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**Negotiating custom : colonial lawmaking in the Galle Landraad**  
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# **PART I**

## **INSTITUTIONS AND PEOPLE**



## Chapter 1 Building the Landraad

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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.<sup>1</sup> 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.<sup>2</sup> 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

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<sup>1</sup> 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).

<sup>2</sup> *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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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

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

<sup>4</sup> 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).

<sup>5</sup> *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.

<sup>6</sup> *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.<sup>7</sup> 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.'<sup>8</sup> 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.'<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> The *Girā Sandēsaya*, a pastoral poem written during his reign, stated that he strictly followed the Manusmriti or the laws of Manu,<sup>12</sup> which is a Sanskrit text originating from India that deals

<sup>7</sup> 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.

<sup>8</sup> 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.

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

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

<sup>11</sup> Cooray, *Legal System*, 103.

<sup>12</sup> *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.<sup>13</sup> F A Hayley however states that ‘such ordinances seem to have been forgotten in course of time, or were disregarded by subsequent kings.’<sup>14</sup> 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’,<sup>15</sup> 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.’<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup> All prod-

<sup>13</sup> Vohārika means judge or justice in Pali. Wilhelm Geiger, *The Mahāvamsa* (Colombo: Govt. Press, 1986), chap. 36, 128.

<sup>14</sup> Hayley, *A Treatise on the Laws and Customs*, 55.

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

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

<sup>17</sup> 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).

<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> It was not the intention to mete out punishment through the Gamsabhāva, 'their endeavours being directed to compromise', as D'Oyly writes.<sup>24</sup> 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.'<sup>25</sup> Dispute negotiation through compromise was more the order of the day.<sup>26</sup> 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).<sup>27</sup> 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,<sup>28</sup> but Ralph Pieris believes this was limited to the dry zone of Nuvarakalaviya and Matale. Pieris points

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<sup>19</sup> 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.

<sup>20</sup> Cooray, *Legal System*, 108–112.

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

<sup>22</sup> 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.

<sup>23</sup> Cooray, *Legal System*, 108.

<sup>24</sup> D'Oyly, *Constitution of the Kandyan Kingdom*, 24:43.

<sup>25</sup> Pieris, *Sinhalese Social Organization*, 149.

<sup>26</sup> 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).

<sup>27</sup> Obeyesekere, *Land Tenure*, 49.

<sup>28</sup> 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 Ratasabhāva 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 Ratasabhāva important in Matale and the Nuvarakalaviya which were north of Kandy.<sup>29</sup> 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 Nāyakkar 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.<sup>30</sup> While Anuradhapura was important for its place in a spiritual topography, establishing judicial control in that region from the centre was more difficult. The Vanniyārs or chieftains of the Vanni, an imprecisely defined region above the Nuvarakalaviya, wielded judicial and police powers independent of the centre.<sup>31</sup>

The Ratasabhāva 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 *gamarāla* 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.'<sup>32</sup> In most areas in the Kandyan Kingdom, the next line of appeal after the Gamsabhāva was likely to have been the state officials who had judicial powers and not another board such as the Ratasabhāva. There is however another judicial forum, the Sākki Balanda,<sup>33</sup> that John Davy believed was in operation under the Kandyan kings.<sup>34</sup> 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 Gamsabhāva 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*, *arāchchis*, *lekams*, *ratemabatayas*, *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.<sup>35</sup>

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<sup>29</sup> 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.

<sup>30</sup> Sivasundaram, 'Buddhist Kingship', 114.

<sup>31</sup> 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.

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

<sup>33</sup> Literarily, this means investigating evidence as *sākki* means evidence and *balanda* means to examine.

<sup>34</sup> 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.

<sup>35</sup> 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.'<sup>36</sup> 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.<sup>37</sup>

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.<sup>38</sup> 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.<sup>39</sup> The formal operation of the Mahanaduva is best described in the works of D'Oyly and Ralph Pieris.<sup>40</sup> 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

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<sup>36</sup> D'Oyly, *Constitution of the Kandyan Kingdom*, 24:42.

<sup>37</sup> 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.

<sup>38</sup> Cooray, *Legal System*, 110.

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

<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> 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 *marelheiros*, will be looked at here.

*Marelheiros* 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 *marelheiros* 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.’<sup>45</sup> 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.

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<sup>41</sup> 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.

