INTRODUCTION

# Conjecture and Deliberation

**Abstract**
In the popular imagination in Sri Lanka, Roman-Dutch law is given an almost hallowed status. Yet, the history of that law, first introduced by the Dutch East India Company, has followed an inconsistent path over the last two centuries. Despite an abundance of Dutch legal records, little is known of the use of Roman-Dutch law under Dutch rule. Did the Dutch apply the laws of the Sinhalese? The judicial forum of the Landraad set up by them had a majority of European officials and a subordinate minority of local headmen. Through an empirical approach and understandings of socio-legal studies of legal pluralism, this study of the Landraad provides insights into the lived experience of colonial law.

**Keywords:** Legal pluralism, pluralities, colonial law, colonialism, Sinhalese law, Roman-Dutch law.

In 1904, the case *Karonchihami v Angohami* raised the question of whether the Dutch power in Sri Lanka had enacted a regulation prohibiting couples engaged in adultery from marrying later. Through this case, numerous Sri Lankan law students learn that in the district-level courts in operation under Dutch rule, local officials tried disputes arising among the inhabitants.[1] The case concluded that local headmen could not be expected to have applied the principles of Roman-Dutch law. If not for *Karonchihami v Angohami*, it is likely that today we would know even less about the *Landraad* (variously translated as land, country, or district council; plural: *Landraden*). Judge A.J. De Sampayo, however, had not studied the Landraad and was misled into overestimating the influence of the local officials. The question of whose law the Dutch used was approached as an either/or dichotomy, far from the evidential reality of pluralities in practice that this monograph reveals. Yet, the 1904 reference is important, as it shows that a British court later recognised that indigenous laws were in use as far back as the eighteenth century. Negotiating with a pre-existing legal order was therefore seen as necessary.

In its administration of parts of Sri Lanka in the seventeenth and eighteenth centuries, the Verenigde Oost-Indische Compagnie (Dutch East India Company or

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

VOC) reluctantly acknowledged the necessity of being involved in judicial matters and variously adapted to the existing order and changing circumstances. Empires realised early on that “one law for all” would inevitably fail in practice. The lasting legacy of Dutch legal practices remains etched in Sri Lankan society.

In this book, I study people as objects, negotiators and consumers of the judicial system introduced by the Dutch through their everyday interactions with the Landraad of Galle. Whose law was used in the Landraad? In the practice of litigation under the VOC in eighteenth-century coastal Sri Lanka, local litigants, and the elite who served as their representatives, underlined distinctive characteristics of the local normative order that were unfamiliar to the Dutch. This book moves beyond the conventional top-down approach to legal history, which focuses primarily on legislation, official correspondence and governmental proceedings. By studying judicial proceedings, I analyse how ordinary people experienced colonial rule in practice through the language of the law. How did the Landraad function in its day-to-day operations? Who controlled it and who appeared before it? Did the Landraad draw on the dominant local normative order of southern Sri Lanka? Drawing on studies of legal pluralism, I have placed Sri Lanka’s early colonial legal history in the growing body of work in this theoretical field.

Much of the work on eighteenth-century Sri Lanka has been on political, administrative and structural social change.[2] An emphasis on the nineteenth century in Sri Lanka’s historiography of colonialism has often led to a neglect of the eighteenth century, rectified in recent times to some extent by Nirmal Dewasiri through his work on land tenure and caste relations; Alicia Schrikker on colonial policy-making and ideologies; and Sujit Sivasundaram on colonial knowledge production. All three scholars emphasise continuity from the eighteenth to the nineteenth

[2] For recent and older scholarship on Portuguese and Dutch rule on the island, see Zoltán Biedermann, *The Portuguese in Sri Lanka and South India: Studies in the History of Diplomacy, Empire and Trade, 1500–1650* (Wiesbaden: Harrassowitz Verlag, 2014); Alan Strathern, *Kingship and Conversion in Sixteenth-Century Sri Lanka: Portuguese Imperialism in a Buddhist Land* (New Delhi & Colombo: Cambridge University Press & Vijitha Yapa, 2010); Alicia Schrikker, *Dutch and British Colonial Intervention in Sri Lanka, 1780–1815: Expansion and Reform* (Leiden: Brill, 2007); Nirmal Ranjith Dewasiri, *The Adaptable Peasant: Agrarian Society in Western Sri Lanka under Dutch Rule, 1740–1800* (Leiden: Brill, 2008); Jorge Flores (ed), *Re-exploring the Links: History and Constructed Histories Between Portugal and Sri Lanka* (Wiesbaden: Harrassowitz Verlag, 2007); Chandra Richard de Silva, *The Portuguese in Ceylon 1617–1638* (Colombo: H.W. Cave, 1972); Kanapathipillai, Valli, “Dutch Rule in Maritime Ceylon 1766–1796” (PhD dissertation, University of London, 1969); Tikiri Abeyasinghe, *Portuguese Rule in Ceylon, 1594–1612* (Colombo: Lake House, 1966); Sinnappah Arasaratnam, *Dutch Power in Ceylon, 1658–1687* (Amsterdam: Djambatan, 1958); K.W. Goonewardena, *The Foundation of Dutch Power in Ceylon, 1638–1658* (Amsterdam: Djambatan, 1958). For an overview, see K.M. de Silva (ed), *University of Peradeniya, History of Sri Lanka (From c. 1500 to c. 1800)*, Vol. 2 (Peradeniya: University of Peradeniya, 1995).

