not be gone into detail here.²⁴ In short, it meant that the claimants lived outside the village of the registered land. Eliminating such doubles (or more) is a difficult task, but may be possible through computerising the data in the thombos. Keeping in mind such limitations of the registers, a socioeconomic snapshot of the eight southern villages in the late eighteenth century through the thombos follows.

Mobility in those times must have been fairly high as absentee ownership was a common occurrence in the more densely populated villages. The PLH of a holdings group frequently resided outside the village as did other LHG members. Obeyesekere calls them 'absentee shareowners' who own shares in the estate but do not cultivate the land.²⁵ Of the thirty-seven first-mentioned persons in Dodampe, only eleven or thirty per cent were resident in that village,²⁶ although the holdings mentioned under them were all in Dodampe. As explained, the first-mentioned person did not have exclusive rights to the shares mentioned in a group. In terms of population, the thombo lists 432 persons, but only 155 lived in the village. Ganegoda had twenty-four LHGs, of which only eight (thirty-three per cent) had principal land holders who lived in that village but its resident population was more than that of Dodampe at 259 (of 520 listed persons).²⁷ In 1760, the entire Hinidum Pattu had 42 thombo groups of which twenty-nine (69 per cent) had first-mentioned persons who lived in the village they had holdings. In terms of population, 358 or around 75 per cent of those listed resided in the village where they held property. Relatively remote from the centre of Dutch government, peasants in the Hinidum Pattu lived and toiled on their plots of lands more than in other areas of the Galle District.

²¹ See for example LHGs 6 and 10 in Dodampe. Ibid., 4, 11.

²² Dewasiri, *Adaptable Peasant*, 56; Obeyesekere, *Land Tenure*, 162.

²³ There was little interest in details about more distant relatives. In fact, it's possible to piece together information about such repeated distant relatives from their different entries in separate LHGs.

²⁴ Dewasiri also refers to an 'absentee PLH' in the Colombo thombos. *Adaptable Peasant*, 114–116.

²⁵ Obeyesekere, *Land Tenure*, 165.

²⁶ Individuals whose ages are mentioned in the thombos were generally those who resided in the registered village. Residence status is thus established through the record of ages, and the number of individuals thus obtained was tallied at the end of some thombos. See, for example, the Hinidum Pattu thombos.

²⁷ Incidentally, two groups in Ganegoda had the same female PLH: SLNA 1/7442A, 'Ganegoda (Wellaboda) Thombo' 1780, 35–37; 63–67; SLNA 1/7442B, 'Ganegoda (Wellaboda) Thombo' 1780, 33–35; 61–63. Others were also frequently repeated, so the figures of the number of persons listed in a thombo do not reflect the number of unique persons.

All sample villages were inhabited by Sinhalese. Dodampe had 19 PLHs (51 per cent) who were *goygama*, the rest being *durāva* (12), European (2), *āchāri* (1), *hakuru* (1), *radā* (1), and *hunu* (1). The PLH's caste, which is generally given in the thombo, usually applied to all members of the group.²⁸ The majority of the residents were *goygama* (70%), and the rest were *durāva* (26%) and *āchāri* (4%). Ganegoda had a larger majority (70%) of LHGs with *goygama* first-mentioned persons, the others being one *durāva*, *radā* and *burger* each, three *karāvas*, and one person of European origin. All residents except for three *radā* caste members were *goygama*. In the Hinidum Pattu, most thombo groups (76%) were headed by *goygamas*. The rest included three *radā* groups, five *āchāri* groups and two unknown. Two *āchāri* families lived outside the pattu, but 42 villagers (almost 9%) of the *radā* and *āchāri* castes lived in the pattu. Interestingly, the Hinidum thombos give the religion of some PLHs. Most were 'heathen' (31) and those mentioned under them would also be heathens except where otherwise mentioned as Christian. In the Hinidum village of Ihala Gigungmaduwa one *mayorāl*, an important figure at the village level, was recorded as a heathen. Another unique feature of the Hinidum Pattu thombos is that occasional marriages in the 'heathen way' have been recorded as such and thereby given sanction. This analysis of the Hinidum thombos indicates that imposing Calvinism and marriages sanctioned by the company (more on this in chapter six) in remote areas was a difficult task. It was likely to have been an area to which company control could not be easily extended.

The extent to which the language of the law spread to such areas is varied. Apart from the socioeconomic analysis that the Galle thombos can enable, significant marginal entries were made in the thombos citing Landraad decisions. Dodampe and Ganegoda were not short of action on the legal front but no references to Landraad cases are to be found in the thombos of the Hinidum Pattu. Yet the thombo registration itself is an expression of the law, with inhabitants recognising that each entry was legally binding on them. Naturally, there were conflicts within this process of cross-cultural translation, as reflected in policy-level discussions as well.

5.2 Discussing Land Rights

The company struggled to make sense of the land services. On 20 December 1745, at an ordinary meeting of the Landraad on a Monday morning in Galle, an important discussion on the question of paravēni or ancestral rights took place.²⁹ The councillors discussed the compilation of the thombo and the registration of paravēni. A majority of European members and one *mudaliyār* were present at the meeting, and the thombo commissioners, who comprised 'both white and inland headmen', were called in as well.³⁰ The latter had an active capacity as they are reported to have given further advice. Evidently matters were deliberated carefully. The aim of the meeting, which was ordered by Van Gollennesse, was to make a 'substantiated provisional decision together after good deliberation'. Letters from the VOC's Gentlemen XVII were quoted at the meeting, revealing that on intricate land matters as well,

²⁸ There were exceptions to this generality. In Gintota, a particularly interesting inter-caste marriage appears in one family: three nephews and a niece of the PLH had their caste given as *visser*, being the offspring of a *visser* father and *goygama* mother. The PLH and other members were listed as *goygama*. SLNA 1/7445, 'Gintota (Four Gravets) Thombo' 1745, 41.

²⁹ I have referred to parts of this discussion in chapter one.

³⁰ The councilors Robbert Cornelis Bagilet, Adriaan Oostdijk, Godfried Gerhard, Johannes de Moor, Johannes de Leeuw, Pieter Welbrink, Matthijs van Geijzen, Casper Dannen, Jan Willem Wickerman and the *mudaliyār* Robento De Silva [Dahanaike] were present at the meeting. The thombo commissioners were Johan François Obble, Jan François de Gennon, and (native) *mohandirams* Lanserot Volkertsz, Johan de Silva Wanigasekere, Don Bastiaan [Wijenaikē] and Don Louis Livere. A list of native headmen from another source confirms Robento's and Don Bastiaan's full names: SLNA 1/5046, 'Galle Political Council Minutes', fol. 60r-v, 4 Dec 1744.

the Dutch government in Sri Lanka corresponded with The Netherlands. It has been said that such intervention from Patria was ‘more in theory than in practice’³¹ but that was not the case on such important issues as land rights in Sri Lanka.³²

At times it was difficult for the villagers to understand the ways in which the colonial government wished them to understand the title to their lands. The discussion from 1745 corroborates this point well. The Landraad had little faith in those who came forward for the registration on the grounds that they were ignorant, unwise, and had to be coaxed to speak.³³ It was pointed out that most people were not aware of how their families came to possess lands: ‘in general the inhabitants never or rarely knew (and nowadays even less) how their parents and forefathers had come upon those lands, or to whom, in whose names they had been gifted or purchased or how such cultivated lands are known.’³⁴ Dewasiri in his study also found inconsistencies in claims to land which he believes had an important ‘socio-political’ meaning. He says:

From the point of view of the peasant, following a standard and systematic way of defining and naming the holdings would have been a highly frustrating exercise. Thus giving one or the other name for the holding may have been highly contingent upon the different circumstances. While one might name them according to the basis of the holding vis-à-vis the “lord of the land”, another might think in terms of the person from whom he inherited the land.³⁵

It is probable that nobody had asked such searching questions before of so large a number of people. Further analysis is necessary to prove this, but it is possible that the combination of census-like aspects with a cadastral survey was absent in the Sinhala *lekam miti* (a cadastre maintained by Sri Lankan kings), and perhaps also in the Portuguese registrations which were precedents to the Dutch thombos.

The Landraad discussion was in essence an attempt to have clearly defined rules of private property. The minutes of the discussion were sent to Governor Van Gollennesse, who gave his decisions on 5 February 1746. The approval of the Governor in Council for the answers provided by the governor was given three days later. Officials in Galle were asked to strictly observe the orders contained in the governor’s marginal notes. It is thus clear that while the Landraad could discuss matters of policy and practical implementation, they were subject as a judicial body to the executive power of the governor on such matters—the council was thereby only another instrument of administration with limited powers. Van Gollennesse did not think that the Landraad was always capable of handling matters on its own. On the other hand Galle clearly had problems following fixed orders when faced with the complexities of the local customs. The governor at times did not agree, taking a stance that was quite different to that of the Landraad and thombo commissioners in Galle, who were the men on the ground. A part of the problem, then, was the friction between the practical realities at a grassroots level and the perceived realities at a higher level of government. This tension is best seen in the thombos—I argue that each thombo entry constituted a potentially unique situation, with certain common characteristics between entries. These commonalities in the attempted standardisation, divided into three classifications, will be discussed next.

³¹ van den Horst, *The Roman Dutch Law in Sri Lanka*, 33.

³² See for extracts from Batavian correspondence: SLNA 1/5658, ‘Extracts of Orders, GL’, fol. 19r, Extract of letter dated 24 Oct 1744 from Batavia to Colombo; 27r–v, Extract of letter dated 24 Sept 1745 from Batavia to Ceylon.

³³ SLNA 1/2805, ‘Minutes (20 Dec 1745), GL’, fol. 40v–41v.

³⁴ ‘[D]e inwoonderen in het gemeen, nooit of seer seldom, tans also min weeten, hoe hun ouders en voorouders aan die gronden zijn gekomen, als wel, aan geene, bij welkers namen geschonken of gekogte dan wel aangeplante gronden bekend staan.’ Ibid., fol. 31r–v.

³⁵ Dewasiri, *Adaptable Peasant*, 111.

5.3 Classification 1: By Cultivation

The company wished to be able to separate property shares into neat, clearly defined plots. All LHGs had descriptions of land rights and each could, arguably, be referred to as a holding (in Sinhala *panguwa*, plural: *pangu*), if only as a quasi-legal category.³⁶ It may even be similar to the *panku* of South India that Nicholas Dirks refers to as shares of land held by a group of family or lineage members, or by a dominant caste (or castes) of a locality.³⁷ Such usufruct and hereditary rights as described in holdings had legal recognition through title obtained from the thombo and were also contested and discussed in the council. The thombo registrars described a share together with its history of ownership or possession. Dodampe and Ganegoda had 174 and 315 holdings in the 1780s while the Hinidum villages, drawn up in 1760, had a total of 210 holdings.

Table 5.1 Distribution of holdings in some Galle villages 1760 & 1780

Village	Fields	Gardens	Swidden	Meadows	n/a	Total
<i>Wellaboda Pattu</i> (selected)						
Dodampe	36	137	-	-	1	174
Ganegoda	205	110	-	-	-	315
<i>Hinidum Pattu</i> (all villages)						
Tawalama	12	6	4	6	-	28
Panangala	19	10	-	-	-	29
Opata Talangala	43	53	3	3	-	102
Ihala/Uda Gigungmaduwa	8	9	5	1	-	23
Pahala Gigungmaduwa	7	5	3	-	-	15
Hiniduma	20	18	-	-	-	38
<i>Hinidum Pattu Total</i>	109	101	15	10	-	235
Total for eight villages	350	348	15	10	1	724

Sources: SLNA 1/7542, 1/7569, 1/7519, 1/7472, 1/7442 and 1/7428

An analysis of the various categorisations of cultivation in the eight sample villages is presented in Table 5.1. Each holding can initially be separated according to whether it is a field, garden, swidden cultivation (*ben*) or meadowland (*owiti*). The latter two were recorded in the Hinidum Pattu thombos, but were not important categories in the villages closer to sea. The Dutch *zwaiveld* or sowing field was usually paddy, the extent of which was given in *amunu* and *kuruni*, a measurement of sowing capacity. ‘Garden’ is a literal translation of the Dutch *tuin*, which in turn would have been a translation of home-gardens (in Sinhala *gevatte*, plural: *gevatu*). These gardens surrounding houses were spacious, but the term *tuin* is also used in the thombos for larger estates in the scale of plantations (*vatte* or *vatu*). The number of coconut, jak and arecanuts in such gardens were registered in the thombo, which was how the extent of the land was recorded. Swidden cultivation was in the highlands of a village and meadowland was occasionally cultivated with paddy. In addition, a certain tax that had to be paid was gen-

³⁶ See Codrington on *pangu* in *Ancient Land Tenure*, 3–5.

³⁷ Nicholas B Dirks, ‘From Little King to Landlord: Property, Law and the Gift under the Madras Permanent Settlement’, *Comparative Studies in Society and History* 28 (1986): 307–33.

erally fixed and mentioned in the thombo—usually one-tenth of the produce (called *ottu*), one-half (*ande*) or a garden tax (*watubadde*) for coconut and arecanut.³⁸

In addition to the division of fields, gardens, swidden cultivation and meadowlands, other ways of classifying lands were used in the thombos. Included in the thombo before the extent of the holdings and after the head information, was information on how a share had been acquired by members of a thombo group and who held it. These descriptions will be looked at next.

5.4 Classification 2: Contracting on Land

The tenurial laws emerged from the colonial subjects themselves. The terminology used in the Galle thombos defined, in so far as exactness may be arrived at, why a property right was claimed. This included the status of the land in relation to the company, the ‘lord of the land’ at the time and private rights to land. The VOC as the ‘legislators’ at the time, agreed to regard such terminology as the law. Details of various categorisations of holdings in this reasonably ‘organic’ approach to classifying land tenure will be given below.

The rights of both the higher authorities and the inhabitants are considered here. Dewasiri refers to a classification that existed in the Colombo thombos ‘in terms of the relationship between the holding and the tenant vis-a-vis the “Lord of the Land”.’³⁹ Such a holding was a sort of tenancy contract between the state/landlord and the subjects. They were traditional definitions of land and it is here that the inconsistencies most appear in the thombo. Traditional terms were used in their original Sinhala form by the Dutch even in internal correspondence at higher levels, and hardly any attempt seemed to have been made to translate them to Dutch terms. We will see below how Governor Van Gollennesse consequently pointed out how a Sinhala land tenure term was being misused. Hence their use in the literature today in the same way, which appears to be the best decision.

5.4.1 Regulating Crown Land

A term that occurs often in the Galle thombos is *ratmahara*. This was quite simply described as the ‘company’s empty land’ by Pieter Sluijsken.⁴⁰ It is one of roughly five kinds of land that belonged to the ‘lord of the land’.⁴¹ Literally, *ratmahara* or the older *ratmāsara* meant the great thicket that belonged to the king.⁴² The others are *malapālu*, *nilapālu*, *muttettu* and ‘s *Compagnies grond* (company ground). The terms *ratmahara* and company ground occur often in the sample villages. *Malapālu* were lands escheated by the death of their tenant,⁴³ and *nilapālu* were lands that had reverted to the crown at the end of the tenant’s service obligation due to the lack of male heirs or termination of the service or office.⁴⁴ These terms only occur in the thombos of the Hinidum Pattu from among the sample villages. The term *muttettu*, a de-

³⁸ Going by the figures in the thombo, for holdings with 1-6 coconut trees, the tax appears to have been ¼ stivers but regulations state that there could be great variation depending on the condition of the tree and soil. On taxes see Kotelawe, ‘Agrarian Policies’, 30–31.

³⁹ Dewasiri, *Adaptable Peasant*, 110.

⁴⁰ Sluijsken, ‘A Description of the Land Services’, vol. 1: 353.

⁴¹ Dewasiri, *Adaptable Peasant*, 111.

⁴² Codrington, *Ancient Land Tenure*, 8. An early nineteenth-century document among Alexander Johnston’s papers in New York states that the original term may be *radamahara*, with *rada* meaning king: ‘The proper derivation of the word is unknown. It is said that it should be spelled Radamaharra, from Rada – king and that it means uncultivated king’s or crown lands, brought into a state of cultivation or capable of being so.’ Johnston, ‘Johnston Papers (NYC)’.

⁴³ Schreuder, *Memoir*, 65.

⁴⁴ Codrington, *Ancient Land Tenure*, 25.

mesne sown for the king or other owner⁴⁵ does not occur in the sample thombos. I have loosely labelled this group of five types of land crown land.

The intricacies of traditional terms of land tenure were hard to grasp for some company officials. The Galle Landraad members believed that all lands, where it was found that they had no owners anymore, had to be registered as belonging to the company. It was said at the Landraad meeting of 1745 that such land must also be understood as being *malapālu* or 'feudal' lands. Van Gollennesse corrects this view, saying: 'The *malapālu* and *nilapālu* are feudal property before their owners have died or deserted the same, but as soon as they become *malapālu* and *nilapālu*, we cannot call them feudal property anymore. On the contrary, they belong among the company's possessions and domains till they are handed over again to others.'⁴⁶ Understanding terminology would have been seen as important for the production of a legible cadastre.

Such 'state' lands, when they were acquired by the peasants, were also handed down the generations. As Van Gollennesse says *malapālu* and *nilapālu* were feudal when they were still held as subsistence by those rendering a service, such service *paravēni* as it is called was evidently looked upon as a feudal agreement. More on this will follow below. The locals cultivated other crown land as well. For instance, although *malapālu* and *nilapālu* were company lands, in practice we see how the produce of such *malapālu* and *nilapālu* lands was 'owned' by the locals. In the Hinidum Pattu, 12 of 235 holdings were *malapālu* and *nilapālu* lands that were held by villagers. A tax of *ottu* or one-tenth on such acquired lands was imposed.⁴⁷

There were also many acquired *ratmahara* and company lands. Following a practice from precolonial times,⁴⁸ if the land was cultivated with company permission its share was one-third, otherwise a half. The one-third tax that was taken from such lands was not always paid, as seen in the Galle thombos. In respect of more than half the entries with these classifications it was specifically stated that the company's share of one third was not extracted. In practice, therefore, the company regulations could not always be implemented, as it would disturb the peace considerably.⁴⁹ Some sources indicate that the company's share of *ratmahara* lands of certain villages was given over to the *salāgamas*.⁵⁰ In a matter discussed in more detail in chapter six, the division of land in Gamage Livina's case showed a clear one-third share demarcated for the *salāgamas*. In another inheritance issue that came up in the Landraad, both *salāgamas* and individuals of a family claimed a piece of land, the former on the basis that it was *malapālu* land to which the *salāgamas* had the rights in that village, and the latter claimed that it was their *paravēni* property.⁵¹ Dewasiri believes that in the traditional system, cinnamon peelers received the right to cultivate lands in return for working for the sovereign, and that the progressive disengagement with peasant agriculture and the practice of granting them the revenue of villages (which he identified with regard to the *lascarins*) was new.⁵² A

⁴⁵ Ibid., 23.

⁴⁶ SLNA 1/2805, 'Minutes (20 Dec 1745), GL', fol. 38v.

⁴⁷ See SLNA 1/7472A, 'Ihala/Uda Gigungmaduwa Thombo', fols 6v, 9; SLNA 1/7519A, 'Pahala Gigungmaduwa (Hinidum) Thombo' 1760, 27–28.

⁴⁸ Kotelawe, 'Agrarian Policies', 18.

⁴⁹ In the Colombo Dessavony, the category of company ground became a potentially contentious issue. Dewasiri says: 'Tombo commissioners did not take for granted tenants' claims to each holding and in many cases they ignored tenants' claims that their holdings were *paravēni* or purchased lands.' He gives an example of 479 holdings registered in the village of Mapitigama (Hina/Gangaboda), of which 216 were claimed as *paravēni* by their tenants, but only 116 were accepted as such. The remaining holdings were declared company lands, he says, and taxed accordingly. Dewasiri, *Adaptable Peasant*, 112. Yet in Mapitigama as well, a significantly high proportion of the company's share appears to have remained unpaid.

⁵⁰ See SLNA 1/151, 'Governor in Council Minutes' 1767, 2 Jun 1767.

⁵¹ SLNA 1/6506, 'Galle Landraad Minutes' 1771, fol. 68v, 3 Aug 1771.

⁵² Dewasiri, *Adaptable Peasant*, 96–97.

description of lands in the Galle District found among Alexander Johnston's papers states 'old Ratmahera Gardens pay no duty only certain villages wherein 1/3rd in Ratmahera Gardens had been allowed a accommodessan to the cinnamon peelers during the Dutch Government. The Ratmahera Gardens in some of such villages pays 1/3rd at present.'⁵³

Governor Van Gollennesse believed that when it came to disputes between private parties (which he said were the majority of disputes that came up in the council), they failed to realise that the land actually belonged to the company and not the two parties involved. The governor said that no one wished to speak of the right of the company in such cases either out of ignorance, or sometimes out of self-interest. It was still fresh in his memory, he said, how those who according to their sworn oath and obligation should execute the company's interests, had given away and sold company lands like no one's business. However it was not very complicated, he said, if the company makes a proper distinction between lands that belong to someone as a result of legal purchase and gift, and hereditary *paravēni* that someone possesses for his service. For the governor, that was the foundation of the whole matter.⁵⁴

The company and the people grappled with each other for control over crown land. Fishermen from Ambalangoda who had been referred to the Galle Landraad by the thombo commissioners, said that their lands are *paravēni* and not *ratmahara* as recorded by the commissioners by virtue of a gift from a king of Kandy to their ancestors in a time before Portuguese rule.⁵⁵ Other litigants came to the council to petition that since they had cultivated and paid taxes for *ratmahara* lands for a number of years they were entitled to be included in the thombos as the rightful owners of such lands. *Ratmahara* land, if cultivated for a minimum of ten years and if the cultivator had paid taxes on it, could be successfully entered in the thombo under that cultivator's name as *paravēni*.⁵⁶ Commissioners reported on such cases after consulting the village headmen, and were asked to ensure that there were no cinnamon trees on the land. The transformation of crown land into private property was thus permitted within limits.

5.4.2 *Managing Paravēni Rights*

Governor Van Gollennesse wrote in his marginal comments to the minutes of the Galle Landraad that all *paravēni* has been reduced to three classes namely, sale, gift or service *paravēni*.⁵⁷ The third, service *paravēni*, was linked to a fixed service that had to be rendered to the company in return for the holding. These lands were also referred to as *accommodessan* in Dutch (mostly in the Colombo thombos) and *divel* (as in some Galle thombos). The extent of land granted in exchange for each service was fixed, one list of which is provided in appendix three. Sale and gift *paravēni* may have been linked to a service that continued once sold or gifted, but this is unclear. The recognition by the company of the hereditary nature of such *paravēni* rights is clear from a statement by Van Gollennesse in 1746: 'while the word *paravēni* itself means hereditary, it is unnecessary to add the same in the Dutch language to it, because it is never disputed and in fact is known to everyone, that it is hereditary.'⁵⁸ This shows a sensitivity towards the task of translating terminology from one system to another—just as

⁵³ Johnston, 'Johnston Papers (NYC)'.

⁵⁴ SLNA 1/2805, 'Minutes (20 Dec 1745), GL', fol. 37r–v.

⁵⁵ This example is from Alexander Johnston's papers, which includes a translation from the Galle Landraad meeting of 24 Apr 1773. Incidentally, this volume of minutes is not available among the Dutch records. Johnston, 'Johnston Papers (NYC)'. Perhaps this translation being among Johnston's papers explains the absence of the original, as Johnston was collecting information about the country from various sources.

⁵⁶ The prescription for this was determined in 1744 as ten years. SLNA 1/92, 'Governor in Council Minutes', fol. 247r–v, 26 Sept 1744.

⁵⁷ SLNA 1/2805, 'Minutes (20 Dec 1745), GL', fol. 39r.

⁵⁸ '[W]ant dewijl het woord parvenie zelfs erflijk betekend, zo is onnodig het zelve in de Nederduitsche tale daarbij toevoegen, dewijl het noit betwist maar idreen bekend is, dat deselve erflijk zijn.' Ibid.

many legal terms were imposed on the locals through the judicial system, the company attempted to understand terms in local society. In practice as well the company recognised the hereditary nature of *paravēni* rights in the thombos.

Yet there were some customary restrictions on the hereditary nature of service *paravēni*. Service *paravēni* according to custom could not be divided among heirs (unlike sale and gift *paravēni*), as it could only be devolved on the eldest son or the person who, ‘according to the customs of the country’ undertook to perform the company’s service in lieu of the father.⁵⁹ In one sample case, a woman’s claims to a garden and three paddyfields were denied till there was a male in her family who could perform the required *mayorāl* service.⁶⁰ Sluijsken’s writings confirm the need for a male heir to take over the service.⁶¹ In this system, persons, duties/services and land were closely interconnected and the company wished to retain land in order to give it out in return for services.

At the same time, other supposedly fixed characteristics of *paravēni* rights were not utilised in a way detrimental to the people. For instance, it was frequently publicised through plakaten that service *paravēni* must not be mortgaged or transferred.⁶² But on the condition of rendering the relevant service they could be sold. Alienation of service *paravēni* is also seen in precolonial times.⁶³ The inconsistency between policy decisions taken by the VOC and actual practice is not surprising. At a higher level as well, accommodating such flexibility Van Gollennesse wrote in 1745 that

it is completely untrue that we would have ordered, as it is said, that most people would inevitably lose their gardens and estates as a result of the lack of sufficient proofs. On the contrary, we have ordered that each person may and must keep his service *paravēni* on the conditions that 1) they provide services for them and 2) that it is not bigger than what the regulation dictates.⁶⁴

He acknowledges that the company ‘may well suffer’, and adds that when the holdings are bigger than what is permitted for each service, ‘the surplus shall also stay in that family if the family is unusually large, on the condition that those on whose names the land has been registered should come to increase the number who render their services.’⁶⁵ So in short, if the family was ‘unusually large’—and it’s not clear what this meant for the VOC—the extra lands that had been acquired could be retained on the condition that more people served the company.⁶⁶ This is seen in the sample villages as well. In Ganegoda, of one garden share and nine paddyfields only two paddyfields were held free of *ottu* for the *mayorāl* service and for

⁵⁹ Mottau, ‘Documents on Ceylon History’, 181.

⁶⁰ SLNA 1/6513, ‘Minutes, GL’, fol. 89r, 12 Aug 1780.

⁶¹ Sluijsken, ‘A Description of the Land Services’, vol. 1: 158. See also Codrington, *Ancient Land Tenure*, 19.

⁶² See for example SLNA 1/93, ‘Governor in Council Minutes’, 226r–v, 10 Dec 1744.

⁶³ W I Siriweera, *History of Sri Lanka: From the Earliest Times Upto the Sixteenth Century* (Dayawansa Jayakody & Co, 2002), 148.

⁶⁴ ‘[H]et is ten eenemaal onwaar, dat wij zouden geordonneert hebben, gelijk gezegt word, dat de meeste bij gebrek van sufficient bewijsen hunne tuinen en landerijen noodwendig zullen moeten verliesen, maar wij hebben ter contrarie gelast dat ider zijne dienstbare parvenies zal mogen en moeten houden mits 1) daarvoor dienst doende en 2) deselve niet groter zijn, dan het reglement dicteert.’ SLNA 1/2805, ‘Minutes (20 Dec 1745), GL’, 34v–35r.

⁶⁵ ‘[W]ij wel mogen lijden, dat van de dienstbare parvenies die veel jaren in een familie geweest en groter zijn dan gepermitteert is, het overtollige mede zal mogen blijven in die familie zo deselve buitengemeen talrijk is, mits dat de geene op wiens naam het zelve word gesz, dan ook teffens het getal dier dienstbare komt te vermeerderen.’ Ibid., f. 35r.

⁶⁶ It would be interesting to try to determine if a ‘family’ meant a thombo group for the governor. See discussion on how to analyse a thombo group earlier in this chapter.

the rest *ottu* was paid.⁶⁷ In another thombo entry, a garden and six paddyfields are held 'in common' (more on this will follow) by an LHG for the payment of garden tax and *ottu*, but two other paddyfields were held by the *mayorāls* in the thombo group free of tax.⁶⁸ In another LHG, one *amuna* from the paddyfields and two gardens were held for the coolie service free of tax, but for the other paddyfields *ottu* had to be paid.⁶⁹ The excess lands in these examples, which were more than the stipulated extents for a particular service (based on the hierarchy of officers) were held on the payment of tax. These lands effectively became private property with no obligatory service attached to them.

