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Between Litigation and Arbitration: Administering Legal Pluralism in Eighteenth-Century Bombay

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This article uses the records of the Bombay Mayor's Court (1728–1798) to explore the ways in which an ostensibly English court of law attempted to administer law in a way that was acceptable to a cosmopolitan cast of litigants. I show how, due to the Court's popularity with Indian litigants, and the difficulties of its hybrid jurisprudence, the Court eventually moved to a model of formalised arbitration. In this arrangement, local Indian elites exercised considerable autonomy, while British judges gained an illicit commission. As such, the evidence from the Mayor's Court points to a novel iteration of legal pluralism in which ill-defined legal regimes came to blur and blend with each other in a single forum. I argue that this forces us to reconceptualise solely jurisdictional definitions of legal pluralism, which must be complimented with the study of a court's 'jurispractice'.

Keywords: Bombay, Legal Pluralism, Empire, Law, Mayor's Court.

In April 1746, the Mayor's Court of Bombay declared that "the Gentoos (Hindus) pay little regard to the Customary Oath administered to them by their Law Book" and so henceforth a cow would be used.[1] The prompt for this decision was a murky case involving the fraudulent bankruptcy of a Hindu merchant at the expense of a former governor of Bombay. Deeming a cow to be more sacred than the Bhagavad Gita, a piece of Hindu scripture that had previously served for oath-taking, the mayor and the bench of aldermen seized upon the new "cow oath" as an opportunity to reduce "litigious proceedings." They further reserved the right to administer oaths to litigants "in such other manner as to the Court shall seem most proper and agreeable to their several Casts."[2] It quickly came to light, however, that the Mayor's Court's conception of what was "proper and agreeable" was not shared by the prominent Indian merchants of Bombay. Not only did these traders refuse to take the new oath, but they sent a number of petitions to the East India Company's governor and council

in Bombay calling for the decision to be reversed. Swearing upon a cow, they explained, would cause them to "lose their Cast and consequently Credit and Reputation throughout all Parts of India," whereas if they refused to swear, then they would be "lyable to be sued for any sum," with judgement passed against them in default. They would be forced to leave the town and, in a veiled threat to a British administration keen on attracting indigenous merchants, take their significant business elsewhere.[3]

This threat had the desired effect on Governor William Wake (1742–1750), who wrote to urge the Mayor's Court to repeal the new measure. Drawing on multiple sources of authority, Wake argued that the book oath was considered sacred in the Mughal's domains, but also made comparison with the Quakers in England, who were permitted to forgo oaths in favour of solemn affirmations.[4] This intervention was received poorly by the court, who responded that they were "in no ways accountable to [the governor and council] for their proceedings." Noting that the cow oath had been administered "time out of mind" in the criminal quarterly assizes, the court saw itself as acting well within its rights, that is to say, in accordance with "the Laws of England, the Laws and Religion of the Gentoos & the Constitution of this Government."[5] A further petition from merchants based in Surat notched up the pressure, and in May the controversy spread from the civil courts to the assizes, where the interpreter refused to take the cow oath, to the great outrage of the mayor.[6] Justice in Bombay had ground to a halt, and the deadlock was only broken in August, when the governor unceremoniously transferred the most troublesome aldermen on the bench back to England, or to other distant settlements.[7]

The cow oath controversy stands out in Bombay's eighteenth-century history as a point of crisis in the town's judicial regime and government.[8] This was a flashpoint in the increasing integration of Indian capital and commercial interests within Company trade and towns, a process characterised by historians such as Lakshmi Subramanian as a motor for imperial expansion.[9] Petitions from Surat point to the wider regional reorientation. Bombay was emerging as the principal port of Western India, largely at the expense of this Mughal city, and Surat's fort was seized by the British the following decade.[10] In addition to this more familiar story, the episode reveals the importance of law, and access to law, for actors who were instrumental to the growth of global financial and commercial networks that drove this transformation.[11] With its hybrid legal practices and cosmopolitan cast of litigants, the institution of the Mayor's Court did not simply reflect these processes, but also played a fundamental role in shaping them.

