

Navigating Pluralities Reluctantly: The Marriage Contract in Dutch Galle

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This article examines diverse practices in the establishment of marriage partnerships in eighteenth-century Sri Lanka,¹ parts of which were controlled by the Dutch East India Company (VOC). Family law was an area in which the attempt to transform local practices was conspicuously present, but not fully achieved. Lawful marriage was linked to conversion to Dutch Protestantism and to inheritance of property. In the authoritative space of the provincial board that heard the matrimonial disputes examined in this article, the Company did not proactively attempt to reform family life, an area where it could not easily dictate terms. It made a significant dent as the requirement for marriage registration was recognised by natives. But the limited reach of the introduced law is evident in the Company's reluctant recognition that its two-step process of reading the banns and subsequent marriage ceremony created confusion and that locals still followed customary practices for forging unions. The VOC faced a normative order in the villages that was characterised by ritual underpinnings. Such local features went unrecognised in official law rules, but their perseverance is testimony to the pluralities in practice in an early colonial encounter in the Indian Ocean world.

Keywords: Marriage contract, customary marriage, pluralities, colonial law, family law, Sinhalese law, VOC, Galle, Sri Lanka, Ceylon.

Introduction

Wadugamage Jebbo of Piyadigama in southern Sri Lanka complained in 1770 to a colonial provincial board that the man with whom she had lived for a while was unwilling to marry her. She claimed that he had promised to marry her and she wanted the board set up by the Vereenigde Oostindische Compagnie (Dutch East India Company or VOC) to compel him to do so. Her plea was rejected on the grounds that she had not given legal notice of her intended marriage.² She was facing a Protestant clergyman and officials of the VOC, which had received a charter from the States General in the Netherlands in 1602 to wage war and govern territories that it captured. The VOC was primarily a trading interest and unaccustomed to such necessities of expanding territorial governance. The history of marriage law under the

VOC is explored here mostly through the resolutions of the Scholarchale Vergadering (school board), the provincial body to which Jebbo made her complaint. The records of that board, studied here for the first time, deal with marital disputes, among other issues. They are replete with stories of adultery, promiscuity, and broken promises that are the stuff of scandal.

How did the VOC regulate the forging of marriage partnerships in eighteenth-century Sri Lanka? The Dutch encountered a strong local normative order on the island; thus conformity to pluralities in legal practice was inevitable. This article examines the complexities of the relatively new requirement for registering marriages, which caused much confusion in the villages. In the regulation of intimate relationships, the VOC could not ignore local marriage practices while introducing new concepts of morality and partnership among the local population. Marriage was a contract through which many locals entered the legal arena of the VOC.

The particular historical conditions Sri Lanka experienced after the sixteenth century led to such developments. For the Portuguese and thereafter the Dutch, Sri Lanka's prize possession was cinnamon, which they shipped to Europe for international trading. The Portuguese consolidated their control over parts of the island during the sixteenth and early seventeenth century. Repeated wars strained relations between the Portuguese and the Sri Lankan kingdom of Kandy, 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 him. Events, however, did not develop in that way. The Portuguese were driven out but the Dutch intended to stay, which they did till 1796, when the British East India Company came to administer the maritime provinces. Sri Lanka became a crown colony in 1802, and the British annexed the Kandyan kingdom by a covenant with the Sinhalese chiefs in 1815. The eighteenth-century period studied here saw greater administrative control by the Dutch through land registration and a strengthening of judicial bodies. The period from 1770 to 1780 covered in this article falls after the war with Kandy (1760–65) and before the centralisation moves under Dutch governor Willem Jacob van de Graaff, which led to increased control from Colombo.

The Dutch maintained normative structures to protect their trade and missionary interests. In their bureaucratic regime in parts of the island, the Dutch governor based in Colombo was responsible for the administration of the colony. The three main administrative units were Colombo, Jaffna, and Galle. The Galle Commandment, where I situated this study, is in the wet zone of the country and includes the districts of Galle and Matara. The monotonous, ritual nature of life based on peasant agriculture would have been patent in the eighteenth-century south, thus making it an ideal location for an examination of normative practice. Galle had a commander who was third in rank to the governor after the commander of Jaffna. He was assisted by a political council composed of the principal heads of departments in the south. Three legal bodies, the Raad van Justitie (Council of Justice), the Civiele Raad (Civil Council), and the Landraad (Land Council) were set up under Dutch rule. Formal law including matrimonial law followed the laws of the Netherlands, the statutes of Batavia, and

enactments of the governor and his council in Colombo. The Landraad, a mixed body of European officials and subordinate local headmen that dealt primarily with land matters, used a plurality of laws, including local customary practices.

The existing literature on gender and colonialism in South Asia covers the nineteenth century for the most part, while this study considers a particular time and place in early modern Sri Lanka. In *Enslaved Daughters*, Sudhir Chandra studies the intersection of orthodox and imperialist tradition through the unique incident of a woman refusing to accept the man to whom she was wedded eleven years previously as a child. Indians were speedily “coming round to the western assumptions about universal justice and uniform laws.”³ Other accounts of colonial encounters with local society focus on marginal groups such as women and lower social classes.⁴ Nandini Chatterjee draws attention to the lack of a coherent top-down approach towards societal reform, characteristic of early modern rule as well.⁵ Yet neither this article’s key point of the problematic two-step process of marriage introduced by the VOC nor the connected theme of pluralities in practice as an inherent nature of early colonial rule have been covered in the work on India. On the other hand, closer parallels can be drawn to a similar colonial context in South Africa.⁶ A comparison with the Indian literature may well demonstrate how approaches to Christian marriage looked similar or different in Sri Lanka and India. But the focus is not on the locals, or their marriage practices per se, but rather on the intersection and adaptation of non-colonial customary norms and colonial law with each other within the legal space of the Galle Landraad. The question of how to conceive of legal spaces as descriptive and analytical spaces is the focus of some current research.⁷ This is of special relevance to the Scholarchale Vergadering.