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

<sup>43</sup> De Silva, *Portuguese in Ceylon*, 158.

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

<sup>45</sup> 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’.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup> 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-

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<sup>46</sup> Hayley, *A Treatise on the Laws and Customs*, 22.

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

<sup>48</sup> 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.<sup>49</sup> 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).<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup> 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

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<sup>49</sup> A commandment was an administrative unit created by the VOC.

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

<sup>51</sup> 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.

<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup> 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.<sup>55</sup> This may have been due to emigrants to the Kandyan territories returning from the late seventeenth century onwards.<sup>56</sup> 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.<sup>57</sup> 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.’<sup>58</sup> The appointment of native commissioners is significant in that it

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<sup>53</sup> 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.

<sup>54</sup> Arasaratnam, *Dutch Power in Ceylon*, 130–131.

<sup>55</sup> Hovy, *Ceylonees Plakkaatboek*, vol. 1; cxxiii.

<sup>56</sup> 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.

<sup>57</sup> Hovy, *Ceylonees Plakkaatboek*, vol. 1; cxxiii–cxxiv.

<sup>58</sup> ‘[T]en princepale reguleren na de oude wetten en de coustume des lants, voor zoveel deselve aengenomen connen worden ende geen bijzondere plakcaten 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 dagelijksse 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.<sup>59</sup> 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 plakkaten, but they do not seem to have operated efficiently.<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup>

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.<sup>63</sup> Jonathan Israel writes that Van Imhoff thought it was necessary 'to extend control, rationalize administration, law, and health measures as well as trade'.<sup>64</sup> 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.

<sup>59</sup> *Ibid.*, vol. 1: c.

<sup>60</sup> *Ibid.*, vol. 1: civ, n. 186.

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

<sup>62</sup> 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.

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

<sup>64</sup> *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.<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup> 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 Gollenesse in the 1740s. Van Gollenesse 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.<sup>68</sup> He had some experience with the administration of justice in Malabar, where he called for diligent work by the members of the court.<sup>69</sup> Between van Imhoff's departure in 1739 and 1743 Willem Maurits Bruyninck and Daniel Overbeek held office.<sup>70</sup> Some work on setting up the Landraad and the thombos began in their terms of office, but it was Van Gollenesse who issued the first set of instructions on the thombo registration, and

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<sup>65</sup> Imhoff, *Memoir Left by Van Imhoff*, 6.

<sup>66</sup> 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.

<sup>67</sup> 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.

<sup>68</sup> A Galletti, *The Dutch in Malabar : Being a Translation of Selections Nos. 1 and 2* (Madras: Govt. Press, 1911), 37. Van Gollenesse 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.

<sup>69</sup> On leaving Malabar Van Gollenesse 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.

<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup> 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'.<sup>74</sup> 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.<sup>75</sup> 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.<sup>76</sup> In any case, disputes related to a higher value could be submitted to the Civiele 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

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<sup>71</sup> 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.

<sup>72</sup> 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.

<sup>73</sup> Imhoff, *Memoir Left by Van Imhoff*, 19.

<sup>74</sup> *Ibid.*

<sup>75</sup> 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.

<sup>76</sup> Hovy, *Ceylonees Plakkaatboek*, vol. 1; cvii.

must go to the Landraad.<sup>77</sup> 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 vil-  
village was the seat of the overseer of Galle, who was also the president of the Landraad.<sup>78</sup> 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.<sup>79</sup> 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.<sup>80</sup> Meetings without either the president or vice president were very rare.<sup>81</sup> 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.<sup>82</sup> 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.

<sup>77</sup> 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.

<sup>78</sup> The Colombo Landraad was in Hulftsdorp, at the residence of the *dessave* of Colombo.

<sup>79</sup> 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.

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

<sup>81</sup> 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.

<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup> 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.<sup>85</sup> 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.<sup>86</sup> 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.<sup>87</sup> 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

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<sup>83</sup> 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.

<sup>84</sup> These were recorded in separate volumes.

<sup>85</sup> 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.

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

<sup>87</sup> 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.<sup>88</sup> 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.<sup>89</sup> 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.<sup>90</sup> 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.<sup>91</sup> 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.<sup>92</sup> Yet some borrowing from administrative (and other) forms of Dutch can be seen in Sinhala—the Landraad was very likely referred to as the *lanthraduwa* up to the early nine-

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

<sup>89</sup> 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.