5.4.3 Planter's Shares

The third breakdown which I regard as the ownership of cultivated trees was a local custom hitherto undisclosed in the thombo literature. Planter's shares occurred frequently in the Galle thombos and involved rights to the trees. In brief, it means that a planter who enters a piece of land and cultivates fruit-bearing trees in it with the owner's knowledge, retains rights of possession to the trees by right of cultivation. Its inclusion in the law of Sri Lanka continues to date and nineteenth-century court cases over such rights help us in understanding the phenomenon better. One lawyer argued in the Supreme Court in 1892 for a respondent who claims a planter's share that '[n]o one would buy planted land without enquiring into or allowing for and protecting himself against planters' rights.' Judge C J Burnside said in that case:

A custom has prevailed throughout the Maritime Provinces, the origin of which is perhaps coeval with the ownership of land, whereby estates in land have been created and known as "planters' shares" in first or second "plantations." A cultivator with the leave of the owner of the land would plant a portion or perhaps all of it with coconut, jak, areca, or other trees of that character, of slow growth and long lived, upon an agreement or understanding that when they came into bearing the planter should have such an interest in them as might be agreed on. In some cases the planter would have a certain number of the trees with the ground on which they stood and with right to live on the land and to go over it to take care of the trees and pluck the fruit. In some cases the planter's share would be a certain portion of the fruit itself. In some cases he would have the right to retain the trees, which he had planted, until he had been paid at a stipulated price for each by the owner of the land, and, in fact, often upon some customary rule which applied to these plantations. But in all cases the interest acquired by the planter has been recognised as a right of property in the land separate from and adverse to that of the owner, to be dealt with by the planter at his own will, to be sold by him, inheritable by his heirs, subject to his devise and to his creditors for his debts in all respects, as any other property.⁷⁰

Burnside points out that the custom had become intrenchably interwoven with actual possession of land, despite statutory laws that challenged it. L J M Cooray states that the local custom of the planter's share was recognised as a *jura in re aliena* within the framework of the

⁶⁷ The thombo entry read: 'All [holdings] according to the old thombo the paravēni of the first-mentioned person's great-grandfather also called Happoetantrige Joan, *mayorāl*; the garden was held for the payment of tax from old times, and the two last-named paddyfields were free of *ottu*, but for the other paddyfields they must pay *ottu*.' ('Alle blijkens d'oude thombo parvenie van des eerstgenoemens overgrootvader mede genaamt Happoetantrigei Joan majoraal, werdende de thuin onder opbrenging van geregtigheid vanouds, en de twee laastgem. zaaivelden vrij van ottoe, gepossiedeerd, doch voor d'overige zaaivelden moet men ottoe voldoen.') SLNA 1/7442A, 'Ganegoda Thombo', 45; SLNA 1/7442B, 'Ganegoda Thombo', 43.

⁶⁸ SLNA 1/7442A, 'Ganegoda Thombo', 5.

⁶⁹ *Ibid.*, 31.

⁷⁰ *Jayasuria v Omar Lebbe Marcar*. 1892. *The Ceylon Law Reports: Being Reports of Cases Decided by the Supreme Court of Ceylon* (Colombo: Ceylon Examiner Press, 1892), vol 2, no. 3, p. 7.

Roman-Dutch law of property.⁷¹ Marleen van den Horst argues that the planter's share or right is particular to Sri Lanka and that '[t]he rights of the planter and the extent of his share are determined by the agreement between him and the landowner and may differ depending on the customary rules of the various districts'.⁷²

It was clearly a customary right acquired by cultivation. In the thombos, planter's shares or interests are identifiable by the phrases *over moeite van aanplanting* (for the trouble of planting) and *over/wegens aanplanting* (as a result of planting). This appears to be a translation of *vev mahansiya pinisa* in Sinhala which means, literally, for the trouble of planting and is a term found in land deeds.⁷³ Another Dutch term used in the Landraad is closer to the English translation of planter's share: *aanplantings deel*.⁷⁴ The existence of this local custom is confirmed by witnesses who came to the Landraad in 1778. They were asked why a 'stranger' was permitted to plant on an already appropriated land, and if it were not true that this could never happen among the Sinhalese. The answer was that if it is empty it could happen.⁷⁵

Planter's shares were hereditary, with references made in the thombo to inheritance from those who had planted trees. However, contrary to Burnside's references to owning the land, the Landraad excluded the planter's rights to the 'ground'. In 1775, one of three holders of an inherited planter's share of one sixth of a garden in Piyadigama appeared in the council with an extract from the thombo. He requested permission to be able to sell the share. The owner of the land had agreed to take over the share at a price of 30 rixdollars, but the planter stated that he had been offered the same price by a schoolmaster but that he had not made any promises to him. The Landraad approves the sale with a significant remark: 'the trees that someone owns in another man's garden for the trouble of having planted them may be sold, but not the ground.' But the council rules that the owner of the garden, when he is willing to pay the same price as a third party, is legally entitled to exercise his right of first refusal.⁷⁶ Other issues brought up in the Landraad confirm this well. The executors of the estate of the late Adam Hendeling requested the Landraad in 1779 for two commissioners of the council to estimate the planter's share of one of his gardens. Two European members of the council and the native councillor Augustinus Ferdinandus Wiresinghe submitted a report that three Moors had to be compensated for their planter's shares in that garden which amounted to 69.9 rixdollars. A 'secretarial certificate' in this respect had to be prepared. The evaluation was done, it was said, according to a resolution of the Governor in Council on 15 September 1772.⁷⁷ In the 1778 lawsuit in which the witnesses quoted above testified to the custom, the Landraad stated that when a certain garden was auctioned and the proceeds divided among the heirs, the new owner should compensate the planter.⁷⁸ Further confirming that the planter's share was well recognised and excluded the rights to the ground, a Land-

⁷¹ 'Common Law in England and Sri Lanka', *International & Comparative Law Quarterly* 24, no. 3 (1975): 556.

⁷² *Compensation for Improvements*, 164.

⁷³ When one Sophia de Saram Wiresinghe Siriwardene Lama Eteni bought a garden share from Cornelis de Saram, the transfer deed from 1853 refers to the exclusion of two coconut trees and a jak tree planted by Salman Fernando of Wolvendaal. She resells it in 1885, again with the exclusion of Fernando's three trees. A last will of 1846 also refers to the bequest of a planter's share. I thank H F Rupesinghe for bringing these deeds, which are among the private papers of Lorna Seneviratne of Galkissa, to my attention.

⁷⁴ SLNA 1/6512, 'Minutes, GL', fol. 80r, 20 Nov 1779; SLNA 1/6513, 'Minutes, GL', fol. 11r, 5 Feb 1780.

⁷⁵ SLNA 1/6534, 'Interrogations, GL', fol. 22r-v, 9 Dec 1778.

⁷⁶ The translated quote was: '[d]en raad in aanmerking genomen, dat wel in boomen die imand uijt ander mans thuijn over moeite van aanplanting competeerden, maar niet de grond mogen verkogt worden.' SLNA 1/6509, 'Minutes, GL', fol. 10r, 7 Jan 1775. A note on the sale was made on 22 Jan 1776 on the Piyadigama thombo. SLNA 1/7534A, 'Piyadigama (Four Gravets) Thombo' 1744, 1; SLNA 1/7534B, 'Piyadigama (Four Gravets) Thombo' 1744, 3.

⁷⁷ SLNA 1/6512, 'Minutes, GL', fol. 80r, 20 Nov 1779; SLNA 1/6513, 'Minutes, GL', fol. 11r, 5 Feb 1780.

⁷⁸ SLNA 1/6511, 'Minutes, GL', fol. 74r, 17 Oct 1778.

raad sentence that assigned the ownership of a garden to one party added that any shares due to those whom the thombo commissioners would find in the future to have also planted on it should be registered in the thombo under such a right.⁷⁹ It is thus clear that planters and their heirs could not lay claim to more than their share in trees.

In essence, the land belonged to someone else, but others could have rights to certain trees in it. Of the fifty-six such holdings of trees in Dodampe which were held because they had been planted or inherited from people who had planted them, most (35) were held by individuals (of which six were inherited shares) with only four shares clearly held by the whole ‘family’ mentioned in the LHG. The rest (17) were held by groups of two or more people. In Ganegoda as well, of fifty-nine of such planter’s shares, at least 37 were held by individuals, and the rest jointly (some of these may have included the whole family, but that has not been explicitly stated). Most planter’s shares were held by persons related to the owner, or at least those who lived in the village.⁸⁰ All such holdings were of coconut and jak trees with one mention of arecanut trees in Dodampe, and were levied the garden tax. The thombos also state that the holders of the planter’s shares were responsible for the tax payments. Planter’s shares in coconut ranged from a single tree to fifty-six trees in Dodampe, and up to thirty-six in Ganegoda. At times they were combined with jak trees of up to twenty-four in number. Planter’s shares are seen only in gardens, and in relation to long-standing fruit-bearing trees.

5.5 Classification 3: By ‘Ownership’

The second approach to classifying is to analyse who ‘held’ a share. Here, a greater degree of interpretation of the thombos was resorted to, as it facilitates exploring the nature of ownership rights in property. In this approach as well, I have looked at the terms and phrases used in the eight thombos. For example, I have classified the phrases *in ‘t algemeen gepossideerd* (‘possessed in general’), and *door deze familie gepossideerd* (‘possessed by this family’) or *de gantsche familie competeerende* (‘belonging to the whole family’) as ‘in common’. Such holdings involved the rights of multiple persons, and the phrases were generally used in thombo groups of more than one individual. The land is held ‘in common’ in that the members of the group are joint heirs or shareholders and have a connection to the PLH. It must not be confused with a communistic type of ownership.⁸¹ And it must be recognised that the rights of the individual were important. As Obeyesekere rightly explains, ‘though the soil in theory belongs to a common body of agnatically related kinsmen, the respective rights to the soil are held by individuals in terms of fractions of an original estate held by a single ancestor (or a group of patrilineally related kinsmen descended from a common ancestor).’⁸² These fractions can at times be quite minute.

Table 5.2 shows how twenty per cent of holdings in Dodampe, fifteen per cent in Ganegoda and twenty per cent in the Hinidum Pattu were held in common in terms of the property owners/stakeholders involved in the 1760s and 1780s. Lands held in common were cultivated according to the *tattumāru* system which Obeyesekere found to be prevalent in the Hinidum Pattu of the Galle District some two hundred years later.⁸³ In *tattumāru*, the cultiva-

⁷⁹ SLNA 1/6514, ‘Minutes, GL’, fol. 93r, 21 Jul 1781. Walgamage Jantje et al. v Henadirage Christobu et al.

⁸⁰ The fellow villagers may have also been connected in some way.

⁸¹ Obeyesekere quotes Baden-Powell who says of the joint village in India: “‘joint ownership’ does not involve the idea of possessing land “in common”, if by this is meant “something of a communistic type as regards property in land”; and most certainly “collective ownership has nothing to do with the social community of goods”.’ B H Baden-Powell, *The Indian Village Community* (London: Longmans, 1896), 3; Obeyesekere, *Land Tenure*, 277.

⁸² Obeyesekere, *Land Tenure*, 38.

⁸³ He says: ‘We do know that most land in the low country was held in undivided shares; that some form of “tattumaru” prevailed and that *vāsagamas* as named patrilineal aggregates existed and still exist today.’

tion of shares to ancestral lands was rotated among the stakeholders, and the system was based on ownership of land in undivided shares.⁸⁴ The Landraad noted, on considering how one-third of an estate that was sold should be shared, that ‘when the fields are so big that they are divided into three, each of the owners will in rotation be assigned one-third of it year after year. In that way such disputes are settled according to the customs of the country and as customary among most inhabitants.’⁸⁵ The surveyor, the council said, could not divide the land. This applied to paddy lands, and the produce of inherited gardens was also shared. It was probably the way in which quite large LHGs ‘shared’ holdings. Inheritance by males and a patrilineal residential aggregation of males facilitated the system.⁸⁶ The nuclear family that lived on the land may also have had special rights. When a family is exceptionally large with many members living outside the village in which the land is described, it is hard to imagine that they all had an equal share to the produce. This was the case in Dodampe, where in a LHG with ninety persons, the first property mentioned is said to be held in common by the family.⁸⁷ ‘In-residents’ who lived in the village would have had special rights to such property. Among Alexander Johnston’s Ceylon papers this was said to have a negative effect on cultivation: ‘The Singalese possess their lands for the most part in common according to the ancient custom and usage amongst themselves and this is in many respects detrimental on the cultivation, owing very often to the negligence of the parties whose turn it is to cultivate the lands.’⁸⁸ It was clearly stated that it was not a Dutch custom. In order for it to work, some form of sharing such lands without complications had to be in place.⁸⁹

Such distinctions had to do with who obtained the produce from the land. Dewasiri says that the *pangu* recorded under one PLH can be called his estate.⁹⁰ This implies ownership by the PLH, but as said before it is unlikely that the PLH in the Galle thombos had special rights to the holdings mentioned in an LHG. A variety of people actually held the rights to the holdings, which include general rights to fields and gardens together with other joint and individual rights. Furthermore, the difference in the structure of the Colombo and Galle thombos could be due to different understandings of the significance of the first-mentioned person. The land information in the Colombo thombo it would be recalled was given in a separate thombo. As the PLH in the head thombo is repeated in the land thombo, a natural correlation between the estate and the PLH was created. Thus it is not difficult to conclude that he or she ‘owns’ the estate as well. Such a conclusion is almost impossible to make with regard to the Galle thombos, which have the land information alongside the information about people and in which many references to common and individual ownership are made. It is perhaps a difference in the nature of land rights in Galle that led to different formats for the thombos, but this must remain conjectural.

Ibid., 308. The Dutch use of the term *beurt wisseling* (changing turns) for who rendered service and/or cultivated the land was related to *tattumāru*. See for example how two brothers shared ‘3 gardens and 1 sowing field freely owned for the service of *mayorāl* and possessed by changing turns’ (‘3 thuijnen en 1 zaaijveld voor den dienst van Majoraal vrij bezeten mitsgaders bij beurtwisseling gepossiedeerd’). SLNA 1/7531A, ‘Pitigala (Walallawiti) Thombo’ 1778, 1.

⁸⁴ Obeyesekere, *Land Tenure*, 165.

⁸⁵ ‘[W]anneer de velden zo groot te zijn, in drien verdeelt, beurtelings jaar om jaar een derde daarvan aan een ieder der eigenaaren aangewezen word te possideeren. Zoo als diergelijke verschillen volgens slands kostumen en onder de meeste ingezeetenen gebruikelijk, worden afgedaan.’ SLNA 1/6525, ‘Draft Minutes, GL’, fol. 39r–v, 19 Jun 1784.

⁸⁶ Obeyesekere, *Land Tenure*, 134.

⁸⁷ SLNA 1/7428A, ‘Dodampe Thombo’, 30.

⁸⁸ Johnston, ‘Johnston Papers (NYC)’. This quote is from a single question and answer sheet. The question in this regard was: ‘Do the Singalese people possess their lands in common according to any Dutch custom or according to any custom or law of their own and what effect has it on the cultivation of lands?’

⁸⁹ For an extensive explanation of the *tattumāru* system, see Obeyesekere, *Land Tenure*, 18–36.

⁹⁰ *Adaptable Peasant*, 109.

Further complicating the picture, in one thombo entry it was said that although some lands belonged to the family in common, one or two persons and their heirs in the family actually owned it.⁹¹ Tenurial illegibility to that degree was rare. Yet this could mean a shift to more individual rights. The majority of holdings in the sample villages in fact were held by individuals or small groups of two or more people whose names appear under a particular LHG. The function of the thombo in this mutual recognition is crucial. We see how distinct rights to specific shares were being established in the thombo by individuals. Whether this marks a break with the past is unlikely. Dutch conceptions of private property may have seeped into local society. Yet it is more likely that the individual rights that we see in the thombos reflect an indigenous practice; the creation of private rights to landed property has been an enduring myth of colonialism. This would be in keeping with the VOC's idea of continuing customary practices. Table 5.2 shows that the majority of holdings were held by individuals or small groups of two or more people whose names appear in a holdings group.⁹² Given the evidence for individual and joint rights to land in precolonial Sri Lanka as well,⁹³ this does not mark a break with the past.

Table 5.2 Frequency of holdings held in common in Dodampe, Ganegoda and Hinidum Pattu

	Dodampe	Ganegoda	Hinidum
Fields	17	38	33
Gardens	20	10	15
<i>Total</i>	37 (20 %)	48 (15 %)	48 (20 %)

Individual rights within holdings groups were thus recognised by the company. For example, individual ownership was stressed as 'in possession of the first-mentioned person only'.⁹⁴ The function of the thombo in this mutual recognition is crucial. For instance, to take an example from another village in Galle not among the sample villages in this chapter, this is proven in the request for a certificate of ownership that one Makkundagamage Christina requested. She appeared before the Landraad in 1779 with an extract out of the 'new thombo' of the village Gintota. She requested a certificate in her name about a garden mentioned in the extract. Recognising that she had legal possession to the garden, the council agreed to her request.⁹⁵

⁹¹ See, for example: 'Mahagedarewatte according to the old thombo, service paravēni of the first-mentioned's mother-in-law or wife of the mentioned Pasquaal de Silva, belonging thus to this family in common, was however in the possession of the third-mentioned and his brothers and sisters...' ('Mahagid-dere watte blijkens d'oude thombo, dienstbare parvenie van den eerstgenoemde schoonmoeder of vrou van gem. Pasquaal de Sielwe competeerende, dus deze familie in 't algemeen, werd echter door den derdengen-oemde en zijne broeders en zusters gepossiedeerd...'). Also, 'Nilawatte, according to the old thombo service paravēni of the first mentioned person's mother-in-law or wife of the mentioned Pasquaal de Silva, belonging thus to this family in common, was however in the possession of the two last-named persons, Arruma Peruma Achchige Johannes and Johanna under payment of tax' ('Nilawatte, blijkens d'oude thombo dienstbaare parvenie van den eerstgenoemde schoonmoeder of vrou van ged.^{le} Pasquaal de Sielwe, competeerende dus deze familie in 't algemeen; werd echter door de twee laastgenoemens Arroema Peroema Atjegeij Joannes en Joanna bezeten onder opbrenging van geregtigheid'). SLNA 1/7428A, 'Dodampe Thombo', 30.

⁹² These 'joint' ownerships consisted of specific named persons and did not refer to the whole LHG.

⁹³ See for example Siriweera, *History of Sri Lanka*.

⁹⁴ '[W]erdende door hem eerstgenoemens alleen gepossiedeerd.' SLNA 1/7442B, 'Ganegoda Thombo', 21.

⁹⁵ A stamped extract from the Landraad session, followed by the thombo extract, and a signed copy of the certificate (marked *certificaat*), most probably made up on 4 Jul 1780 (the last digit of the year is not clear) appear in SLNA 1/6491, 'Registers of Deeds Affecting Land, Galle' 1780 to 1791, fol. 6r–8r. The relevant thombo is SLNA 1/7445, 'Gintota Thombo', 41.

The thombo extract found among the papers is from a registration done in 1745. The Gintota thombo made in 1745/46 has insertions over time, even as late as in 1804.⁹⁶ According to the thombo, Christina was the granddaughter of Makkundagamage Francisku. The extract, dated 9 July 1779, had been obtained by Christina's cousin's son. The garden in question, which according to the 1745 thombo had 180 coconut trees, six jak trees and seven hundred and twenty eight arecanut trees, had been bought by Francisku at a company auction, proof of which was a certificate from the year 1716. Twelve years prior to the thombo description made in 1745, Francisku had favoured and gifted away (*vereerd en weggeschonken*) the garden to his granddaughter Christina, according to the evidence given by the rest of the family. In 1745, Christina was living in Horangalla/Walallawiti Kōralē. In the description of the Horangalla village made in 1778, she is likely to be the same person listed as Makkundagamage Christina, wife of Ududollewattege Domini.⁹⁷ Thus, although she appears to have married virilocally (more on this follows in chapter six) her rights to the land are protected through the gift.

It is not clear how such types of holdings held in common and individual rights, converged or did not converge in practice. Obeyesekere analyses how in the twentieth century 'out-residents' created occasional conflict with a core group of 'in-residents' who enjoyed the rights in common. This occurred in Dutch times as well, as chapter six will show through legal conflicts.

5.6 Complexity of Property Rights

In order to better understand the various classifications mentioned above, Table 5.3 gives a breakdown of shares held by a land holdings group in Dodampe.⁹⁸ This land holdings group is as an example of the kind of agreements or conversations the people had with land and company.

Table 5.3 Holdings held by LHG 6 of Dodampe

Classification 1	Classification 2	Classification 3	Extent	Tax
Garden 1	Service paravēni	In common	34 coconut, 8 jak	<i>watubadde</i>
Garden 2	Service paravēni	In common	30 coconut, 4 jak	<i>watubadde</i>
Field 1	Service paravēni	In common	1 <i>amuna</i> , 10 <i>kuruni</i>	<i>ottu</i>
Field 2	<i>Ratmahara</i>	Individual	5 <i>kuruni</i>	<i>ottu</i>
Field 3	Company ground	Joint	4 <i>kuruni</i>	<i>ottu</i>
Garden 3	<i>Ratmahara</i>	Individual	10 coconut	<i>watubadde</i>
Field 4	<i>Ratmahara</i>	In common	15 <i>kuruni</i>	<i>ottu</i>

The first variable is of cultivation type, the second of 'rights' (or the particular nature of the relation to the lord of the land), while shares held in common (in turns) by the whole family, as opposed to those that are not, define the third variable of ownership. The variables

⁹⁶ SLNA 1/7445, 'Gintota Thombo', loose unnumbered pages. Later additions included notes on the transfer of lands.

⁹⁷ SLNA 1/7467A, 'Horangalla (Wellaboda) Thombo' 1778, 7; SLNA 1/7467B, 'Horangalla (Wellaboda) Thombo' 1778, 5. Christina was seventy years old in 1778, ten years older than her husband, which means she would have been thirty-seven years old at the time the Gintota thombo description was made (as is common for those who lived outside the estate, her age is not given in the Gintota entry), and the bequest would have been made in the early 1730s.

⁹⁸ A Landraad case on the ownership of the lands in Table 5.3 was heard in 1780 and involved one non-blood relation named Claas Fontijn who claimed a share of the property held in common. The holdings group that Fontijn entered was taken here as just one example of the kind of agreements/conversations that the people had regarding land. This case has been analysed in more detail in chapter six.

were applied to analyses of the Dodampe, Ganegoda and Hinidum thombos—it is likely that the same categories can be applied to other Galle thombos with some accommodation for variation.

The complexity of tenurial arrangements can also be viewed from the perspective of a garden. To say that recognition of rights involving long-term hereditary rights to an estate, planter's shares and company rights was complex is an understatement. Figure 5.2, which presents the various claims on a garden called Rilagodawatte in Dodampe illustrates this complexity. The garden had some point been divided into two, and various parties had rights to it. It had rights held by four LHGs (1, 13, 19, 20), and no relationships between members of the groups are mentioned in the thombo. According to the old thombo one half of Rilagodawatte was listed under Rilagodage Francisku. In the new thombo, the biggest share in that half of the garden was held in common as paravēni by LHG 13 headed by Rilagodage Don Simon. Liyana Achchige Philippu, the first-named person in LHG 1 of Dodampe had twenty-eight coconut trees and twenty-four jak trees in that same half. The thombo recorded that he had such rights because he had planted the trees. He was not the only person to have such rights as seen in Figure 5.2, which shows how Rilagodawatte was divided. In the same section of that garden, Simon, who is Liyana Achchige Philippu's father's sister's illegitimate son, had thirty coconut trees. Boderegamage Mariana, the daughter of Kobeiwattege Sabina listed under LHG 20 in Dodampe, had eleven trees.⁹⁹ The second half of the garden, listed as the purchase paravēni of the *lascarin* Hewagamage Pedrinyu of Hinatigala in the old thombo, is also divided among many people in a mix of rights. The biggest share of that half of the garden was held in common by LHG 19 headed by Hallolluwe Christina, an inheritance from her grandfather according to the old thombo.

No member of the two LHGs (13 and 19) that held paravēni rights to the biggest shares (1 & 5 in Figure 5.2) actually lived in Dodampe. Their rights were held in common, while all other claims were planter's shares. The group of five persons including Rilagodage Don Simon of LHG 13 all lived in Metterembe. In PLH Hallolluwage Christina's group (19) of ten persons, Adriana, was recorded as married and living in the Jaffna district.¹⁰⁰ While this indicates absentee ownership it also shows internal migration between the north and south. Christina herself lived in Metterembe, and the others lived in Hinatigala, Kumbalwella, and Henagama (Belligam Korle). Shares 2 & 3 were held by residents of Dodampe, while other shareholders were not residents. Strangely enough, throwing the exact meaning of a thombo group into further confusion, Christina's husband and son who hold shares 6 & 7 are not mentioned in the head count section of the thombo, as is also the case with Boderegamage Mariana. It could mean however that Christina's husband and son and Mariana did not have a right to the produce of the trees held in common. Being from another thombo group, the owners of shares 2 & 3, Liyana Achchige Philippu and Simon also could not claim the produce of the larger shares. Thus we see how distinct rights to specific shares were been established in the thombo by individuals, leaving intact the shares held in common. It also proves that not everyone in a 'family' was mentioned in the head count section, for we find three people in Dodampe only mentioned in the land rights section. This would indicate that those mentioned in the head count held particular rights in common, while those who had exclusive rights were mentioned separately. Clearly, this degree of complexity could not be easily reflected within the format of the Colombo thombos which had separate head and land thombos.

⁹⁹ Incidentally, Mariana is not mentioned in LHG 20. Boderegamage Mariana had grown eleven trees, while it turns out that the group of seven persons in LHG 20 had six trees (and nothing more) in the *other* half of the garden with the same name.

¹⁰⁰ She may have had Tamil or Chettiar connections as her sister had the name Nallaperumatantrige.

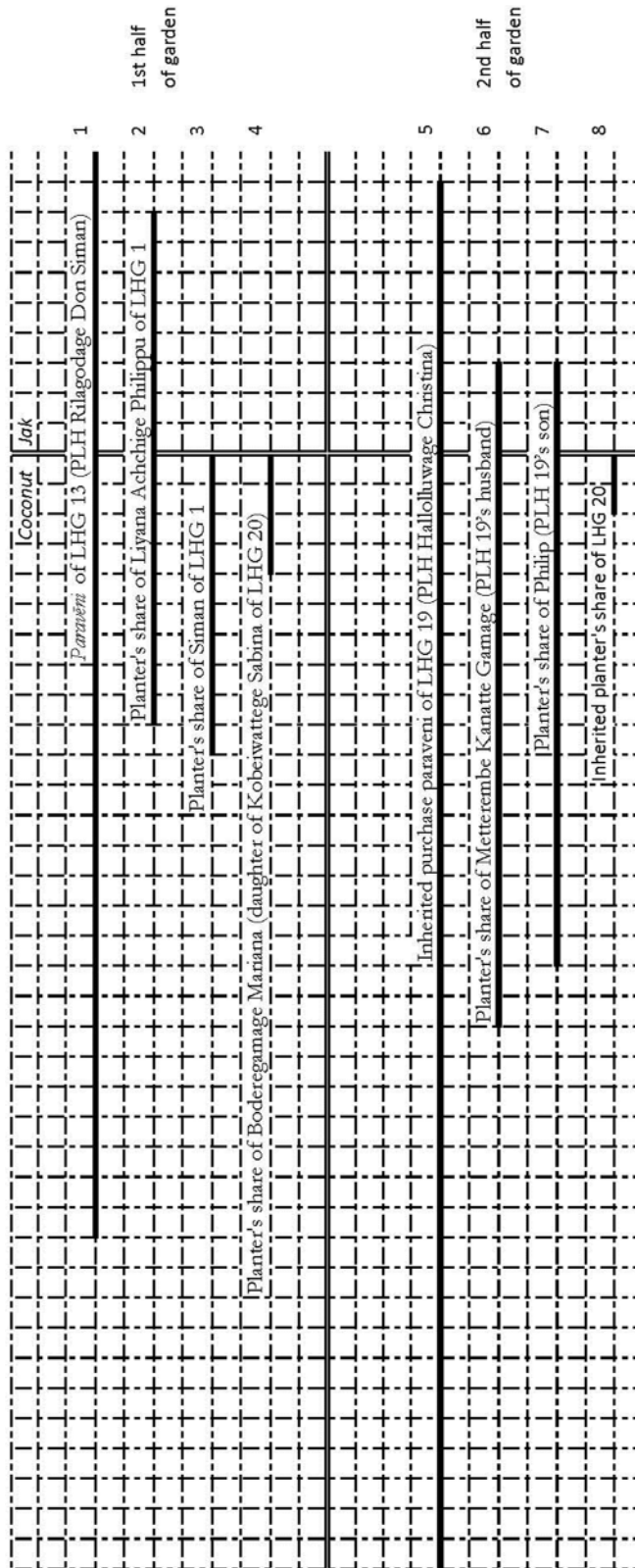


Figure 5.2 Eight shares of a garden named Rilagodamatte in Dodampe

Note: The horizontal double line indicates the division of the garden into two halves, the thombo clearly stating on which side each of the shares were. The left side of the vertical double line gives the coconut trees and the right side the jak trees. A square shows three trees, and the number of trees has been represented approximately.

