Negotiating custom : colonial lawmaking in the Galle Landraad

Seneviratne-Rupesinghe, N.T.

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

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[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

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[3] For an experiment in connecting Sri Lanka to Victor Lieberman's theory of 'protected rimlands' of Southeast 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 *Karonchihami v Angohami* to the Landraad mentioned at the beginning of this introduction is brought forward as evidence[8] that the Dutch had applied the laws of the Sinhalese, the majority community in the country. *Karonchihami 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

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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-

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[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 Johanis 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

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[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-

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[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 tenurial 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

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[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

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[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

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[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 legitimation 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

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[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 juridicial 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

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[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.