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

<sup>91</sup> 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.

<sup>92</sup> 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.<sup>93</sup> 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,<sup>94</sup> 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.<sup>95</sup> 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.<sup>96</sup> 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.<sup>97</sup>

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.<sup>98</sup> 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.<sup>99</sup> 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

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<sup>93</sup> 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.

<sup>94</sup> Mottau, 'Instructions for Landraden', 15.

<sup>95</sup> 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.

<sup>96</sup> 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.

<sup>97</sup> Mottau, 'Instructions for Landraden', 5.

<sup>98</sup> *Ibid.*, 9. See also Bailly, *Recht Voor de Raad*, 140.

<sup>99</sup> 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.<sup>100</sup> 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.<sup>101</sup>

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'.<sup>102</sup> 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-

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<sup>100</sup> 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.

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

<sup>102</sup> 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.<sup>103</sup> 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.<sup>104</sup> 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.<sup>105</sup>

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.<sup>106</sup> 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*.<sup>107</sup> 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.<sup>108</sup> 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.<sup>109</sup> 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.<sup>110</sup> 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 *rekest* (request) from the

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<sup>103</sup> Schepper et al., ‘Prolegomena’, 279.

<sup>104</sup> 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.

<sup>105</sup> Mottau, ‘Instructions for Landraden’, 8–9.

<sup>106</sup> *Ibid.*, 4.

<sup>107</sup> 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.

<sup>108</sup> Cooray, *Legal System*, 111.

<sup>109</sup> 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.

<sup>110</sup> 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.<sup>111</sup> 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.<sup>112</sup> 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.<sup>113</sup> The procedure for issuing summons, however, was different if the defendant was a *burger*.<sup>114</sup> Non-appearance by plaintiffs and defendants was punished with fines of half a rixdollar or one rixdollar.<sup>115</sup> The instructions state that the fines went into a Landraad 'box' but the minutes refer to the diocese poor being the beneficiary.<sup>116</sup>

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.<sup>117</sup> 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 plaints and depositions of witnesses.<sup>118</sup> 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

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<sup>111</sup> 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.

<sup>112</sup> Schepper et al., 'Prolegomena', 278.

<sup>113</sup> 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.

<sup>114</sup> Mottau, 'Instructions for Landraden', 6.

<sup>115</sup> *Ibid.*, 6-7.

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

<sup>117</sup> Mottau, 'Instructions for Landraden', 7-10.

<sup>118</sup> *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.<sup>119</sup>

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.<sup>120</sup> All judgements had to be made in the name of the 'Hoogmogende' or members of the States General in The Netherlands.<sup>121</sup> The 1789 instructions state that reasons for a judgement had to be provided.<sup>122</sup> 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.<sup>123</sup> In the precolonial legal order, a decree was communicated to the parties orally which was occasionally given in writing.<sup>124</sup> 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 2<sup>nd</sup> Adikar, for Lands situated within his general local Jurisdiction.'<sup>125</sup> 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.<sup>126</sup>

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<sup>119</sup> Ibid., 7.

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

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

<sup>122</sup> Mottau, 'Instructions for Landraden', 5.

<sup>123</sup> Horst, *Compensation for Improvements*, 121–122.

<sup>124</sup> Cooray, *Legal System*, 111.

<sup>125</sup> 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.

<sup>126</sup> Mottau, 'Instructions for Landraden', 13.



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.<sup>127</sup> 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.<sup>128</sup>

### 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.<sup>129</sup> All sorts of cases were to be brought before the Landraad.<sup>130</sup> 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.<sup>131</sup> 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.<sup>132</sup>

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.<sup>133</sup> Entries pertaining to various cases and a smaller number of

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<sup>127</sup> Cooray, *Legal System*, 111.

<sup>128</sup> 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.

<sup>129</sup> Nadaraja, *The Legal System of Ceylon*, 30n.

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

<sup>131</sup> Nadaraja, *The Legal System of Ceylon*, 8, 30n.

<sup>132</sup> 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.

<sup>133</sup> 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.<sup>134</sup>

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.<sup>135</sup>

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

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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.

<sup>134</sup> Cornelis van Bynkershoek, as a judge of the Hoge Raad (Supreme Court) of Holland, Zeeland and Westfriesland 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 Observations 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.