Rilagodawatte is an example of many gardens divided into a number of shares that can be found in the Galle thombos. The council was not pleased about such complicated claims, yet it appears that they were accommodated. The perspective of the indigenous inhabitant was taken into account, and this indicates an active engagement with the conflicting view as negotiation was impossible without it. While the plakraten and instructions of the Dutch government were a fixed point of reference, the thombo registration was flexible.

5.7 Conclusion

This chapter aimed to explore the intricacies of the thombo registration in all its implications for land rights. That it was, considering the times, a dynamic document is clear. Pieter Sluijsken wrote in the 1780s that the thombos were the ultimate reference for questions of inheritance and land disputes.¹⁰¹ The thombo was the law, he argued. That is amply illustrated when looked at together with Landraad cases. Any doubts about the importance of the thombo in practice need hardly be entertained. The thombos continued to be legally relevant in the nineteenth century under British rule, and even today, the thombo is a document that is used to a limited extent for legal cases.

Given the presence of a foreign power who found the prevalent system of land tenure a novelty, the Landraad provided a space within which ideas and practice could merge in a written form on the question of land rights and entitlements. It provided the opportunity for peasants to be more assertive in southern Sri Lanka. The contact zone of coloniser and colonised in Galle produced acclimatised ideas of land rights that were different to higher level discussions on land tenure that involved the governor and Governor in Council. The governor's involvement was a part of the quest to consolidate authority; at the grassroots level the making of a single thombo entry engaged the practical realities with which lower level officials had to contend. I argue that there was fluidity and flexibility in practice which corresponds with the work of Lauren Benton on colonial law.¹⁰² The discursive struggles centred and finally settled around the text of the cadastre, despite moves by higher officials to appropriate the production of knowledge on categories of rights. The Landraad and by extension the Dutch government in Sri Lanka may have constituted the legal platform on which tenurial rights could be discussed, but the realities lay further out in the field.

On the subject of contractual relationships with fellow countrymen or the rulers of a land, the language of the people was the law. What they spoke was law, what was translated was law, and what was written down in the end product was supposedly the law as well to both coloniser and colonised. In essence, this was bottom-up lawmaking. At the same time, the act of making representations to the Landraad on land matters may have affirmed that the company was in charge and was the arbiter of justice. Significantly, the peasants appear to have had considerable faith in the company's power to fix and regulate land rights, as we may judge from the number of cases that came up, which the next chapter will demonstrate more clearly as well.

The early colonial power regulated land use carefully, making it seemingly impossible for the people to escape the long arm of the law. At the same time, the thombo itself is testimony to the fact that the VOC policies were flexible at the ground level. They maintained the status quo, and subject to extra taxes they allowed excess land held by service caste members and native officials as well as other irregularities such as the appropriation by private parties of the full produce of company lands and wasteland. The locals were renegotiating 'custom'—where possible, they had no wish to adhere to rules where it can be imagined that aspirations to absolute property rights ran high. The thombo and the Landraad were in effect

¹⁰¹ Sluijsken, 'A Description of the Land Services', vol. 1: 367.

¹⁰² 'Historical Perspectives on Legal Pluralism', *Hague Journal on the Rule of Law* 3, no. 01 (2011): 57–69; *Law and Colonial Cultures*.

the legal mechanisms by which the conversion of land, whether collectively or individually held, into alienable title was sought to be consolidated. That history of land tenure in the countryside had remained untold till now.

In such a context, it is difficult to detect an overpowering domination by the colonial state in the process of state formation. Colonial subjects, both elite and non-elite were frequently involved. Lawmaking in coastal Sri Lanka had its greatest relevance in relation to agrarian rights, and the process was determined to a large extent, I argue, by the indigenous people themselves. The mundane practices through which property holdings were determined on an everyday basis relied heavily on the subjects. Through the new discursive platforms of the Landraad and the thombo, colonial officials used the law in an effort to control each share of land. Notwithstanding the complexity of such tenurial rights, the new platforms, they believed, would render the agrarian countryside administratively controllable in a process that made room for pluralities of practice.

Chapter 6 On Inheriting Land

Landownership, inheritance and kinship are inseparable elements in the Sri Lankan context. A legal approach necessarily involves all three aspects. Observing family life and inheritance together is not surprising as most inheritors are family members. Forms of land tenure, i.e. the particular agreements relating to the land that people had, reflected on inheritance and by extension on kinship. The 'law' of family inheritance is the subject of this chapter. Inheritance today is an issue that has much importance attached to it as a result of its implications for the individual. Who inherited within a family and in what proportions are key questions that have been asked over the years. An important question in early modern and modern litigation in Sri Lanka was how an ancestral estate was to be divided after a death. Unsurprisingly, intestate succession was an issue that resulted in a fair number of the cases heard by the Landraad in the eighteenth century. This chapter is based on original research into inheritance cases that came up in the Dutch Landraad in Galle in the late eighteenth century.

As preceding chapters have shown, the language of a mixed legal system had reached villagers through the Galle Landraad, the traces of which must be read in close accompaniment to the thombos. It can be argued that all those who received title to land through the thombos were engaging with their legal rights at the registration. The thombos are in fact the ultimate reference for studying inheritance patterns, but that calls for a monographic work of its own. Shareholders often had to come to the Landraad to prove their rights, if the thombo commissioners could not decide on the case themselves.

Did the inheritance law used in Landraad decisions reflect Dutch or local legal customs? I have examined this question by studying processes taken up in the Landraad, starting with retracing the steps of an inheritance issue brought up by one Claas Fontijn in 1780. Thereafter, I explored the possible explanations for this case through an exposition of traditional inheritance norms and the Roman-Dutch law of inheritance. I consider the available historical records on the question of which law was used in Dutch judicial councils. I have not attempted a comprehensive introduction to Dutch or Sinhalese inheritance laws in this chapter—aspects of these laws are discussed through the cases given as examples.¹ I have also used cases to show how principles of Sinhalese law such as the concept of familial assistance, local modes of marriage, and the rights of widows were also brought up in the Landraad. I have studied the records of the Scholarchale Vergadering to draw a picture of marriage in eighteenth-century Galle, in order to better understand its potential bearing on inheritance matters. Illegitimacy, at times diligently recorded in the thombos, was embraced by some to engage in litigation in the Landraad for exclusion from inheritance. Most strikingly, the Landraad exhibited a trend towards bilateral inheritance. This attempt can by no means be comprehensive in dealing with all aspects of family inheritance, but serves to be illustrative on some aspects through empirical data.

¹ For a discussion of local inheritance laws, see Obeyesekere, *Land Tenure*; Nur Yalman, *Under the Bo Tree: Studies in Caste, Kinship, and Marriage in the Interior of Ceylon* (Berkeley & Los Angeles: University of California Press, 1967); Edmund Ronald Leach, *Pul Eliya: A Village in Ceylon* (Cambridge: Cambridge University Press, 1961). On the Roman-Dutch law of inheritance, see: L M Rollin Couquerque, *Het Aasdoms- En Schependomsrecht in Holland En Zeeland, in Verband Met Het Erfrecht Der Naburige Provinciën* ('s Gravenhage: Nijhoff, 1898); Robert Warden Lee, 'The Intestate Succession of Husband and Wife in Roman-Dutch Law', *Journal of the Society of Comparative Legislation* 12, no. 310 (1911); Melius de Villiers, 'Succession Unde Vir Et Uxor', *South African Law Journal* 33 (1916): 158–61; C. Graham Botha, 'Intestate Succession', *South African Law Journal* 34 (1917): 172; *An Introduction to Roman-Dutch Law*, Fifth Edition (1915; repr., Oxford: The Clarendon Press, 1953).

6.1 Claas Fontijn's Claim

In 1780, Claas Fontijn, a sieve-maker and *burger* in the company's service in Kumbalwella (Four Gravets) gained property rights in a village in the Galle District through his father's second wife. He had no blood relationship to the rest of the family in Dodampe (Wellaboda Pattu), to which his father Hendrik's second wife Johanna Floorman belonged. Since the land in question in Fontijn's matter involved a thombo registration, he had to appear before the Landraad. This case serves as an introduction to the question of intestate law.

The thombo entry² in question ran as follows and is illustrated in Figure 6.1. The principal land holder (PLH) in the thombo group is Arumaperuma Achchige Johannes from the fourth generation, who lived in Dodampe with his wife, son and two daughters. Of the *goygama* caste and a *lascarin*, he had a sister named Johanna who lived in Tellumbura, and an aunt named Maria Bouman who lived in Kumbalwella.³ Claas Fontijn is given in the thombo as the stepson of Maria's cousin (mother's sister's daughter) Johanna Floorman. The thombo and Landraad records also state that one *lascarin* named Arumaperuma Achchige Johan was both Maria's and Johanna's grandfather. So Maria and Johanna were the offspring of two sisters whose father was Arumaperuma Achchige Johan, who, according to the thombo, was also PLH Arumaperuma Achchige Johannes's great-grandfather. This made Johanna Floorman the PLH's aunt as well. In this way, it would appear that the stepson of the aunt of a PLH in a thombo group was included as a fellow inheritor in a decision made in the Landraad, the details of which will be discussed here.

Claas's stepmother Johanna died giving birth to the son she had with his father Hendrik, and according to reports a few hours later her son died as well. Claas's argument in his request to the Landraad on 3 June 1780 was brief: 'because the lands of Arumaperuma Achchige Johan belonged to his granddaughter Johanna Floorman, and by her death to her son and as a result of his [the infant's] death to his or the supplicant's father, who had also died since then, the supplicant held the stance that this share should be transferred to him.'⁴ He asked that his share (*aandeel*) be recorded under his name in the new thombo, which was drawn up for the village that same year. The Landraad asked the thombo commissioners to ascertain if the supplicant had a legal right to the said shares of the lands and if so to insert the same in the new thombo.⁵

The lands in question were as follows.⁶ Claas Fontijn's stepmother's family held the inherited land in common, a type of ownership that we saw in chapter five to be customary in Dodampe.⁷ The sowing capacity of one field that the family held in common was one *amuna*

² SLNA 1/7428A, 'Dodampe Thombo', 4–6. Another thombo entry made thirty years earlier in Hinatigala probably represents the Dodampe PLH's grandfather's generation, but I have not included them in the family tree figure as they do not directly appear in reference to the case heard in 1780. SLNA 1/7460B, 'Hinatigala (Talpe) Thombo' 1750, 13.

³ Maria is given as 'nicht' and described as the grandfather's sister's daughter. Corresponding references to the same persons indicate that Maria Bouman is indeed an aunt of Arumaperuma Achchige Johannes. The father of Johanna and Johannes is called Arumaperuma Achchige Michiel (and not Allensu) in another thombo group to which they have family connections. SLNA 1/7428A, 'Dodampe Thombo', 30. One Jacob Floorman is referred to as Maria's 'neef' in Ibid., 15; SLNA 1/6513, 'Minutes, GL', fol. 47r, 20 May 1780. By May of 1780 Jacob had died. 'Neef' in Dutch could indicate that he is either a cousin or nephew. He was probably Johanna Floorman's brother, but could have also been a brother's son.

⁴ 'En dewijl de landerijen van Aroema Peroema Aatje Joan, ged.^{te} zijne klijndogter Johanna Floorman en door haaren dood haar zoontje en door zijn overlijden zijn of des supp.^{ts} vader competeerd, die zederd meede gestorven is. Zo sustineerd hij supp.^t dat dit aandeel op hem moet devolveeren...'. SLNA 1/6526, 'Annexes to Minutes, GL', fol. 56r–v, n.d.

⁵ SLNA 1/6513, 'Minutes, GL', fol. 52r, 3 Jun 1780.

⁶ Table 5.3 in chapter five gives a breakdown of the shares.

⁷ These shares were one third of a garden named Tannewierewatte, one half of a garden named Arumaperuma Achchiwatte and one field named Kundeniyekumbura. The thombo says they were '[a]ll ser-

and ten *kuruni*, more than two acres of land. The two gardens held in common were not large⁸—they both had 64 coconut and 12 jak trees between them. Another field of fifteen *kuruni* was also held in common. Fontijn was apparently requesting a share of these lands. Within the same land holdings group, exclusive individual rights were also recognised—one field (approximately a quarter of an acre in extent) was held by Maria Bouman, another slightly smaller field was held jointly by Arumaperuma Achchige Johannes and his sister Johanna, and Johannes also had rights to a small garden with ten coconut trees. In 1787, two litigants unsuccessfully challenged some of the family’s holdings, claiming an error in the thombo.⁹ This proves yet again that the thombo with its information about holdings and shareholders was a living document that villagers took seriously.

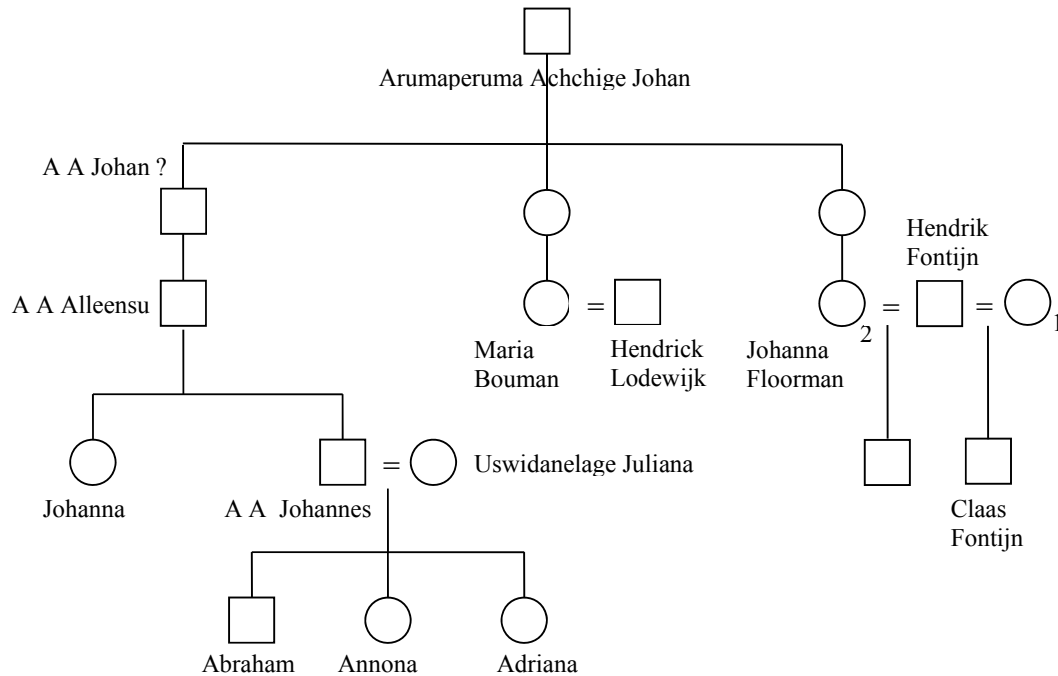


Figure 6.1 Family details of PLH Arumaperuma Achchige Johannes of Dodampe (Wellaboda)

The thombo commissioners Christian Huijbertsz, Albert Christoffel Luijk, and Jan Casper German submitted a report to the Landraad on 12 August 1780. They confirmed the family relationships between the persons concerned, that Johanna Floorman had died some years ago already and that the infant had died shortly after his mother. Moreover, they queried whether Claas’s request to be a fellow inheritor in place of his father could be taken into account because both father and son, according to reports (probably oral), had not occupied the lands left behind by Arumaperuma Achchige Johan.¹⁰ So long-term possession could not

vice paravēni of the first-mentioned person’s great-grandfather Arumaperuma Achchige Johan, *lascarin* according to the old thombo and in the possession of this family under payment of tax and *ottu*’ (‘Alle dienstbaare parvenies van des eerstgenoemens overgrootvader Arroemaperuma Atjige Joan lask. blijkens de oude thombo werden door deeze familie gepossiderd onder betaling van geregtigheid en ottoe’). SLNA 1/7428A, ‘Dodampe Thombo’, 4.

⁸ Dewasiri’s definition of a plantation having more than 200 trees serves as a guide here. *Adaptable Peasant*, 83.

⁹ SLNA 1/6515, ‘Minutes, GL’, fol. 36r–v, 24 Mar 1787; 231r–v, 30 May 1789; 257v, 26 Sept 1789.

¹⁰ SLNA 1/6526, ‘Annexes to Minutes, GL’, fol. 23r, 12 Aug 1780.

be used as an added qualification. The commissioners were clearly in doubt, and could not decide on whether to enter Claas's name in the thombo themselves.

The council's response was to order Claas to show through an affidavit that 'the infant had lived longer than the mother'.¹¹ This request, as we will see, is crucial for a thorough understanding of the case. The implication inherent in the request is that if the infant had not lived longer than his mother, Claas Fontijn could not inherit her share. In the next section, we will consider the possibilities of what may have followed if she had died after the infant. It can be imagined that the order may have been preceded by a discussion on the matter in the council, unfortunately we are not privy to it through what remains of the minutes and other documents.¹² It is also possible that Fontijn had prior knowledge of the possibility of such a request being made and was prepared for it. This is apparent as he undertook to provide evidence for his case in his initial request as well.¹³

In order to fulfil the order, a deposition by five witnesses was made before Landraad Secretary Petrus Jacobus Roosmale Cocq six days later on 18 August 1780. Claas had moved fast, which suggests that the deposition had been pre-arranged. Johannes Philipsz, a thirty-six-year old *burger* declared that when he heard that Claas's stepmother had died at childbirth, he had gone to the house around seven in the evening and stayed the night there when asked to. He said the just born son had also died that very night, or early in the morning. Four women corroborated Johannes's deposition. They were, Elizabeth van der Hoeven (65 years) widow of the master sail maker Eldert Brink, Magdalena Dias (61 years) widow of the soldier Arij Liere, Catharina de Silva (36 years), widow of the cooper Nicolaas Jochem Kok, and Francina Joosten (50 years), described as an 'orphan' (*weesdochter*). Van der Hoeven, Brink, Kok and Joosten are all names of people who lived in Galle.¹⁴

The decision (*appointement*) of the Landraad was given on August 26. The council ordered the thombo commissioners to include Claas Fontijn, in place of his late father Hendrik Fontijn, as a fellow inheritor of the lands of Arumaperuma Achchige Johan in the new thombo. The case was heard and decided in 1780 within about three months. After the baby's death, the council regarded Hendrik as the next of kin with inheritance claims. And on Hendrik's death, the Landraad decided that Claas was then the rightful heir to Johanna's share of her maternal paravēni. No reasons were given for this judgement.

Thus, on the strength of the fact that his infant step-brother outlived his mother Johanna, and as the Landraad thereby established that Hendrik inherited his deceased child's property, Claas is entered as a fellow inheritor of a holdings group in Dodampe. His inheritance appears to have gone unchallenged by fellow LHG members. A few years after the 1780 judgement his daughter Cornelia Clara obtained permission to sell her late father's share of

¹¹ 'De raad ordonneert Claas Fontijn bij een verklaring aan te toonen dat het kind langer als de moeder geleefd heeft.' SLNA 1/6513, 'Minutes, GL', fol. 88r, 12 Aug 1780.

¹² If a case went up in appeal, we have more details of it, as an illegitimacy issue explored below will show.

¹³ The request reads thus: 'Claas Fontijn, sieve-maker in the company's service here, your honour's humble servant, respectfully shows that the granddaughter of a certain *lascarin* Arruma Peruma Achchige Johan, called Johanna Floorman, married to the supplicant's father Hendrik Fontijn, has died, leaving a small son by the mentioned father of the supplicant, who also died shortly after the mother, and the supplicant undertakes to prove the same with credible evidence.' ('Claas Fontijn siftenmaeker in scomp. dienst alhier bescheiden, uwer Eerw.^s zeer verpligte dienaar vertoond reverentlijk dat de klijndogter van zekere lascorijn Aroema Peroema Aarjege Joan gen.^t Johanna Floorman, getrouwd met des supp.^{ts} vader Hendrik Fontijn overleeden is, nalaetende een zoontje, bij gem. des supp.^{ts} vader geproduceerd, 't welk meede kort na de moeder aflijvig geworden is, gelijk de supp.^t zulx aanneemt door geloofbaare getuigens te probeeren.') SLNA 1/6526, 'Annexes to Minutes, GL', fol. 56r, n.d. 'Alhier' as used in the Landraad meant Kumbalwella where the council was situated, while 'stad' (town) was used to refer to the Galle Fort.

¹⁴ See the index of names in Wagenaar, *Galle, VOC-Vestiging in Ceylon*. Most depositions list the residence and religions of the witnesses, but this information is absent in this case. Most probably they were either Dutch Protestant or Catholic and lived in the Four Gravets or Galle Fort.

the lands in Dodampe.¹⁵ Her husband Johannes Westerman was also a sieve-maker like her father and no doubt they were not wealthy *burgers*.¹⁶ She produced a copy of the 1780 Landraad decision and an extract of the thombo made that year. The Landraad granted permission for her to sell one fourth each of two lands held in common with the rest of the family and a similar extent from another land if a case in progress regarding it was decided in their favour.¹⁷ Later, Cornelia reappeared in the council with the 'widow of Abraham Mamboer'¹⁸ to retrieve the papers (1780 judgement and thombo extract). This is perhaps an indication that Mamboer's widow is the new owner, but no revision was made on the thombo itself. Cornelia and her husband told the council that they were in a hurry to sell the land as they were moving to Colombo.¹⁹ If Mamboer's widow became the owner, the share was then well and truly alienated to a non-agnatic and non-*vāsagama* person. The reference to one-fourth of the lands held in common clearly indicates that Johannes, his sister Johanna, his aunt Maria Bouman and Claas Fontijn were the four shareholders identified in 1780.²⁰

Claas came to the Landraad because he believed his right to the property was under dispute. No references to succession *inter vivos* or a testament were made, it was clearly a matter of intestate succession. The PLH in the thombo, who it is assumed would have been responsible for the most part to provide information about shareholders, had not included him. The headmen of the village, who were supposedly held accountable for the task of reporting to the thombo commissioners assigned to register the lands of the village, also did not include Claas. The thombo of Dodampe was being drawn up at the time Claas's case was heard, and we will see later in this chapter that other cases from the village were also heard around the same time. The three European commissioners appointed by the Landraad after Claas's claim was made, were also supposed to be helped by the headmen of the village in their investigation.²¹ Presumably the European commissioners were assisted by the village headmen. Perhaps they were expected to explore Sinhalese jural norms in their investigation but found none. The field investigation drew up an inconclusive report for unknown reasons.

We're also in the dark as to what role the indigenous headmen in the council played in the decision-making process. The councillors were initially reluctant to establish the condition on which Claas Fontijn would be able to inherit, instead assigning the responsibility for the investigation to the European commissioners. An equal number of European and local members of the council were present on the two most important days on which the case was heard: the day on which Claas was asked to prove that the infant had lived longer than his mother, and the day of the final decision. The members present on both days,²² were the president Abraham Samlant, M Andreas Everhardus de Lij, Christiaan Huijbertsz, Petrus

¹⁵ SLNA 1/6525, 'Draft Minutes, GL', fol. 207v, 2 Dec 1786; SLNA 1/6515, 'Minutes, GL', fol. 80v, 8 Sept 1787; 130r, 16 Feb 1788.

¹⁶ At the time of their marriage in 1782, Westerman was recorded to have been a carpenter in the militia. New No. 5/2, 'Marriage Register, Galle'.

¹⁷ This maybe the case referred to above where the litigants claimed an error in the thombo.

¹⁸ Abraham Mamboer was born in Galle, and his first appointment was in 1745 as a sailor. He was made a blacksmith in 1761. Mottau, 'Company Servants Galle'.

¹⁹ This internal migration is confirmed by their baptism of two children at the Dutch Reformed Church in Wolfendaal in 1789 and 1793. S A W Mottau, 'Index to the Baptisms Registered in the Baptism Registers of the Dutch Reformed Church at Wolfendaal' 1709 to 1952, 1: 582, Dutch Reformed Church at Wolfendaal.

²⁰ While the division here is one-fourth, of the remaining garden (Tanniewieregewatte) held in common a 2/3 share was sold or mortgaged by Maria Bouman and her *neef* (cousin/nephew) Jacob Floorman. SLNA 1/6513, 'Minutes, GL', fol. 47r, 20 May 1780. Such over-claiming of shares was not uncommon. See Obeyesekere, *Land Tenure*.

²¹ See for example advice given on the registration of lands in Matara in 1770 and 1776. SLNA 1/5660, 'Extracts of Orders, GL', fol. 60r ff.

²² 12 & 26 Aug 1780.

Jacobus Roosmale Cocq, Johan Casper German, *mahamudaliyār* Nicolaas Dias Abeysinghe Amarasekera, *Korālē Mudaliyār* Adriaan de Silva Jayatilleke Seresinghe, titular *mudaliyār* Augustinus Ferdinandus Wiresinghe, and the *mohandirams* Don Philip de Silva Wickramesinghe Dahanayake and Don Matthijs de Silva. They were also present when Claas first came to the council with his petition. Curiously there was no reported denial of a share to Claas.

Many interesting questions now arise. In the final decision, was it a principle of Roman-Dutch law that was applied or was it an aspect of inheritance law that was recognised by the Sinhalese? Whose norms were the Landraad most likely to follow in Claas's case? We may never know conclusively, but the case provides an entry into a discussion of the differences in intestate laws in the two cultures. Claas's stepmother Johanna Floorman is likely to have had a *burger* father, in which case the Roman-Dutch law presumably applicable to her, his father and himself was applied. We can also imagine that some attempt to adhere to Sinhalese law was made since the matter affected Sinhalese peasants as well. Going by nineteenth-century Kandyan/Sinhalese laws of intestate inheritance where property usually reverts to origin, if Johanna Floorman had died after her son, her blood relations alone would have inherited her shares as per Sinhalese law, hence the necessity to determine at which point she died. According to certain Dutch intestate laws as well, her share would have then reverted to her family. The case is of special interest for the Sinhalese-*burger* alliance that we see, and is a foundation from which to explore the differences in intestate laws. This experimental discussion is further complicated by the ambiguity of what we know about Sinhalese law at the time, the provincial differences of the inheritance laws in the Dutch Republic, and the uncertainty of the Dutch laws supposedly in operation in Sri Lanka at the time. Further complicating the picture, there are family resemblances between the different traditions of law in relation to intestate succession.

6.2 Local Jural Norms

First, let us consider Claas Fontijn's inheritance issue through established understandings of Sinhalese law. We do not have written sources for the Sinhalese intestate laws of the area in question. We are in the dark as to what extent the Sinhalese law was clearly defined even allowing for regional differences, let alone expecting it to be uniform everywhere on the island. There were some recorded differences to inheritance laws in Sabaragamuva, but it is not known what local inheritance laws were applicable to the coastal areas of the south. Going on the premise that the principles of Sinhalese intestate succession were fundamentally the same, I studied the application or non-application of those principles as described for the most part by nineteenth-century British writers to this case. I will for the most part use Obeyesekere's account of Sinhalese inheritance law, which he bases on the available sources mentioned in chapter one of this thesis. It must be remembered that those Sinhalese jural norms dealt with here are of the ideal type. Principles aside, the situational character of judging on a case by case basis was seen in the local system. There was no ideal type of inheritance law in Sinhalese law that is applicable to every case—we're not dealing with a black box.²³ Yet, most authorities do agree on some fundamental rules.

Two principles, seemingly contradictory, governed Sinhalese rules of intestate succession.²⁴ The first was that property should revert to source and the second recognised bilateral inheritance, where property is divided equally among both male and female children. The solution to the contradiction was linked to the two types of marriage recognised in Sinhalese law. In *diga* marriages the woman left her family home to live virilocally with her husband. In *binna* marriages, a man lives uxorilocally in the wife's family home or settles down with her in

²³ See Obeyesekere, *Land Tenure*, 48–49; Yalman, *Under the Bo Tree*, 121.