Within the space of the Scholarchale Vergadering, matters of religious and secular education, registration, and as it appears, morality, were regulated. This was aside from the ecclesiastic tasks carried out by clergymen. It dealt with the predominantly Sinhalese population of the south, among whom a large number were nominal converts to Dutch Protestantism.⁸ Set up in 1663, the board consisted of a *predikant* (ordained pastor), a senior official of the Galle Commandment as president, and other members of the Galle political council, who were referred to as *scholarchen*.⁹ It sought the approval and recommendation of the commander of Galle on its resolutions. Among its tasks were inspecting schools, compiling the school *thombos*, or registers, and recommending the appointment of schoolmasters at a parish level.¹⁰ Marriage and divorce matters among native Christians also came under the board’s purview.

I have examined the resolutions of the Scholarchale Vergadering in Galle from 1770 to 1780¹¹ and added information from the Galle Landraad for corroboration.¹² Due to lacunae in the records and abandonment of cases I have not found the conclusion of many disputes mentioned here. Given the patchy records and moreover the scope and thematic nature of this article, I have not analysed change over time. Scholars have hitherto not studied the registers of either of these institutions, which are in Dutch, due to a paucity of historians on Sri Lanka working with Dutch language sources. This study, with its emphasis on practice, is supported by ordinances

from the seventeenth century onwards and European accounts of the island from a wider span of between the seventeenth and nineteenth centuries, as they provide the relevant contextual information.

This article will first consider how the registration of marriages was received by peasants, followed by an analysis of the prevalence of local practices despite their being regularly condemned. The Dutch followed a two-step process in marriage law of reading the banns (*huwelijksgeboden*) and the subsequent marriage ceremony (*huwelijksinzegening*). Registration practices were an important part of the Dutch colonial bureaucracy. In practice, however, colonial laws could not operate in a vacuum—the VOC had to recognise customary marriages and legitimise the children of parents who had put up the banns but had stopped short of the ceremony. Eighteenth-century southern society saw a baffling confusion of local practices conflicting with the requirement for putting up the banns and solemnisation in church. This study focuses on navigation by the Company and the locals of diverse rules for forging unions by attending to legal doctrine and sociocultural and socioeconomic contexts.

(Mis)understanding Marriage Registration

The European practice of registering marriages was alien to Sri Lankans. Portuguese captain João Ribeiro went so far as to say that Sinhalese marriages were a “ridiculous matter.”¹³ Robert Knox, who wrote his account of the Kandyan kingdom while a captive of the king in the late seventeenth century, saw what he regarded as private “whoredom” surpassing public prostitution.¹⁴ In later times, one British judge saw marriage relations among the locals as “established with a wink and cancelled with a kick.”¹⁵ Despite such laxity in sexual relations, family attachments were strong, as British army doctor John Davy noted in the early nineteenth century.¹⁶ Locals had no difficulty seeing cohabitation as marriage because it was “recognised by everyone as such on the village level.”¹⁷ Men and women could find their own partners, or their parents could give them away in marriage. Higher ranks in society had elaborate celebrations that were largely absent among peasants. Ralph Pieris writes that rituals were followed only to “symbolize the conclusion of a relatively permanent union, contracted with a view to raising a family.”¹⁸ Simple cohabitation by a man and woman of the same rank also automatically legitimised the marriage and children. Pieris points out that there was a “remarkable vagueness as to the essentials of a legal marriage, and the line which distinguished marriage from concubinage was faint indeed.”¹⁹ But mutual agreement to marry was no longer considered sufficient under colonial rule.

The locals are likely to have been familiar with demands to solemnise marriages in church as it would have been required of Catholic converts under Portuguese rule as well. The Dutch initially attempted to obliterate the institutional structures of the Roman Catholic establishment (a legacy of Portuguese power) and replace it with Protestantism. Yet by the late eighteenth century the Catholic faith was hardly persecuted. The Calvinist church in Sri Lanka was never as well staffed as the Roman

Catholic church, but the late eighteenth century saw a growth in the Dutch ecclesiastical body, due perhaps to the Eurasian and native element of the local population.²⁰

Although primarily a secular affair in the Dutch Republic, marriage registration under the VOC was closely connected to the church in Sri Lanka. The Dutch Reformed Church in the colonies however was not independent of Company power. The three church consistories were Colombo, Jaffna, and Galle. Europeans and Eurasians attended church services in Dutch mostly in the forts, which were enclaves of VOC officials. The minutes of the consistories regularly dealt with matters of morality and church discipline among its congregations in the forts.²¹ But the reformed church in Sri Lanka comprised a much larger population of Sinhala-speakers, the focus of this article.²² Outside the forts, Protestant churches, many of which also functioned as schools, were set up in former Catholic churches of the Portuguese. Ministers would visit villages regularly to conduct baptisms and solemnise marriages. Native schoolmasters taught the principles of the reformed religion, reading, and writing. They also registered marriages, births, and deaths among the peasants.

The Scholarchale Vergadering gave prior approval for a marriage to take place in some special cases. A regularly published *plakkaat* (a public notice) forbid relationships between “undesirable” parties, including blood relatives of one’s partner. It followed the statutes of Batavia, which in turn followed legislation in the Dutch Republic. The particular construction of the family among the Sinhalese often included the marriage of first cousins. The Scholarchale Vergadering was petitioned in 1776 to allow such cousins to marry. The matter was referred to the *predikant* but it is not known what his advice was.²³ From similar requests made in 1759 and 1764 we know that such marriages were allowed, and legislation in Sri Lanka and the Dutch Republic did not prohibit marriage between first cousins.²⁴ The Company’s *thombo* (registers), which had family details in addition to information regarding property holdings, often show cross-cousin marriages. But Dutch law forbade remarriage to the siblings of a spouse,²⁵ a practice acceptable in Sri Lanka. In 1771 the Scholarchale Vergadering allowed two men to marry their deceased brothers’ intended wives (their brothers having passed away after notice of marriage) on proving with credible witness testimony that the women had not had sexual intercourse with their first bridegrooms. Two other men were permitted to marry the sisters of their deceased wives-to-be (with whom they had proclaimed the banns) as they produced testimony in support of their claims that they had not slept with the deceased women.²⁶ The Dutch were anxious about the local practice of polygamy, found in Sri Lanka until at least the middle of the twentieth century. The Company was unable to rout out the practice. Fraternal polyandry, the marriage of one woman to two brothers, was the commonest arrangement of joint husbands—this included parallel cousins. On the other hand, in another issue taken up at the Scholarchale Vergadering, a man who wished to marry his deceased wife’s sister was flogged and jailed, as it was considered an “incestuous” relationship.²⁷ Such affinal alliances and couples who were closely related to each other in various degrees were banned by orders that had been published yearly since 1773.²⁸ A chance to marry the sibling of a deceased partner existed

if the relationship with the deceased partner had not been consumed and confirmed. Deciding power over the issue lay with the Scholarchale Vergadering.