When thinking about law in imperial contexts, historians have frequently had recourse to the notion of legal pluralism, defined at its broadest as a "situation in which two or more legal systems coexist in the same social field."[12] For British India, legal pluralism is most commonly understood in relation to the categories of Hindu and Muslim personal law, envisaged in 1772 by Warren Hastings for Bengal.[13] While eighteenth-century Bombay saw no official attempts at codification along the lines of Bengal, the arguments marshalled by either side in the cow oath controversy leave us

in no doubt that, for contemporaries, legal pluralism was an "unremarkable habit."[14] As Lauren Benton and Richard Ross remind us, this should come as no surprise: early modern empires were legally plural in both their core regions and their peripheries, composite polities which encompassed diverse sources and forms of law.[15] The composite and layered nature of sovereignty, which they see as a distinctive feature of empires in general, is particularly helpful when thinking about Bombay. Having been ruled for over a hundred years by the Portuguese, in 1661 the island was given to the English as part of Catherine of Braganza's dowry in her marriage to Charles II. The crown, however, found Bombay a burdensome responsibility, and transferred it to the East India Company for a quit rent in 1668.[16]

In seeking to understand how the Mayor's Court of Bombay operated as a forum that administered different laws to different individuals, this article contributes to our understanding of legal pluralism and empire in the premodern period. This was in some ways typical of the "messy" legal world which British imperial administrators sought to reorder in the late eighteenth and early nineteenth century.[17] Comparison can also be made to contexts of consular justice in the Mediterranean, where European consular courts drew eclectically from local sources of law.[18] Moreover, the article expands the growing field of scholarship on early colonial law in South Asia, which has seen the rich records of the Mayor's Courts of all three presidency towns (Madras, Calcutta, Bombay) tapped to different ends.[19] Perhaps the most frequently recurring question for historians has been to try and establish the reasons behind the "popularity" of British courts with Indian litigants.[20]

Explanations for this popularity have generally hinged upon the advantages afforded by British courts to Indians, their efficacy in enforcing verdicts, or their use as an arena for embarrassing opponents. However, Arthur Fraas has recently emphasised instead the expansive rhetoric of English subjecthood in accommodating Indian litigants. Although acknowledging the important influence of local conditions and adaptations, Fraas is at pains to emphasise the shared English legal culture of all three chartered courts, writing that they functioned "along procedural lines expected of any English Court in England or the Americas."[21] For Gagan Sood, however, the Bombay Court should be understood as operating squarely within its local context. According to him, the 1726 charter establishing the Mayor's Courts was in some senses an "exercise in make-believe," since the court applied rules, principles, and procedures derived from the customs of maritime Asia, which had little or nothing to do with the laws of England.[22]

Such a stark polarisation is partly predicated on the definition of "English law" that one chooses to adopt. In the early eighteenth century, English law can certainly be understood in a broader sense than common and statute law, as ecclesiastical, manorial, and equity courts administered justice across Britain according to their various sources of jurisprudence.[23] This is an especially important point to bear in mind in view of the fact that the Mayor's Courts were modelled on the Court of Chancery, an equity court rather than a court of common law.[24] Conversely, as the Bombay Mayor's Court gave verdicts on the basis of evidence heard from *qadis*,

Brahmans, caste heads, and even occasionally "the Jentue Law Books," it seems an understatement to describe this as a bench "freely [stretching] the Englishness of their jurisprudence."[25]

In contrast, I argue that from the very beginning of its existence, judges and lawyers of the Mayor's Court cherry-picked from an often-bewildering mosaic of customs, traditions, and sources of law in an attempt to deliver justice to a cosmopolitan cast of litigants. Charting the chequered progress of this legal bricolage, we see how indigenous litigants employed increasingly sophisticated legal strategies to secure favourable verdicts on matters of personal law, including inheritance and caste expulsion. There was never a hard and fast separation between English and Indian law, but the notion of "equity" served as something of a middle ground, a contestable terrain in which local inhabitants of Bombay co-created the law by bringing their own customs and legalities to bear.[26] This was never formally defined, but can be recognised in the "jurispractice" of the court, which we can understand as "a living body of legal procedures and precedents that were informed by several distinctive strands of jurisprudence."[27] As with the cow oath controversy, such contests could sow conflict among the British, but also the sheer volume of cases was presented as unmanageable. In this context, a countervailing strategy by the mayor made use of an unofficial capacity to oversee indigenous arbitration as a means of de-judicialising litigation involving Bombay's Indian inhabitants. The court's expensive and lengthy Chancery-style proceedings became inaccessible for the majority of Bombay's population, who were instead shunted towards Indian arbitrators.[28] As such, the evidence from Bombay Mayor's Court points to a novel iteration of legal pluralism in which ill-defined legal regimes came to blur and blend with each other in a single forum, until arbitration was settled upon as a means of achieving a degree of separation.