<sup>135</sup> 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 *rajakariya*) 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.<sup>136</sup> In the final analysis, as service issues had to do with access to property, such cases were also connected to land.<sup>137</sup> 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.<sup>138</sup> 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.<sup>139</sup>

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.<sup>140</sup> Another case involved an investigation into the lands belonging to a revenue farmer and subsequent sale of them to recover arrears in rent payments.<sup>141</sup> However no cases of revenue farming involving rent payers and farmers were heard, although disputes between them could be heard in the Landraad.<sup>142</sup> In another case, Coenraad Hendeling, a sergeant in the *burgerij* who lived outside the town, was condemned to pay the *mayoral*<sup>143</sup> 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

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<sup>136</sup> See Appendix III for this list.

<sup>137</sup> 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.

<sup>138</sup> 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.

<sup>139</sup> 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.

<sup>140</sup> 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.

<sup>141</sup> 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.

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

<sup>143</sup> 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).<sup>144</sup> Inhabitants often defaulted on tax payments.<sup>145</sup> 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'.<sup>146</sup> Permission for the sale of lands was frequently sought after. The Landraad instructions of 1789 detail the regulations for the sale of land.<sup>147</sup> 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.<sup>148</sup> 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.<sup>149</sup> 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.<sup>150</sup> 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.<sup>151</sup> It was also necessary for the *thombobouder* (thombo-keeper) to confirm ownership.<sup>152</sup> In one case an *edictale citatie* (summons with drums in Sri Lanka) was issued for claimants to come forward before a sale was made.<sup>153</sup> At times disputes over whether a transaction was a sale or mortgage (*verpanding*)<sup>154</sup> 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

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<sup>144</sup> 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.

<sup>145</sup> 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.

<sup>146</sup> 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.

<sup>147</sup> 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.

<sup>148</sup> 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.

<sup>149</sup> Kotelawele, 'Agrarian Policies'.

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

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

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

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

<sup>154</sup> 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.<sup>155</sup> 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.<sup>156</sup> 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.<sup>157</sup>

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.<sup>158</sup> 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.<sup>159</sup> 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.<sup>160</sup> 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.<sup>161</sup>

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

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<sup>155</sup> SLNA 1/6513, ‘Minutes, GL’, 47r, 20 May 1780.

<sup>156</sup> *Ibid.*, fol. 60r, 24 Jun 1780.

<sup>157</sup> 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.

<sup>158</sup> 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.

<sup>159</sup> SLNA 1/6511, ‘Minutes, GL’, fol. 57r–v, 12 Sept 1778.

<sup>160</sup> 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.

<sup>161</sup> 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.<sup>162</sup> 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.<sup>163</sup> 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.<sup>164</sup> 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.<sup>165</sup> 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 *lĕkam miti* which were land rolls written on palm leaves.<sup>166</sup> 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.<sup>167</sup> 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-

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

<sup>163</sup> 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 thiyavada?* (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).

<sup>164</sup> 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.

<sup>165</sup> 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.

<sup>166</sup> See, for an introduction to the *lĕkam miti*, H A P Abhayawardhana, *Lĕkam Miti Vimarshanaya (A Critical Study of Lekam Miti)* (Colombo: Dept of National Archives, 2009).

<sup>167</sup> 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.<sup>168</sup> 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.<sup>169</sup> 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,<sup>170</sup> 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'.<sup>171</sup> Yet, for the registrars, the old thombos were a convenience, as it was for some property owners.<sup>172</sup> 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.<sup>173</sup> 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.<sup>174</sup> The thombos of Colombo were revised on three occasions in the eighteenth century.<sup>175</sup> The Galle thombo compilation followed an altogether different chronology. It is possible that as the

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<sup>168</sup> 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.

<sup>169</sup> 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.

<sup>170</sup> Clegghorn suggests this in his minute. Pieris, 'The Clegghorn Minute', 138.

<sup>171</sup> '[Z]o hebben deselve tot nog toe eger 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.

<sup>172</sup> 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 secretesse 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.

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

<sup>174</sup> 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).

<sup>175</sup> 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.<sup>176</sup>

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 1745<sup>177</sup> 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.<sup>178</sup> 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 plakkaten.<sup>179</sup> 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 best<sup>180</sup> 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.<sup>181</sup> 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.<sup>182</sup> Jurriaanse says this officer is first mentioned on 16

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<sup>176</sup> 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.