The *Echtreglement* (marriage ordinance) of 1656 from the Netherlands is likely to have determined marriage regulations in Sri Lanka, as it did in Batavia and the Cape. Under it, men under twenty-five years and women under twenty had to obtain parental consent to marry, and this appears to have applied under Dutch rule in Sri Lanka as well.²⁹ They had also to be baptised, making it a vital factor in establishing legal marriage.³⁰ Converts were apparently in the habit of lending their baptism proofs so that non-Christians could legalise marriages.³¹ Widanege Pasqualege Christina complained to the Scholarchale Vergadering in 1771 that eight years previously a man had shown her a Sinhalese palm leaf manuscript claiming that it was his baptism certificate and lived with her on the promise of marriage. Later, she had discovered that it was not a baptism, and wanted the board to compel him to marry her to restore her honour.³² If baptised, a couple could put up the banns (*ondertrouwen*), which was supported by a deed to that effect.

The earliest Dutch ordinance found relating to marriages among native Christians in Galle was from 1647.³³ In those early years, villagers in the countryside could give notice of their marriages to minor village-level indigenous officials, who were required to make public proclamations in the village on three successive Sundays. Later, schoolmasters took over such matrimonial duties in the countryside. In 1780, couples in the Galle Commandment who could afford to had to pay six stivers for the banns and marriage.³⁴ By the 1790s, it was recognised that no marriage could take place among native Christians without the approval of the schoolmasters. They maintained separate books to record marriage notices.³⁵ Although not always achieved in practice, all headmen and inhabitants, “excluding no one,” had to attend the Sunday service and the public proclamations of marriage notices that followed it.³⁶ If the betrothal was not challenged, the marriage could be solemnised the first time a *predikant* or *proponent* (preacher) came to the district. If they wished to have the marriage confirmed immediately, they could go to the nearest Company town with attested proof that the banns were read out without obstacles.³⁷ Except under special circumstances, it is likely that couples in Galle rarely married outside the church, although in Holland couples could marry before municipal authorities.³⁸ Baptism, therefore, was crucial, and meant greater control of marriage by the Dutch Reformed Church. Objections could be brought up after notice of marriage or in church. At one solemnisation in church, a sibling claimed that the bridegroom was illegitimate and had not been baptised.³⁹

The necessity for the second step of solemnising the marriage often escaped the natives, although failing to do so was a punishable offence.⁴⁰ For many couples, the banns meant they could start living together. A dispute from outside the sample period, in 1790, suggests that couples were likely to be dressed well when putting up the banns. A female witness said that the woman had dressed up in the jewels and clothes of a bride at her house. The couple had returned to her house after putting up the banns and she had welcomed them in the Sinhalese way and sprinkled them with rose water and flowers.⁴¹ After the parties gave notice of marriage, they commonly cohabited and

procreated, although this was illegal before the actual marriage. The Scholarchale Vergadering in Galle wanted parents to guard daughters from their bridegrooms.⁴² Virginity at marriage was considered at least socially important by the Dutch, while the locals had a more relaxed attitude towards it. As the board complained, many Sinhalese regarded the publishing of the banns to be “as good as the marriage” and did not “bother themselves” with the confirmation of the marriage.⁴³ They clearly didn’t take the solemnisation seriously, as they appear to have been often late to the occasion—the Dutch imposed fines that increased depending on how late they were for the solemnisation. After the minister had already climbed up to the stool and started to preach, the fine was ten rix dollars, after the end of the prayer it was twenty rix dollars. If they were unable to pay, they had to work in the public works.⁴⁴ After the banns, locals often would proceed to live in arrangements that resembled matrilineal (*binna*) or patrilineal (*diga*) marriage patterns.⁴⁵ This is perhaps not surprising due to the importance of public recognition in both the mutual agreement of the local practice and the reading of the banns in the Dutch practice.

Women often complained that their men did not honour the banns. A 1692 *plakkaat* says that many disputes over the common practice of dowries arose among the native Christians. In 1779, Don Simon de Silva Hataresinghe refused to confirm his marriage, citing failure to deliver the dowry. When Cornelis Ferdinandus complained that Hataresinghe had refused to marry his daughter Katarina after putting up the banns three years ago, the bridegroom said he would confirm the marriage when Cornelis gave him the promised fifty rix dollars and two acres of paddy. The board ordered Hataresinghe to confirm the marriage and if he were unwilling to do so, to arrest him. His dowry claim was referred to the Landraad.⁴⁶ In 1772, a Sinhalese woman complained to the Scholarchale Vergadering that her “bridegroom” was living in concubinage with another woman despite having had three children with her after proclaiming the banns ten years previously. She wanted him back, and she wanted the marriage confirmed.⁴⁷ One such case had a happy ending. Hunu Hikkaduwege Christina had put up the banns with Welligama Hunudure Christinage Dumingu in 1767 and had a daughter with him, but the father was nowhere to be found in 1778. In 1782, he came to the board and admitted that he had left her over some differences, but was willing to confirm the marriage the following Sunday.⁴⁸ Native Christian women had grasped the benefits of the marriage contract, and of at least having put up the banns. The board could force the betrothed to confirm the marriage; they could be arrested for failing to do so or face banishment if they were unwilling.