century.[3] Among them, Dewasiri draws a picture of structural transformations in peasant life. However, Sri Lanka's rich legal history, which includes a mix of Dutch, English and customary normative systems, has received scant scholarly attention. The existing legal literature suffers from a lack of empirical research and inattention to the developing field of socio-legal studies of legal pluralism. Research into the unique legal sources of eighteenth-century Sri Lanka can enrich not only our understanding of the complex ways in which legal orders intersected, but can also provide reflection on how such studies further illustrate theories of European colonialism and its interaction with non-Western practices and ideas.

Sri Lanka's indigenous lowland polities since 1500 can be interpreted as being "unprotected" due to European territorial expansion.[4] Its prize possession, in European eyes, was cinnamon, which was shipped to Europe for international trading. In the sixteenth and seventeenth centuries, the Portuguese captured and consolidated power in parts of western Sri Lanka and the northern kingdom of Jaffna. Infighting within the ruling family weakened the western lowland kingdom of Kotte; this led to its division in the early sixteenth century. Of the indigenous powers, the Kandyan kingdom in the mountainous interior survived into Dutch times.[5] Relations between the Portuguese and the internal kingdom of Kandy were strained by repeated wars, and Rājasingha II of Kandy entered into an agreement with the VOC in 1638 to drive out the Portuguese and hand over the captured territory to Kandy. Events did not develop in that way: the Dutch drove the Portuguese out but also intended to stay.

I focus on the workings of the early colonial state at the district level of Galle in southern Sri Lanka, at a time when European rule seeped into the rhythms of everyday life. Although Galle was the VOC's first administrative base after they captured it from the Portuguese in 1640, it appears less culturally touched than Colombo, and thus is a more fitting site for the study of negotiations between local and external normative orders. The district is situated in the wet zone of the country; the lush terrain becomes hilly just a few miles from the coast. The monotonous, ritual nature of peasant life based on agriculture would have been more patent

[3] Dewasiri, *Adaptable Peasant*; Schrikker, *Dutch and British Colonial Intervention*; Sujit Sivasundaram, *Islanded: Britain, Sri Lanka, and the Bounds of an Indian Ocean Colony* (Chicago: University of Chicago Press, 2013).

[4] For an experiment in connecting Sri Lanka to Victor Lieberman's theory of "protected rimlands" of South East Asia, which he said shared "the same historical path from a milieu of warring little kingdoms to increasingly large, solid states," see Alan Strathern, "Sri Lanka in the Long Early Modern Period: Its Place in a Comparative Theory of Second Millennium Eurasian History," *Modern Asian Studies* 43, no. 4 (2009): 815–869.

[5] Despite its geographical isolation, Kandy was a cosmopolitan kingdom at least at the elite level, as Sujit Sivasundaram argues in *Islanded*, 41.

in eighteenth-century Galle.[6] Although Galle is not a natural harbour, it has long been used as one. The VOC administered its expanding territory on the island for sixteen years (1640–1656) from Galle, which remained the most important port for the company.[7] This study focuses on the eighteenth century, from the setting up of the Landraad in 1741 till the end of Dutch rule in 1796, when the maritime provinces came to be administered by the British East India Company. These provinces became a crown colony in 1802, and the rest of the island was annexed by a covenant with the Sinhalese chiefs, the Kandyan king having been deposed in 1815.

## Conjecture and Deliberation

In the popular imagination in Sri Lanka, Roman-Dutch law is given an almost hallowed status. Most Sri Lankans with some general legal knowledge would say that the Dutch introduced their laws to Sri Lanka. At a higher educational level, judges of even recent times may be said to have followed its principles more than of other legal systems, and some appear to have been proud of their contributions to its preservation.[8] If Roman-Dutch law was the "state" law or the official law adopted by the colonial power, its dominant image is that of descending on customary, "non-state" laws in a linear way over many decades.

Yet, the history of Roman-Dutch law in Sri Lanka has its ambiguities and has followed an inconsistent path over the last two centuries. Despite robust claims about adopting Roman-Dutch law as state law in British times, jurisdictional confusion and complexity persisted into the twentieth century. The waxing and waning of its adoption in Sri Lanka has been remarked on.[9] Our understanding of its use in Sri Lanka by the Dutch among the majority Sinhalese population of the low country is sketchy at best due to a lack of research. Little is known of the use of Roman-Dutch law in the maritime provinces. But this is not due to a lack of sources. The reference

[6] Dewasiri describes some aspects of the everyday life of the peasant in western Sri Lanka in *Adaptable Peasant*, 25–58.

[7] See Lodewijk Wagenaar, *Galle, VOC-vestiging in Ceylon: Beschrijving van een koloniale samenleving aan de vooravond van de Singalese opstand tegen het Nederlandse gezag, 1760* (Amsterdam: De Bataafsche Leeuw, 1994), 7; Goonewardena, *Foundation of Dutch Power*, 37. Later, Colombo became the seat of government.