²⁴ Obeyesekere, *Land Tenure*, 41.

her property. The issue of a *binna* marriage is entitled to the maternal grandfather's estate, but the issue of a *diga* marriage is not. According to the first principle which protects the rights of the line (*vāsagama*), when a wife died intestate her widower and their offspring were excluded from inheriting her parent's paravēni property if she had married in *diga*. Through a *diga* marriage she rescinded her rights to a deceased parent's paravēni. Often, she received gifts at the time of marriage, which dowry was considered an alternative to intestate inheritance. If she returned to her family home after her husband's death or divorce, she was entitled to maintenance during her father's lifetime. In some special cases discussed below under the concept of familial assistance, she could claim a part of the parents' property.²⁵

If Johanna Floorman legitimately inherited her grandfather's property, under Sinhalese law, does her husband Fontijn inherit through her son who survived her for a few hours after her death? As Johanna's infant son died without descendants, the ancestral property would revert to the parents, in this case the surviving Hendrik, and on his death to Johanna's son's half-brother Claas.²⁶ Familial rights, rather than unilinearity that retains paravēni shares in the *vāsagama*, would then have been recognised. But the crucial question in Sinhalese law would be whether virilocal or uxorilocal marriages had been contracted. Johanna Floorman and her mother were most probably married through registrations in church and were subject to Roman-Dutch law conditions of the community of property and divorce. Moreover, Roman-Dutch law applied to their husbands and offspring. *Diga* and *binna* distinctions are hardly likely to have applied to them. Johanna's husband Hendrik Fontijn was from Amsterdam, and had already been married to a Clara Ferdinando with whom he had several children including Claas.²⁷ The other children, if they were alive and in Sri Lanka during Claas's claim in 1780, were not mentioned in the case.

Under Sinhalese law, Johanna Floorman's inheritance would depend in particular on what type of marriage her mother contracted. The lands in question were Johanna's maternal grandfather's paravēni. Johanna's mother automatically withdrew her claims to the property in Dodampe if she married in *diga*, possibly to a soldier named Pieter Floorman from Bergen-op-Zoom.²⁸ If she received a dowry from her father, that would have been a 'conversion of her interest in the landed property into cash, jewelry and other movable and non-paravēni property'.²⁹ If Johanna's mother had given up her rights to the Dodampe property by marrying in *diga*, according to Hayley she 'severs her connection with her father's people' and '[w]hatever claim she has to a share of her property is satisfied by her dowry, and neither she nor her children have henceforth any claim in competition with brothers and sisters who

²⁵ For a discussion of types of marriages, see *Ibid.*, 43–47; Yalman, *Under the Bo Tree*, 122–130; Pieris, *Sinhalese Social Organization*, 203–204. Yalman says people of the lowest economic background did not apply rules of *diga* and *binna* and were even unaware of them.

²⁶ As Obeyesekere says: 'It is only when a man has no descendants, that the ancestral property reverts to his parents, and on their death to their male children and *binna* married females, that is, the intestate's brothers and sisters.' *Land Tenure*, 48.

²⁷ Hendrik's first appointment was in 1724, and he became jailor and provost in 1744 and a free trader in 1747. Mottau, 'Company Servants Galle'; SLNA 1/5690, 'Register of Acts of Appointment of Company's Officials' 1742 to 1747, fol. 48r, 11 May 1744; f. 114v, 15 Mar 1747.

²⁸ Annona, with likely connections to the Dodampe family, is recorded as being the widow of Pieter Floorman, a former soldier. In 1750 she was living in Galle Fort. SLNA 1/7460B, 'Hinaitigala Thombo', 13. A Pieter Floorman from Bergen-op-Zoom whose first appointment was in 1715 and who was appointed midshipman in 1728 may have been the same person. Mottau, 'Company Servants Galle'; SLNA 1/5684, 'Register of Acts of Appointment of Company's Officials' 1728 to 1729, 16v, 4 Sept 1728. In all likelihood Johanna had also settled down in Galle Fort. It must be remembered, however, that virilocal residence alone did not make a marriage *diga*. It was, as Hayley says, 'not dependent on any particular form or ceremony, but on the intention of the parties and their parents.' Hayley, *A Treatise on the Laws and Customs*, 194. See also Obeyesekere, *Land Tenure*, 45.

²⁹ Obeyesekere, *Land Tenure*, 43.

may have not so left the family abode'.³⁰ As said before, no will or deed of gift is referred to in Claas's claim, so going by Sinhalese law this norm of excluding *diga* married daughters should have applied.

During the course of the Landraad proceedings, no effort is made to establish a type of marriage—if Johanna's father lived uxorilocally for instance, his children would be able to claim the mother's paravēni. Incidentally, I have seen no recognition of or references to *diga* or *binna* marriages in the Landraad records or other Dutch records. Johanna's mother and Floorman marrying in *binna* however would have been highly irregular, for as a *burger* to whom Roman-Dutch law applied, Floorman is hardly likely to have passively received the subordinate position of a *binna* husband.

The principle of ideally maintaining property in the patrilineal line is in contradiction, as said before, to the second principle of bilateral inheritance in Sinhalese law. Obeyesekere shows that this was solved through the recognition of permanent and temporary rights in paravēni. Males, who carried the patrilineal name had permanent rights while females whose children would have a different patrilineal name would have temporary rights. In this way, 'while all members of the family are a man's immediate heirs, the rights of some heirs are restricted in a manner that will ensure the continuity of the ancestral line, and the convergence of property among a body of agnatic kinsmen.'³¹ Temporary rights were held by daughters while they resided in their family home and by widows who have a life interest to the paravēni of their deceased husband. They were also claimed by divorcées and destitute widows who have a right to return to their family home for support but, as Sawers says, their children had 'no rights of inheritance in the estate of their mother's parents'³². Thus, assuming this may have happened in Johanna's mother's case, Johanna still had no rights to the estate as her mother's rights would have been temporary.

Another factor that serves to disinherit the Floormans under local jural norms is that in families dealing with undivided shares (referred to as rights held in common as explained in more detail in chapter five), the in-residents of the village were most likely to hold the cultivation rights, on the understanding that the out-residents would not interfere.³³ The in-residents in this case were the PLH Arumaperuma Achchige Johannes, his wife and three children, who in all likelihood retained the cultivation rights to the lands. If Johannes's grandfather's two sisters married in *diga*, and his sister Johanna lived virilocally, Johannes had full cultivation rights. In such a situation as well, Claas Fontijn's claims were a deviation from local norms. Other explanations through Sinhalese law may well be possible, but no ready solution through the ideal type of Sinhalese law appears to have been applicable.

6.3 Roman-Dutch Intestate Law

When faced with ambiguity in the Sinhalese system, the Landraad had leave to proceed with the laws of the Dutch Republic. Was the Roman-Dutch law of inheritance used in Sri Lanka for the Sinhalese? A St V Jayewardene was one of the first to deal with the question comprehensively in 1901.³⁴ Without studying the legal records, but focussing on an index of legislative enactments of the Dutch government that the British had translated, he speculated that except where the Sinhalese laws were silent and unsuitable, the Dutch had used the Sinhalese laws. He says: 'The Roman Dutch Law of succession, inheritance, fidei commissum,

³⁰ Hayley, *A Treatise on the Laws and Customs*, 166.

³¹ Obeyesekere, *Land Tenure*, 42.

³² Simon Sawers, *Digest of Kandyan Law* (Colombo: 1826), 4. Quoted in *Ibid.*

³³ *Ibid.*, 167–168.

³⁴ A St V Jayewardene, *The Roman-Dutch Law as It Prevails in Ceylon* (Colombo: Examiner Press, 1901).

and contracts does not seem to have been imposed on the Sinhalese. The laws of the Sinhalese seem to have been left intact.³⁵ Walter Pereira says the law of inheritance was Dutch.³⁶

An 1817 report among Alexander Johnston's papers by the judge H Wright on inheritance in Matara is likely to be similar to the laws in Galle due to geographical proximity.³⁷ It gives a concise account of Dutch inheritance laws, which can serve here as an entry into the question of Claas's inheritance from the point of view of Dutch law. It must however be remembered that his account could be reflective of British impositions of Dutch law from 1796 onwards. Wright signed the report as a provincial judge, so he should have had an authoritative knowledge of the topic.³⁸ He says the inheritance laws that he described were Dutch in nature. One paragraph in particular explains the decision in Claas Fontijn's case succinctly:

As the whole estate is the joint property of both [husband and wife], if either die leaving children half the estate becomes the property of the children equally divided, whether male or female who can do what they like with their respective shares; and upon the death of the other parent the remaining half devolves in like manner upon them. But in case any of the children die in the interim without issue, the share to which the deceased child was entitled in right of father or mother deceased, reverts to the surviving parent as the nearest relation.³⁹

This has echoes of a charter of 1661 on intestate law that was enacted in the Netherlands Indies. By this explanation, for the short time that he was alive, Johanna Floorman's share of her grandfather's property devolved on her son and her husband. Her son having died before his father, his share reverted to the nearest relation being the surviving parent Hendrik Fontijn. If Johanna had died after her son, meaning without issue, half of the estate went to her husband and the other half to her relatives going by Wright's account. In that case Claas would have only been entitled to half of Johanna's original share.

Let us now explore in more detail whether interpretations of Dutch law are applicable to the case. The two succession laws in the Dutch Republic were the Schependoms law of South Holland and the Aasdoms law of North Holland. The river Hollandse IJssel was the boundary line between the two systems. There has been some dispute as to which version of the Dutch laws was applied in Sri Lanka. A judgement in 1822 favoured the North Holland law, while in 1871 the opposite view was expressed. R W Lee is in favour of the law of South Holland, more of this will follow after an exploration of whether either of the two systems applies to the case.

Under Schependoms law as stated in the Political Ordinance of Holland of 1580, children have first rights to a deceased parent's property. Johanna then rightly passed on her property to her infant son. However, the guiding principle of Schependoms law is that 'the property

³⁵ Ibid., 5.

³⁶ James Cecil Walter Pereira, *Institutes of the Laws of Ceylon*, vol. 1 (Colombo: H C Cottle, Govt. Printer, 1901), 13.

³⁷ This Wright maybe the same as the 'agent of government' that S B D de Silva refers to in *The Political Economy of Underdevelopment* (1982; repr., London etc.: Routledge & Kegan Paul, 1984), 216. Wright included an account of the land tenure in the district, and his opinions on both tenure and inheritance. The original had been sent by Wright, which was promptly copied and returned to him. Johnston, 'Johnston Papers (NYC)'.

³⁸ Conscientiously, elsewhere in the report he admits to the possibility that he may make mistakes. On offering an opinion on whether land tenure or inheritance in the district would either facilitate or obstruct the introduction of a quit rent to replace the proportionate land tax, he hopes that allowance will be made for his 'inexperience in subjects of this nature'. Wright refers to the people's 'aversion to any innovations on their customs' in doubting if the transformation would be successful.

³⁹ Johnston, 'Johnston Papers (NYC)'.

goes to the side from which it came'.⁴⁰ So if she had died after her son, which as we know was established in the council as not being the case, her parents and failing them collaterals or their descendants would have inherited the property. Failing them, her grandparents and their issue would have inherited her share and we know that Maria Bouman, for instance, was a surviving cousin and another cousin's children and grandchildren were also still alive. So Johanna had other relatives who could inherit by this law. Failing them, the inheritance would be passed on to the issue of the eight great-grandparents under Schependoms law.

However, we know that the council established that Johanna died before her son, thus making him the sole inheritor. Then we arrive at the issue of how *his* intestate property would be disposed of under the South Holland law. Failing children, both parents could succeed to the property under that law. However, if only one parent was alive, the estate went to the children of the deceased parent, i.e. to the brothers and sisters of the intestate whether of whole or half blood. Claas was not Johanna's son so he did not fall into this category. In fact, even as the baby died after Johanna, by Schependoms law Maria Bouman and other descendants of Arumaperuma Achchige Johan the senior would inherit Johanna's share. The sole surviving parent at the time of the infant's death would not inherit,⁴¹ so Hendrik and Claas are effectively ruled out by Schependoms law and Claas does not have a claim under it. By that analysis it could not have been because of an intention to apply Schependoms law that Claas was asked to prove that the child had lived longer than the mother.

It could, however, have been because of the recognition of a surviving parent's rights under Aasdoms law that he was asked to do so. Under the Aasdoms Law of North Holland as in the plakkaat of 18 December 1599, descendants, and failing which both parents (being alive) had first rights. Its guiding principle was that 'the nearest blood inherits the property'.⁴² If one parent survived with no brothers and sisters who are the issue of the deceased parent, the surviving parent had exclusive rights. By the law of North Holland, Maria Bouman was the next of kin eligible to Johanna's share, if Johanna's infant son had died before her. Because he died after her, Hendrik was the sole inheritor of his share. So going by Aasdoms law it was important to establish when the son had died, and the final decision fits the use of this law. Yet the practice in 1822 in various provincial courts in Sri Lanka points to the use of the law of South Holland.⁴³

However, scholars have agreed that it was Schependoms law as modified by the charter of 1661 that contained a part of the law of North Holland, or in other words a mix of Schependoms and Aasdoms that was in use in Sri Lanka. In fact, the Charter issued by the States General in 1661 and promulgated in Batavia in the same year, while stipulating Schependoms law as the law of succession, only deviates from it in admitting the sole surviving parent which is akin to Aasdoms law. The Political Ordinance of 1580 of Holland which enacted Schependoms law does not admit a surviving parent to the inheritance of a deceased child.⁴⁴ However, the charter of 1661 states that if the intestate had one surviving parent, but no children and no siblings (or children or grandchildren of deceased brothers and sisters being the children of the deceased parent), the surviving parent inherited the whole estate. He or she would be preferred to all collateral relatives.⁴⁵ So if we accept that we must only concern ourselves with a part of Aasdoms law that was said to be in operation in the Dutch

⁴⁰ 'Het goed gaat van waar het gekomen is.' Couquerque, *Het Aasdoms- En Schependomsrecht*, 4; Botha, 'Intestate Succession', 175; Villiers, 'Succession Unde Vir Et Uxor', 160.

⁴¹ Lee, 'Intestate Succession', 318.

⁴² 'Het naaste bloed erft het goed.' Couquerque, *Het Aasdoms- En Schependomsrecht*, 6; Villiers, 'Succession Unde Vir Et Uxor', 160; Botha, 'Intestate Succession', 175.

⁴³ Lee, 'Intestate Succession', 320.

⁴⁴ *Ibid.*, 318.

⁴⁵ Lee, *Introduction to Roman-Dutch Law*, 341–42.

Indies, the question of the applicability of the entire succession law of North Holland does not apply. Incidentally, it is ironic then that as per the law of Sri Lanka today, it is the North Holland law that applies.⁴⁶ But the charter of 1661, just as Aasdoms law does, appears to facilitate an understanding of how Hendrik inherited from his deceased infant son, and Claas from Hendrik thereafter.

There has been some confusion on whether it was Schependoms law, Aasdoms law or simply the charter of 1661 that was used in Sri Lanka in Dutch times. Lee refers to the resolutions of the Governor in Council in Colombo in the eighteenth century and nineteenth-century court cases to answer the question. In a case decided in 1822 Chief Justice Sir Harding Giffard, delivering the judgement of the Court of Appeal, hesitantly ruled in favour of the North Holland law. Some fifty years later, in 1871, Chief Justice Sir Edward Creasy had an opposite view in the same court.⁴⁷ They both referred to a resolution by the Governor in Council of Colombo on 20 December 1758 to promulgate the charter of 1661.⁴⁸ This resolution holds within it a contradiction that has added to the confusion, for a plakkaat from Holland from the year 1599 that is an amendment to the Aasdoms law was annexed with other documents relating to Schependoms law. It is believed that the attachment was a mistake.

One wonders at the state of confusion that prevailed with regard to intestate law prior to the resolution being passed, as it is said in the resolution that Governor Schreuder leafed through the *Grote Plakkaatboek* and found the charter of 1661. He also extracted other documents that he believed belonged to the charter and should be annexed with it. Among those listed in the resolution were the political ordinance of 1580, the interpretation on the 1580 ordinance in 1594 and the 'plakkaat on the subject of intestate succession bearing the same date'. The plakkaat that was actually attached was in fact the contradictory plakkaat of 1599 from Holland that contained Aasdoms law. It may have been Schreuder who had made the mistake of attaching the wrong plakkaat. Schreuder wished to know if there were other laws that were relevant to the 1661 charter, and the Governor in Council members having confirmed that they knew of no changes or additions to it, and that it was certainly given by the sovereign (presumably the States General in this case), it was decided that the charter should be followed. They had failed to see the contradiction in the attached 1599 plakkaat. Yet it is clear that whatever the attached documents were, it was the intention of the Governor in Council to enact the charter. Furthermore, and most importantly for this discussion, the resolution said that it should be observed everywhere on the island (*alomme op dit eijland*).

This could mean that the 1758 resolution was applied in the Landraad as well.⁴⁹ The resolution's stated intention was to place intestate law on a firm footing. It was also said at the 1758 meeting that not only the Raad van Justitie, the Civile Raad, the Orphanage and process representatives, but the factories under Sri Lanka should also receive a copy of the resolution and its annexes. The Landraad was not mentioned. If the solicitors were notified, could that mean that it was the law that they knew, and passed on to the public? Claas's request was drawn up by Justinus Rutgard Visser, a sworn *procureur* who it is expected would

⁴⁶ The Matrimonial Rights and Inheritance Ordinance No. 15 of 1876 (and amendments) regulates intestate matters in the island today. It states that where the ordinance is silent, 'the rules of the Roman-Dutch law as it prevailed in North Holland are to govern and be followed' (s. 26). In an appeal dismissed in 1936, the law of North Holland is referred to as the common law of the country and the Aasdoms law is cited.

Vanderstraaten v Eaton, New Law Reports (1936).

⁴⁷ Lee, 'Intestate Succession', 319.

⁴⁸ NL-HaNA, VOC 2927, 'Resolutions of the Governor in Council' 1758, 20 Dec 1758; SLNA 1/127, 'Governor in Council Minutes' 1758, 20 Dec 1758. Translated into English in PRO CO 416/13 F6 pp. 82-90 and published in English in J W Vanderstraaten, *The Decisions of the Supreme Court of Ceylon Sitting in Appeal from 1869 to 1871* (Colombo), app. i-xxi.

⁴⁹ Incidentally, the volumes of extracts of orders belonging to the Galle Landraad archives do not include references to this resolution.

have known of the law by 1780. Did Claas and/or Visser know before they came to the council that the council would exclude the spouse as in Johanna's case if she had died after her son? Were they aware of a clear line of succession from his stepbrother to his father and then him, as also indicated in his initial request? Visser's name appears in many council minutes and documents of the Galle Landraad, also holding the power of attorney in some cases. If the charter was adopted in the Landraad, it is possible that this was a case of law-making by the lawyer, subsequently adopted by the councillors.

In other former Dutch colonies as well, the charter was held as law. A South African Chief Justice ruled fully in favour of the 1661 charter in 1914: 'The Charter granted by the States-General to the Dutch East India Company, on the 10th January 1661, regulates the law of succession *ab intestato* in this Colony. That Charter adopted as the law of succession the provision of the Political Ordinance of 1580, as interpreted by an edict of the States bearing date the 13th May 1594, with one modification.' He believed therefore that it was a mistake to refer to either North Holland or South Holland law as the law of the South African colony, and perhaps this is applicable to Sri Lanka as well. In fact it is possible that the 1661 charter was born of a necessity to accommodate large numbers of single parents having to face the deaths of their children in the colonies.

The charter appears to have dropped out in the course of the nineteenth century, when references to the laws of North and South Holland are made. The question is of purely academic interest today as the law of the country is now clearly defined either way, but it is important to remember as said in the introduction that questions of the substance of law are inherently questions about law and society, and in this case from Sri Lanka, colonial law. Whether or not Roman-Dutch law was used to adjudicate matters relating to the locals is a question about whether a colonial state had endeavoured to impose foreign laws, or whether they incorporated customary laws to the substance of the law. The judgement itself, however, is not the end of the matter. Arumaperuma Achchige Johannes, the first-mentioned person in the thombo, and other members of the thombo group do not appear to have protested Claas's inheritance through an intestate case. Were they aware of it? Did Claas Fontijn obtain his share after so many years of not appearing on the land? In what manner did he do so? How did the family respond to him making use of a legal provision to obtain a share that the rest of the family had not at least initially recognised? These and other questions are likely to remain unanswered. We only know that his inheritance was upheld by the Landraad as his daughter sold his share some years later.

Other second-hand accounts on the question of inheritance law at times contradict each other but mostly agree that the Dutch law of inheritance was in use. François Valentijn, who produced another early account of Sri Lanka said: 'The immovable goods are inherited by the children but not just the oldest son alone, or, if this happens, he must maintain the mother and the children.'⁵⁰ Valentijn was perhaps recognising the bilateral nature of Sinhalese inheritance while also referring to the permanent rights of male heirs. At the time (1720s) that he wrote his account (based on company papers, historical works and travel accounts) the use of Dutch laws of inheritance was probably not discussed (the charter was enacted in 1758). Much later, Sluijsken referred to the dowry given to daughters before the death of the parents and the inheritance by daughters in equal measures to the sons that excluded service paravēni.⁵¹ In 1803 Joseph Greenhill said briefly that the law of inheritance was certainly Dutch: 'The Dutch have granted numerous freeholds to the inhabitants especially those of the... conquered provinces. These being divided and subdivided according to the Dutch laws

⁵⁰ Valentijn, *Description of Ceylon*, 149:169.

⁵¹ Sluijsken, 'A Description of the Land Services', vol. 1: 158–159.

of inheritance, instead of industry a habit of constant litigation has been produced.’⁵² The imposition of bilateral inheritance without the system of temporary rights that the Sinhalese had devised to cope with pressure on the land (more on this will follow) would have led to such a situation.

6.4 Towards Bilateral Inheritance

Notwithstanding the lack of a well-defined answer on the question of intestate law in Claas Fontijn’s case, the decision in the case shows a clear recognition of bilateral rules of inheritance, a feature of Roman-Dutch law that gradually seeped into local society.⁵³ Except in principle, the Sinhalese system was not bilateral. Bilateral inheritance was not sustainable in the long run, as it led to the fragmentation of shares. The British judge Wright criticises the modes of inheritance which he said he certainly did not regard favourably for its effect on agriculture. He gave an extreme example of fifty heirs who held a small field that yielded about two handfuls of paddy for each shareholder:

as soon as a man dies leaving 5 or 6 children they take possession of half his estate—this is often too small to make it worth their while entering into a division of it and the customary practice in such cases is for each to possess the whole alternately for a year thereby feeling no interest in extending the limits of what he is only to possess once in 5 or 6 years and if he did he would be obliged to divide the produce of the spot so enlarged upon or added to the former extent if it formed part of the heritable property among all the other heirs. I confess that I am not aware of a remedy for this knowing them to be scrupulously tenacious of the smallest piece of ground to which they have any claims—a stronger instance of this perhaps cannot be given than one I know of in the Wellebaddepattoe of this district where there is a small field in the possession of about 50 inheritors, each of whom at the harvest receives for his share about two hands full of paddy, and this he would rather take, than dispose of his right in that field. But it is only cultivated by one or two of them—who therefore receive half as the planter’s share and divides the other half with the 48 other proprietors. Hence arise innumerable disputes.

Wright was clearly criticising *tattumāru* coupled with bilateral inheritance. He adds that ‘[p]eople of a higher class generally make a distinct division of any property they inherit’.⁵⁴ In the local normative order, daughters did not usually inherit land ‘as is customary’ but received a dowry.⁵⁵ In intestate succession disputes, the Landraad appeared to almost consistently impose the law of bilateral inheritance following the practice of Roman-Dutch law.

In the following example,⁵⁶ bilateral inheritance was insisted upon by a female litigant who had returned to her father’s village on the death of her husband. A dispute between Gamage Livina and her cousin brother Gamage Dinees revolved around the *ratmahara* (wasteland) garden named Dollemegodawatte. As Livina and Dinees, inhabitants of Dodampe and Pedinnoruwa respectively, belonged to a holdings group consisting of ninety persons in Dodampe, the family tree drawn in Figure 6.2 includes only those who are mentioned in the Landraad records. Livina, a widow of a *kangān* with two sons and three daughters came to the council in 1780 to challenge the inclusion of what she claimed was her share of the garden under that of Gamage Dinees in the new thombo. She recognised that the company’s share was one-third (because it was *ratmahara* planted without consent) but that another one

⁵² Joseph Greenhill, ‘On Ceylon’ (British Library, 1803), fol. 12r, Add MS 26568, ADVERSARIA Indica. I thank Manjusha Kuruppath for transcribing Greenhill’s account at the British Library.

⁵³ Obeyesekere shows how bilateral inheritance on intestate succession became an empirical reality in Mādagama in the early twentieth century. *Land Tenure*, 135.

⁵⁴ Johnston, ‘Johnston Papers (NYC)’.

⁵⁵ Pieris, *Sinhalese Social Organization*, 200–201.

⁵⁶ SLNA 1/6513, ‘Minutes, GL’, fol. 92r, 26 Aug 1780.

third should go to her as her father, together with Dinees's father, had planted it. However, she claimed that Gamage Dinees had had two thirds of the garden registered under his name alone. Dinees either engaged in 'genealogical amnesia'⁵⁷ by conveniently leaving Livina out of the thombo, or genuinely believed that through her marriage which took her to Akmeemana she had rescinded her rights to the land. But Livina's witnesses claimed that on being widowed she had returned to her father's village eight years ago.

Gamage Dinees said the garden had been inserted under his name after an investigation carried out by the thombo commissioners. He thus clearly made claims to appropriating the authority of the Landraad. Livina said their forebears had planted the garden together, and the council asked her to prove this.⁵⁸ Witnesses were called by both sides, and the Landraad ordered an investigation by two of its members.⁵⁹ Before Livina's deposition was made, Gamage Dinees (together with his brothers Bastiaan, Matthees and Johan) produced six witnesses on their behalf. At least some of Dinees's brothers were thus asserting their rights as well, although his sister Annika who was married and living in Pedinnoruwa and brother Adriaan who also lived in Pedinnoruwa were not mentioned by name in the deposition. They had probably renounced their cultivation rights. The first witness said that the parents of the four brothers had planted and owned the garden, and after their death their children had cultivated the garden further. He added that it was the father of their mother, Gamage Set-uhamie who had planted and owned it at first, and after his death she had owned it. The second witness said that Gamage Dinees's father, Dodampe Gamage Simon, had planted and owned the garden and that after his death his children had owned it. He said he didn't know of anyone else having planted any trees in the garden. The third and fourth witnesses agreed with him. The fifth and sixth witnesses also agreed with the second witness, adding that the sons had also continued to cultivate the garden after their father's death.⁶⁰

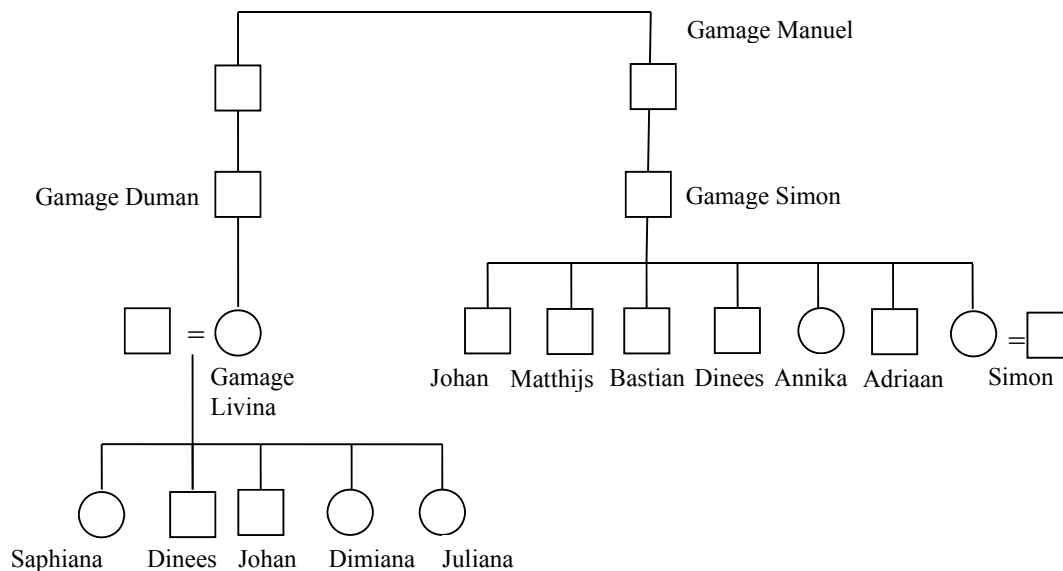


Figure 6.2: Some family details of Gamage Livina & Gamage Dinees of Dodampe (Wellaboda)

⁵⁷ Obeyesekere, *Land Tenure*, 163.

⁵⁸ SLNA 1/6513, 'Minutes, GL', fol. 102r, 9 Sept 1780.

⁵⁹ Ibid., fol. 132v, 4 Nov 1780.

⁶⁰ SLNA 1/6494, 'Depositions, GL', fol. 84r, 20 Sept 1780.