It was not only women who complained of broken marriage vows. In 1775, Porrewekare Kankanange Philippu of the Matara district complained that Parnige Livina of Ahangama, with whom he had given notice of marriage four years previously and lived with in Matara, no longer wanted to marry him unless he moved to her village. The *mahamudaliyar* (a high-level indigenous headman) whom he had first approached had reportedly ordered that she return to Matara. Initially agreeing, Livina had later refused. The *predikant* whom Philippu next appealed to also seemingly had no effect on her, hence Philippu’s complaint to the Scholarchale

Vergadering. This dispute demonstrates that after the banns were proclaimed, it was considered customary to take the bride to the bridegroom's home "in the Sinhalese way" in an apparently virilocal marriage. The man said that his property from which he could maintain his family was in the Matara district and that it was customary for the woman to follow the man.⁴⁹ In another dispute, the betrothed woman simply said that she had nothing against the man but that she herself did not know why she was not inclined to marry. The board noted that she seemed to be deranged when she appeared before it.⁵⁰

Some women were rudely awakened to the necessity of confirming the marriage after the deaths of their partners. A couple who had announced the banns in the school in Talpe had lived together as husband and wife in the "Sinhalese way" for seventeen years and had two children. The man having died (eighteen years before), his surviving partner, Kobeiwattege Annika, asked the Scholarchale Vergadering in 1770 to recognise their daughter as legitimate so that she could be registered in the *thombo*, the cadastral record maintained by the Landraad. The *thombo* played a crucial role in the inheritance of landed property and villagers for the most part tacitly acknowledged the need to have their names registered in it. A recognised marriage was also important to establish property rights, as illegitimacy reduced inheritance considerably. Annika's request was granted.⁵¹ The secretary of the Scholarchale Vergadering was the same as the Landraad secretary, and the records of both bodies appear to have been maintained together. Swift communication between them in this case was thus facilitated. Annika was likely to have been caught unawares by the law when she heard that her partner's children by a previous marriage sought to disinherit her daughter. She was able to bring forward witness testimony to reinforce her claim, thus she did not lack support from those around her. If the failure to confirm a marriage was taboo, and that is highly unlikely, no witness would have come forward to legitimise the child. In fact, the widespread involvement of witnesses on issues surrounding marriage indicates that there was little or no censure from friends and family on such matters. Another woman, Mellegodage Simange Anna, faced a similar predicament when her intended husband died five years after they proclaimed the banns in 1758 without confirming the marriage contract. She had gone to the Landraad with their son in 1774, many years after the fact, to have their names inserted in the land register under the family of her late partner, whose brother strongly denied the notice of marriage. The Landraad had referred the matter to the Scholarchale Vergadering.⁵² Failure to solemnise the marriage could thus lead to legal encumbrances years later, yet it was an error that the authorities were willing to overlook. Such situations were also recognised in the Landraad. A status of *ondertrouwden* (having put up the banns) was often recorded for individuals in the Galle *thombos*. Where cohabitation had sufficed to establish a recognised conjugal bond earlier, colonisers imposed complicated new requirements that would have baffled many inhabitants.

Banns, once put up, could be cancelled by the board, which often happened many years later.⁵³ Separation and divorce occurred on the basis of the notice of marriage

and dissolution was meant to ensure that a legal second marriage could take place. I have not dealt with marriage dissolution among the natives as it is not possible to cover the complexities of the subject in a satisfactory way in an article of this length. Given that the board itself met in certain years just twice, formal divorce procedures that followed Roman-Dutch law principles requiring proof of malicious desertion or adultery could not have been widely applied among the indigenous population. It is likely that men and women parted as they pleased, just as much as they lived together in a customary fashion. The Company could not control interpersonal relationships in the villages in exactly the way it wished.

Navigating Customary Marriages

Despite the regulations on marriage registration, a “Sinhalese way of marriage” was grudgingly recognised in the Scholarchale Vergadering and the Landraad. Two understandings of the phrase are possible: cohabitation as husband and wife after the banns were read or cohabitation without such a legal betrothal. The Company employed another term in a way similar to our understanding of the “Sinhalese way of marriage”: *massebaddoeschap* seemingly referred to unions where even the banns had not been announced, and was frequently condemned in the Scholarchale Vergadering.⁵⁴ The Company likely had difficulties distinguishing promiscuity, concubinage, and cohabitation. In Sinhala, the similar word *massebāduva* is a Portuguese origin word meaning rape,⁵⁵ which is significant as the Dutch used *massebaddoeschap* in frequent references to how men had led native women astray. Clergymen and laymen of the board who inspected village schools listed couples who lived in “*massabaddoe*.” Couples who lived in concubinage had to marry or face punishment.⁵⁶ Given their relative intimacy with villagers, washer (*dhobi*) caste members whose traditional occupation was washing clothes had to report to schoolmasters on which Christians partnered with non-Christians, and who married in the Sinhalese way. Schoolmasters were required to stop marriages in the Sinhalese way and if unsuccessful to inform the *predikant*.⁵⁷

The board made some effort to mitigate the problem of unconfirmed marriages. In 1779 and 1780 schoolmasters were asked to make a list of all those who had put up the banns but not yet married.⁵⁸ The produced list stated that in the Galle district, 207 couples had put up the banns but not confirmed the marriage. The schoolmasters also reported that 440 Christian couples and 222 mixed couples of heathens and Christians lived in concubinage.⁵⁹ Ordinances that stipulated corporal punishment for such offences were to be published everywhere to combat the problem. No evidence of such punishment however was found in the ten-year sample period that I studied. Thus, it appears local practices were frowned upon, yet reluctantly tolerated to some extent. In practice, the Scholarchale Vergadering turned a benevolent eye on unregistered unions. Formally promising to marry one another was recognised as proof of the intention to marry—the board stipulated that witnesses including village officials had to be present at such an engagement (referred to as *trouwbelofte* or

huwelijksbelofte). It even referred to engagement “in the Sinhalese way.”⁶⁰ Such engagements however had to be verifiable.

Many disputes arose when engagements could not be proved. In the late seventeenth century, the Company lamented that it was hard-pressed to deal with the numerous complaints from native women claiming defloration and impregnation after the promise of marriage, and requests to make the men in question marry them in order to restore their honour or pay maintenance for their children. The VOC warned villagers as far back as 1692 not to bring such complaints in a *plakkaat* that was to be published everywhere in Colombo, Galle, and Matara in the Sinhala language.⁶¹ But complaints of broken promises continued. Women who felt deceived by their partners would have had customary ways in which to deal with restoring their honour; we may not know for certain how willing they were to turn to the Company for intervention. Did they, for instance, first approach their headmen? Men at times admitted to coition with the women concerned, but insinuated that the women were prostitutes or that they were one of many. They denied having promised marriage and focused on throwing doubt on the woman’s sexual honour.