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

[9] L.J.M. Cooray, *An Introduction to the Legal System of Sri Lanka* (Pannipitiya: Stamford Lake, 2003; repr. 2009), 94.

to the Landraad in the nineteenth-century case *Karonchihami v Angohami*, which I mentioned at the beginning of this introduction, is brought forward as evidence that the Dutch had applied the laws of the Sinhalese.[10] *Karonchihami v Angohami* shows that the exact extent of the application of customary law by the Dutch posed problems for later British jurists even in the early twentieth century. Incidentally, the judgement stated that there was no proof that the Dutch ordinance of 26 September 1658, which prohibited the marriage of persons who lived in adultery, was applied in Sri Lanka. Evidence on this question from the Dutch archives is still forthcoming.

Thambiah Nadaraja, a legal scholar, opines that the Dutch cases would be especially important in determining how Sinhalese customs were taken into account, if at all. Nadaraja says, "[w]ithout making a close study of what is still legible in the legal records of the Dutch period no conclusions can be reached regarding the order in which the different kinds of authorities would have been considered by a judge engaged in deciding a case."[11] He wrote this in the late 1960s, but such a study of the Dutch legal records has not been undertaken yet. This work is an attempt to fill that lacuna. As Nadaraja himself says, his ambitious history of the legal system of Sri Lanka, covering nearly 300 years in six chapters (often with endnotes that are longer than the chapters), was unable to draw upon preliminary studies that could be the foundation of such a sweeping history.[12] Through this study, I reveal for the first time the breadth of knowledge that can be made available to us through extensive research into the legal documents produced under Dutch rule.

The application, or non-application, of Sinhalese laws or customs in Dutch territory based on discussions surrounding a legal issue requires a full examination of enactments of the administration and judgements of the councils of law. Only a fraction of legal cases under Dutch rule has been studied to date. In her study of the law of compensation for improvements, Marleen van den Horst traces the evolution of that law into present times. She states that in the ninety-four volumes from the full range of Dutch legal records that she studied, she found no reference to the use of local, customary law.[13] She concludes that even a study of the cases, as Nadaraja recommends, would not answer the question of the application of Sinhalese law. The absence of stated reasoning for judgements is a key drawback.

10 See, for example, Cooray, *Legal System*, 65.

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

12 Ibid., 1.

13 Van den Horst says: "Though it is generally admitted that the Dutch respected and applied the local, customary laws, not a single reference to such laws could be discovered." However, in one of two volumes of the Galle Landraad that she had examined, she did find a reference to "general custom" in a decision. Marleen H.J. van den Horst, *Compensation for Improvements: The Roman Dutch Law in Sri Lanka* (Amsterdam: Free University Press, 1989), 121–22.

Van den Horst did not, however, study the Landraad extensively, and a more comprehensive study through case analyses makes it possible to provide insights into the design and operation of colonial law in eighteenth-century Sri Lanka.

Nineteenth- and twentieth-century chief justices and other judges have speculated on how far Dutch laws were used in the coastal areas of the island under the administration of the VOC. While many cases under British rule refer to Roman-Dutch law as the "common law" of the country, only a few judgements discuss its applicability.[14] Controversy arose because the British attempted to employ Roman-Dutch law for the low-country Sinhalese, in the belief that they were continuing the Dutch practice. Scholars present differing views on the question. Some even argue that Roman-Dutch law had always been subordinate to Sinhalese law along the coast.[15] The preamble to a report by Godfried Leonhard De Coste, a high-ranking official in late Dutch times, mentions that ancient Sinhalese laws and customs have been "completely obliterated" but "a few of them are still to be traced in their original form for information relative to the local laws and customs of the western and southern maritime provinces of Ceylon."[16] Gananath Obeyesekere argues that Roman-Dutch law probably applied only to Dutch residents of Sri Lanka and converted Sinhalese Protestants, while traditional laws governed the remaining majority.[17] R.W. Lee writes: "it has been doubted whether the Dutch ever applied their law to the native races of the low country."[18] Others contend that Sinhalese law had almost disappeared from the maritime provinces and was replaced by Roman-Dutch law.[19] Although Nadaraja pointed out that Dutch legal cases had to

[14] See *Karonchihami v Angohami*, 2 New Law Reports 276 (1896); *Karonchihami v Angohami*, 8 New Law Reports; *Daniel Silva v Johanis Appuhamy*, 67 New Law Reports 457 (1965).

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

[16] CO 54/124, "Ceylon Native Laws and Customs, Part 2 Presented by Sir Alexander Johnston" (1770), 1, Schedule 8, National Archives, Kew. It is not clear who authored this preamble.

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

[18] Robert Warden Lee, *An Introduction to Roman-Dutch Law*, fourth edition (Oxford: Clarendon Press, 1946), 11.