A Pluralistic Court of Equity

The 1726 royal charter establishing the Mayor's Courts in Madras, Calcutta, and Bombay aimed to homogenise the provision of justice in the presidency towns, bringing them within the purview of English law and under greater supervisory control from London.[29] The Mayor's Court was granted jurisdiction over "all Civil Suits, Actions and Pleas," and its procedure was borrowed from the model of the Court of Chancery.[30] A suit was commenced with a bill of complaint, followed by a written answer from the defendant. Depending on the seriousness of the case, further counter-arguments might be heard followed by the exhibition of evidence and witness depositions. The verdict was then decided upon by the bench, "one body Politick and Corporate" composed of nine elected aldermen and the mayor, who was annually elected among the former.[31] These "merchant judges," as they have been termed, had no training in English law, and it was not until 1798 with the creation of the Recorder's Court that Bombay was served by trained legal professionals.[32] Frustratingly for the historian, but in line with Chancery practice, the justification for the verdict was generally delivered orally. The court's decisions were enforced by a sheriff, and

its jurisdiction was notionally "10 English miles" from Bombay or its subordinate factories. The governor and council served as a court of appeal, with cases over 1,000 pagodas (Rs. 3,000) eligible for appeal to the Privy Council in London.[33]

A letter from the Company's directors which accompanied the charter shows us that a book of instructions as well as some law books were provided to help the aldermen carry out their duties. The court officers were to be offered remuneration in the form of court fees, although these should be "very moderate" so as not to deny the poorest residents access to the court.[34] In London, at least, the Company directors took the charter and the provision of English law in its Indian settlements fairly seriously. Scrutiny of proceedings was ensured through the yearly copying of the register which was to be sent back to London for inspection.[35] While the governor did have the power to dismiss aldermen, they had the right to appeal their case to the king-in-council.[36] Significantly, while the charter permitted the governor and council to pass bylaws, rules, and ordinances "for the good Government and regulation of the several Corporations here erected," any such amendments had to be approved by the Court of Directors, and crucially "not contrary to the Laws and Statutes of England."[37] At least in theory, therefore, the charter and instructions represented an attempt to tie Bombay closer to English legal norms and metropolitan control, while also enshrining a measure of independence in the town's civil court.

This brings us to the vexed issue of the jurisprudence of the Bombay Mayor's Court. No provision was made in the charter for what should decide the court's verdict, other than that it should "give Judgement and Sentence according to Justice and Right."[38] Later legal judgements have traditionally interpreted this phrase to mean the common and statutory law of England as it stood in 1726, insofar as applicable to Indian circumstances.[39] J. Duncan M. Derrett has argued that this phrasing was an intentional shift towards English law, away from the more "Roman" phrasing of "Justice, Equity and Good Conscience," which had been used in Company courts during an earlier period.[40] Whatever the sources of the law encapsulated in this sibylline formulation, the director's letter leaves us in no doubt that the charter was "principally designed for the Government and benefit of Europeans." For their part, local inhabitants were to continue to enjoy their "peculiar customs" so long as they did not breach the peace or the "settled Rules of the Place."[41] This directive did not explicitly forbid Indians from using the court, but rather suggests the Company directors imagined that they would settle their own affairs.

However, the Bombay Court quickly became dominated by non-British litigants. Out of the 170 cases recorded in the register for 1731 only 10% of cases were between litigants with British names, a further 10% were between litigants with Portuguese or other European names, 44% were between litigants with non-European names and 36% were mixed.[42] Given that the predecessor of the Mayor's Court, the Court of Judicature (1718–1728), had also dealt with disputes arising among the local population, it is unsurprising that this tradition was continued.[43] Indeed, this was the rationale behind a letter sent by Governor William Phipps (1722–1729) to the Mayor's Court in November 1728. In these instructions, which would come back to haunt

his successor, Phipps ordered that the Mayor's Court continue the "antient practice" of deciding upon matters involving native customs as reported to them by the *vereadores*. A vestige from Portuguese times, these municipal officers were a branch of local administration who were "chosen out of the landed men, and Yearly sworn into Office."[44] For the most part they seem to have been Luso-Indians, and fulfilled a number of duties which ranged from compiling inventories of births and deaths to reporting on the quality of manure.[45] In fusing this local institution to the Mayor's Court, Governor Phipps was no doubt acting in accordance with the traditional provision of justice in Bombay, yet under dubious legality in relation to the charter, something we will return to later. From the beginning, therefore, the court did not so much make a distinction about Indian subjects *per se*, but specified instead the "controversys arising about customs peculiar to their respective Casts."[46]