Maintenance was sometimes discussed. In 1779, Gallemulle Duminguge Christina, in her complaint against Ponnadurege Andries who had left her after many years and two children for another woman, claimed that a schoolmaster and family members from both sides were present at the engagement. Her mother, Andries’s uncle, and the schoolmaster confirmed the engagement, and the board referred to her as Andries’s bride in recognition of that exchange of *trouwbeloften* (marriage promises). Andries had to either prove that the children were not his, or marry his bride. He brought forward three male witnesses to support his claim that Christina was a whore. She was granted a copy of that affidavit on her request, but no further mention of the case was found in the records thereafter.⁶² When Gamage Leonara complained in 1778 that Gamage Matthijs had not kept his promise to marry her daughter despite having two children with her, and had put up the banns to marry another woman, the board summoned Matthijs and the schoolmaster who had put up the banns to investigate the matter further. Leonara remarked that due to their poverty her daughter had lived with her partner in the Sinhalese way after promising to marry each other in public.⁶³ Incidentally, parents often came to the Scholarchale Vergadering on behalf of their betrayed children.⁶⁴ In the absence of public *trouwbeloften*, the board would not recognise a union, as in Jebbo’s case given at the start of this article—she refers only to marriage promises made to each other (*onderlinge trouwbeloften*). In a similar case heard before the sample period in 1763, a woman’s claim of *trouwbeloften* was dismissed as she could not produce any witnesses and had not immediately reported it to the schoolmaster. The man denied carnal knowledge of her, but claimed that one night her uncle with help from others had shut him up in a room with her!⁶⁵ It would be unusual to force someone to marry on the basis of unverifiable *trouwbeloften*. In fact, the Political Ordinance of 1580 in Holland had declared that only the public engagement was legal; a private exchange of promises was no longer considered

binding.⁶⁶ In Sri Lanka, the Company recognised promises of marriage exchanged in public.

In the Landraad, customary unions were recorded and recognised as such. *Op de heidense wijze getrouwt* (“Married in the heathen way”) was recorded against a few names in the Galle *thombos* which the council maintained.⁶⁷ It can be imagined that during the *thombo* registrations unions that were public knowledge in the village were easily recognised.⁶⁸ Witānachchige Bastiaan, a *mayorāl*, came to the Landraad in 1778 and asked that his son Jantje by his first wife whom he had married *op de Singaleese wijze* (in the Sinhalese way), also be registered in the new *thombo* as a *mayorāl*. A *mayorāl* was a village head who traditionally organised the compulsory services due from the villagers, reported to the Landraad on land matters, and provided victuals for visiting VOC commissioners and headmen. Jantje’s mother’s brother⁶⁹ claimed to be ignorant of his sister’s marriage, but said that Jantje was definitely her son and that he had brought him up when he was young till Bastiaan had taken him away. Another *mayorāl* and *schrijver* (writer) of a village nearby added that they did not know the circumstances of his birth, but that Jantje had always been known as Bastiaan’s son and performed the *mayorāl* service for at least twenty-five years. Despite doubts over a recognised marriage in even the local way, the Landraad allowed Jantje to be inserted in the *thombo* as a *mayorāl*.⁷⁰

It is not clear if *de facto* spouses were treated in the same way as a registered spouse for the purpose of intestate inheritance. In a case heard in the Landraad in 1778, the inheritance rights of the surviving spouse and children based on a deed of gift were upheld. The Sinhalese woman Bussa Āchārige Kalu Nachera produced a deed of gift by which the man whom she had married *na de Singaleese wijze* (in the Sinhalese way) had gifted property and other goods to her and her children by him. Her husband’s relatives, however, appeared in the council and said that they knew neither of the gift nor that Kalu Nachera had married their brother in the Sinhalese way. The Landraad ignored them, and approved the gift and entry in the *thombo* of Kalu Nachera’s details.⁷¹ More research however is necessary to establish the full inheritance rights of men and women who had married in the Sinhalese way.

Children, not mentioned in Wadugamage Jebbo’s rejected plea mentioned above, may have played a key role in establishing marriages by cohabitation and repute. It is often an inheritance from the child’s late father that is in dispute. When the issue of the frequency of unconfirmed but consummated unions came up in the Scholarchale Vergadering, it was remarked in the case of any issuing children’s inheritance that “*moeders na regten geen bastaarden maken*” (mothers make no bastards), a well-known principle of Roman-Dutch law that illegitimate children inherited in the same way as legitimate children from their unmarried mothers. The Scholarchale Vergadering recommended the legitimation of the children whose fathers had passed away before the marriage was confirmed.⁷² Roman-Dutch law disallowed inheritance from the father by an illegitimate child, but the Dutch in Sri Lanka permitted it in some circumstances. Thus clearly, the Company made an exception in the law that effectively legitimised a customary practice of cohabitation.

It may be argued that the reluctant acceptance of customary marriages can be understood within the framework of the Roman-Dutch law of a rebuttable presumption of a valid marriage instead of concubinage. Although not specifically referred to in the archival record, the Landraad and Scholarchale Vergadering clearly recognised marriages established by cohabitation and repute, especially if the couple also had children. To date, if there is evidence that a man and woman have lived together as husband and wife, the law in Sri Lanka considers it a valid marriage if the contrary is not proved. The “Sinhalese way of marriage” and *massebaddoeschap* would easily fall under such provisions. Such presumption in favour of marriage usually arises in cases where either or both parties are dead and an issue of inheritance has arisen. It was not considered in Jebbo’s case mentioned above. Her request for the reinstatement of her partner or restitution of conjugal rights as it were could not be granted under a presumption of marriage. Her claim of a private promise of marriage was insufficient for the Dutch. It may have also been insufficient under local laws, where a more or less permanent union would be sanctioned among the peasants by simple formalities that included witness, and more elaborate ceremonies among the elite. These were regionally diverse.⁷³