Three witnesses produced a deposition on behalf of Gamage Livina. The first witness, Wijetunga Arachchige Don Salomon de Silva *vidāne* of Totagamuva and inhabitant of Wewelle (25 years) said that two years ago, during the overseer Diederick Thomas Fretz's time, the inhabitants of the village Dodampe had requested that their *ratmahara* gardens be parcelled out because the *salāgamas* extracted tax from them in excess. He said that he, together with two *nanayakkārayo*, three *kangāns* of the Cinnamon Department and the *mayorāls* of the village were appointed to the task and they had divided all the *ratmahara* lands, including the *ratmahara* garden planted by Livina's father Gamage Duman and Gamage Simon. It had been divided into three parts, one part for Livina, one for Gamage Simon's heirs and the other for the *salāgamas*. The second witness, Mohottie Philippu, *nanayakkāraya* and inhabitant of Mipe (71 years) said that Livina's father Duman and his cousin Simon had planted the *ratmahara* garden and since Duman and Livina had settled in Hinatigala, the garden had been occupied by Simon, who had paid rent money (*huur penningen*) for it. Furthermore, he said that Livina had been living in Dodampe for eight years, while retaining half of the garden. The third witness, Runage Andriku, *wildschutter* (hunter) and inhabitant of Yakgaha (62 years) said that Livina's father Duman and his cousin Simon had planted the garden and owned it for forty years. He said that Livina had married a *kangān* and lived in Akmeemana, and that after her husband's death had lived in the garden under dispute in Dodampe for eight years, owning half of it.⁶¹

Haartel and Huijbertsz handed in their report on 6 January 1781, and the case documents were circulated among the members of the Landraad. The Landraad concluded on 27 January 1781 that it appeared from the circulated papers that Gamage Duman, being Livina's father, and Gamage Simon, being Dinees's father, had both planted the garden and that therefore Livina was entitled to her half share of the trees.⁶² According to the thombo the garden had fifty two coconut trees and nine jak trees.⁶³ Duman and Simon were cousin brothers, and their children inherited in equal shares—although only Dinees is mentioned from among his siblings in most council documents. This may be due to other prospective heirs living outside the village. Livina became an in-resident again even though her marriage may be perceived as a *diga* one due to her change of residence, but she was allowed to return with her family to claim her father's property after her husband's death. While this case displays the application of bilateral inheritance, it also gives an example of the VOC practice of dealing with wasteland claimed by the people and granting the company's share to caste groups for their services, as also discussed in chapter three.

6.5 Concept of Familial Assistance

The concept of familial assistance, which was important in Sinhalese law, was recognised in the Landraad. Under this concept, 'any person who had rendered assistance to an intestate was "entitled" morally to a share of the intestate's estate, even if the person so entitled was a non-agnate or outsider.'⁶⁴ Obeyesekere says such cases were judged on a case by case basis in the Sinhalese system. A *diga* married daughter who returned to her family home to render assistance to a parent would be entitled to a share of *paravēni* property if the parent had wished it to be so. For such a bequest, rendering assistance was essential. Land could also leave the agnatic source in this way and 'such bequest will be perfectly valid, although the donor had not reserved any portion of his lands for his children and did not expressly disin-

⁶¹ Ibid., fol. 85r, 5 Oct 1780. It is possible that the witnesses meant the 'half' after the company's share of one-third was extracted from it.

⁶² SLNA 1/6514, 'Minutes, GL', fol. 7r, 6 Jan 1781; 20v, 27 Jan 1781.

⁶³ SLNA 1/7428A, 'Dodampe Thombo', 32.

⁶⁴ Obeyesekere, *Land Tenure*, 49.

herit them—it being premised that the donor’s children were adults, and had wilfully neglected their duty to their said parent.⁶⁵

Assistance was recognised in inheritance *inter vivos* as ‘perfectly valid’: *gift olas* quoting assistance were not uncommon.⁶⁶ In one issue heard in 1779, two men appeared in the Landraad and asked for their names and that of their children to be registered in the thombo against property gifted to them by one Kodawege Michiel, a relative of their deceased wives. Other parties technically eligible to shares also appeared in the council that day and declared that they had nothing against the request of the two heirs. But one Kodawege Annika claimed a share, because her son had provided ‘much assistance’ to the said uncle Michiel. The council ruled that the *gift ola* that was produced was not written by a qualified person, but since the other family members had nothing against the request they approved it after separating a share for Annika.⁶⁷ Since family members apparently had no objection to Annika’s claim (or that of the two heirs) based on her son’s rendering of assistance, the council was not unwilling to heed the request. Recognition of Annika’s claim, although unsupported by a deed of gift, shows the Landraad’s recognition of familial assistance and an indication of the situational character of judgements in such cases that was seen in indigenous courts. Strong family ties can also be seen in this case.

In 1780 a mother’s gift to her youngest daughter made on the grounds of assistance rendered to her in her old age was challenged by other family members. Kosmulage Lisa de Silva claimed that her mother had favoured her with a gift of a garden excluding other siblings. The disinherited sisters objected on the grounds that the garden belonged to their father, and therefore that they should also have a share. The council asked the thombo commissioners to examine the thombo and report if the mother could gift the land.⁶⁸ They reported that the garden called Kobeiwatte in Hinatigala was held in common by the whole family and that she owned 1/7th of it, which she had gifted to Lisa. Catharina, the eldest of Lisa’s sisters, two daughters of her second sister Christina and the third sister Juliana’s husband made submissions to the commissioners opposing the gift. They claimed that they had been ignorant of the gift, and because the garden was planted by their father and grandfather whose *paravēni* it was, they requested that their shares be recognised. A third daughter of Christina, however, supported her aunt Lisa, because as she said Lisa had maintained her grandmother alone and borne many costs till her death. Lisa claimed she could produce witnesses to that fact, and that she had possessed the garden freely thus far.⁶⁹ The gift, referred to as a ‘gift and donation *inter vivos*’ was dated ten years before the matter was taken up by the council and Lisa’s husband had taken out an extract of the thombo entry a few weeks earlier.⁷⁰ The council asked Lisa to prove that she had supported her mother and that she alone had owned that part of the garden over the years without encumbrances.⁷¹ It was ten years since the *gift ola* was made out in 1770, so the Landraad was possibly also seeking to establish the prescription rule.

Lisa’s husband was a *vidāne* of Hinatigala, also the location of the garden, and all her witnesses were men from the same village—two *mayorāls*, a grain measurer and a *lascarin*. The first witness said that Lisa had supported her mother financially for twenty years since her

⁶⁵ Armour, *Armour’s Grammar*, 106. See also Obeyesekere, *Land Tenure*, 49–51.

⁶⁶ See SLNA 1/5969, ‘Galle Translations of Olas’ 1780 to 1784, fol. 25r, 2 Jun 1780; f. 58r, 20 Jan 1781; f. 65r, 28 Apr 1781.

⁶⁷ SLNA 1/6512, ‘Minutes, GL’, fol. 92v, 27 Nov 1779; SLNA 1/6514, ‘Minutes, GL’, fol. 55r, 5 May 1781.

⁶⁸ SLNA 1/6513, ‘Minutes, GL’, fol. 59v, 24 Jun 1780.

⁶⁹ SLNA 1/6526, ‘Annexes to Minutes, GL’, fol. 109r, 4 Nov 1780.

⁷⁰ Ibid., fol. 158r–159r, Thombo extract dated 23 Feb 1770; 160r, Gift ola, 28 Apr 1770.

⁷¹ SLNA 1/6513, ‘Minutes, GL’, fol. 137r, 4 Nov 1780.

father's death without the other children being present or doing anything for her. Nine months before her death, he further said, Lisa's mother had called for him and declared that except from Lisa she had not received any assistance from her other children. Therefore, he said she had gifted thirty coconut and fifteen jak trees that her husband had planted in Kobeiwatte to Lisa, and because he had not been present on that occasion, she had requested him to bear testimony to it and added that the other lands will be owned equally by all her children together. The mother having died since, he said Lisa had had her buried at her cost, without any of the other children being present or contributing. The second and third witnesses confirmed the first witness's account. The fourth witness, a *lascarin*, also claimed that Lisa had looked after her mother for twenty years and on her death had her buried at her cost alone. He said he had dug the grave for which Lisa had paid him, and that none of the other children of the deceased were present or contributed in any way.⁷² The council accepted the gift and instructed the thombo commissioners to register 1/7th part of Kobeiwatte under Lisa's name in the thombo.⁷³ Rendering assistance to elders is said to be ingrained in Sri Lankan culture,⁷⁴ and Lisa's claim was strengthened by her niece's support. That such a bequest was also open to be challenged cannot however be unique to the colonial situation—although the trend towards bilateral inheritance would have contributed to encouraging the plaintiffs.

Yet another disagreement connected to the concept of assistance occurred around the same time. In a sample case, Kallu Appu, a Sinhalese, cited the concept of assistance in the Landraad with regard to his mother's bequest to his adopted brother on that basis.⁷⁵ Kallu Appu's mother, widow of Peditantrige Ediri Appu, had bequeathed her husband's paravēni property through a Sinhala *gift ola* dated 11 July 1765. She had transferred 1/3 to her adopted son Omeri and 2/3rds to her two biological sons. Omeri and Kallu Appu (who spoke at the Landraad for his mother's other biological son as well) wanted the ola approved. Kallu Appu said he had no objection to the gift, but that their mother had made the bequest on the understanding that she would enjoy 'some assistance' from the adopted Omeri. Omeri said that he had mortgaged his section for three sacks of paddy and given the same to the mother. Kallu Appu refuted this saying that Omeri had only given 7 *medieden*⁷⁶ to his mother. The council rejected Kallu Appu's claims as baseless (*in geen en deelen gefondeert*) and fully approved the *gift ola* because as he said himself, 'he had nothing against the gift'. Indeed it is not clear what the two biological sons wished to achieve by bringing up the issue of promised assistance. As far as the record goes, they were not explicitly asking for the adopted brother to be disinherited. That was possibly something that only the donor could do if she felt neglected by the donee. Perhaps the Landraad recognised this. John Armour states that if the donee neglected the donor, a deed of gift became null and void if the donor resumed possession of the land and refused further assistance from the said donee, or if the donor voluntarily quit the donee's premises and took up abode elsewhere.⁷⁷ These conditions were not referred to in the Landraad case.

⁷² SLNA 1/6494, 'Depositions, GL', fol. 97r–v, 22 Mar 1781.

⁷³ SLNA 1/6514, 'Minutes, GL', fol. 86r, 7 Jul 1781. The thombo entry in question could not be found.

⁷⁴ Even today, it is considered unthinkable to leave elders alone to fend for themselves. Carla Risseuw, 'Urban Middle-Class Elderly in Sri Lanka and the Netherlands: Everyday Sociality and Ways of Keeping Company', in *Alter(n) Anders Denken: Kulturelle Und Biologische Perspektiven*, ed. Brigitte Roder, Willemijn de Jong, and Kurt W Alt (Cologne, Weimar, Vienna: Bohlau Verlag, 2012).

⁷⁵ SLNA 1/6511, 'Minutes, GL', fol. 4r, 23 May 1778.

⁷⁶ A *medied* was a measure of weight, with four *medieden* being equal to one *kuruni*. S A W Mottau, 'Glossary of Terms Used in Official Correspondence of the Government of Sri Lanka Compiled from Records at the National Archives', *The Sri Lanka National Archives* 3 (1985 to 1986): 157.

⁷⁷ Armour, *Armour's Grammar*, 92.

Litigants were clearly not unwilling to invoke the concept of assistance in the Landraad. It was a space within which they could present the idea, while the strictures of doing so would be determined by a mixed body of councillors. Three local members and five European members were present in the first example of the Kodawege family's claim. Local and European members were present in equal numbers on the day Kosmulage Lisa de Silva was asked to prove that she had supported her ailing mother, and when her witness testimony was produced and the gift from her mother approved, there were three local members and eight European members present. Nicolaas Dias Abeysinghe Amarasekera, Augustinus Ferdinandus Wierasinghe, Don Johan de Silva Wanigasekera and Don Philip de Silva Wickramasinghe Dahanayake were present at the meeting that Kallu Appu and Omeri attended and they equalled the number of European members present. Evidently, there was no opposition from the majority members to the recognition of the concept of assistance.

6.6 Marriage, Divorce and the Rights of Widows

Monogamous marriage was emphasised under Dutch rule, but not successfully achieved. Polygamy was commonly practised in Sri Lankan society up to at least the middle of the twentieth century in some areas and the Dutch were unable to rout out the practice.⁷⁸ Legalising marriages and divorces were handled by the Scholarchale Vergadering or School Board, which was assigned the task of regulating matters of religious and secular education, registration, and, as it appears, morality. Protestant schools were set up in former Catholic churches of the Portuguese, where native schoolmasters taught the principles of the reformed religion and reading and writing. The Scholarchale Vergadering carried out regular inspections of such schools and administered the appointment of schoolmasters.⁷⁹ Marriages among the peasants were registered by schoolmasters, who also had to register births and deaths.⁸⁰ Such registrations were of potential importance in connection with inheritance disputes. Most interestingly for us, the minutes of the Scholarchale Vergadering, replete with stories of adultery, promiscuity and broken promises, hold the stuff of scandal.

Early demands of the VOC from the rural population to register marriages were not reflective of local customs, but could not have been fully unexpected as registration under Portuguese rule was not unknown. Roman Catholic priests, as the VOC in Sri Lanka noted, 'made so bold as to get destitute folk to take out the banns'.⁸¹ The Portuguese Captain Ribeiro went so far as to say that Sinhalese marriages were 'a ridiculous matter'.⁸² The Portuguese and Dutch practices of registering marriages were alien to the local customs. For villagers, it was not difficult to 'prove unions as marriages since they are recognized by everyone as such on the village level'.⁸³ In fact, one British judge saw marriage relations among the locals as established with a wink and cancelled with a kick.⁸⁴ Much earlier, Robert Knox saw what he regarded as private whoredom surpassing public prostitution and his accounts

⁷⁸ For work on polyandry see S J Tambiah, *Polyandry in Ceylon, with Special Reference to the Laggala Region* (Social Scientists' Association, 2011); Pieris, *Sinhalese Social Organization*; Yalman, *Under the Bo Tree*.

⁷⁹ See for example the Galle Scholarchale Vergadering documents. Also Hovy, *Ceylonees Plakkaatboek*, vol. 1; nr. 74, Instructions for the scholarchen who are in charge of the schools in the districts of Colombo, Jaffna and Galle, 25 Dec 1663.

⁸⁰ In the towns and areas to which they could travel, the registrations were done by church officials.

⁸¹ Hovy, *Ceylonees Plakkaatboek*, vol. 2; nr. 543, Plakkaat regulating the formalities for putting up the banns and the marriage solemnization... 24 Dec 1776.

⁸² Ribeiro, *Historic Tragedy*, 50.

⁸³ Obeyesekere, *Land Tenure*, 140.

⁸⁴ T Berwick, *Judicial Report (Administration Reports)* (Kandy: Ceylon Government, 1870), 51. Quoted in Pieris, *Sinhalese Social Organization*, 195.

of marital infidelity are supported by innumerable folk-tales.⁸⁵ Despite such laxity in sexual relations, family attachments were strong as Davy says.⁸⁶ Men and women could find their own partners, or be given in marriage by their parents. Higher ranks in society had elaborate celebrations on the occasion, but these were largely absent among lower ranks. Rituals were followed only to 'symbolize the conclusion of a relatively permanent union, contracted with a view to raising a family.'⁸⁷ Simple cohabitation of a man and woman of the same rank also automatically legitimised the marriage and their children.⁸⁸ Pieris points out that there was a 'remarkable vagueness as to the essentials of a legal marriage, and the line which distinguished marriage from concubinage was faint indeed.'⁸⁹ But mutual agreement to marry was no longer sufficient under colonial rule. The Sinhalese woman Wadugamage Jebbo of Piyadigama complained to the Scholarchale Vergadering in 1770 that she had exchanged marriage promises (*onderlinge trouw beloften*) with one Dorruwe Kottege, *nainde* of Piyadigama and lived with him for a while but that he was now unwilling to marry her. She wished the board to compel him to marry her. Her plea was rejected on the grounds that she had not been legally registered, a decision that was also approved by the commander.⁹⁰ Dutch efforts to register marriage saw a baffling confusion of mutual agreement, putting up the banns, and solemnisation in church as described below through plakATEN and documents of the Scholarchale Vergadering.

The earliest Dutch plakkaat found in connection with marriages among native Christians in Galle was dated 1 August 1647.⁹¹ It said that either from ignorance of the law or because they did not consider each other true couples, many alliances had not been registered during recent wars. Looked upon as whoredom or concubinage, they were given two months within which to register their marriages, failing which they faced a fine. At that time, villagers in the countryside could give notice of their marriages to their *vidāne* and *mayorāl*, who would make a public proclamation in the village on three following Sundays. This was the putting up of banns (*ondertrouwen*), which was supported by an ola to that effect, after which the marriage had to be solemnised in the church in town or during a visit by church officials, which was to take place three or four times a year. At that point, each side had to produce at least two closely related or associated witnesses and the *mayorāl* of the village where the banns were put up. Later, schoolmasters replaced the matrimonial duties of the headmen.⁹² By the 1790s, it was recognised that no marriage could take place among native Christians without the approval of the schoolmasters. The schoolmaster had to maintain a separate book to record marriage notices and perform the public proclamations in the school or church. Although not always achieved in practice, all headmen and inhabitants, 'excluding no one', had to

⁸⁵ Pieris, *Sinhalese Social Organization*, 195–196.

⁸⁶ Davy, *An Account of the Interior of Ceylon*, 289.

⁸⁷ Pieris, *Sinhalese Social Organization*, 201.

⁸⁸ Still, even after performing various rituals or after the first fortnight of cohabitation, the marriage could be annulled. *Ibid.*, 200–201.

⁸⁹ *Ibid.*, 197.

⁹⁰ It is not clear whether 'registration' here meant putting up the banns or baptism. SLNA 1/6220, 'Scholarchale Vergadering Minutes', fol. 29r, 4 Jul 1770.

⁹¹ Hovy, *Ceylonees Plakkaatboek*, vol. 1; nr. 15, Ordinance on the legalisation of illegal marriages between native Christians and on the registration and ending of marriages; punishments against concubinage, separation and adultery, 1 Aug 1647.

⁹² A plakkaat stipulates this in 1776, but the schoolmaster's role is mentioned in the Galle Scholarchale Vergadering minutes of an earlier time and in seventeenth century plakATEN. *Ibid.*, vol. 2; nr. 543, Plakkaat regulating the formalities for putting up the banns and the marriage solemnization... 24 Dec 1776; SLNA 1/6221, 'Scholarchale Vergadering Minutes' 1770 to 1773, fol. 31r–33r, 5 Sept 1770; 35v, 3 Oct 1770. See also Hovy, *Ceylonees Plakkaatboek*, vol. 1; nr. 187, Plakkaat binding the native Christians in the southwest of Ceylon to register their pledges of dowries... 13 Jun 1692.

attend the Sunday service and be present at the registration.⁹³ If the proposed alliance was not challenged, the couple could have their marriage solemnised the first time that a predikant or proponent came to the district.

Failure to have the marriage confirmed was a punishable offence.⁹⁴ Yet, as the Scholarchale Vergadering also recognised at one meeting, many Sinhalese regarded the publishing of the banns to be 'as good as the marriage'. The matter came up because a couple who had put up the banns in the school in Talpe, had lived together as husband and wife in the 'Sinhalese way' for seventeen years and had two children. The man having died (eighteen years previously), his surviving partner, Kobeiwattege Annika, asked the Scholarchale Vergadering to recognise their daughter as legitimate and to register her in the thombo. This request was granted.⁹⁵ The secretary of the Scholarchale Vergadering was the same as the Landraad secretary, and the records of both bodies appear to have been maintained together.⁹⁶ Swift communication between them in this case was thus facilitated. Annika had been rudely awakened to the law when she heard that her husband's children by a previous marriage sought to disinherit her daughter. Failure to solemnise the marriage could at times lead to legal encumbrances years later.

Interpersonal relationships in the village could not be controlled by the company in exactly the way it wished. After notice of marriage was given, parties did commonly cohabit and procreate before the actual marriage had taken place. Technically however, you could not live together before the actual marriage.⁹⁷ One Sinhalese woman complained at the Scholarchale Vergadering that her bridegroom was living with another woman despite having had three children with her after putting up the banns.⁹⁸ Two men who wished to marry their brothers' brides (their brothers having passed away after notice of marriage) were asked by the Scholarchale Vergadering to prove with credible witness testimony that the women had not had sexual intercourse with their first bridegrooms.⁹⁹ Two men who wished to marry their deceased bride's sisters were also permitted to do so as they produced testimony in Sinhala *olas* in support of their claim.¹⁰⁰ However, such alliances with a blood relation of a husband or wife, if that marriage had been solemnised, were banned in orders published in 1773, 1787 and 1795.¹⁰¹ In yet another issue taken up at the Scholarchale Vergadering, a man who wished to marry his wife's sister was flogged and jailed, as it was considered an 'incestuous' relationship.¹⁰² Dutch anxieties over the local practice of polygamy are reflected in these cases.¹⁰³ Despite such strict enforcements of the law on certain fronts, there is also clear

⁹³ See Hovy, *Ceylonees Plakkaatboek*, vols. 2; nr. 684 (3, 15), Concept-mandate of the Scholarchale Vergadering in Galle... 19 May 1795.

⁹⁴ More details of the process can be read in the plakkaat of 1776. Ibid., vol. 2; nr. 543, Plakkaat regulating the formalities for putting up the banns and the marriage solemnization... 24 Dec 1776.

⁹⁵ SLNA 1/6220, 'Scholarchale Vergadering Minutes', fol. 27v, 4 Jul 1770.

⁹⁶ Mottau, *Inventory of the Archives*, 63.

⁹⁷ Hovy, *Ceylonees Plakkaatboek*, vol. 2; nr. 684, Concept-mandate of the Scholarchale Vergadering in Galle... 19 May 1795. This concept-mandate from the Scholarchale Vergadering in Galle asked parents to guard their daughters from the bridegrooms.

⁹⁸ SLNA 1/6221, 'Scholarchale Vergadering Minutes', fol. 48r, 11 Aug 1772.

⁹⁹ Ibid., fol. 38v, 6 Feb 1771; 42v, 23 Sept 1771.

¹⁰⁰ Ibid., fol. 42r-v, 23 Sept 1771.

¹⁰¹ Hovy, *Ceylonees Plakkaatboek*, vol. 2; nr. 684, Concept-mandate of the Scholarchale Vergadering in Galle... 19 May 1795.

¹⁰² SLNA 1/6220, 'Scholarchale Vergadering Minutes', fol. 29v, 4 Jul 1770.

¹⁰³ If in fact the requests for remarriage to a deceased partner's sibling were linked to an already existing polygamous relationship, the legalisation of the union becomes necessary in order to ensure the inheritance of the new partner and any children begot by them. In the above cases, no mention of children from either union are mentioned. Fraternal polyandry was the commonest form of joint husbands—this included parallel cousins. Pieris, *Sinhalese Social Organization*, 208.

evidence that the authorities were willing to overlook the failure to confirm a marriage. Such situations were also recognised in the Landraad and thombo registration.¹⁰⁴ Where cohabitation had sufficed to establish a recognised conjugal bond earlier, new requirements (complicated at that), that were imposed by colonisers would have baffled many inhabitants.

In fact, *de facto* spouses were treated in the same way as a spouse for the purpose of inheritance. Despite the regulations regarding marriage, a ‘Sinhalese way of marriage’ was grudgingly recognised in the Scholarchale Vergadering and the Landraad. The details given above suggest two possible understandings of the phrase: cohabitation as husband and wife after putting up the banns or the failure to register the marriage. ‘Married in the heathen way’ (*op de heidense wijze getrouwt*) was recorded against three names in the Hinidum thombos.¹⁰⁵ Witāne Achchige Bastiaan, a *mayoral* of Naranowita, came to the Landraad in 1778 and asked that his son Jantje by his first wife whom he had married *op de Singaleese wijze* (in the Sinhalese way), also be registered in the new thombo as a *mayoral*. Bastiaan’s first wife’s brother¹⁰⁶ claimed that he did not know whether Bastiaan had been married to his sister in the Sinhalese way, but that Jantje was definitely his nephew and that he had brought him up when he was small till Bastiaan had taken him away. A writer and *mayoral* of an adjoining village, Pitigala, also told the Landraad that they did not know the circumstances of the birth, but that Jantje had always been known as Bastiaan’s son and performed the *mayoral* service for at least twenty-five years. Despite these testimonies to the doubtful nature of the union between his parents, the Landraad allowed Jantje’s details to be inserted in the thombo as a *mayoral*.¹⁰⁷ In yet another case heard the same year, the Sinhalese woman Bussa Āchārige Kalu Nachera produced a *gift ola* by which the man whom she had married *na de Singaleese wijze* (in the Sinhalese way) had gifted property and other goods to her and her children by him. Her husband’s relatives, however, appeared in the council and said that they knew neither of the gift nor that Nachera had been married to their brother in the Sinhalese way. The Landraad ignored them, and approved the *gift ola* and entry in the thombo of Nachera’s details.¹⁰⁸ These cases show that the rights of the surviving spouse and children in such relationships were upheld in the Landraad.

The Dutch imposition of the requirement for registering marriages on the residents of the Galle District was clearly not always successful. Obeyesekere is right in surmising that many aspects of local Sinhalese social life remained in practice in Dutch times. The old ways of life in indigenous society held fast in the face of the new theological messages of both Catholicism and Protestantism.¹⁰⁹ Despite the Scholarchale Vergadering’s best efforts, their attempts to regulate family life could not reach the masses, and the Landraad itself had a rather more inclusive approach as described below. The word *massebaddeesschap* was used in Dutch records to refer to unions that had not been legalised, which was frequently condemned in the records of the Scholarchale Vergadering.¹¹⁰ In Sinhala, *massebaduwa* is a Portuguese origin word

¹⁰⁴ *Ondertrouwd* was a word often used in the Galle thombos.

¹⁰⁵ Degalle had another reference to marriage in the heathen way (*op de heidense getrouwd*): SLNA 1/7424, ‘Degalle (Wellaboda) Thombo’ 1784, fol. 3v.

¹⁰⁶ He is also Bastiaan’s cross cousin, and married to Bastiaan’s sister. So Jantje is both his and his wife’s biological nephew.

¹⁰⁷ SLNA 1/6511, ‘Minutes, GL’, fol. 41r, 25 Jul 1778; SLNA 1/7512, ‘Naranowita (Walallawiti) Thombo’ 1778, 13 (Group nr 5).

¹⁰⁸ SLNA 1/6511, ‘Minutes, GL’, fol. 92r, 5 Dec 1778; SLNA 1/7491C, ‘Kumbalwella (Four Gravets) Thombo’ n.d., 143.

¹⁰⁹ See, for a discussion of civility in sixteenth-century Sri Lanka, Strathern, *Kingship and Conversion*, 120–124.

¹¹⁰ See SLNA 1/6219, ‘Scholarchale Vergadering Minutes’ 1766 to 1768, fol. 13v, 6 Feb 1767. See also the plakkaat in Hovy, *Ceylonees Plakkaatboek*, vol. 2; nr. 684, Concept-mandate of the Scholarchale Verga-

meaning rape,¹¹¹ which is significant in connection with the Dutch use of the word together with frequent references to how native women had been led astray by men in local society. The word *massebaddoesschap* was used by the Dutch in connection with unions where even the banns had not been put up. Thus, some percentage of unions in villages would have remained unregistered, but notifying the schoolmaster is likely to have become a regular practice over time. The less serious manner in which one could break the law was by omitting the extra step of consecrating the marriage, which was considered unnecessary by many. While the VOC overlooked this, the requirement for registration at least by putting up the banns appears to have had an effect on the peasants. Obeyesekere describes how well into the twentieth century Mādagama villagers regarded ‘absence of registration as rendering a marriage *legally* invalid.’ They were unaware of the ‘law relating to proof of marriage through custom and repute.’¹¹² This may be due to repeated enforcement of legislation requiring the registration of marriage going back to Portuguese rule.