In passing verdicts on matters as diverse as the cosmopolitan population of Bombay itself, lawyers and judges had frequent recourse to the notion of "equity" to accommodate a kind of legal pluralism.[47] The use of the Court of Chancery as a model facilitated this flexibility, since equity was imagined as an "expansive notion of conscience," associated with natural justice and understood by maxims rather than strict rules.[48] As a 1727 manual on equity put it, "the Court of Equity will not adhere to its own most established Rules, if the least Injustice arises from thence."[49] Although in Chancery the practice of equity hardened into its own system of precedents over the eighteenth century, broader notions of the "equitable" continued to inform decisions made by untrained judges in provincial courts throughout England.[50] Appeals to the Mayor's Court as a "Court of Equity" can be understood as an attempt to reconcile local customs within a recognisable framework of English law, even where those customs might infringe the statutory law of England.[51] This tactic was not always successful. For example, in a pleading of non-age, the English age of majority was upheld to invalidate a bond, with the bench rejecting the argument that it should act as a court of equity "to relieve such who cannot be supposed to be acquainted with our Laws."[52] However, when it came to complex customary inheritance practices, the court might consult caste heads, and judge their report to be "founded upon Equity," allowing it to stand as evidence in lieu of the litigants' petitions and answers.[53]

Yet on another level, this kind of legal pluralism can be related more directly to the Indian judicial landscape. As Niels Brimnes has argued for Madras, the notion of "layered sovereignty" is especially useful for conceptualising the ways in which Indians in the eighteenth century understood the exercise of power as "multi-layered," something shared among different "contractors."[54] Nevertheless, we might query the sharp contrast he draws with British sovereignty, presented in its modern, Weberian definition. Philip Stern's influential intervention has alerted historians to the limitations of applying such standards to the "corporate sovereignty" of the Company.[55] Even metropolitan Britain at the beginning of the eighteenth century was still in some senses a "composite monarchy."[56] While the Acts of Union in 1707 had merged the legislatures of Scotland and England, Scottish employees such as James Fraser, James Dalrymple, and John Neilson, all of whom were involved in the

cow oath controversy, would have been aware of the coexistence of English and Scots law.[57] Furthermore, in England itself, powerful and independent landowners who served as Justices of the Peace might be envisioned as "contractors in power," in a similar vein to Indian chiefs and headmen.[58] The continuing role of the *vereadores* as a municipal body which had long participated in local government and justice further complicates the legal landscape. While this comparison should not be pushed too far, it is useful to remember that the customs and corporate privileges of a divided sovereignty were very much a part of metropolitan legal terrain, and in this sense the "antient customs" referenced in suits might not seem so alien to the bench, even if we might doubt the accuracy in how they were reported.[59]

The bench was aided in its understanding of these various customs through its consultation of a plethora of different authorities. Sood distinguishes between "independent legal forums" such as arbitrators or caste heads, and "sovereign legal forums," in which he includes the Mayor's Court and the personal justice of the governor.[60] Here the distinction rests upon access to violence, yet as Sood notes, the boundary between independent and sovereign forums was porous. This does not, however, detract from the importance of such bodies to Bombay's legal regime, as their reports and evidence could be vital in determining the outcome of a case, with a given community's rules around property ownership and transmission often featuring as a central battleground.[61] The "Codjee" (*qadi*, a judge of Islamic law) and "Chogolas" (*chaugula*, deputies) appear to have been consulted in cases involving Muslims.[62] In 1741 there were at least two *qadis*, who both signed a report about the ownership of a house and some cattle in dispute between Caday, a widow, and a "Moorman."[63] The term "cast" might be used indiscriminately in the minutes, as we find examples of "the heads of several casts" or "the head Padre and heads of Cast," whether for "Moors," "Gentoos," or "Parsees." [64] Brahmans might also be included under the rubric of caste heads, although on other occasions Brahman legal experts were referred to as a separate grouping.