Some percentage of unions thus remained unregistered and unconfirmed, but notifying the schoolmaster is likely to have become a regular practice over time. The less serious manner in which one could break the law was by omitting the extra step of consecrating the marriage, which many considered unnecessary. While the VOC overlooked this, the locals had reluctantly begun to accept the requirement for putting up the banns. Gananath Obeyesekere describes how well into the twentieth century Mādagama villagers regarded “absence of registration as rendering a marriage *legally* invalid.”⁷⁴ They were unaware of the laws relating to the validity of marriage solemnised according to customary rituals and the proof of marriage through cohabitation and repute. This may be due to repeated enforcement of legislation requiring the registration of marriage since early colonial rule, and the widening understanding that inheritance and legal marriage were linked. If it could not establish even a local customary marriage, the Landraad recorded as illegitimate in the *thombo* a child born to either an unmarried woman or an adulterous married man or woman. The child was then forced to accept a lower status of *nainde* (a husbandman) and its reduced land grant. Economic factors thus contributed to the recognition of registration, but the accommodation of customary marriages created a plural structure of family norms in the eighteenth-century south.

Conclusion

Wadugamage Jebbo’s story of her subsequently unwilling partner with whom she had lived on the promise of marriage shows how a local woman viewed the Scholarchale Vergadering as a legal space where her personal quandary could be solved. She, as did many other women, demonstrated legal agency in attempting to manage their socioeconomic lives within the context of a European joint-stock company’s trade

and missionary interests. Jebbo had not given notice of marriage, and she was likely not aware that cohabitation before a legal marriage was in principle unacceptable to the new colonial powers. She believed that the Scholarchale Vergadering was a forum to which she could appeal to compel her partner to marry her. In her case, as the inheritance of children was also not at stake, the board emphasised Dutch laws of registration. It could not compel her man to return. The Scholarchale Vergadering was not strictly judicial, but as a provincial board exercised control over matters of morality that touched the heart of family life. The peasants accepted the “legality” of the space it provided, as they did the judicial space of the Landraad. The two institutions cross-referenced disputes, maintaining a close relationship. Retaining pre-conquest family laws in such spaces was inevitable. At the same time, attempts to incorporate Dutch legal principles and customs where possible were not uncommon.

Monogamous, legitimate marriage was emphasised under Dutch rule in eighteenth-century Sri Lanka, but not fully achieved. Marriage registration laws intended to transform local practices were conspicuously present.⁷⁵ The Dutch imposition clearly baffled native inhabitants of the south. Old ways of life held fast in the face of Protestantism. Baptism was linked to marriage, which in turn was linked to inheritance. Yet, at least within limits, the Company reluctantly accepted local practices reprehensible to Dutch sensibilities, such as cohabitation either without registration or without solemnisation after the banns. Such accommodation established the realities of normative rule in eighteenth-century Sri Lanka; pluralities in practice were a key factor in maintaining the peace among the natives.

It is doubtful that despite its best efforts the Scholarchale Vergadering could achieve change in a significant way on issues of morality. Economic forces are more likely to bring about transformations in customary laws than moral grounds. Unlike in nineteenth-century Hawai‘i, where American missionaries closely regulated matters of sexuality,⁷⁶ the Company did not proactively attempt to reform family life, an area where it could not easily dictate terms. It made a significant dent as the requirement for registration reached native society, but evidence of customary marriages shows us its limited reach. Pluralities in practice were evidently inevitable. The enduring nature of marriage registration can be seen over the nineteenth and twentieth centuries, when registration practices were secularised and came to be preferred despite the legal recognition of customary marriages. The association of legal marriage with land ownership was not consistently emphasised by the VOC, but came to be a lasting legacy of Dutch rule.

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SV = Scholarchale Vergadering

GL = Galle Landraad

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Notes

- * Nadeera Rupesinghe has taught at the Open University of Sri Lanka and has a doctorate from Leiden University. Her dissertation, "Negotiating Custom: Colonial Lawmaking in the Galle Landraad," is an examination of a district-level judicial forum set up by the VOC in eighteenth-century Sri Lanka. She is at present a postdoctoral researcher under the Dutch NWO-funded project Colonialism Inside Out: Everyday Experience and Plural Practice in Dutch Institutions in Sri Lanka (ca. 1700–1800). She is grateful to the reviewers of this article for their extensive comments that have enriched it greatly.
- 1 The Dutch called the country Ceylon, but I have used Sri Lanka as that is the name by which it is known today.
 - 2 SLNA 1/6220, 'SV Minutes,' fol. 29r, 4 Jul 1770.
 - 3 Chandra, *Enslaved Daughters*, 7.
 - 4 Anagol, *The Emergence of Feminism in India*; Mallampalli, *Race, Religion and Law*; Mallampalli, *Christians and Public Life*.
 - 5 Chatterjee, *The Making of Indian Secularism*.
 - 6 See Groenewald, "A Mother Makes No Bastard."
 - 7 The Max Planck Institute for European Legal History is leading a research focus group on Legal Spaces.
 - 8 In the Galle and Matara districts, the number of converts rose from 25,827 in 1693 to 92,313 in 1753. Thereafter there was a decline to 58,723 in 1788. It is not possible to present accurate population figures from the available material, but an estimate of a population of 95,000 over the eighteenth century for Galle alone was based on the *thombos* or land registers. Goor, *Jan Kompenie as Schoolmaster*, 160–1; Belt, Kok, and Mandemakers, "Digital Thombos," 484.
 - 9 In the records from 1770 to 1780, Albertus Homoet, the second in command of the Galle Commandment, was also the president of the Scholarchale Vergadering. He was followed by Mattheus van der Spar, also his successor as second in command. Mottau writes that the number of members fluctuated, as can be seen in Galle. "Education under the Dutch," 305 n8.
 - 10 See Hovy, *Plakkaatboek*, vol. 1; nr. 74, Instructions for the scholarchen who are in charge of the schools in the districts of Colombo, Jaffna and Galle, 25 Dec 1663.
 - 11 This ten-year period is covered in SLNA 1/6220–6224.
 - 12 Although this article also deals with marital disputes from the Matara district, I have not looked at the Matara Landraad records due to time constraints.
 - 13 Ribeiro, *Historic Tragedy*, 50.
 - 14 Knox, *An Historial Relation of Ceylon*, 173–5.
 - 15 T. Berwick, 'Judicial Report' Kandy Administrative Reports, 1870, quoted in Pieris, *Sinhalese Social Organization*, 195.
 - 16 Davy, *An Account of the Interior of Ceylon*, 216.
 - 17 Obeyesekere, *Land Tenure*, 140. Obeyesekere based his anthropological study in Mādagama in the 1960s.
 - 18 Still, even after performing various rituals or after the first fortnight of cohabitation, the marriage could be annulled. Pieris, *Sinhalese Social Organization*, 201–2.
 - 19 Pieris, *Sinhalese Social Organization*, 197.
 - 20 Schutte, "Een Hutje in Den Wijngaard," 186. The VOC issued specific rules for