Roman-Dutch laws of divorce were even less likely to be imposed. Legally married native couples who subsequently separated had to pay a fine according to early regulations.¹¹³ The grounds for dissolution of marriage according to the Dutch legal texts were adultery or malicious desertion. Sinhalese men and women came to the Scholarchale Vergadering for cancellation of the banns or a divorce. The following are examples from a meeting in 1770. Laguruge Jantje, a *goygama* inhabitant of Hikkaduwa, claimed that he had been registered with Tottege Siekuge Christina for fifteen years, but that she had since left him and had children by other men. He wanted the registration cancelled and requested permission to marry another woman. The board decided that the woman in question should be summoned. Nagahawatte Clara of Bope complained that her husband, with whom she was legally married, had left her and taken up residence with another woman. Clara’s grounds for divorce would be adultery. Two other cases heard at the same meeting in 1770 had grounds of desertion. Witanege Simonge Gimara of Kodagoda said she had not heard from her husband who had been absent for twenty-five years. Ellepitti Baddehellege Diogu, *pottebakker* of Bentota said he had been deserted by his wife fourteen years ago and that he had since heard that she had died in the Seven Kōralēs of the Kandyan Kingdom. In both cases the allegedly aggrieved parties wished to remarry. They had allowed many years to pass before taking action—in all likelihood they wished to legitimise new unions they had entered into in order to ensure their children’s inheritance, but the schoolmasters or other officials would have sounded them on the legal obstacles they faced. The board ordered that the absconding husband and wife in the two cases be summoned by tom-toms.¹¹⁴

Men and women were thus seen approaching the Scholarchale Vergadering to obtain separations, but whether this was widespread is doubtful. If the ‘Sinhalese way of marriage’ was accepted, it can be safely assumed that couples parted for the most part in a relatively uncomplicated way as well, without having to resort to the marriage dissolution requirements stipulated under Roman-Dutch law. Divorce, as Ralph Pieris says, was a common event and a man could divorce his wife simply ‘by taking her back to her village’.¹¹⁵ It is likely that mu-

dering in Galle... 19 May 1795. A 1770 school visit noted that many natives everywhere lived in *massebādu*. SLNA 1/6220, ‘Scholarchale Vergadering Minutes’, fol. 23r, 4 Jul 1770.

¹¹¹ Charles Carter, ‘Massebāduva’, *A Sinhalese-English Dictionary* (1924; repr., Colombo: M D Gunasena & Co. Ltd, 1965), 484. The word does not appear to be in common usage today.

¹¹² Obeyesekere, *Land Tenure*, 139–141.

¹¹³ Hovy, *Ceylonees Plakkaatboek*, vol. 1; nr. 15, Ordinance on the legalisation of illegal marriages between native Christians and on the proclamation and dissolution of marriages; punishment against concubinage, separation and adultery, 1 Aug 1647.

¹¹⁴ The cases are from SLNA 1/6220, ‘Scholarchale Vergadering Minutes’, fol. 29r–v, 4 Jul 1770. The decisions have not yet been found. Incidentally, Diogu did not know his wife’s name!

¹¹⁵ Pieris, *Sinhalese Social Organization*, 200.

tual consent or the will of either party (as seen in ‘Kandyan’ law) were the practice. In contrast, divorce in the Roman-Dutch fashion was a cumbersome and expensive procedure. If a divorce came through, it is possible that disputes over the division of property could have been heard in the Landraad, but such lawsuits were not found.

In terms of the disposal of intestate property the above discussion on marriage and its dissolution is of special interest. For, Christian registration propelled a couple towards Dutch jurisdiction and new laws of intestate inheritance. Under Roman-Dutch law, husband and wife pooled their resources in a community of property, but this was not a feature of Kandyan law.¹¹⁶ Under local jural norms, men, if they were married in *binna* (matrilocal) had no power over their wives’ property, and if they were married in *diga* (patrilocal) their wife had lost her right of inheritance. Widows had no absolute interest in their husband’s paravēni property. Obeyesekere points out that Armour, the *Niti Niganduma*, D’Oyly and Sawers agree on this point. But one lawsuit illustrated above shows that widows in Dutch times had deciding power on how a husband’s paravēni property was divided. In Kosmulage Lisa de Silva’s case, her mother was bequeathing property that had been acquired by her husband, so it does not fall into the category of paravēni property, but in the case of the mother with three sons, she prepared a deed of gift for her husband’s inherited property. ‘Historical sources,’ as Obeyesekere says, ‘disagree as to whether on the death of a man, his sons and *binna* married daughters take over the *paravēni* at once or whether their rights remain in “abeyance” until the death or *diga* marriage of the widow.’¹¹⁷ The mother held temporary rights to the property till her death.

Significantly, Kosmulage Lisa de Silva’s sisters who challenged their mother’s bequest of a garden said that since their father had planted it, they had rights to it. They implied that their mother did not have absolute interests in that property although it may not have been a paravēni holding. If the children recognised the mother’s temporary rights to the land, they believed that on her death it reverted to them and that she did not have the right to bequeath it as she pleased. The available sources are contradictory on this issue for while Armour says that the mother is heiress to all acquired property of her husband, D’Oyly and Sawers do not agree.¹¹⁸ The thombo commissioners, who were asked to examine the thombo as to whether the mother had the right to gift away the land, ruled in her favour. This recognition was not contrary to local practice. As Obeyesekere says, ‘[w]idows and mothers in several instances can inherit acquired property absolutely, since such property is not associated with the patrilineal ideology of the society.’¹¹⁹ It is likely that such cases were judged situationally as in local Sinhalese courts. A group of owners of a paddyfield in Kalegana came to the Landraad and asked that they be allowed to sell the land, but the Landraad would not let one of them, a widow, sell her share because her minor son Godage Aberan was still alive.¹²⁰ Here, the rights of the child were upheld.

The rights of widows as recognised in the Landraad were considerably greater than expected in local law. The laws of Sabaragamuva in this regard as recorded by George Turnour could shed more light on the matter. They differed from the rest of Sinhalese law as described by Turnour’s 1826 account. Obeyesekere treated the pre-British jural rules of Hinidum Pattu for instance as though they confirmed with those of Sabaragamuva. As Sabaragamuva adjoins the Galle District, this fairly early description could play a part in our understanding of inheritance laws to the south of the area in Dutch times. Turnour implies that ‘[i]f the widow had children she had full managerial control of the husband’s estate’. The

¹¹⁶ Ibid., 201.

¹¹⁷ Obeyesekere, *Land Tenure*, 51.

¹¹⁸ Ibid., 52.

¹¹⁹ Ibid.

¹²⁰ SLNA 1/6522, ‘Drafts of Galle Landraad Minutes’ 1780 to 1781, fol. 128r, 21 Oct 1780.

children could institute proceedings against her to have the land divided, in which case the lands would be divided equally between the mother and the children. If such a division occurred the widow's portion could be alienated by her in any way she liked till she contracted a subsequent *diga* marriage. Turnour's sources were six prominent chiefs from the Sabaragamuwa province, who said the increased rights of widows were 'compensation for the loss of a woman's rights in her own paternal *praveni* due to *diga* marriage.'¹²¹ The difference in the Kandyan and Sabaragamuwa laws has not been fully explained.

The British had assumed that the Sabaragamuwa province had come under the influence of Roman-Dutch law. Obeyesekere rejects this explanation as Sabaragamuwa was not part of Dutch territory and because he believed that Roman-Dutch law was unlikely to have prevailed in the maritime provinces or that it influenced the Hinidum Pattu. He further points out that the rights of widows were considerably different to the practice of Roman-Dutch law. 'Finally,' he says, 'it is highly doubtful whether the Roman-Dutch law would have influenced the rights of widows, whereas the other aspects of the legal system so offensive to Roman-Dutch law, like polyandry, *binna* marriages etc. remained unaffected.'¹²² His explanation for the difference in Sabaragamuwa is the existence of strong marriage ties and an ideology of wifely devotion to the husband. Yet this is unworkable as an explanation as a plausible comparison with Kandyan areas on this question is not feasible. As S B D de Silva argues, 'geographically or culturally, there was no sharp dividing line between the Kandyan territory and the extensive tracts comprising the Sabaragamuwa district.'¹²³ He believes that Sabaragamuwa had connections with the maritime provinces as well. Such links make it difficult to rule out the possibility of the influence of southern practices, including the residues of Dutch practice.

It is possible that covert efforts were made to adjudicate under Dutch laws in the late eighteenth century. Attempts to incorporate Dutch legal principles and customs were not uncommon. For instance, although the VOC did not proactively attempt to stop marriage alliances that they deemed were undesirable, in the case of complaints over inheritance and remarriage as seen above the Dutch laws were to prevail. The *plakkaat* forbidding marriages and extramarital relationships between 'undesirable' parties, including blood relatives of one's partner, was published at least twice after 1773. The reason for the publication of the *plakkaat* in the Wannin in 1787 was that men married three or four women and left them, as a result of which there were many disputes with regard to inheritance. The governor and council recommended that the commander did not investigate the marriages themselves, but in case of complaints settled it 'in such a way that it gradually tallies with the Dutch laws'. This appears to have been the policy with regard to other matters of inheritance as well, in particular in the event of complaints over illegitimacy which is discussed below.

6.7 Navigating Illegitimacy

The Galle branch of the Scholarchale Vergadering discussed the issue of 'illegitimate' (*onecht*)¹²⁴ children in 1770. The Governor and Council in Colombo referred the matter to the Landraad of Colombo, to report on how such children were registered and the service due

¹²¹ I have used Obeyesekere's interpretation of Turnour here in *Land Tenure*, 53. Turnour's account is in D'Oyly, *Constitution of the Kandyan Kingdom*, 24:162–164.

¹²² Obeyesekere, *Land Tenure*, 54.

¹²³ Silva, *Political Economy*, 217. He further says: 'The district in turn was contiguous with several other districts in the extreme South and on the West coasts of Sri Lanka, such as the Giruwapattu of Hambantota, Morowakorle or Matara and Gangabode Pattu of the Galle district and the Pasdun, Raigam and Hewagam Korles of the Colombo district....The inhabitants of the Sabaragamuwa district, while being essentially Kandyan and governed by Kandyan law, had "adopted many of the habits and customs" of the maritime provinces.'

¹²⁴ Another meaning of the Dutch word *echt* is 'real' and *onecht* is literally 'un-real' or fake.

from them to the company in Colombo.¹²⁵ The company thus determined the law relating to such children and assigned the male children of *goygama* parents the status of *nainde*, a husbandman who performed menial work.¹²⁶ The extent of land assigned to such a person was twenty *kuruni* (one acre), which was equivalent to the extent given to messengers, village smiths, washermen, and drummers among others.¹²⁷ The *nainde* status was considered a demotion. It was also made law that where the parents were from different castes, the son would be assigned the lower caste. The order did not refer to female illegitimate children.

The definition of illegitimate in this context is ambiguous. As early as 1647, those who had not registered their marriages were given time to do so.¹²⁸ The use of the word in the Dutch records can be linked to adultery, temporary unions, unregistered marriages, or *ondertrouwen* who had put up the banns but not had their marriages solemnised.¹²⁹ The Scholarchale Vergadering complained that Sinhalese who had put up the banns often did not bother with confirming the marriage, and if in the meantime they have children and the father died, the board asked whether the children should be legitimised.¹³⁰ That board also warned schoolmasters against allowing Christians to marry in the ‘Sinhalese or heathen way’.¹³¹ Whether the Sinhalese way of marriage was recognised in the thombos could differ from thombo to thombo. It is also possible that where there was no recognised marriage in both ways (in either the ‘Sinhalese way’ or by registering the marriage through the schoolmasters), the children were recorded as illegitimate in the thombos. In general, ‘illegitimacy’ was recognised in Sinhalese law in so far as children of women who had married beneath their caste were disinherited. Issue from an ‘equal’ union of a man and woman of equal caste, and in some circumstances of men of higher caste with lower ranking women, were not considered illegitimate. In so far as the Sinhalese were concerned, a concept of illegitimacy that was dependent on a requirement for registration was a new one. The intention to form a definite alliance was sufficient in local law.¹³²

Within this new understanding, ‘illegitimate’ persons appeared in the Galle thombos often. In the villages of Dodampe and Ganegoda, the percentage of illegitimacy was around 7 per

¹²⁵ SLNA 1/160, ‘Governor in Council Minutes’ 1770, 2 Aug 1770. Unfortunately, Colombo Landraad minutes and correspondence for the year 1770 are no longer extant.

¹²⁶ Ibid., 21 Aug 1770; SLNA 1/5660, ‘Extracts of Orders, GL’, fol. 64r, Extrakt from letter dated 5 Sept 1770 from Colombo to Galle. See also Hovy, *Ceylonees Plakkaatboek*, vol. 2; nr. 513, Resolution to instruct the Galle officials that illegal children of parents of the Wellale caste shall be regarded as naindes..., 21 Aug 1770. *Goygama* inhabitants of the Walallawiti Corle in Galle who had not contracted a Christian marriage out of ignorance, were exempted from the status demotion of their children in 1775. Ibid., vol. 2; nr. 537, Resolutie waarbij de Wellales in de Walallawiti Corle (Commandement Galle) die uit onkunde geen christelijk huwelijk hebben gesloten, niet bestraft zullen worden met statusverlaging van hun kinderen tot de subkaste der naindes..., 4 Jul 1775. See also SLNA 1/5895, ‘Draft of Annual Compendium Sent to Colombo’ 1774 to 1775, fol. 29v–30r, 13 Dec 1776.

¹²⁷ See Appendix III.

¹²⁸ Hovy, *Ceylonees Plakkaatboek*, vol. 1; nr. 15, Ordinance on the legalisation of illegal marriages between native Christians and on the proclamation and dissolution of marriages; punishment against concubinage, separation and adultery, 1 Aug 1647.

¹²⁹ Heavy punishments against adultery were stipulated, but we do not know if they were actually meted out—in *Karonchihami v Angohami*, it was decided that they had not been implemented in Dutch times. Ibid.; *Karonchihami v Angohami*, 8 New Law Reports 1 (1904). The threat of children being made illegitimate is among the punishments meted out for not solemnising a marriage. Hovy, *Ceylonees Plakkaatboek*, vol. 2; nr. 543 (4), Plakkaat regulating the formalities for putting up the banns and the marriage solemnization... 24 Dec 1776.

¹³⁰ SLNA 1/6221, ‘Scholarchale Vergadering Minutes’, fol. 41r–v, Church and School Visit Report, 23 Sept 1771.

¹³¹ Hovy, *Ceylonees Plakkaatboek*, vol. 2; nr. 684 (6), Concept–mandate of the Scholarchale Vergadering in Galle... 19 May 1795.

¹³² Pieris, *Sinhalese Social Organization*, 202–203.

cent. But it could be that another thombo of the same pattu does not have a single example. The frequency of illegitimacy is almost impossible to measure as each registration of a thombo could be unique to a clerk or thombokeeper, on whom it may have depended whether *onecht* was recorded. In Dodampe, of the resident illegitimate males, most were described as *nainde*.¹³³ In 1780 Simon was the fifty-year-old illegitimate son of the widow Liyana Ächchige Catharina.¹³⁴ Gamage Punchi Ettena, a niece of the PLH Gamage Gimara, was forty years old in 1780, and is referred to as the illegitimate *ondertrouwd* widow of Maddugodage Punchi. In what may be seen as illegitimacy begetting illegitimacy, she had four sons, two of whom, Se-appuwa (12 years) and Annurappa (7 years), were listed as illegitimate.¹³⁵ It is possible that because her marriage had not been solemnised (resulting in a new category of *ondertrouwd* widow) her children were listed as born out of wedlock. Henadirege Kattona, a woman of another thombo group in Dodampe who was unmarried had an illegitimate son and four illegitimate grandsons. Christina, who was Kattona's sister's daughter, was also illegitimate and had a nonmarital son.¹³⁶ In Ganegoda, Bastiaan was illegitimate but was recognised by a thombo group that had his father's brother as the PLH—incidentally, his mother's name is also mentioned. Christobu had three illegitimate sons and one illegitimate daughter.¹³⁷ Most illegitimate children, however, are mentioned with their mother with no mention of the father.

This is an analysis of 'illegitimacy' in two southern villages at one point in the late eighteenth century, but the thombos offer a rich source of information for a more comprehensive analysis of the phenomenon, whether invented or real. The moral and legal implications of its imposition in Dutch and later British times can be explored in more detail; only an introduction to its use in Dutch Galle is attempted here.¹³⁸ The thombos can reveal who the parents of such illegal children were, whether it was a rather more urban or non-urban phenomenon, what happened to such children, and what status in society they were accorded in the official records. The enforcement (or not) of a European legal concept was of course heavily influenced by both the experience of the colonialists in early modern Europe and necessary negotiations on the ground.

Litigants attempted to utilise the new concept of illegitimacy to disinherit 'illegal' offspring. This is illustrated through a case for which many supporting documents survived.¹³⁹ In 1788, two Sinhalese said that Kottegodage Daniel was illegitimate and therefore not an heir. They produced a thombo extract from Mipe, and said that Daniel should be mentioned in it as *onecht*. The thombo was drawn up in 1751, and he had been entered as a son of Kottegodage Philippu. Philippu himself was said to have been present at the thombo registration and entered Daniel as his son. At the time, Philippu was described as a 43-year-old *goygama lascarin*. His wife was 38 years old, Daniel 8 years old. He also had three older daughters, two of whom were living away, while the other appeared to be living with her parents and was 12 years old.¹⁴⁰ Johan de Silva, a former *vidāne* of Pilaane and Melagodege Jantje who were married to two of the daughters made the claim. The two European and two local members present at the commissioner's meeting decided that the matter should be investigated by the

¹³³ It is not clear why all of them were not called *nainde*.

¹³⁴ SLNA 1/7428A, 'Dodampe Thombo', 1.

¹³⁵ *Ibid.*, 21.

¹³⁶ *Ibid.*, 27.

¹³⁷ SLNA 1/7442A, 'Ganegoda Thombo', 3, 27; SLNA 1/7442B, 'Ganegoda Thombo', 3.

¹³⁸ It is possible that the recording of 'illegitimacy' was more common in the Galle thombos than in the Colombo thombos, as revealed through a database of the Hina Korle (Mende Pattu) and Hapitigam Korle (Udugaha Pattu) thombos sponsored by Utrecht University and Radboud University.

¹³⁹ SLNA 1/1514, 'Galle Political Council Minutes' 1789, 29 Oct 1789; SLNA 1/6515, 'Minutes, GL', fols 167r, 2 Jul 1788; 197v, 24 Jan 1789; 229v, 30 May 1789, 280v, 27 Feb 1790.

¹⁴⁰ SLNA 1/7447A, 'Mipe (Talpe) Thombo' 1751, 109.

thombokeeper, the *toerbeurds* (rotating) members, the village heads and all the heirs, to ascertain if Daniel was not a fellow inheritor.¹⁴¹ A report together with a new thombo extract and an extract from the school thombo of Talpe and a *lascarin* deed of Kottogodage Philippu dated 28 April 1769 were produced at a subsequent meeting and the council sent the papers around for a decision before deciding on the matter.¹⁴²

The investigation by the commissioners and the thombokeeper was done in the presence of the village headmen and the heirs. It was revealed during the course of the investigation that Daniel was ‘no legitimate son of Kottogodage Philippu, but an illegitimate son of his, conceived by his sister-in-law or wife’s sister Manege Johange Jibika’.¹⁴³ Daniel’s mother confirmed this, adding that Philippu and her sister had entered Daniel as their legal son in the thombo. Daniel’s brothers-in-law who petitioned the Landraad were also present and produced an extract from the school thombo showing that he had been baptised under his mother’s name and that she had not known till after Philippu and his wife’s death that Daniel had been entered in the thombo as their legal son. They wanted the *lascarin* service and *divel* lands held for that service to be transferred to them. Daniel’s widow was also present at the investigation and shows a *lascarin* deed and a trump card in the form of a Sinhala report *ola* from the *sabandaar modeljaar* who was most probably the Landraad councillor Don Balthasar Abeysinghe. Cadenski, Trek and von Bergheim signed the report of the investigation, the first two agreeing that the *lascarin* service and *divel* lands could be held in turns by Daniel’s children and his brothers-in-law, while the third signatory believed that Daniel’s children alone should hold the privilege. The council approved the proposal by Cadenski and Trek. The thombokeeper was instructed to insert a note in the thombo that Daniel was an illegitimate son of Kottogodage Philippu’s sister-in-law called Manege Johange Jibika. He had also to add that from now on the service of *lascarin* would be carried out by the men and descendants of Philippu’s legitimate daughters and Daniel’s children (as he was no longer alive) and enjoy in turns the *divel* lands belonging to that service.¹⁴⁴ This decision was duly entered in the thombo on 1 July 1789, but was subsequently struck off and followed by a new note.

For, soon after, the case came up in appeal in the Raad van Justitie of Galle. Pilaane Godakandege Gimara, Daniel’s widow, together with their children Dinees and Mathees, obviously wished to revert to what they believed were their exclusive rights to the service and associated lands. They said that Daniel, being Philippu’s only son, had performed the *lascarin* service till his death and cultivated the *divel* lands linked to the service. It was only after his death that his sisters’ husbands had brought up the issue of his illegitimacy, they further said. Gimara and sons asked why they had not prevented Daniel’s entry in the thombo at the time of registration, when he was eight years old, but only brought up the issue around a year ago after having waited so long till he was dead and could no longer answer for himself. Although Daniel was an illegitimate son of Philippu, they said it was fully apparent that Philippu had recognised him as a legitimate child, as he himself had Daniel registered as such, for which he would have had his reasons.¹⁴⁵ His three other children, it must be considered, were daughters, two of whom had already moved away; he would have had concerns about who would farm the land. In the initial report to the Galle Commander Kraijenhoff on Daniel’s

¹⁴¹ SLNA 1/6515, ‘Minutes, GL’, fol. 167r, 2 Jul 1788.

¹⁴² Ibid., fol. 197v, 24 Jan 1789.

¹⁴³ ‘[G]een echte zoon van Kootegoddegei Philippoe, maar wel een onechte zoon van hem is, verwekt bij zijne zwagerin of vrous zuster Maanagei Joeangei Jibika.’ SLNA 1/1514, ‘Galle Political Council Minutes’, 29 Oct 1789, Report by Landraad commissioners dated 24 Jan 1789.

¹⁴⁴ SLNA 1/6515, ‘Minutes, GL’, fol. 229v, 30 May 1789.

¹⁴⁵ ‘And certainly the father Philippu would have known the reasons best.’ (‘En zeekerlijk de vader Philippoe best de reeden had moeten weten’). SLNA 1/1514, ‘Galle Political Council Minutes’, 29 Oct 1789; Plea dated 9 Sept 1789 from Pilaane Godakandege Gimara.

wife's request, it is mentioned that the Landraad's first decision was in full contradiction of the 1770 resolution to assign illegitimate *goygama* children the *nainde* service. The commander asked the Landraad to report on the history of the case.

This report of the Landraad is of special interest as it provides an example of how both European and indigenous councillors judged a case. The councillors de Moor, van Geijzel, and Otto voted in favour of the commissioners' report produced earlier, while the president and a councillor referred to as the 'sabandaar modeljaar', who could only be Balthasar, 'were of the opinion that Daniel's children alone should be entitled to the *lascarin* service and the *diwel* gardens'.¹⁴⁶ Balthasar may have wished to turn the tide in favour of Daniel's widow, who may also have been hopeful, but more powerful authorities came to play. Nicolaas Bernadus Martheze and Pieter de Vos, members of the Raad van Justitie of Galle, were assigned the task of providing further advice on the case. They said that the Galle Landraad had not observed the 'laws and orders of the country, which were fixed and pre-assigned on this subject'.¹⁴⁷ They commended the Landraad for recognising that Kottegodage Daniel was 'born of incest' (*uit bloedschande gesprooten*) which they pointed out was attested to without restraint by not only the village headmen but the mother herself. But they said he could have no right to inherit or to possess through the father's line. Partnering with the sibling of your deceased spouse was banned by the Dutch government as described above. Philippu's adultery with his sister-in-law and the child begot by her were anathema to the Raad van Justitie councillors.¹⁴⁸ They disapproved of the Landraad's decision to allow Daniel's children to provide the *lascarin* service together with Daniel's sisters' husbands. They stated that Daniel himself had no right to the privilege during his lifetime, and was 'no *lascarin* due to his illegitimate birth' (*geen laskorijn was om sijne onechte geboorte*). They also remarked that since Philippu was not survived by male heirs, his *lascarin* service had to be regarded as vacant as the service could not be transferred to his daughters, and because their husbands also had their separate obligations. In response to all the reports, the Galle Political Council referred to the 1770 order and condemned Daniel's sons to the *nainde* service. They requested approval from Colombo, and the decision was communicated to the Galle Landraad, which altered the thombo accordingly.¹⁴⁹

On 17 April 1790 another note was entered below the first in the thombo. It refers to a letter from the Governor in Council dated 31 December 1789.¹⁵⁰ The deceased Daniel's children, namely Dinees and Mathees, were referred to as illegitimate, and they were to be registered as *naindes* and the *diwel* lands of Kottegodage Philippu were to be absorbed by the company as *malapālu* after allowing the sons the portion that is ascribed to *naindes*. Referring to the 1770 resolution on illegitimate children, the earlier judgement was considered a mistake as Daniel's children must also be disinherited if he was to be disinherited; this was the rectification as it were. The Landraad had judged the case more in accordance with local customs that did not always penalise illegitimate children, but the higher Dutch judicial body recon-

¹⁴⁶ '[W]aren van gevoelen, dat de kinderen van Daniel alleen den dienst van laskorijn en de diwel tuinen toekwaamen.' Ibid., 29 Oct 1789, Report of Landraad dated 29 Sept 1789. It is not clear here whether Balthasar had a vote. Cadenski and Trek wrote the initial report on the investigation, so their votes are not mentioned. Lourensz's vote is also not mentioned. No mention is made of the opinion or votes of the two other local members present at the meeting. The report was signed by Abeyasinghe as well.

¹⁴⁷ '[D]e wetten en orders deezer landen, dewelken op dit subject beraamd en vastgesteld zijn.' Ibid., Report dated 19 Oct 1789.

¹⁴⁸ Incidentally, they were both present at the school board meeting of 4 July 1770 when the issue of illegitimate children was taken up.

¹⁴⁹ SLNA 1/6515, 'Minutes, GL', fol. 280v, 27 Feb 1790.

¹⁵⁰ SLNA 1/5315, 'Inward Letters, Colombo to Galle' 1789, fol. 308r, 31 Dec 1789, Letter from Governor in Council to Galle Political Council. Also in SLNA 1/1565, 'Outward Letters, Colombo to Galle' 1789, 31 Dec 1789, Letter from Governor in Council to Galle Political Council.

firmed the lower status given to illegitimate children and their disinheritance under Dutch intestate laws.

In this case, two litigants believed they could capitalise on illegitimacy. No doubt they were aware of the 1770 order that was given publicity in the village schools.¹⁵¹ We see here how the lower judicial body, with the influence of headmen, attempted a judgement that was more consensual in nature. But the effort was overturned by the higher authority, where there were no headmen. The Raad van Justitie of Galle also imposed a judgement that left both parties bereft, the illegitimate party more than the other.

The rights of illegitimate children if stipulated by inheritance *inter vivos* were safeguarded against challenges and they were also the PLHs of thombo groups. In a Landraad session of 21 June 1794 Madegamage Adriaan and his sister Madegamage Babiana, are described as the *onegte kinderen* (illegitimate children) of the late Abittegodage Don Philippu, a Sinhalese inhabitant of the village Ganegama.¹⁵² Their rights to parts of gardens and paddy fields in Horeganpita, Piyadigama and Ganegama were challenged by Abittegodage Johan¹⁵³ but the council validated the deed of gift (*gift ola*) from 1760 that the children had received from their father Philippu. Johan, the opposing party, was charged the costs of the investigation, which was carried out by the thombokeeper Trek and another member of the Landraad (*teurbeurthebende*). The Ganegama thombo entry made in 1760 for Abittegodage Don Philippu, listed as a *goygama lascarin* in the village Ganegama does not mention the two illegitimate children at all.¹⁵⁴ He is not listed as married either. Yet Don Philippu thought it important enough to specify in the year the thombo was compiled itself that it was his two 'illegitimate' children who would have the rights to his property. These rights were upheld even when challenged in the Landraad. In yet another case heard in 1787, the Landraad allowed Haupe Hewage Simon to gift all his property ('houses, gardens and fields') with life interest to his brother's 'illegitimate son'.¹⁵⁵ The necessity to secure their inheritance indicates how a belief that illegitimate children could be disinherited through the thombo and the Landraad if their rights were challenged had seeped into a peasant's concept of family.

6.8 Conclusion

Marriage and divorce laws were areas in which the intention to transform local practices were conspicuously present, but not fully achieved.¹⁵⁶ We saw in chapter four how conversions were ensured by their relationship to the thombo registrations; baptisms were also linked to marriage, which in turn was linked to inheritance. Economic forces are more likely to bring about transformations in customary laws than moral grounds. Unlike in nineteenth-century Hawai'i, where American missionaries closely regulated matters of sexuality,¹⁵⁷ the company did not proactively attempt to reform family life, an area where the government could not easily dictate terms. It is doubtful that the Scholarchale Vergadering could achieve change in a significant way, given the limited nature of its operations. It may have made a

¹⁵¹ SLNA 1/6221, 'Scholarchale Vergadering Minutes', 39v, 23 Sept 1771. It was supposed to be published in Matara as well: SLNA 1/5660, 'Extracts of Orders, GL', fol. 64r, Extract letter dated 8 Sept 1770 from Galle to Matara.