In consulting these different authorities, the Mayor's Court attempted to remain true to the Company's policy of respecting local peoples' "peculiar customs." Nevertheless, as cases came before the bench, they were filtered through the processes, procedures, and vocabulary of English law, and ultimately decided upon by a British jury. In the absence of reasoned judgements, it is difficult to determine any over-arching rules employed by the court. In some instances, they simply judged the case on the petitions presented to them, at other times they heard reports from headmen, or they might peruse translations of written evidence such as wills and genealogies.[65] In a particularly contentious case over the inheritance of a coconut farm, precedence was sought for the verdict of the Brahmans and their "Law Books" over a report submitted by the heads of caste, with the latter disparaged for the "Incertainty of their Decisions, and the Diversity of their opinions."[66] This case saw both parties produce "several paragraphs out of the Jentue Law books, truley translated from thence, and confirm'd by several Braminees to be a true translation."[67] This development likely reflects local practices of dispute resolution in eighteenth-century Maharashtra, yet it

also reveals the actions of Indian legal practitioners in a pluralism that might otherwise escape a strictly jurisdictional perspective.[68]

Insofar as it is possible to determine the origin of such legal strategies, it is helpful to conceive of them as the joint creation of Indian litigant and British attorney.[69] Focusing on this coproduction helps us appreciate how the court's hybrid legal culture evolved. Attorneys were responsible for drafting petitions, answers, replications, and rejoinders, as well as interrogatories for witnesses—and would bill for all of these services.[70] While mostly an invisible figure, the attorney could nevertheless prove duplicitous. A rare suggestion of this can be found in 1751, with the dramatic renunciation of the widow Ruckimenbay (Rukhmabai) by her attorney. This occurred in a convoluted case over a disputed inheritance involving her daughter Putlybay (Putlibai), whose age of majority was disputed.[71] Although a Hindu birth certificate was presented showing her as underage, this was contradicted by a will proving her majority, and following its exhibition, the attorney suddenly dropped the case.[72] He claimed to have been "deceived and imposed upon by his Client in this affair, he having acted according to the Instructions given him," and "hoped the Ho. Court would not Impart this affair to him."[73]

The fact that the attorney felt suspicion might fall on him is probably proof enough of the influence attorneys might have in shaping petitions. It seems unlikely that such a delaying tactic could have been entirely "imposed upon" him, especially as he stood to gain financially from extra charges.[74] As we will see below, the court could be wary of attempts by attorneys to encourage proceedings deemed "litigious." Yet Rukhmabai was hardly a passive figure herself. Upon advice, she had come to Bombay from the mainland "to make proper application and defence in behalf of her said Daughter."[75] The translation and presentation of this apparently dubious birth certificate suggests further cooperation between attorney and litigant. Even in deception, however, we see how the jurispractice of the court drew upon multiple sources of law. The vibrant legal ecosystem which emerged around Bombay Mayor's Court was clearly fertile ground for hybrid and cross-fertilising legal discourses and strategies.

Jockeying for Jurisdiction

The creative and active participation of Indian litigants in the Mayor's Court ensured that it remained a legally pluralistic forum. But this same creativity could have disruptive effects, as the arm of the law was called in to enforce verdicts that might be imagined as contravening a well-established Company policy of tolerance in religious and caste matters.[76] Given this longstanding tenet of colonial governance in Bombay, such scenarios could pit the Company's governor and council against the bench, as we saw with the cow oath controversy. One example of this "jurisdictional jockeying," to borrow Lauren Benton's felicitous term, is the so-called Zanoky affair of 1730.[77] While this well-known case has all the ingredients of a classic jurisdictional showdown, less attention has been given to the light it sheds on the specifics of Bombay's legal order. Different actors invoked English, Portuguese, and natural law,

reflecting the legal bricolage of Bombay justice. Indeed, while the case signified future trajectories of jurisdictional conflict, I suggest it must also be understood in relation to the court's jurispractice.