- marriages between Roman Catholics and between Roman Catholics and Protestants.
- 21 At the *censura morum* conducted by the church councils, the discipline, morals, and conduct of the church members were examined. See Koschorke, *Dutch Reformed Church*.
 - 22 Tamil- and Portuguese-speakers also converted to Calvinism, while the Moors alone, it appears, did not convert. Ten-
nent, *Christianity in Ceylon*, 64.
 - 23 SLNA 1/6222, ‘SV Minutes,’ fol. 20r, 5 Dec 1776.
 - 24 SLNA 1/6218, ‘SV Minutes,’ fol. 2r, 5 Dec 1759; 15v, 17 Oct 1764; Groenewald, “A Mother Makes No Bastard,” 78.
 - 25 Lee, *An Introduction to Roman-Dutch Law*, 55.
 - 26 SLNA 1/6221, ‘SV Minutes,’ fol. 38v, 6 Feb 1771; 42r–43r, 23 Sept 1771.
 - 27 In his marginal comment, the commander says that his request for a sororate marriage could have been granted if he was Jewish or a Jewish convert. SLNA 1/6220, ‘SV Minutes,’ fol. 29v, 4 Jul 1770.
 - 28 Hovy, *Plakkaatboek*, vol. 2; nr. 528, Notice concerning the forbidden grades of blood relationship by marriage or out of wedlock relationships, 28 May 1773. See also Hovy, vol. 2; nr. 530, Notice against all possible crimes, 1 Jul 1773; nr. 684, Concept-mandate of the Scholarchale Vergadering in Galle . . . 19 May 1795. In the Dutch Republic, as marriage was considered permanent, unions between people related by marriage were considered incestuous and criminal. Groenewald, “A Mother Makes No Bastard,” 78.
 - 29 In a case outside the sample period, Kahaduwe Arachchige Johan had put up the banns with Kalupahane Anna Maria, but was subsequently unwilling to marry her. He claimed to be underage at 21 years old and that he had registered without his parent’s consent. The commander dismissed that reason, saying that if he had no other reason he’d have to marry Maria. He was subsequently found to be 27 years old according to the school register and he agreed to marry her. SLNA 1/6218, ‘SV Minutes,’ fol. 24r, 2 Aug 1763; 25v, 5 Sept 1763.
 - 30 Hovy, *Plakkaatboek*, vol. 2; nr. 195, Regulations on the church and school obligations of native Christians, 15 May 1699; nr. 457, Resolution to forbid concubinage between non-Christian men and Christian women by notice in the usual languages of the country, 3 Jun 1760. In an issue taken up in the Scholarchale Vergadering in 1774, a schoolmaster was accused of allowing the notice of marriage to be given by a woman who was baptised with a man who was not. The accusation was later found to be false. SLNA 1/6222, ‘SV Minutes,’ fol. 7r, 5 Sept 1774; 8v–9r, 9v–10r, 5 Oct 1774; 24r–25v, 7 Dec 1774; 26v–27r, 5 Jan 1775; 27v, 7 Jun 1775.
 - 31 The Scholarchale Vergadering forbade this practice. See Hovy, *Plakkaatboek*, vol. 2; nr. 684.
 - 32 SLNA 1/6221, ‘SV Minutes,’ fol. 42v, 23 Sept 1771. In this case, unlike in Jebbo’s mentioned at the beginning of this article, the board summoned the man although notice of marriage had not been given. It is possible that his deception on the pretext of being baptised was thought to be serious enough to address.
 - 33 Hovy, *Plakkaatboek*, vol. 1; nr. 15, Ordinance on the legalisation of illegal marriages between native Christians and on the registration and ending of marriages; punishments against concubinage, separation, and adultery, 1 Aug 1647. For other relevant ordinances, see Hovy, vol. 2; nr. 195; nr. 543 Plakkaat regulating the formalities for proclaiming the banns and the marriage solemnisation . . . 24 Dec 1776; nr. 684.
 - 34 SLNA 1/6224, ‘SV Minutes,’ 23v, 2 Aug 1780. Officials were warned that this would be a new practice for the natives.
 - 35 These records have not survived. The Christian Reformed Church in Wellawatte holds some records of marriages among Europeans, Eurasians, and the