[19] See Ivor Jennings and H.W. Tambiah, *The Dominion of Ceylon: The Development of its Laws and Constitution* (London: Stevens, 1952), 195–96; A. Wood Renton, "The Roman-Dutch Law in Ceylon under the British Regime," *South African Law Journal* 49 (1932): 164. A.R.B. Amerasinghe says that the Sinhalese customs are likely to have disappeared, but also asks whether the Dutch would have risked sowing the seeds of discord by ignoring Sinhalese law. See A.R.B. Amerasinghe, "The Dutch Influence on the Legal System of Sri Lanka," in Saman Kelegama and Roshan Madawela (eds) *400 Years of Dutch-Sri Lanka Relations 1602–2002* (Colombo: Institute of Policy Studies of Sri Lanka, 2002), 293–94.

be studied, he believed that the "adulteration of the Sinhalese customary law may have been the reason for the Dutch authorities not having undertaken its codification, and the very absence of a code probably contributed further to the disuse of that law."[20] The question has thus not been satisfactorily answered.

By unravelling evidence of the use of various laws by the company, I propose that the answer to the question does not lie in a dichotomous either/or proposition. Rather, I argue for a broader understanding that focuses on jurisdictional pluralities that existed in practice. Such pluralities governed the day-to-day experiences of the early colonial subject. The conceptual framework for such a meticulous reconsideration, as I attempt here, is provided by the developing literature on legal pluralism, which connects with studies of colonialism in Dutch Sri Lanka. In that way, this research reveals the distinctiveness of this premodern period.

## Conceptualising Colonial Lawmaking

This book argues for the study of everyday legal processes to unravel the complex workings of pluralities. Legal pluralism is the existence of two or more legal systems in varying degrees of synchronism.[21] Expanding the concept to include a pluralism of normative spheres, the Max Planck Institute for European Legal History extensively studied the use of the term "multinormativity."[22] My book is situated within the framework of institutional structures. This poses a methodological problem for legal pluralists who are being asked, as Lauren Benton and Richard Ross argue, "to uncover elusive subjective beliefs about the applicability and ordering of bodies of law." Yet we can only hope to investigate, in that way, the jurisdictional politics of colonial authorities. Benton and Ross advocate studying exactly where conflicts occur in this process and revealing jurisdictional divides, "rather than elusive and often inconsistently applied rules or norms." They call this a "methodological advantage" for historical research "because it becomes

[20] Nadaraja, *The Legal System of Ceylon*, 16.

[21] Classic studies on legal pluralism are John Griffiths, "What is Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55; Sally Engle Merry, "Legal Pluralism," *Law and Society Review* 22, no. 5 (1988), 869–896; Brian Z. Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global," *Sydney Law Review* 30 (2008): 375; Brian Z. Tamanaha, "The Folly of the Social Scientific Concept of Legal Pluralism," *Journal of Law and Society* 20, no. 2 (1993): 192–217.

[22] Thomas Duve, "Global Legal History: A Methodological Approach," Social Science Research Network (SSRN Scholarly Paper ID 2781104), 2016, http://papers.ssrn.com/abstract=2781104. Accessed 28 August 2016.

possible to analyse structural shifts propelled by the legal strategies of parties to jurisdictional conflicts."[23]

However, by focusing mostly on the mundane, everyday workings of the Landraad, this study aims to present the lived experience of colonial law in eighteenth-century Galle. It connects with Martha-Marie Kleinhans's and Roderick Macdonald's "critical legal pluralism," which focuses on individual agency in the use and interpretation of the law. This assigns more responsibility to individuals in creating their own legal subjectivity. It also takes the focus away from reifying law and essentialising cultures and communities.[24]

The VOC is believed to have applied at least some customary laws in the legal administration of its territory. Anthony Paviljoen, the Commander of Jaffna, said in 1665: "Justice is administered to the Dutch according to the laws in force in the Fatherland and the Statutes of Batavia. The natives are governed according to the customs of the country if these are clear and reasonable, otherwise according to our laws."[25] This may be true for the Jaffna that he wrote about, where a code of native laws applied. Over the course of the eighteenth century, some native laws were codified, such as the customs of the Tamils of Jaffna, the Muslims and Mukkuvars of Puttalam, and laws based on the Statutes of Batavia for other Muslims. This institutionalisation of customs gives the impression of the existence of a plural legal structure under a European power. A code was understood as a unified statement of law that could be consulted on its own.[26] The codification of customs of particular groups tends to reinforce their cultural differences. Indeed, this happened not only in Sri Lanka but was characteristic of the colonial world: "the colonial codes remain on the books on the subcontinent today."[27]

[23] Lauren Benton and Richard J. Ross, "Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World," in Lauren Benton and Richard J. Ross (eds), *Legal Pluralism and Empires, 1500–1850*, Kindle edition (New York: NYU Press 2013), 5–6. See also Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2001).

[24] Martha-Marie Kleinhans and Roderick A. Macdonald, "What is a Critical Legal Pluralism?" *Canadian Journal of Law and Society* 12, no. 2 (1997): 25–46.