<sup>177</sup> Mottau, 'Documents on Ceylon History'.

<sup>178</sup> Imhoff, *Memoir Left by Van Imhoff*, 21–23.

<sup>179</sup> Printed by the VOC press in Colombo. Jurriaanse, *Catalogue*, 245.

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

<sup>181</sup> 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.

<sup>182</sup> 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.<sup>183</sup> 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.”<sup>184</sup> 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.<sup>185</sup> 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.<sup>186</sup> Incidentally, Governor Van Gollenesse was disappointed that surveying was not done according to European methods of measurement but with seed as the unit of measurement.<sup>187</sup> 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.<sup>188</sup> Expertise on ‘land and legal affairs’ was considered to be low among the thombo commissioners.<sup>189</sup> Thombo commissioners were frequently upbraided as seen in the Governor in Council resolutions and letters to Galle.<sup>190</sup> 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

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<sup>183</sup> Jurriaanse, *Catalogue*, 245.

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

<sup>185</sup> 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.

<sup>186</sup> 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.

<sup>187</sup> 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.

<sup>188</sup> ‘[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.

<sup>189</sup> Governor Van Gollenesse 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.

<sup>190</sup> 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.<sup>191</sup>

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.<sup>192</sup> 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.<sup>193</sup> Yet this had not been successful. Van Gollenesse 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.<sup>194</sup>

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.’<sup>195</sup> This had echoes in other areas of the country as well, where the thombo registration even caused violent resistance.<sup>196</sup> The instructions to the thombo commissioners of 1745 also state that the ‘influential’ actively opposed the registration.<sup>197</sup>

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<sup>191</sup> ‘Aangaande het poinct 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, genoegzaam 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.<sup>s</sup> 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 gebrekelik 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.

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

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

<sup>194</sup> ‘Het is te verwonderen, dat men hier van zulke clagten niet hoord maar alleen op Gale en wat de prentse onnoselheid en gebrekkigheid der dorpshoofden belangt zo kan men niet denken, dat er zulke eenvoudige menschen gevonden worden die niet zouden weeten 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.

<sup>195</sup> Imhoff, *Memoir Left by Van Imhoff*, 20.

<sup>196</sup> Governor Van Gollenesse attempted to introduce systematic surveys in the Hina Kōralē (Colombo Desavony) which were opposed by the people. Sinnappah Arasaratnam, ‘Introduction’, in *Memoir of Julius Stein van Gollenesse*, by Julius Stein van Gollenesse (Colombo: Dept of National Archives, 1974).

<sup>197</sup> Mottau, ‘Documents on Ceylon History’, 180.

Still, men and women came to the Landraad 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’<sup>198</sup> 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.’<sup>199</sup> 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.<sup>200</sup> 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).<sup>201</sup> 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.<sup>202</sup> 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.’<sup>203</sup> A proper review of their use in court today is timely.

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<sup>198</sup> ‘[H]et wesentlijke wet boek.’ Pieter Sluijsken, ‘Eene beschrijving van de landdienst op Ceylon: Zo uyt ondervinding als uyt oude papieren tezaemen gebracht (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.

<sup>199</sup> ‘[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 vereijstcht 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.

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

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

<sup>202</sup> 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.

<sup>203</sup> 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.<sup>204</sup> 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.<sup>205</sup> 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.<sup>206</sup> 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'<sup>207</sup> and '[t]his is all customary according to the old ways.'<sup>208</sup> 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

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<sup>204</sup> 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.

<sup>205</sup> 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'.

<sup>206</sup> Mottau, 'Instructions for Landraden', 5.

<sup>207</sup> 'Deeze gerechtigheid 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.

<sup>208</sup> '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’.<sup>209</sup> 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.<sup>210</sup>

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.<sup>211</sup> 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.<sup>212</sup> 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.<sup>213</sup> 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

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<sup>209</sup> ‘Of niet een constant gebruik onder de Sinhalesen 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 besteeden, en wat dan den laatst gem. voor profijt daarvan heeft.’ SLNA 1/6534, ‘Interrogations, GL’, fol. 15r, 9 Jul 1778.

<sup>210</sup> 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.

<sup>211</sup> Horst, *Compensation for Improvements*, 121.

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

<sup>213</sup> 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.<sup>214</sup> 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-

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<sup>214</sup> 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.