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Chapter 3 Facing the Law

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

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

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

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

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

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

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

3.1 Social Formations in Eighteenth-century Sri Lanka

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹³ Rupesinghe, 'Strange Cooperation'.

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

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

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

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

¹⁸ Rupesinghe, 'Strange Cooperation', 76.

¹⁹ Raben, 'Batavia and Colombo', 106.



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

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

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

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

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

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

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

3.1 Litigants and Witnesses

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

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

²³ Dewasiri, *Adaptable Peasant*, 85.

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

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

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

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

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

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

²⁷ Bailly, *Recht Voor de Raad*, 219.

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

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

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

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

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

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

3.2 Gender: Women and Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁴⁶ This case is described in detail in chapter six.

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

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

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

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

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

3.3 Social Status of Local Actors

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

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

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

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

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

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

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

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

Table 3.1 Social formation of litigants and witnesses

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

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

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

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

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

⁵⁶ SLNA 1/6494, 'Depositions, GL'.

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

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

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

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

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

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

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

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

Table 3.2: Service and occupation of litigants and witnesses

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

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

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

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

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

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

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

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

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

3.4 Distance to the Council

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

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

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

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

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

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

Table 3.3 Geographical origins of land disputes 1778-1779

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

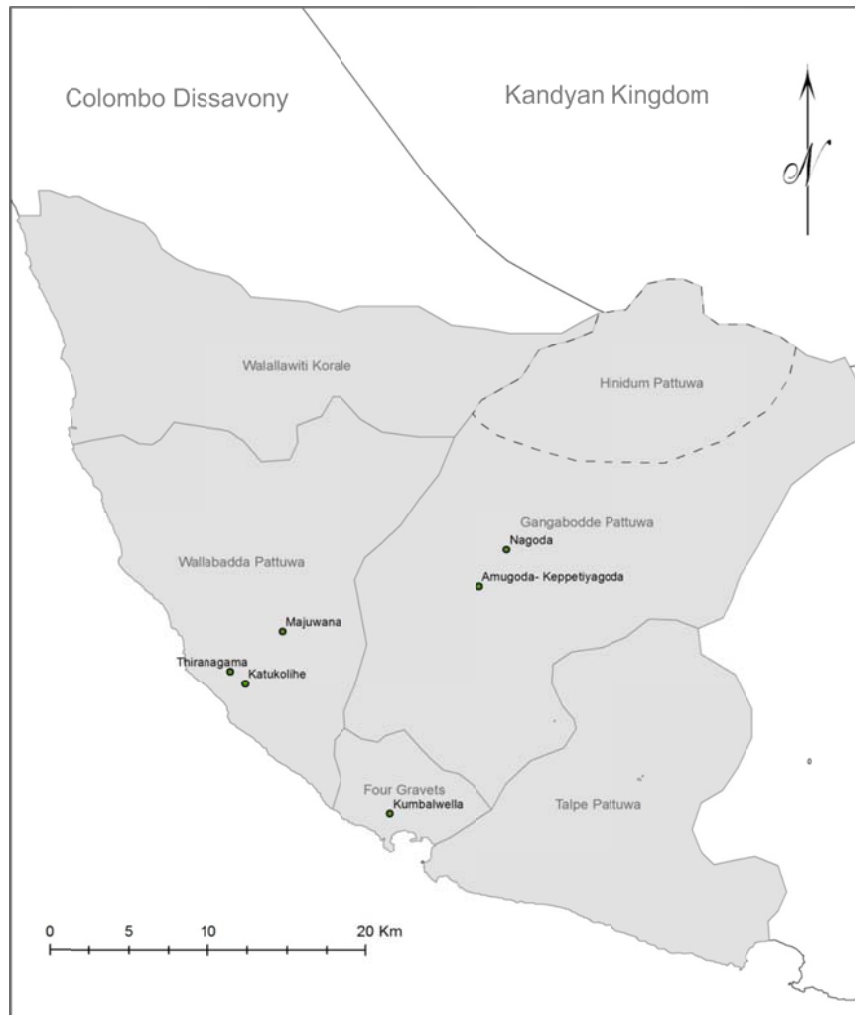
Table 3.4 Residence of witnesses 1778-1781

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

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

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

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



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

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

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

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

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

⁶⁹ Mottau, 'Instructions for Landraden', 6.

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

⁷¹ Ibid., fol. 95r, 2 Dec 1779.

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

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

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

3.5 Conclusion

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

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

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

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

⁷⁴ Pieris, 'The Cleghorn Minute', 134.

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

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

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

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