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

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

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

In this work, I consider the Dutch and the dominant group in the south, the Sinhalese, without pitting them against the Tamils, Moors, Chettiars or other smaller groups, a perspective that falls beyond the scope of this study. This is not to assume that monolithic communities or cultures of "Dutch," "Sinhalese," "Tamil," etc. existed then; neither do they exist today. Their laws are similarly heterogeneous. This book does not attempt to achieve the impossible task of representing the entire experience of Dutch colonial law on the island; neither does it represent all Sinhalese areas, as it centres on Galle. But this focus on regional phenomena can still inform our understanding of inter-legality, or the recognition of two or more legal orders, in the eighteenth-century south. "Custom" in this context consists of the shared social rules of a "customary normative system," within which the term "indigenous law" was a label constructed for specific purposes under circumstances of colonisation.[28] In the words of Brian Tamanaha, "[o]nce created, these labels have been carried over and continue to the present in some form of coexistence with (or within) official legal systems."[29] The laws of the Kandyans, Jaffna Tamils and Muslims are now official customary law within Sri Lanka's state law.

The vastly developing literature on legal pluralism provides a framework for this inquiry. Paul Halliday describes it as "a device scholars use to impose interpretive order on otherwise chaotic worlds of both present and past."[30] The difficulty of defining law pervades the study of legal pluralism. Much has been written on that question alone. However, as Tamanaha writes after summarising the arguments on what can be regarded as law, "it is not necessary to construct a social scientific conception of law in order to frame and study legal pluralism." He shows that it is possible to analyse situations of legal pluralism without defining law. One way of avoiding conceptual problems is to accept "as 'legal' whatever was identified as legal by the social actors."[31] The seeming informality of local family laws can, for instance, be misleading. But the informality of a legal order is not in itself a disqualification from being a part of an institutionalised normative order. Sally Engle Merry also supported moving away from defining law.[32]

More recently, Benton and Ross have described legal pluralism as "encompassing all sources of law or rules of conduct in a given territory or social context." A "normative" legal pluralism could include "customs, habits, religious precepts and codes of etiquette." Such a non-essentialist view would help us better understand

[28] Tamanaha, "Understanding Legal Pluralism," 375.

[29] Ibid., 397.

[30] Paul Halliday, "Laws' Histories: Pluralisms, Pluralities, Diversity," in Lauren Benton and Richard J. Ross (eds), *Legal Pluralism and Empires, 1500-1850*, Kindle edition (New York: NYU Press, 2013), 262.

[31] Tamanaha, "Understanding Legal Pluralism," 396.

[32] Merry, "Legal Pluralism," 889.

the ways in which officials and colonial subjects dealt with the demands of everyday life. To this day, discussions on the legal history of Sri Lanka have drawn a veil over the flexibility of the various social formations and exaggerated the insularity of customary laws, especially in relation to the Sinhalese. As Benton and Ross say, opening up "a limitless horizon for the study of legal pluralism" by including "all ordered social behaviour" under its rubric is less dangerous than "the representation of imperial orders as comprising sets of neatly stacked and bounded legal spheres." The Sinhalese laws, where they were recognised in varying degrees by the Dutch, effectively became official law and thus retained their validity.[33]

Without using the term "legal pluralism," colonial officials studied it in early modern times as well.[34] Yet, we can observe this process only to a limited extent, because what remains with us today is what was recorded in code, proclamation, or, as I have studied in this work, judicial records. I omit the story of structural shifts and instead focus on restrained conflicts and perceptible continuities. I attempt "locally specific understandings of law and legal complexity as presented and debated by historical actors, including state agents"[35] to show subtle changes or divides in everyday judicial operations. Thus, my focus is on jurisdictional practices.

The presence of the individual peasant is felt throughout this story in both implicit and explicit ways. The jurisdictional conflicts are evident from their understated responses to the land registrar about tenurial rights that are duly recorded despite being in opposition to company predilections, in the recognition of Sinhalese practices of marriage, and in the adoption of local practices of the oath and Dutch laws of inheritance. In all this, we can see the constant thread of "elusive and often inconsistently applied rules or norms."[36] The conflicts in the story of Dutch legal intervention in Sri Lanka, as I present them here, may not always be obvious, but their complexity deepens our understanding of the everyday workings of jurisdictional politics. The strategies of the indigenous, who were seemingly subordinate to the coloniser, contributed to changes in jurisdictional practices and either maintained continuity with the past or upheld Dutch practices.

Research on legal practice in eighteenth-century Sri Lanka not only enriches our understanding of the complex ways in which legal orders intersected, but also reflects on how such studies further illustrate theories of European colonialism

[33] The quotations in this paragraph are from Lauren Benton and Richard J. Ross, "Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World," in Lauren Benton and Richard J. Ross (eds), *Legal Pluralism and Empires, 1500–1850*, Kindle edition (New York: NYU Press, 2013), 4.

[34] Ibid., 1.

[35] Ibid., 5.

[36] Ibid., 6.

and its interaction with non-Western normative structures. Some scholars of south India, a region close to Sri Lanka geographically and otherwise, argue for continuity with the past; others argue for transformation. David Ludden's work emphasises gradual rather than revolutionary change, with a primary role given to peasants, while Pamela Price's work on Indian kingship in Ramanad speaks to continuity rather than change. Nicholas B. Dirks and Arjun Appadurai, however, highlight a more radical change in south India under British rule.[37] My focus on indigenous engagement with colonial institutions provides, for the first time, a framework of legal studies that can enable a more detailed comparison with pre-colonial practices. This offers deep insights into the nature of early colonial rule.