¹⁵² SLNA 1/6517, 'Minutes, GL', fol. 68r, 21 Jun 1794.

¹⁵³ The exact relationship is of yet unknown. Johan maybe Philippu's father's brother's son who was married and living in Horaganpitiya according to the thombo entry.

¹⁵⁴ SLNA 1/7441A, 'Ganegama (Gangaboda) Thombo' 1760, 113, group nr 47. An extract of this thombo is also found in the Landraad annexes: SLNA 1/6526, 'Annexes to Minutes, GL', fols 181–183r.

¹⁵⁵ SLNA 1/6515, 'Minutes, GL', fol. 106r–v, 1 Dec 1787.

¹⁵⁶ This tension between rules and practice was also seen in the eighteenth-century in The Netherlands. See Manon van der Heijden, *Huwelijk in Holland: Stedelijke Rechtspraak En Kerkelijke Tucht, 1550-1700* (Amsterdam: Bert Bakker, 1998), 261–264.

¹⁵⁷ Merry, *Colonizing Hawai'i*.

small dent, as the requirement for registration and to a lesser extent legal marriage dissolution appeared to have seeped down to local society, but evidence of customary marriages from areas far from the centre of southern government, such as the Hinidum Pattu, shows us its limited reach. The enduring nature of marriage registration can nevertheless be seen over the nineteenth and twentieth centuries, when registration practices were further streamlined and came to be preferred despite the legal recognition of customary marriages. The association of legal marriage with land ownership was not consistently emphasised in the Landraad, but came to be a lasting legacy of Dutch rule.

Other areas of family life were also beginning to be affected by Dutch rule. Issues of illegitimacy of children were looked at more benevolently by Landraad officials, but such decisions were liable to be overturned by higher authorities that were exclusively European. The more consensual decision of the Landraad in the illegitimacy case discussed in this chapter was overturned and judged as incorrect by the higher court that restricted the inheritance of nonmarital children. Litigants adapted to the laws introduced by the company and reflexively redefined their own traditional ideas of some aspects of the family for economic benefit. Thus, the adoption of new laws had the potential for causing conflict among groups and individuals and with the company. This process would have been perplexing to say the least for most of peasant society.

On some areas of family law the company thus faced an institutionalised normative order characterised by ritual underpinnings. Yet this did not extend to all aspects of inheritance law. The absence of strict rules and the practice of situational judging in Sinhalese law, when faced by the rules of a legal system that was more clearly defined, led to a dominance of the Dutch laws. Claas Fontijn's case strongly suggests that in complex intestate cases, Dutch laws were in use. Less ambiguously, Dutch laws of bilateral inheritance were used in the Landraad on a consistent basis. Although local jural norms recognised bilateral inheritance, other principles such as virilocal and uxorilocal marriages served in retaining the lands in the original family. Gamage Livina's case shows us how a woman who is likely to have married virilocally claimed her share on returning to the village and asserted her rights to it through the Landraad and the thombo. Fragments of Sinhalese law can be seen in the Landraad as well: the concept of familial assistance wherein one daughter or son who cares for a parent is favoured for inheritance received sanction. Such recognition of the residues of the local normative order, which would have been a direct result of the presence of the native councillors, was possible through situational judging but went unrecognised in official law rules. In all this, the emerging dominance of company rules in family law is unmistakable.

Conclusion

The nature of legal pluralism is closely related to the fragmented nature of colonial rule. Contested arguments over evolutionary or revolutionary change in early colonial society have largely overlooked the practical realities of pluralities when translated into everyday lives. This thesis has contributed to an open debate of over two hundred years on the extent to which Dutch laws, or Sinhalese laws, were applied to the Sinhalese of the maritime provinces. L J M Cooray has expressed the opinion that the question of the application or non-application of Sinhalese customary law remains a purely academic one today, as it is the Roman-Dutch law that is applied to the low-country (coastal) Sinhalese today.¹ For, whatever the outcome of a study into Dutch legal records, Roman-Dutch Law is here to stay in Sri Lanka as its proponents would say that 'it continues to be of great value to the legal system'.² Developments under the British in the nineteenth century may be even more important in understanding present-day law, but the foundation for such developments was laid before that. The question of the application of Sinhalese law is of more relevance when one considers that the legacy of Partha Chatterjee's 'rule of colonial difference'³ is that 'difference, exclusion, and exemption might still define how states and structures continue to behave. That is to say, it is worth considering the fact that the legal history and relevance of colonialism does not lie dormant in the archives.'⁴ New developments in the fields of socio-legal studies of legal pluralism warrant further attention being paid to the Sri Lankan example.

The British legacy of its understanding of Dutch rule is still with us today. Legal pluralism is said to be practised in modern Sri Lanka. A modified version of the *Thesawalamai* which is a codification of the customary laws of the Tamils of Jaffna that the VOC commissioned and produced in 1707, is a part of the official laws of Sri Lanka. The British also made some local practices which they believed to be exclusive to the upcountry 'Kandyan' residents, statute law. Yet the pluralism of British times and today's world is a much reduced version of the pluralities in practice under early colonial rule.

In legal matters, British moves to make Roman-Dutch law statute law in many areas of the law can be seen as a marked break from the more plural manner in which the local normative order was approached by the Dutch, as revealed in this study. Claims of a rupture in the legal arena created by the British can be contextualised in an important debate about either evolutionary or revolutionary change in nineteenth-century colonial rule. The question is whether late colonial rule was transformational, marking an epistemological break with an earlier period when the East India companies were operating, or merely a change of the guard. For Sudipta Kaviraj, Chatterjee and Gyanendra Pandey,⁵ the dynamic and fluid nature of social relations changed in the nineteenth century. For others such as C A Bayly and Susan Bayly, the continuities rather than the radically transformational effects of late colonial rule

¹ Cooray, *Legal System*, 69.

² Amerasinghe, 'The Dutch Influence', 321.

³ *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton, N.J: Princeton University Press, 1993), 10, 18.

⁴ Kolsky, "A Note on the Study of Indian Legal History."

⁵ Sudipta Kaviraj, 'On the Construction of Colonial Power: Structure, Discourse, Hegemony', in *Contesting Colonial Hegemony: State and Society in Africa and India*, ed. Dagmar Engels and Shula Marks (London: British Academic Press, 1994); Chatterjee, *Nation and Its Fragments*; Gyanendra Pandey, *The Construction of Communalism in Colonial North India* (Oxford: Oxford University Press, 2006). Other works stress a similar transformational nature of nineteenth-century developments: Dirks, *Castes of Mind*; Appadurai, *Worship and Conflict under Colonial Rule*. Pandey argues that colonialism played a significant role in the creation of religious communalism in India in Pandey, *The Construction of Communalism in Colonial North India*.

are more striking.⁶ Further study into the British legal arena in Sri Lanka is necessary to determine the full extent of its transformational role. In contrast to nineteenth-century British understandings of an imposition of Roman-Dutch law, this study has been a story of how Dutch law intertwined with local legal orders in the eighteenth century. Within the social arena of Dutch-controlled Galle, social actors from both elite and non-elite groups identified more than one source of law, a situation that was mutually recognised if not successfully followed.

Negotiating Custom

The Dutch set up an institutional legal structure through the Landraad that peasants approached for mediation. To use Mumford's words, '[j]udging the colonized population was both a claim to legitimacy and a major part of the colonizers' job.'⁷ Sri Lankan peasants faced courts of record for the first time through the Dutch legal system, the textual proceedings of the Landraad being novel within the local normative order. Boosting judicial efficiency was not far from the minds of the Dutch government, but efforts to bring down costs of litigation or improve local participation were not always successful. The Galle Landraad can be seen as a site for negotiation between Sinhalese, other locals and the VOC, rather than simply as an instrument for colonial domination. Yet this process was mired in uncertainty, confusion and the lack of a clear trajectory.

A racialised hierarchy of dominant 'white' members were pitted against 'black' councillors in the Landraad. As in the Landraad in Java, where also there were indigenous councillors, there was never a local chairman or majority on the bench. The Indonesian and Sri Lankan sides were thus subordinate to the Dutch side—ultimately a sign of direct rule.⁸ Native headmen were powerful, but clearly less so in comparison with company officials; peasant farmers were even less powerful in the equation. Yet we must consider the considerable interdependence, however uneven, among the parties concerned. The locals wielded independently created entitlements and could use tools such as the petition or riot to compel the stronger coloniser to enter into negotiation over rule-making. Without the native department of the bureaucracy, the indirect rule of the company had little hope of survival; for their provision of labour services including the collection of the prized cinnamon the native inhabitants were indispensable to both local and foreign elite formations. While the company held the threat of coercion and if necessary violence in establishing 'collaboration', locals had the recourse of turning to the Kandyan Kingdom and harming the company's economic interests. The relative bargaining powers of company, local elite and peasant groups is indeterminable and is unlikely to have been spatially and temporally static. Men and women of high and low ritual status groups crossing cultures and economic status appeared in the Landraad, which engaged in the task of essentialising identities based on caste and occupation that were linked to labour services. The litigants and witnesses who appeared in the Landraad—presented here in a hitherto unseen manner in the Sri Lankan historical literature—were not necessarily undiscerning collaborators for affirming the legitimacy of the colonial judicial forum. As Lauren Benton says, drawing on Pierre Bourdieu, '[i]t is possible simultaneously to use imposed law (thereby reaffirming it) and to seek to undermine its authority.'⁹ Authority,

⁶ C A Bayly, *Origins of Nationality in South Asia: Patriotism and Ethical Government in the Making of Modern India* (Oxford: Oxford University Press, 1998), 44–9, 210–37. He argues that communalism during the colonial period had its origins in the eighteenth century. Susan Bayly argues that caste was a distinct part of Indian life, and one that evolved from the precolonial period in Susan Bayly, *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age* (Cambridge University Press, 2001).

⁷ Mumford, 'Litigation as Ethnography in Sixteenth-Century Peru'.

⁸ Daniel S. Lev, 'Colonial Law and the Genesis of the Indonesian State', *Indonesia*, no. 40 (1985): 57–74.

⁹ Benton, *Law and Colonial Cultures*, 257–258.

through recognition of plural authorities of law, could also contain features of the local normative order, achieved through that very process of collaboration. This can be seen in the subtle and more evident processes analysed in part two of this thesis.

The Dutch recognised that clearly defined property rights through the implementation of the land registration had obvious economic benefits and helped individuals to live together in peace and prosperity. Indigenous practices of land tenure and fixing property boundaries, existing and new practices of registering lands, Dutch and local practices of surveying, and traditional means of communicating information by tom-tom beaters combined with a new institutional setting in which to settle disputes. On entering the local framework the Dutch colonial power sought to establish a legal foundation for the exercise of authority based on both Roman-Dutch legal procedures and laws and the local normative orders. Traditional forms of ordering society were then faced with different forms of knowledge, different institutional practices in assigning of meanings. In seeking to combine written records such as gift and *koop olas* and the oral evidence and memories of the inhabitants in a new legal forum, new forms of ordering knowledge emerged. But it was not purely an imposition of a foreign system—the system in place in the eighteenth-century grew out of multiple systems of knowledge. For the VOC, there was a need to define laws on property, and the thombo and the Landraad were the central instruments made use of for that purpose. At times there were conflicts between procedural rules and practical experience. Process had to be adapted during the course of the registration. Governance had to be on a stable footing, but the primary aim of the thombo was to know who owned what and how much was due to the company in cash or crop shares. In the end, it was a means by which the Dutch possession could become more profitable through a coherent and functional basis for revenue collection. It had also to have meaning ideologically—the definitions of the land while having its foundations in the local normative order had also to have meaning for the new European rulers.

The ideas and practices of the agrarian regime at the time were renegotiated in the formal legal spaces of the thombo registration and the Landraad, an effort that involved both official and shareholder in the process of lawmaking. The interdependence of the relationship between them on this question would have been a key factor leading towards negotiation. The ‘law’ was central to controlling the lands of the colonised—or of economically powerless groups—and incorporating plural legal orders was often a part of this effort. In the end, the law has to be productive, not repressive or a hindrance. The texts of law had to be made real in the court room, where they were potentially either received or rejected. In a colonial setting, it is to be expected there would be difficulties in translating terms cross-culturally. Chapter five focused on how the VOC went about deciphering local land tenure in practice. It dealt with the continuation of local customs and the flexibility of rules, given that an expectation of colonialism as a ‘great watershed’¹⁰ of change is no longer tenable.

A reading of legal narratives from eighteenth-century Galle shows that the company and its legal system were regarded by the natives as a means of affirming ownership and resolving land disputes. This was rendered necessary through the registration process. It can be imagined that the compilation of the thombos gave out a clear signal to the citizens as to who controlled the country. Interplay between colonial and indigenous needs would eventually lead to a compromise. Chapter five showed how the thombo and the Landraad were sites of interaction or negotiation for both Europeans and locals and a means of colonial domination. They battled out on the cadastre their own particular unique understandings of property rights, and these battles come alive in the Landraad in the succession disputes analysed in chapter six. By the mid-eighteenth century the native inhabitants were at least reasonably knowledgeable of the Dutch forms of law and used this knowledge to their advantage in

¹⁰ Dirks, ‘From Little King to Landlord’.

navigating the law. Pluralities of laws were seen as opportunities by some. To others they signified the imposition of baffling judgements. Chapter six showed how within one area of law, namely inheritance, pluralities or rules could be oppressive or accommodating.

Exactly what aspects are borrowed or rejected between foreign and local legal orders cannot be easily predicted, but the dominance of inheritance, land and marriage law in sociolegal studies of legal pluralism gives some indication. Not all attempts at assimilation are fully realised; aspects of evidence law such as the decisory oath were unsuccessfully adopted in practice in Sri Lanka. The oath in Dutch Sri Lanka was a judicial site in which religious differences between the cultural spaces of Europe and Asia were both passionately and dispassionately denied, debated and endorsed within the platform of the Landraad. The decisory function of the Dutch oath had an accidental congruence to the local practice, as did the bilateral laws of inheritance explored in chapter six. More conscious adoption or adaptation of local practices, as in the acceptance of the Sinhalese forms of the oath, local land tenurial practices, the concept of familial assistance in inheritance cases, the Sinhalese way of marriage or more locally consensual decision-making in the case of the inheritance of nonmarital children can also be seen.

Through this discussion I question the notion of the enforcement of distinctly defined cultural boundaries in jurisdiction and suggest that accommodation, negotiation and resourcefulness are more appropriate concepts for understanding the legal interactions that occurred in eighteenth-century Sri Lanka. The coloniser would negotiate on rule-making 'because he believes himself morally obliged to do so, or, more pragmatically, because he believes that establishing rules by the sheer use of power may entail undue costs.'¹¹ Resistance by the locals would impose costs that would make the colonial enterprise in the island economically unviable. Recognising the local normative order was conducive to the company, yet this was done within limits. In family law, the Sinhalese way of marriage, concept of familial assistance, or resistance to the disinheriting of illegitimate issue was recognised in the Landraad. These were normative practices to which the people were able to induce compliance on the part of the Dutch. Land tenurial agreements were recognised by the Dutch government for their obvious economic benefits. On the adoption of Sinhalese laws, the company can be said to have found the middle ground between strict and permissive extremes.

Discerning Pluralities

The conventional legal literature in Sri Lanka has tended to draw a sharp line between the use of Sinhalese laws and Roman-Dutch law. The underlying assumptions of the discussion have seen mostly a dichotomous solution to the problem. This early debate can benefit from the developing legal literature on 'pluralism as a central concept in studies of diffusion or transplantation of law'¹². The cultural deformation in the discussion about the lack of a Sinhalese code is hard to shed, but I emphasise moving away from culturalist arguments in this thesis. For the inhabitants of Galle, the law could have been simply a means to an end, and the use of customary laws, or the lack thereof could have assumed a secondary role with the local population in at least certain areas. The people were provided with a 'durable, if flexible resource'¹³ and it would enhance our understanding to be conscious of a 'hodge-podge of courts and norms operating side by side' and of 'various complex mixtures and combinations,

¹¹ Eisenberg, 'Private Ordering through Negotiation', 675.

¹² William Twining, 'Normative and Legal Pluralism: A Global Perspective', *Duke J. Comp. & Int'l L.* 20 (2009): 487.

¹³ Lauren Benton and Richard J Ross, eds., *Legal Pluralism and Empires, 1500-1850*, Kindle Edition (NYU Press, 2013), 3.

and mutual influences'¹⁴ within the legal system, let alone within the operation of the Landraad. This warrants a refashioning in the way the story is told in legal education in Sri Lanka. Emphasis should be laid on legal pluralism and how that works, despite conventional suspicions lawyers hold of legal pluralists.¹⁵

The Galle Landraad exemplifies a forum where a choice of laws came into play, that choice being significant at varying degrees for different areas of the law. The councillors were asked to adjudicate according to local customs, but also told they had the option of resorting to Dutch laws where local laws were unclear or unreasonable. The Landraad shows the tension of two apparently competing sets of norms within a single system. It is no surprise that the likes of Kalegana Bastian Naidelage Maria of Galle said that even her dog would not appear before the Landraad. Nominal Christians in Galle rejected the Dutch form of the oath, yet at the same time used its non-acceptance to their advantage in preventing opponents from being admitted to the oath. Pilaane Godakandegge Gimara collided more visibly with the Dutch government in appealing the loss of inheritance due to her late husband's illegitimacy, which she did not seek to hide. Resistance, however subtle, was unavoidable and served in undermining state power. At the same time, the company was careful to ensure subordination and widespread recognition of their authority. The Dutch law had priority at the level of the higher judicial councils. Where possible this predominance was also imposed on the Landraad, but the effort, at times successful, to recognise the local normative order in that body was also perceivable. The exclusion of such adaptability between legal orders from the concept of legal pluralism is not viable, as it would thereby exclude the lived experience of inter-legality within the single Dutch legal regime. The local normative order was as much a social fact as Roman-Dutch law, and early colonial rulers understood that it could not be ignored.

We may use an 'ism' in the term 'legal pluralism', but Paul Halliday is right to have said that 'in the living of laws in the past, they were simply pluralities'. As in this study, in the hands of historians 'pluralism has become pluralities'.¹⁶ Thus the sources of all laws are hardly likely to be acquired rather than existing normative practices. Pluralities, both imposed and existing, operated within the council or in the codifications of the laws of other ethnic and religious groups in Sri Lanka. Pluralities show us the ways in which the early colonial world in southern Sri Lanka was experienced by its inhabitants. It is not the intention of this study, however, to romanticize the notion of pluralism.¹⁷ I have, as Halliday advocates for historians, observed pluralities. The observation of pluralities however must not be an end-point: I have shown that when discerned in practice they may fail as they could be either supported or contested. This is seen, for example, in the ultimately unsuccessful adoption of the local form of the oath, and in the Landraad's more consensual stance on the inheritance of non-marital children backfiring at a higher level of legal authority. In-depth studies of this nature can thus greatly inform us about legal pluralism in practice.

This in turn informs us about the nature of early colonial rule. Benton is right to have said that '[c]olonial states did not in an important sense exist *as* states in the early centuries of colonialism. They did not claim or produce a monopoly on legal authority or on the assignment of political and legal identity.' She points out that there was an undeniable dominance, 'but both colonizing factions and colonized groups were not irrational or deluded when they

¹⁴ Tamanaha, 'Understanding Legal Pluralism'.

¹⁵ William Twining refers to how lawyers can be resistant to the idea of legal pluralism in 'Normative and Legal Pluralism', 476. See for a fuller account Cotterrell, *Law, Culture and Society*.

¹⁶ Halliday, 'Laws' Histories: Pluralisms, Pluralities, Diversity', 262.

¹⁷ Santos and others have warned against such romanticisation. See Twining, 'Normative and Legal Pluralism', 502; Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (Cambridge University Press, 2002), 89.

sought advantage in the fractured qualities of rule.’¹⁸ As explained in the introduction, I have presented the ‘nuanced historical analysis of legal pluralism’ that Benton and Ross have lamented the loss of, but state is not as practicable as a focus on jurisdictional conflict that show structural changes.¹⁹ This thesis, however, uniquely gestures towards a nuanced history from below of the headmen and peasants involved in lawmaking through an approach that integrates socio-legal studies, the nature of colonial rule and peasant studies. An emphasis on jurisdictional conflicts alone would have skewed our understanding of legal pluralism and colonialism in Dutch Sri Lanka.

The incorporation of existing practices and ideologies into the enterprise of colonialism makes it less of a rupture than Nicholas Dirks contended.²⁰ The practice of law in Dutch times further emphasizes that the transformative role of colonialism, as it trickled down to peasants was not consistently dissonant with the local normative order. The legal structure had to come to terms with existing norms and legal practices. Yet the transplant, as it were, also sought to disrupt the existing order. The pluralities of the system in practice would invariably bring about a seemingly unsatisfactory association of both change and continuity, a position taken up by David Washbrook.²¹ The tempered normality of the recognition of pluralities would inevitably lead to such an association, as other means of managing the diversity of laws that were encountered would not be feasible. As Benton and Ross state, ‘[i]mperial officials could regard jurisdictional complexity as acting to reinforce state power rather than unleashing transformative conflicts. The dynamics of legal pluralism, they show, extended well beyond the end point of the mid-nineteenth century..., and beyond any other artificial marker separating “early modern” and “modern” worlds.’²² The Landraad in Galle shows the early colonial practices of legal pluralism, which in turn arguably had its origins in a much earlier time under the local normative order.

The company’s extensive penetration into native society can be seen through the Landraad, which is a rich source for understanding the intersection of local and external normative orders. This thesis is a rare step towards an in-depth study of a colonial judicial forum, but much unexplored territory still lies buried in the archives, waiting to be noticed.

¹⁸ Benton, *Law and Colonial Cultures*, 259.

¹⁹ Benton and Ross, *Legal Pluralism and Empires*, 5–6.

²⁰ Dirks, *The Hollow Crown*.

²¹ David Washbrook, ‘South India 1770–1840: The Colonial Transition’, *Modern Asian Studies* 38, no. 03 (July 2004): 479–516.

²² Benton and Ross, *Legal Pluralism and Empires*, 14.

APPENDIX I: EUROPEAN MEMBERS AT THE GALLE LANDRAAD 1759-96¹

<i>Name</i>	<i>Birthplace</i>	<i>1st appointment</i>	<i>Record in meetings</i>	
			<i>First</i>	<i>Last</i>
Aldons, Hendrik	Galle	1768	22 Jun 1782	25 Sept 1784
Aldons, Jacobus	Galle	1767	29 Apr 1786	24 Jul 1787
			5 Jan 1788	21 Mar 1789
Anthonisz, Steven	Galle	1762	31 Mar 1781	12 Dec 1795
Bergh, Adrianus van den	Dordrecht	1768	15 Jul 1769	7 Jan 1775
Bergheim, Bernhard Hendrik van	Colombo	1783	16 Feb 1788	21 Mar 1789
Brakel, Hendrik	Colombo	1737	14 Jul 1764	19 Dec 1772
Busing, Eijlert	Oldenburg	1760	21 Feb 1767	21 Mar 1772
Cadenski, Johan Pieter Simon	Jaffna	-	25 Oct 1786	28 Jun 1793
Cock, Cornelis de	Emden	1755	5 Sept 1767	30 Dec 1769
Conradie, Johan Fredrik	Kirchheim	1772	16 May 1778	9 May 1779
Cramer, Hendrik	Galle	1742	20 Jul 1763	16 Aug 1766
Engelbregt, Harmanus	Galle	1737	9 Jul 1768	30 Apr 1785
Engelbregt, Johannes	Galle	1738	21 Mar 1772	13 Feb 1776
Evaristo, Jean	[Spain]	-	9 Oct 1790	12 Dec 1795
Franken, Johan Harmanus	Heusden	1764	14 Oct 1775	25 Jul 1778
Fretz, Diederick Thomas	St Goar	1764	24 Feb 1770	2 Mar 1782
Frits, Roelof	Karlskron	1745	26 Apr 1760	30 Dec 1763
German, Jan Casper	Hildersheim	1766	9 Dec 1779	11 Oct 1783
Gijsel, Dirk Francois van	Colombo	1763	20 Apr 1786	12 Dec 1795
Graaff, Adriaan Sebastiaan van de	Huissen	-	14 May 1785	24 Mar 1787
Gratiaan, Johannes Franciscus	Bruges	-	14 Apr 1787	5 Apr 1788
Haan, Johannes de	Galle	1736	29 Sept 1759	30 Dec 1769
Haartel, Christian Hendrik	Altenberg	1757	16 May 1778	2 Jun 1781
			20 Apr 1786	14 Apr 1787
Hingert, Hendrik Johannes	Galle	1760	5 Jan 1788	28 Jun 1788
Huijberts, Christiaan	Galle	1745	21 Feb 1767	1 Dec 1787
Johnson, Hendrik Anthony	-	-	10 May 1793	12 Dec 1795
Jolles, Lourens	Jaffna	1760	31 Mar 1781	12 Dec 1795
Kersse, Daniel Gerardus	Colombo	1750	6 May 1775	31 Mar 1781
Koene, Hendrik	Amsterdam	1756	20 Jul 1771	12 Mar 1774
Kroner, George Michiel	Pappenheim	1760	25 Jul 1778	15 Jun 1782
Lasge, Nicolaas	Galle	1734	29 Sept 1759	25 Sept 1779
Leembruggen, Robbertus Henricus	Matara	-	9 Oct 1790	10 May 1793
Leeuw, Johannes de	Galle	1730	29 Sept 1759	6 Dec 1760
Lij, Andreas Everhardus de	Colombo	1778	24 Dec 1779	12 Oct 1782
Loose, Jan	Bremen	1752	25 Jul 1778	29 Jul 1780
Lourensz, Adriaan Hendrik	Galle	1762	19 Apr 1788	18 Feb 1792
Marci, Adolph Fredrik	Lubeek	1751	17 Sept 1762	6 Aug 1764
Marci, Paulus	Cochin	1760	14 Jul 1764	14 Feb 1767

¹ The Landraad councillors are given here in alphabetical order, with the dates indicating when they first and last appear in the available meeting records. At times their first day in the Landraad is corroborated by a letter of appointment from the Galle commander and formal introductions at the meetings. A few records of earlier meetings exist but are intermittent. Councillors who served for short periods from 1759 to 1796 may have escaped this list as some meeting data during this period is also missing. It must be kept in mind that some members were absent for long durations, citing reasons mentioned in chapter two. The 'last' date is the day on which the member is last listed in the available meeting records, but it does not mean that he was always present at that meeting. On some occasions, his death was announced on that day. The 'generale land- en zeemonsterrollen' of the VOC's Amsterdam chamber and S A W Mottau's indexes of acts of appointments from Galle and Colombo provided information on birthplace and first appointment in the east. Family trees published in the Journal of the Dutch Burgher Union and the database of VOC sea voyagers (<http://vocopvarenden.nationaalarchief.nl/>) were also useful in drawing up this table.