- indigenous elite originally from the Dutch Reformed Church of the Galle Fort.
- 36 See Hovy, *Plakkaatboek*, vol. 2; nr. 684.
- 37 Hovy, vol. 2; nr. 543.
- 38 Heijden, *Huwelijk in Holland*, 37–8.
- 39 See SLNA 1/6221, ‘SV Minutes,’ fol. 53r–v, 5 Nov 1772; 55r–56r, 6 Jan 1773; 59r–v, 60r–64r, 2 Sept 1773; 71v–72r, 4 Dec 1773.
- 40 See Hovy, *Plakkaatboek*, vol. 2; nr. 543.
- 41 SLNA 1/6226, ‘SV Minutes,’ fol. 29r, 5 May 1790.
- 42 Hovy, *Plakkaatboek*, vol. 2; nr. 684.
- 43 SLNA 1/6220, ‘SV Minutes,’ fol. 27v, 4 Jul 1770; SLNA 1/6221, ‘SV Minutes,’ fol. 41r, 23 Sept 1771.
- 44 Hovy, *Plakkaatboek*, vol. 2; nr. 458 Resolution in order to make known that those who come for the marriage solemnisation in church too late must pay fines in favour of the military cashier 3 Jun 1760.
- 45 Such distinctions had a bearing on inheritance law, which will not be dealt with in this article.
- 46 SLNA 1/6224, ‘SV Minutes,’ fol. 5v, 8 Sept 1779. For a similar dispute, see SLNA 1/6222, ‘SV Minutes,’ fol. 12r–v, 5 Jul 1775. Blood relatives and friends or those who could be summoned for the purpose “as per the country’s ways” had to witness a dowry being promised before the villager writer and schoolmaster who recorded what and how much was being promised. Hovy, *Plakkaatboek*, vol. 1; nr. 187, Plakkaat binding native Christians in the southwest of Ceylon to register their promises regarding marriage goods, also warning that women who have intercourse on the promise of marriage, cannot derive any rights, 13 Jun 1692.
- 47 SLNA 1/6221, ‘SV Minutes,’ fol. 48r, 11 Aug 1772. In an earlier example, a woman complained that the native soldier that she had announced the banns with three months ago was now unwilling to marry her. She wished the board to compel him to marry her. SLNA 1/6221, fol. 33r–v, 5 Sept 1770; 38v–39r, 6 Feb 1771. In 1778, a kalkbrander-caste woman claimed that the man she had put up the banns with around ten years previously had since left her without providing for her. SLNA 1/6224, ‘SV Minutes,’ fol. 12v, 19r, 1 Dec 1779; 24v, 2 Aug 1780. In all these disputes, the board summoned the men in question but the available records do not contain their resolutions.
- 48 SLNA 1/6224, ‘SV Minutes,’ fol. 1v, 21 Jan 1779; 12v, 19r, 1 Dec 1779; f. 43r, 5 Jun 1782; 46r, 3 Jul 1782.
- 49 SLNA 1/6222, ‘SV Minutes,’ fol. 28r, 29v–30v, 7 Jun 1775. Philippu had produced an affidavit with five witnesses confirming that Livina had abruptly left his Matara residence when he was away.
- 50 SLNA 1/6221, ‘SV Minutes,’ fol. 51v–52r, 2 Sept 1772.
- 51 SLNA 1/6220, ‘SV Minutes,’ fol. 27r–v, 4 Jul 1770.
- 52 SLNA 1/6222, ‘SV Minutes,’ 8v, 9r–v, 5 Oct 1774; 24v, 7 Dec 1774. The board summoned the parties concerned.
- 53 Both men and women asked the board to cancel notice of marriage. See SLNA 1/6221, ‘SV Minutes,’ fol. 34v–35r, 3 Oct 1770; 49r, 51r–v, 2 Sept 1772; 60r, 70r, 2 Sept 1773; 72r, 75r, 4 Dec 1773.
- 54 A 1770 school visit report noted that many natives everywhere lived in *massebādu*. SLNA 1/6220, ‘SV Minutes,’ fol. 23r, 4 Jul 1770. See also Hovy, *Plakkaatboek*, vol. 2; nr. 684.
- 55 Carter, “Massebāduva,” 484. The word does not appear to be in common usage today. In Dutch, ‘oe’ sounds like ‘oo’ in tooth.
- 56 Hovy, *Plakkaatboek*, vol. 2; nr. 39 Ban on concubinage 19 Nov 1658; nr. 195; nr. 257 Translation of a Sinhalese mandate-ola by which the native headmen and other inhabitants of the dessavonij Colombo and the commandment Galle were ordered . . . to follow Christian obligations 4 Apr 1732; nr. 457.
- 57 Hovy, vol. 2; nr. 257; 684.

- 58 SLNA 1/6224, 'SV Minutes,' fol. 19v, 1 Dec 1779; 32r, 7 Jun 1780.
- 59 SLNA 1/6224, fol. 23v, 2 Aug 1780.
- 60 SLNA 1/6224, fol. 45r, 3 Jul 1782. The board said that the *trouwbeloften* should be made before the schoolmaster and a headman, and noted down by the schoolmaster. SLNA 1/6223, 'SV Minutes,' fol. 26v, c. 1778.
- 61 Hovy, *Plakkaatboek*, vol. 1; nr. 187.
- 62 SLNA 1/6224, 'SV Minutes,' fol. 12v, 1 Dec 1779; 13v, 19 Jan 1780; 31v, 5 Jul 1780; 30r, 2 Aug 1780; 26r–27r, 6 Sept 1780.
- 63 SLNA 1/6222, 'SV Minutes,' fol. 5v–6r, 10 Jun 1778. Further mention of this case was not forthcoming in the available records.
- 64 In one case, the fathers of the couple came to the Scholarchale Vergadering. SLNA 1/6224, 'SV Minutes,' fol. 20v, 1 Dec 1779.
- 65 SLNA 1/6218, 'SV Minutes,' fol. 14v, 17r, 7 Feb 1763.
- 66 Heijden, *Huwelijk in Holland*, 99.
- 67 See SLNA 1/7569, "Panangala Thombo," 9, 11; SLNA 1/7424, "Degalle Thombo," fol. 3v.
- 68 As there is much variation between *thombos* on marriage, they must be more comprehensively studied.
- 69 He was also Bastiaan's cross-cousin, and married to Bastiaan's sister. So Jantje was both his and his wife's biological nephew.
- 70 SLNA 1/6511, 'Minutes, GL,' fol. 41r, 25 Jul 1778; SLNA 1/7512, "Naranowita Thombo," 13 (Group nr 5).
- 71 SLNA 1/6511, 'Minutes, GL,' fol. 92r, 5 Dec 1778; SLNA 1/7491C, "Kumbalwella Thombo," 143.
- 72 SLNA 1/6221, 'SV Minutes,' fol. 41r-v, 23 Sept 1771.
- 73 Pieris, *Sinhalese Social Organization*, 197–200.
- 74 Obeyesekere, *Land Tenure*, 139–41.
- 75 This tension between rules and practice was also seen in the eighteenth-century in the Netherlands. Heijden, *Huwelijk in Holland*, 261–64.
- 76 Merry, *Colonizing Hawai'i*.