In comparison with other imperial regimes, relatively less work has been done on the legal history of the Dutch empire. Almost the only exceptions are the publications on Indonesian law and Cape society. The adoption of *adat*, the customary law in Indonesia has linked the concept of pluralism to the legal structures of the VOC in many territories that it controlled. Without recognising the uniqueness of the Sri Lankan case in Dutch times, Benton, for instance, says that in South Asia, Dutch strategies "recognised VOC legal authority over mainly VOC employees, while local rulers continued to preside over their own legal forums."[38] The VOC was predominant in the forts (Colombo, Jaffna, Galle and Matara in Sri Lanka), which were enclaves that mostly housed officials.[39] But local rulers had less authority in Dutch Sri Lanka; the VOC's judicial authority spread beyond city walls into rural society, requiring intervention in the legal administration of territories under company control.

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

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

[39] Some writers have shown that administrations in Cochin and Batavia displayed a level of adaptability to local circumstances. See Anjana Singh, *Fort Cochin in Kerala, 1750–1830: The Social Condition of a Dutch Community in an Indian Milieu* (Leiden: Brill, 2010); Carla van Wamelen, *Family Life onder de VOC: Een Handelscompagnie in Huwelijks- en Gezinszaken* (Hilversum: Uitgeverij Verloren, 2014).

## Sources and Research Design

The methodology of this study greatly facilitates the development of history from below. I have used an inductive approach by seeking narratives from the sources themselves, which tell stories of individuals, and of as many individuals as possible. Throughout the book, I present micro-histories of family life, which provide new horizons for recreating rural eighteenth-century Sri Lanka. Sanjay Subrahmanyam has aptly referred to "[t]he saliency of the micro-history (*microstoria*) approach, in particular given the nature of legal records as a privileged source that allows the historian to penetrate into the 'community' formations at the level of the family, or even the individual peasant."[40] Sri Lanka has a treasure trove of such sources.[41] Unique among them are the land registers referred to as *thombos* and the judicial records that I studied are some of the earliest extant for Sri Lanka. The Landraad of Galle, set up in the early 1740s to administer land matters, is the focus of the study, but I also study the thombos and other related documents.

Around sixty volumes from the Galle Landraad are deposited in the Sri Lanka National Archives today. The rolls (*rollen*), or minutes, form the bulk of the volumes. Other volumes include draft minutes, depositions, interrogations, transfer deeds, annexes and correspondence of the council. The annexes have valuable extra information about the cases that came up in the council, including requests, thombo extracts, *gift olas* (gift deeds) and other documents relating to land and debts. Unfortunately, the annexes are not bound together with references to the meetings in which they were brought up, making it time-consuming to connect them to the corresponding cases. Other documents I found among the volumes of the secretariat of Colombo are also part of the history of the Landraad. By extension, it can be argued that even the Galle thombos are a part of the archives of the Landraad, as they were drawn up and maintained by its members.

The thombos are unique for their historical value and socio-economic information on the eighteenth-century inhabitants and their property in Galle.[42] They are also unique in the world for their wealth of information on a pre-1800 Asian

[40] Sanjay Subrahmanyam, "Peasants before the Law: Recent Historiography on Colonial India," *Etudes Rurales*, no. 149–150 (1999): 199–209.

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

[42] Mottau likened the records to the *Domesday Book*. There are indeed some similarities: in 1085 in England, the Norman conquest required that the new rulers had detailed knowledge of land ownership. S.A.W. Mottau, "Documents on Ceylon History (2): Documents Relating to the Tombo Registration

society. Primarily a basis for better taxation, the thombo is a dynamic document that reveals an early colonial example of how "the fiscal reformer needed a detailed inventory of land ownership to realize the maximum, sustainable revenue yield."[43] Over 200 villages in Galle have thombos that are kept in the archives in Colombo. They record personal details such as name, age, caste, service, residence, nonmarital birth, civil status and details of property held. We can also use them to study family ties in relation to property, the nature of property rights, partner choice, mortality, migration, marriage and birth patterns and diaspora. My use of the thombos focuses on the nature of the rights they describe and the assumptions behind them, and the legal disputes in connection with such rights. An analysis of the nature of rights listed in the thombos, together with the land disputes, reveals a number of legal concepts regarding what gave people rights to land. Importantly, the Landraad had to deal with issues arising from the registration process of the thombos. The thombos thus lie at the functional core of the Landraad, which was responsible for their creation and maintenance.

A source of inspiration for this study, due to the similarities in the form of the archives used, was Marie-Charlotte Le Bailly's work from 2001 for which she drew up a database of cases that came up in the Hof van Holland (Court of Holland) during 1457–1467. Her database was in turn partly based on a model for a legal history database developed by H. de Schepper and others in 1988.[44] The Landraad documents I examine for this work do not readily lend themselves to tabulation in a database. Naturally, these difficulties arise because the VOC did not draw up these records for the purposes for which I have used them. The information I required, therefore, was not always in the documents. While the documents were consistent in form, they were irregular in content such as the social background, residence, and gender of subjects. This makes tabulating their data difficult at times.