<i>Name</i>	<i>Birthplace</i>	<i>1st appointment</i>	<i>Record in meetings</i>	
			<i>First</i>	<i>Last</i>
Marin, August Charles de	Celle	1774	25 Jul 1778	21 Oct 1780
Martheze, Nicolaas Bernardus	Galle	1737	27 Jun 1767	5 Sept 1767
			7 Jan 1775	21 Sept 1776
			11 Mar 1780	15 Jul 1780
Mazius, Sixtus	Colombo	1737	14 Jul 1764	14 Feb 1767
Medeler, Hendrik Anthonij	Colombo	1751	21 Feb 1767	28 Nov 1767
Meurling, Johannes	Westerwijk	1745	20 Nov 1779	
Moor, Pieter Arend de	Colombo	1761	20 Apr 1786	12 Dec 1795
Nagel, Harmanus	Amsterdam	1749	8 Dec 1770	22 Jun 1771
Oosterlo, Maurits	Varnholte	1723	29 Sept 1759	6 Dec 1760
Otto, Coenraad	Mannar	1751	21 Mar 1789	2 Aug 1793
Poulier, Aarnout	Galle	1740	14 July 1764	6 Aug 1764
Poulier, Adriaan	Galle	1770	21 Apr 1781	15 May 1784
Prevo, Coenraad	-	1733	14 Jul 1764	8 Mar 1766
Ranzow, August Christian Anthon Graaf van	Oldenburg	1788	23 Aug 1793	12 Dec 1795
Rooij, Jacobus de	Galle	1740	9 Mar 1765	7 Jan 1775
Roosmale Cocq, Petrus Jacobus	Leiden	1764	16 May 1778	19 Aug 1785
			11 Dec 1790	12 Dec 1795
Runstoff, Casparus	Matara	1766	19 Aug 1785	14 Jan 1786
Samlant, Abraham	Colombo	1769	24 Dec 1779	12 Nov 1788
Schreuder, Johan Fredrik	Erfurt	1775	12 May 1787	1 Sept 1787
Schuler, Pieter William Ferdinand Adriaan van	Utrecht	1780	12 Nov 1788	23 Oct 1790
Sieling, Casper	Galle	1755	4 Jul 1772	25 Jul 1772
Silva, Pieter Simonsz de	Galle	1761	28 May 1785	12 May 1787
Sluijsken, Pieter	Amsterdam	1758	15 Jan 1766	14 Mar 1772
Stein, Johannes	Halle	1745	29 Sept 1759	15 Jul 1775
Strehl, Johan Theodoor	-	-	29 Sept 1759	22 Oct 1760
Stroebbe, Balthazar Hendrik	Osnabrück	1748	14 Jul 1764	27 Apr 1776
Stroebbe, Balthazar Nicolaas	Galle	1760	29 Jul 1775	21 Sept 1776
Swieten, Floris van	Leiden	1736	12 Jul 1760	15 Oct 1762
Teylingen, Theodorus van	Negapatnam	1784	24 May 1788	12 Nov 1788
Tekenborg, Jan David	Nijmegen	1763	21 Feb 1767	19 Dec 1772
Toussaint, Johannes	Colombo	1732	29 Sept 1759	6 Dec 1760
Trek, Justinus Christiaan	Colombo	1775	11 Jul 1787	12 Dec 1795
Velde, Egbert van de	Galle	1734	29 Sept 1759	6 Dec 1760
Velzen, Adriaan van	Batavia	1746	21 Feb 1767	26 Nov 1768
Vos, Pieter de	Colombo	1742	8 Jun 1765	21 Mar 1772
			16 Nov 1782	2 Feb 1793
Wahlberg, Johannes	Kalmer	1787	10 May 1793	12 Dec 1795
Wijnants, Gerrits Jansz	-	-	15 Aug 1772	21 Sept 1776
Zitter, Wilhelmus Gijsbert van	Galle	1766	8 Jul 1786	-

APPENDIX II: RULERS OF KANDY AND DUTCH GOVERNORS

Kings of Kandy 1591–1815

Vimaladharmasuriya I	1591–1604
Senerat	1604–1635
Rajasinha II	1635–1687
Vimaladharmasuriya II	1687–1707
Narendra Singha	1707–1739
Sri Vijaya Rajasingha	1739–1747
Kirti Sri Rajasingha	1747–1782
Rajadhi Rajasingha	1782–1798
Sri Vikrama Rajasingha	1798–1815

Dutch Governors of Ceylon 1640–1796

Willem J. Coster	1640
Jan Thyszoon	1640–1646
Jan Maatzuyker	1646–1650
Jacob van Kittensteijn	1650–1653
Adriaan van der Meijden	1653–1660
Rijklof van Goens	1660–1661
Adriaan van der Meijden	1661–1663
Rijklof van Goens	1663
Jacob Hustraart	1663–1664
Rijklof van Goens	1664–1675
Rijklof van Goens jr.	1675–1780
Laurens Pijl	1680–1692
Thomas van Rhee	1693–1697
Gerrit de Heere	1697–1703
Cornelis Jan Simons	1703–1707
Hendrik Becker	1707–1716
Isaac Augusteijn Rumpf	1716–1723
Johannes Hertenberg	1723–1726
Petrus Vuyst	1726–1729
Stephanus Versluys	1729–1732
Jacob Christiaan Pielat	1732–1734
Diederik van Domburg	1734–1736
Gustaaf Willem Baron van Imhoff	1736–1739
Willem Maurits Bruyninck	1739–1742
Daniel Overbeek	1742–1743
Julius Valentijn Stein van Gollonnesse	1743–1751
Gerard Jan Vreelandt	1751–1752
Johan Gideon Loten	1752–1757
Jan Schreuder	1757–1761
Lubbert Jan Baron van Eck	1762–1765
Iman Willem Falck	1765–1785
Willem Jacob van de Graaff	1785–1794
Johan Gerard van Angelbeek	1794–1796

APPENDIX III: LIST OF ACCOMMODESSAN GRANTS

<i>Position</i>	<i>amunu</i>	<i>pela</i>	<i>kuruni</i>
To a <i>maha</i> or first <i>mudaliyār</i> of the governor's gate	20		
To a second <i>mudaliyār</i> of the governor's gate	18		
To a <i>mohotiaar</i> ¹	14		
To a <i>mohandiram</i> of the guard of the governor's gate	14		
To a <i>mudaliyār</i> of the <i>dessave</i> called <i>atapattu mudaliyār</i>	12		
To the <i>mudaliyārs</i> of the <i>kōralēs</i> each	12		
All <i>mohandirams</i> each	8		
All <i>ārachchis</i> each	6		
All <i>kangāns</i>	4		
All <i>lascarins</i>	2		
The <i>kōrālas</i> of the Hewagam en Salpity <i>kōralēs</i> *	10		
A <i>mahavidāne</i> of the gold- and silversmiths gets**	6		
To a <i>vidāne</i> of a <i>pattu</i>	4		
To a <i>atukōrāla</i> ²	3		
To a <i>mohotti</i> of the <i>kōralēs</i> or secretary	3		
To a village writer	2		
To a village <i>vidāne</i>	1		
To a <i>terikōrāla</i> or servant of the <i>atukōrāla</i>		3	
To a <i>saparamādu</i> or permanent commissioner	3		
To a <i>mayorāl</i>	2		
To a <i>nainde</i>		2	
To a <i>kuruwerāle</i> or master of the elephant hunt	10		
To a <i>pantiya ārachchi</i> or chief of the elephants' stable	3		
To a <i>baddena ārachchi</i> or assistant of an elephant catcher	2		
To a <i>mahapannikila</i> or chief of the elephant drivers	2		
To a <i>kudapannikila</i> or assistant of a <i>mahapannikila</i>	1	2	
To a <i>kornak</i> or elephant driver	1		
To a <i>mahaduraya</i> or head of the <i>pannayas</i>		2	
To a <i>liyanaduraya</i> or writer of the <i>pannayas</i>		2	
To a <i>kudaduraya</i> or assistant of the <i>mahaduraya</i>		2	
To a <i>hulawaliya</i> or messenger		2	
To a <i>dekumkaraya</i> or attendant of the elephant stables		2	
To a <i>pannaya</i> or grass-cutter		3	
To a head of the gold- and silversmiths in Colombo	6		
To a head of the stone-cutters	4		
To a head of the goldsmiths in the <i>kōralēs</i>	3		
To a head of the iron smiths	2		
To a head of the carpenters	2		
To a head of the gold smith		3	
To a <i>gamachāria</i> or smith of the villages		2	
To a carpenter		2	5
To a <i>porovakāraya</i> or woodcutter		3	
To a <i>kangān</i> of the <i>pottebakkers</i>	1		
To a <i>pottebakker</i>		3	
To a <i>vidāne</i> or <i>pēdiya</i> of the <i>wassers</i>	1		
To a <i>wasser</i>		2	
To a <i>tamblinjero</i>	1		

¹ A clerk or secretary.

² An assistant to a *kōrāla*.

<i>Position</i>	<i>amunu</i>	<i>pela</i>	<i>kuruni</i>
To a <i>tamblinjero</i> of the villagers or <i>berewase</i>		2	
To a grain-measure called <i>mananna</i>	3		
To a coolie	1		
To a <i>vidāne</i> of the barbers	1		
To a barber			
To a <i>kangān</i> of the huntsmen	1	2	
To a huntsman	1		
To a horn player or <i>kambukāraya</i>	1		
To a <i>schalmij</i> ³ player or <i>horiyākaraya</i>	1		
To a provider of provisions for Kandyan ambassadors	6		

**Note in original: But the kōrālas of the other kōralēs should maintain themselves from the usual pehindums or the obligatory pingos, which the mayorāls should bring to them monthly...The wibadde vidānes, or collectors of the company taxes also get nothing, but they should manage with the 5 per cent excess and 2 parras paddy per month that the company allows them, apart from those who are also ārachchis over some lascarins for whom the company then allows land.*

***Note in original: But the other mahavidānes of the gold- and silversmiths get nothing.*

Source: Sluijsken, 'A Description of the Land Services,' (1784) p. 249-257. He refers to the Colombo Dessavony in this list, but implies in his description on Galle that it applies to that district as well.

³ A type of horn.

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SUMMARY IN DUTCH / NEDERLANDSE SAMENVATTING

De blanke lieden van den Gaalsen Landraad, ziende de onnoselheyd, onbedreventheijd en onkunde der inlandse hoofden die zitting in dat collegie hebben in de zaken die daarin getraceert worden, stooren zig aan dezer laatste gevoelens weijnig, worden ook niet aangetekend, maar gebruiken egter derzelver namen in de appointementen, eveneens of se mede gevoteert hadden...¹

Aldus een ontevreden inheems hoofd van Galle die zitting had in de Landraad tijdens de jaren veertig van de achttiende eeuw. Bovenstaand citaat is een voorbeeld van de spanningen die zich tijdens rechtszittingen in de Landraad voordeden. De institutionele ontwikkeling en het functioneren van de Landraad—een in Sri Lanka functionerende rechtbank tijdens de achttiende eeuw—is het onderwerp van dit proefschrift. Deze studie biedt inzicht in de regionale werking van de vroeg koloniale staat in het zuiden van Sri Lanka. In het eerste deel van het proefschrift wordt een overzicht gegeven van de dagelijkse werkzaamheden, rechters, procespartijen en getuigen binnen de Landraad van Galle. Het tweede deel richt zich op de normatieve ordes waaraan de Landraad haar werkwijze ontleende. Van invloed waren zowel de dominante lokale orde van de Sinhalese bevolking, als de wetten opgelegd door de VOC. De vroegmoderne rechtsgeschiedenis van Sri Lanka wordt hiermee geplaatst binnen het theoretische debat over rechtspluralisme (*legal pluralism*) en de aard van kolonialisme

De rechtsprekende leden van deze rechtbank bestonden voor een meerderheid uit ambtenaren van de Verenigde Oost-Indische Compagnie (VOC), terwijl een minderheid was samengesteld uit inheemse hoofden. De inheemse hoofden waren ondergeschikt aan de Europese leden, maar uit de bronnen komen schermutselingen naar voren waarin de inheemse leden hun positie subtiel bevechten. Het belang van inheemse deelname aan de zittingen van de Landraad werd nog benadrukt in de eerste jaren na de introductie hiervan, de jaren veertig van de achttiende eeuw, maar tijdens een aantal sessies aan het eind van de achttiende eeuw waren geen inheemse hoofden meer aanwezig. De hoofden waren invloedrijk, maar het was duidelijk dat zij in vergelijking met de VOC ambtenaren minder machtig waren. De invloed van de boerenbevolking, wier zaken werden behandeld in de Landraad, was nog geringer. Ondanks deze ongelijkheid is het van belang te realiseren dat er tussen de drie partijen een aanzienlijke onderlinge afhankelijkheid bestond.

Met de introductie van het Nederlandse rechtssysteem kwam de boerenbevolking van Sri Lanka voor het eerst in aanraking met rechtbanken die gebruik maakten van schriftelijke procedures. Ondanks de pogingen om de mondelinge procedures in stand te houden, werden de geschreven processtukken van de Landraad in toenemende mate ook door de lokale bewoners van belang geacht. Vanuit het perspectief van de bewoners bestond rechtspleging in de Landraad uit een afgesloten en vreemde ruimte waar zij naar binnen en weer naar buiten werden gestuurd. Binnen zaten buitenlandse personen met een zekere autoriteit samen met een aantal mensen van hun eigen achtergrond. Deze personen spraken meestal een vreemde taal. De Landraad vroeg de betrokkenen om documenten mee te nemen als bewijsstukken en getuigen waren vaak verplicht om een getekende getuigenverklaring te overhandigen die bij de zitting werd voorgelezen. Hiermee werd afgeweken van de lokale normatieve orde. Belangrijke ondersteunende documenten die gebruikt werden in de Landraad waren de *thombos*. De *thombos* waren landregisters opgesteld door de Nederlanders en zij waren een belangrijk hulpmiddel voor het vroeg-koloniale bestuur. De *thombos* vormden een integraal onderdeel van het ontstaansproces van een nauw omschreven sociaal en economisch regime.

Het was vooral via de landregistratie dat mannen en vrouwen op brede schaal in aanraking kwamen met het koloniale rechtssysteem. Als de afstand niet te groot was tenminste. Hoe verder weg van het bestuurlijk centrum in het zuiden, hoe minder frequent er een beroep op de Landraad werd gedaan. Het was niet nieuw dat vrouwen en mensen uit de lagere sociale klassen voor hun

¹ SLNA 1/94, 'Governor in Council Minutes', fol. 95r–v, 5 Feb 1745.

belangen opkwamen en naar de Landraad kwamen, aangezien het in het inheemse rechtssysteem ook gebruikelijk was geweest dat zij rechtszaken aanspanden. Pogingen om juridische zaken van vrouwen te laten afdoen door hun echtgenoten (zoals in Nederland gebeurde als uitvloeisel van het Romeins-Hollandse recht) slaagden niet volledig in deze rurale omgeving. De Landraad had een groot sociaal bereik en werd onderdeel van de leefwereld van de dorpsbewoners. Tegen het midden van de achttiende eeuw waren de bewoners gewend geraakt aan de Landraad en de thombo-registratie, en zij gebruikten deze kennis bij het beslechten van conflicten. Procespartijen moesten hiervoor kennis hebben van de procedures en de beste strategieën.

De VOC had een economisch belang bij een essentialistische benadering van identiteiten. De Landraad vertegenwoordigde een koloniaal rechtssysteem dat zowel reageerde op bestaande culturele categorieën als zelf een aandeel had in het herschikken en vormen van deze categorieën. Noties van essentiële verschillen aan de hand van kaste en beroep waren vastgelegd via de thombos. Bezit was gerelateerd aan deze categorieën en in de thombos werden de correcte sociale identiteiten en beroepen vastgelegd om zo landrechten te kunnen behouden. De boerenbevolking was erop gespitst om eventuele fouten in de weergave van hun beroep te laten verbeteren. Procespartijen met een gemengde identiteit beschouwden de Landraad als een plek waar onderhandeld kon worden binnen het veranderende juridische landschap.

Het aanpassen van een dergelijke pluralistische identiteit was niet altijd zonder obstakels. Dit was bijvoorbeeld het geval bij het bepalen van de waarheid, zoals onderzocht in hoofdstuk 4. De Nederlandse eed, waarbij twee vingers van de rechterhand in de lucht werden gestoken en gezworen werd op God, werd door de (grotendeels althans in naam Christelijke) bewoners oneerbiedig afgelegd, iets wat de VOC ergerlijk vond. Een lokale vorm van eedaflegging, waarbij gezworen werd op het leven van een familielid, was niet bruikbaar vanwege de mogelijkheid dat de eedaflegger in diskrediet gebracht werd door de tegenpartij. Het afleggen van de eed werd nauwelijks toegepast in de Landraad van Galle. Een Christelijke getuige die weigerde de Christelijke eed af te leggen en de lokale eed prefereerde (op zichzelf al een teken dat de introductie ervan betekenis had) liep het risico door de tegenpartij in diskrediet gebracht te worden, terwijl hij kon verwachten dat zijn keuze voor de Nederlandse of Christelijke eed ook bekritiseerd zou worden. Ondanks de flexibiliteit van de VOC met betrekking tot de vorm van de eed, nam de waarde van de eed af doordat degenen die de eed aflegden, terecht of onterecht, in diskrediet werden gebracht. De overtuiging dat inheemse personen onbetrouwbaar waren was hardnekkig. Deze overtuiging werd vergroot door het aandeel dat de inheemse bevolking hier zelf in had. Dit is een perspectief dat niet vaak naar voren wordt gebracht, maar dat bij nauwkeurige bestudering van de VOC-bronnen onmiskenbaar is. Pluralistische kenmerken van het rechtssysteem leidden dus niet altijd tot het gewenste effect, maar konden op onverwachte wijze toch invloed hebben.

In de kuststreken van Sri Lanka was wetgeving vooral relevant met betrekking tot het recht dat een rol speelde in de agrarische omgeving. Uit deze studie blijkt dat het proces grotendeels werd bepaald door de inheemse bevolking zelf. Hoofdstuk 5 richt zich op de wijze waarop de VOC het lokale grondbezit in de praktijk ontcijferde. Het hoofdstuk beschrijft de continuïteit van lokale gebruiken en de flexibiliteit van regels. De alledaagse methoden waarmee het eigendomsrecht werd vastgesteld waren overwegend afhankelijk van de inbreng van de bevolking. Via nieuwe discursieve platforms, zoals de Landraad en de thombo, werd de rechtspraak door koloniale ambtenaren gebruikt om controle uit te oefenen over het gebied. Zij waren ervan overtuigd dat, ondanks de complexiteit van het landrecht, dit de juiste methode was om het agrarische binnenland administratief controleerbaar te maken, in een proces dat ruimte liet voor onderhandeling.

Inheemse gebruiken met betrekking tot landbezit en het afbakenen hiervan, bestaande en nieuwe manieren om land te registreren, Nederlandse en lokale manieren om landbezit te meten, en traditionele communicatiekanalen zoals de tom-tom werden gecombineerd met een nieuw instituut waar conflicten konden worden beslecht. Traditionele vormen van regulering van de samenleving kwamen hierdoor in aanraking met andere kennisvormen en institutionele gebruiken die betrekking hadden op het geven van betekenis. Binnen het nieuwe juridische forum ontstonden—tijdens een proces van het combineren van geschreven stukken, gesproken bewijs en de herinneringen van bewoners—nieuwe vormen van het ordenen van kennis. Het was dus niet zo

dat simpelweg een buitenlands systeem aan de bevolking werd opgelegd, want het systeem dat zich ontwikkelde gedurende de achttiende eeuw kwam voort uit verschillende kennissystemen. De VOC had belang bij het definiëren van de eigendomsrechten, en de thombo en de Landraad waren de essentiële instrumenten om dat doel te bereiken. In de praktijk waren er zo nu en dan conflicten tussen procedurele regels en praktische ervaringen, waardoor de procedures tijdens het registratieproces moesten worden aangepast. Het belangrijkste doel van de thombo was te kunnen bepalen wie wat bezat en hoeveel belasting en gewassen zij de VOC schuldig waren. Uiteindelijk was de landregistratie een manier om het rendement van Sri Lanka als exploitatiekolonie te verhogen, en dit coherente en functionele instrument vormde de basis van het stelsel waarmee de compagnie belastinginkomsten genereerde. Het had ook een ideologische betekenis, aangezien de nieuwe Europese overheersers betekenis wilden ontleen aan het definiëren van het grondbezit, ook al was dit gefundeerd op de lokale normatieve orde.

Er was onmiskenbaar een groeiende dominantie van VOC-regels binnen het familierecht. Huwelijks- en echtscheidingswetten waren rechtsgebieden waar de intentie bestond om lokale gebruiken te transformeren, maar waar dat is niet volledig gelukt. Toch lijkt het voorschrift tot huwelijksregistratie en, in mindere mate, het rechtsgeldig ontbinden van huwelijken, te zijn doorgedrongen tot de inheemse maatschappij. Gebieden ver van het bestuurscentrum, zoals bijvoorbeeld gemeenschappen in de Hinidum Pattu, werden door deze hervormingen echter nauwelijks bereikt. Het verband tussen legale huwelijken en landeigendom werd niet consistent benadrukt in de Landraad, maar zou een langdurende erfenis van het Nederlands gezag worden tijdens de negentiende en twintigste eeuw. Er werd ook een begin gemaakt met de Nederlandse beïnvloeding van rechtsgebieden die betrekking hadden op andere aspecten van het familieleven. Kwesties over buitenechtelijke kinderen werden over het algemeen door de leden van de Landraad welwillend behandeld, maar dergelijke in consensus genomen beslissingen werden doorgaans verworpen door de hogere autoriteiten die alleen uit Europeanen bestonden. Procespartijen conformeerden zich aan de wetten geïntroduceerd door de VOC en herdefinieerden tevens hun eigen traditionele ideeën over bepaalde aspecten van de familie, als dit in hun eigen economisch belang was. Het is aannemelijk dat de afwezigheid van strikte regels en de gelegenheidsrechtspraak van de Singalese rechtstraditie leidden tot een dominantie van de Nederlandse wetten die voortkwamen uit een rechtssysteem dat duidelijker gedefinieerd was. Nederlandse wetten over erfrecht, waarin bepaald was dat nalatenschap toekwam aan alle kinderen in gelijke delen, werden systematisch gebruikt in de Landraad. Bepaalde elementen van het Singalees recht worden echter ook teruggevonden in de Landraad: het concept van assistentie voor ouders, waarbij een dochter of zoon die zorgde voor een ouder voorrang kreeg op de erfenis, bleef in stand. Dergelijke erkenning van de lokale normatieve orde, een direct resultaat van de aanwezigheid van inheemse raadsleden, was mogelijk via de gelegenheidsrechtspraak maar was niet terug te vinden in de officiële reglementen.

Het belang van duidelijk te onderscheiden culturele grenzen in de jurisdictie wordt in dit proefschrift ter discussie gesteld. Aangetoond wordt dat aanpassing, onderhandeling en vindingrijkheid bruikbare concepten zijn voor het begrijpen van juridische interactie in achttiende-eeuws Sri Lanka. De kolonisator onderhandelde over voorgenomen juridische hervormingen aangezien weerstand door de lokale bevolking financiële gevolgen zou kunnen hebben voor de koloniale onderneming. Het erkennen van de lokale normatieve orde was in het belang van de VOC, maar dit vond plaats binnen bepaalde grenzen. Wat betreft het familierecht, werden de Singalese wijze van echtverbinding, het concept van assistentie door familieleden, en het erfrecht van buitenechtelijke kinderen erkend in de Landraad. In het geval van deze normatieve gebruiken was de bevolking in staat geweest de Nederlanders tot inschikkelijkheid te bewegen. Overeenkomsten over landeigendom werden erkend door het Nederlands bestuur vanwege de duidelijke economische voordelen die dit voor de VOC met zich meebracht. Met betrekking tot het accepteren van Singalees recht kan geconcludeerd worden dat de VOC een middenweg vond tussen strikt en toegeeflijk.

De bestaande vakliteratuur in Sri Lanka trekt een scherpe lijn tussen het gebruik van het Singalees en het Romeins-Hollands recht door de VOC. De onderliggende aannames van deze discussie kunnen uitsluitend leiden tot een dichotome oplossing voor het probleem. Het debat zou zijn voordeel kunnen doen met de nieuwe literatuur over rechtspluralisme. Deze literatuur geeft

goede gronden voor een verandering in de wijze waarop het verhaal wordt verteld in het huidige juridische onderwijs in Sri Lanka. De nadruk zou moeten liggen op het rechtspluralisme, aangezien de Landraad laat zien dat een vorm van co-existentie mogelijk was van twee concurrerende normatieve ordes binnen een rechtssysteem. Het Nederlands recht had de prioriteit op het niveau van de hogere rechtbanken. Waar mogelijk werd deze dominantie ook opgelegd binnen de Landraad, maar de—soms succesrijke—poging om de lokale normatieve orde binnen deze rechtbank te erkennen is tevens waarneembaar. De lokale normatieve orde was net zo goed een maatschappelijk gegeven als het Romeins-Hollands recht, en vroeg-koloniale bestuurders begrepen dat zij dit niet konden negeren.

Het pluralisme, zowel opgelegd als al bestaand, opereerde binnen de rechtbank en laat ons zien hoe het vroeg-koloniale bestuur in Zuid Sri Lanka door de bevolking werd ervaren. Het observeren van het pluralisme is echter geen eindpunt: in de praktijk kon het immers falen, worden ondersteund of betwist. Dit is bijvoorbeeld te zien aan de uiteindelijk onsuccesvolle adoptie van de lokale eedaflegging, en aan het door hogere instanties verwerpen van de toegeeflijke houding van de Landraad ten opzichte van het erven door buitenechtelijke kinderen. Diepgaande studies kunnen ons informeren over het rechtspluralisme in de praktijk. Dit proefschrift presenteert een genuanceerde historische analyse van het rechtspluralisme. Enkele onderzoekers hebben het verlies van dit pluralisme betreurd en met name het conflict beschreven tussen de rechtsgebieden. Deze studie wijst echter op unieke wijze in de richting van een geschiedenis van onderaf, waarin hoofden en de boerenbevolking betrokken waren bij het ontstaan van wetgeving. Dit werd gerealiseerd door middel van een benadering waarin sociaaljuridisch onderzoek, onderzoek naar de aard van koloniaal bestuur en rurale geschiedenis samen werden gebracht. Nadruk op het conflict tussen de rechtsgebieden alleen zou ons begrip van het rechtspluralisme en kolonialisme in Nederlands Sri Lanka slechts hebben vastgepind.

Dit proefschrift informeert ons over de aard van het vroege koloniale bestuur. De incorporatie van bestaande gebruiken en ideologieën in de uitvoering van het kolonialisme maakte de ervaring met de Landraad een minder ingrijpende verandering voor de boerenbevolking die ermee in aanraking kwam. De rechtspraktijk in de Nederlandse tijd benadrukt dat de transformerende rol van het kolonialisme, zoals het naar beneden sijpelde richting de boerenbevolking, niet per definitie dissonant was met de lokale normatieve orde, ook al zouden sommige hoofden, zoals hierboven geciteerd, het hiermee oneens zijn. De juridische structuur was in verbinding gekomen met de bestaande normen en juridische gebruiken. Toch zou de juridische transplantatie, want dat was het, ook een verstoring betekenen van de bestaande situatie. Het rechtspluralisme vormde daardoor in de praktijk een ogenschijnlijk onbevredigend geheel van zowel verandering als continuïteit. De ontstane situatie waarin pluraliteiten erkend werden leidde onvermijdelijk tot een dergelijk enigszins chaotisch geheel, aangezien andere manieren van het omgaan met een diversiteit aan wetten niet uitvoerbaar zouden zijn. De vergaande penetratie van de VOC in de inheemse maatschappij kan geobserveerd worden via de Landraad, die een rijke bron vormt voor het begrijpen van de elkaar kruisende lokale en externe normatieve ordes.

CURRICULUM VITAE

Nadeera Rupesinghe was born in Colombo, Sri Lanka in 1980. In 2001 she began her BA in history (honours) which she passed with distinction at the University of Colombo. She obtained an Encountering a Common Past in Asia (Encompass) scholarship from 2007 to 2010 for a foundation year BA and MPhil, which she obtained with distinctions at the Institute for History in Leiden University. The programme was funded by the Dutch Ministry of Education, Culture and Science. Thereafter she was an assistant-in-opleiding (aio; teaching and research assistant) at the same institute from 2010 to 2013, a position funded by the Netherlands Organisation for Scientific Research and the Leiden University Fund. In 2013 she passed the national exam in Dutch as a second language (NT2 State Exam Programme II). From October 2013 she was a guest researcher at the Institute for History for a year.

PROPOSITIONS BELONGING TO *NEGOTIATING CUSTOM: COLONIAL LAWMAKING IN THE GALLE LANDRAAD* BY NADEERA RUPESINGHE

1. Contrary to the *communis opinio* among legal historians a nuanced understanding of pluralities in practice is the answer to the question on whether and in what manner the Sinhalese laws were used by the Dutch.
2. The ideas and practices of the local normative order were used by the Dutch colonial power, yet that order was also imposed upon by foreign laws.
3. The institutional innovations of the colonial Landraad and cadastral thombos were surprisingly widely accepted by eighteenth-century indigenous peasants.
4. Local headmen were secondary to Europeans as councillors of the Landraad. (Contra A St V Jayewardene, 1901 and *Karonchihami v Angohami*, 1904)
5. Focusing on major jurisdictional conflicts alone would skew our understanding of the everyday lived experience of judicial forums. (Contra Benton and Ross, 2013)
6. The production of truthful subjects in a colonial judicial forum was not practicable whether attempted through local or foreign custom, as procedure could be exploited. Whether litigants followed the ninth commandment or not, legal strategy took over.
7. The complex web of norms that govern us can only be fully described through interdisciplinarity.
8. Tiny text in the margin (*marginale opmerkingen*) transcribed with difficulty can contain gems of stories about individuals.
9. The cadastral thombos are the ultimate reference for studying property rights.
10. The greatest question of all time is who am I, not why some nations are rich and some are not.
11. Without digital records, our history is lost.
12. A thesis is about figuring out how to get stumped and then, crucially, unstumped.