Despite this relative drawback, I obtained a wide range of data. I reconstructed around 100 consecutive cases that came up in the Landraad from May 1778 to

of the Dutch Administration in Ceylon: Instructions Issued to the Tombo Commissioners," *The Ceylon Historical Journal* 3, no. 2 (1953): 173.

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

[44] Marie-Charlotte Le Bailly, *Recht voor de Raad* (Haarlem & Hilversum: Historische Vereniging Holland & Uitgeverij Verloren, 2001), 28; H. de Schepper et al., "Prolegomena voor onderzoek van rechtspraak en bestuur in de oude Nederlanden," in J. Koster van Dijk and A. Wijffels (eds) *Miscellanea forensia historica: Ter gelegenheid van het afscheid van Prof. Mr. J. Th de Smidt* (Amsterdam: Werkgroep Grote Raad van Mechelen, 1988), 263–94. In general, there is a lacuna in early modern studies of the courts of Holland. Schepper et al. had the intention of developing a common list of questions for the development of a juridical database, so that exchange and comparison of data would be possible. Naturally that is a difficult task even within the legal history of a single country, more so in the study of an attempted transplantation of a legal system on foreign land.

December 1779. These years represent a period of relative peace under Governor Iman Willem Falck (1765–1785), many years after the war with Kandy that ended in 1765 and before the greater emphasis on centralisation policies imposed by the next governor, Willem Jacob van de Graaff. In addition, I analysed cases from before and after this period, particularly those from after 1780. I have made every effort to trace the beginning and end of these cases in preceding and subsequent volumes of the council minutes. I identified individual cases by collating the case documents from the various volumes of minutes, depositions, interrogations and annexes into separate dossiers.[45] These cases can be identified by the parties involved, subject, and references to previous hearings. On closer reading of the sample cases, it turned out that while a few of them initially read as separate cases, they in fact referred to a single case. Thus, it was necessary to maintain a manageable number of cases for the study. In Sri Lanka, the practice of producing law reports began in the nineteenth century, and unlike in the courts of Holland, summaries (*regesten*) and indexes are not available for the eighteenth-century Dutch judicial records. Such summaries usually have the names of the litigants, descriptions of the dispute or offence and, at times, even the sentence.[46] Large-scale quantitative studies of legal history conducted elsewhere in the world have also benefited from summaries of cases and collaborative work, which this study lacked.[47]

The judicial and cadastral sources complement each other in building up our knowledge of litigants and reconstructing eighteenth-century rural families in southern Sri Lanka. When a case came up in the Landraad around the time of the thombo registration, the links were more definite. If the dispute involved a registration matter, notes on the council decision were often made on the thombo. For the cases analysed in this book, I established such links manually. A larger database of the Landraad and the thombos would naturally yield a better platform to automate, speed up and simplify such record linkage.[48] This study, however, has benefitted from manual record linkage; I hope to have minimised the space for unconscious biases and inconsistencies in this process. I have also used other sets of data on meetings, meeting attendance, litigants, witnesses and small-scale prosopographical

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

[46] Le Bailly, *Recht Voor de Raad*, 123–24.

[47] See Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law* (Princeton, NJ: Princeton University Press, 2000), 146.

[48] See Ian Winchester, "What Every Historian Needs to Know about Record Linkage for the Microcomputer Era," *Historical Methods* 25, no. 4 (1992): 149–65.

databases of the thombos of eight villages from Galle, and describe them in more detail in relevant chapters. The extant minutes quite easily yield a full breakdown of the members and the meetings at which they were present in the period of 1759–1796.[49] The Galle thombos that I selected for detailed study in this book were drawn up between 1760 and 1784. When compared to Landraad documents, the thombos present a somewhat easier form for transfer to the spreadsheets of a database, as they lend themselves more readily to tabulation. Page after page of the large folio volumes presents similar structures of information, as the Dutch Government required details on its subjects and resources. The thombos add quantitative data to the type of land rights that were recognised in practice.

As there is hardly any prior work on the Landraad, this case study is unprecedented. I carried out preliminary work on how the Landraad operated, who the councillors were and who came to the council, as such questions are inherently linked to that of whose laws were used in the council. I cover this area in the first three chapters of the book, and discuss the personal involvement in lawmaking of the various stakeholders within this new institutional framework in later chapters. The borders between description and analysis are, however, often blurred, and the questions that have informed the descriptive parts are likely to have been prompted by a particular worldview. The wealth of information that can be mined from the Landraad documents, together with sources such as discussions on property rights, proclamations, minutes of the Governor in Council in Colombo and Galle Political Council, contemporary descriptions of the land services and the much-mined memoirs of the governors provide a rich picture of eighteenth-century Sri Lanka.

The value of the sources I have used is apparent in Cornelia Vismann's work on the history of files in law and media technology. The documents of the Landraad and the thombos derive authority "from the fact that they came into being at the same time as the transactions they record." In that moment of transmission from the oral to the written, a translation from the vernacular to the Dutch also occurred, which "enables protocols to enter the sphere of officially recognized and communicated truth."[50] Through this process, the voices of social actors can be heard. However, legal sources in general contain problems of partiality. There may well be a gap between what was recorded and the actual events and proceedings of a case, as also between what a judge meant and what a litigant or witness understood. The lack of private sources such as letters and diaries is a further drawback. However,

[49] Records of an earlier period are available sporadically: SLNA 1/3215, "Copies of proceedings of Galle and Matara Landraden sent to Colombo" (1747 to 1748); SLNA 1/3216, "Copies of proceedings of Galle and Matara Landraden sent to Colombo" (1749 to 1752).

[50] Cornelia Vismann, *Files: Law and Media Technology* (Stanford, CA: Stanford University Press, 2008), 53–54.

although the council records are in a particular legal language and reflect only select information, they do offer a special lens into the everyday lives of the social players involved, if only because they are all that remain.

Transformations are inherent to an analysis of such everyday lives. I analyse changes in laws through what is known of the pre-colonial past, thus addressing the issue of the interplay of foreign and local laws in a colonial setting. This work reflects an intersection of legal, colonial and social histories, and the interdisciplinary practices that arise in the context of empirical studies.

**Structure of the Book**

To unravel the functioning of a small legal body in eighteenth-century Sri Lanka, I analysed the institutional development and functioning of the Landraad with aspects of procedural and substantive law that came up in the council. In chapter one I outline the available information on the judicial organisations that were in place before the Dutch arrived to understand the structure of the local legal order. I also detail the establishment of the Landraad, its operations, procedures and caseloads, as well as the related development of the thombo registration and sources of the law. In this way chapter one looks at the institutional development of the Landraad in the context of the local environment.

I discuss the members of the council and issues of efficiency in chapter two, examining the backgrounds of the European and indigenous members, the nature of their presence at meetings and the relative powers of the two groups. Occasional skirmishes for power raised tensions within the council from time to time. Chapter three offers a breakdown of the inhabitants who came before the councillors of the Landraad. I examine the gender, ethnicity and occupation of litigants and witnesses, along with the geographical location of the council, which may have influenced who appeared in the Landraad. Sources suggest that native women often flocked to colonial courts around the world, although a statistical survey of this phenomenon has not been done. Moreover, in reality, women's agency may have varied from empire to empire and over time. These questions in chapters two and three are important precursors to the larger question of which law was being used in the Landraad.

While the first three chapters thus discuss the logistics of the Landraad, the next three lean more heavily towards an analysis of the content of the law. First, I deal with a more procedural aspect through the specific practice of the oath in the Landraad in order to enter the discussion on navigating pluralities. In chapter one, I describe the Dutch procedure used in the Landraad, but this did not mean that adaptation to local conditions in procedural aspects did not occur. On the contrary,

chapter four will show how as a result of the necessity to establish the "truth" in the council, the Landraad adapted local customs of oath-giving. The oath, including trial by oath in countries around the world, has been a traditional part of the law of evidence, and the Dutch incorporation of the local practices of the social actors on site is thus particularly significant.

It was mostly in connection with land matters that establishing the truth became particularly important in the Landraad. As attempted in chapter five, it is necessary to determine how the land rights of the people were defined. My concerns in this chapter lie mostly with definitions of the terms used in the thombo and their reinforcement in Landraad proceedings. The issue of importance to inhabitants, indigenous headmen and company officials was in determining who owned what and to what extent, as conflict was not conducive for a stable economy. Negotiating the question of land tenure took a more practical approach. The struggle to possess and control land as property in late eighteenth-century Dutch Sri Lanka is central to this work. By looking at the thombos in some detail, chapter five considers how the VOC and indigenous people defined the rights to land in the Galle district. It lists the types of land rights that were recognised in the Galle thombos and the regulatory role that the Landraad played in maintaining certain definitions of tenure. To what extent did company officials who came from different cultural, social, economic and legal environments adapt existing indigenous systems of land tenure? What motivated them in this process? Fiscal extraction, socio-economic control and legitimising colonial rule were often the primary motives.

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

Finally, the conclusion addresses how this study contributes to legal and colonial history. I situate the issues inherent to the question of the application of Sinhalese law in the context of current discussions of legal pluralism, which could have a bearing on how we understand its history. In a pluralistic setting, it is difficult to predetermine which areas of the law are most likely to be borrowed. Pluralities are reflected in more than one conventional division of the laws of Sri Lanka at present

– this is a discussion that I will not engage in. Yet, this study helps us to understand how indigenous inhabitants experienced law in eighteenth-century Sri Lanka. The purpose, in essence, is to open up specific features of Sri Lanka's legal legacy during Dutch rule, through an exploration of its practice. I also touch upon British and postcolonial continuities of this legacy from time to time, but the focus remains on drawing a picture of an eighteenth-century colonial judicial forum. In that image, the Landraad is revealed as a site of legality that was in part constructed by the needs and actions of the colonialists, and in part by the indigenes.