Matters came to head when in June 1730 Zanoky (Janaki), a Catholic convert, complained that Bendoo (Bendu), of the "Taylor" caste had refused to return some of her jewels.[78] Bendu replied that in fact it was Janaki who was indebted to him, as he had paid for the maintenance of her child for six years. This seems to have been the real nature of the dispute as Janaki immediately countered that her son was being kept from her due to her conversion, and that he ought to be returned at once. While her jewels may have been something of a pretext, this did not stop the bench from ruling that Janaki's son should be returned to her, with the concession that she must keep him "at a Gentue house."[79] This was apparently not enough to stop Bendu and the heads of his caste from complaining to President Robert Cowan (1729–1734) about the verdict in Mayor's Court. In acquainting the council with the matter two days later, Cowan was quick to bring up the "Royal Charter," and whether it vested the Mayor's Court with "sufficient authority to take cognizance of & determine in Causes of a Religious nature or disputes about Casts which is the Religion of the Jentoos."[80]

Jurisdiction was certainly at the forefront of this initial round of arguments. Although Cowan repeated the familiar Company policy of freedom of religion, he simultaneously claimed that disputes around caste more properly came under his own prerogative as governor. As he explained "on such occasions the President & Chief Governors have been always guided in giving their decisions by the most antient & intelligent persons of the several Casts." Cowan also backed up his claim by citing both the 1726 charter and the accompanying letter, quoting the paragraph soliciting the court to respect the "peculiar customs" of native inhabitants. Following a unanimous vote of council, the authority of the Mayor's Court was judged to be merely civil rather than ecclesiastical, and judged to have "usurped an authority they are no ways entitled to."[81]

Mayor Edward Page and aldermen sought to defend the court's jurisdiction over the Janaki case, yet quickly resorted to drawing on different legal orders beyond English law. Even as the court sought to emphasise the monetary dimensions to the case, they also provided a compassionate description of Janaki's "very great affection & tenderness" for her child, thereby diverging from the jurisdictional angle. This was buttressed by extensive quotations from Grotius and Pufendorf establishing the "natural right" of parents over their children.[82] Such use of natural law to shore up the authority of an English court prefigures later justifications made by Bengal's Supreme Court in delivering its judgements, as "natural justice" became a vehicle (intentional or otherwise) for introducing conventional notions of English law.[83] In addition to this arsenal of legal authority, the court questioned Cowan's conflation of religion and caste, observing that, "many cases of Meum and Tuum [i.e., distinction of property rights] that come before us have an immediate relation to the laws and Customs of the Respective Casts." If these were to be deemed religious, they warned

that the "Charter will be of Little Effect or Signification with Respect to the natives."[84] While this reveals an apparent ignorance of the intentions of the Court of Directors a mere two years after Bombay had received the charter, it can be explained in relation to the 1728 letter from the previous governor, William Phipps, mentioned above, which the court also cited. As we have seen, this letter instructed the court to rule on disputes over the "peculiar customs" of the indigenous population with the assistance of the *vereadores*. Again, rather than invoking English law, the court drew on local precedent and jurispractice, from their own experience of litigation involving Indians.

A further blow came as a councillor named Thomas Rammell broke ranks and dissented from his previous approval. Rammell's intervention is notable in his invocation of English law, based on his own reading of the Mayor's Court charter and Phipps' letter. His investigations led to the awkward suggestion that ex-governor William Phipps had breached the charter in his 1728 letter by instructing the Mayor's Court to continue the practice of dealing with caste disputes via the *vereadores*. The dissenting councillor doubted that such a bylaw accorded with English law, airily suggesting that it was something "the judges of England will suppose to determine." More damning still, he revealed that within the timeframe of the receipt of the charter in Bombay and Phipps' bylaw, it would have been impossible for Phipps to have had the necessary agreement of the Company directors for the measure. Observing that Phipps "no doubton't well knew the extent of his own authority," Rammell not only challenged the Company administration in Bombay, but in the same flourish undermined the very legality of the established practices of the Mayor's Court.[85]

Cowan's response to this insubordination was exemplary in the light it sheds on the nature of Company sovereignty. As Company servants, Page and Rammell were both vulnerable to his retribution. Page was curtly dismissed from his position as council secretary, as the governor deemed it "highly unreasonable that the person who presides in that Court should be privy to the debates."[86] Cowan also suspended Rammell for his trouble, and it appears there were further sources of disagreement between the two men who subsequently sued each other in the Mayor's Court.[87] While Cowan later faced some criticism for his actions from the metropole, it is a useful reminder of how, as with the cow oath, corporate authority over employees could prove a way out of knotty legal quandaries.[88] Cowan still thought it necessary to explain Phipps' troublesome letter, which he denied was a bylaw.[89] In a letter to the Mayor's Court, he related it to an article in the 1661 treaty with Portugal, which required that Roman Catholics in Bombay be permitted freedom of religion. Once again, a non-English source of law proved the touchstone, with a somewhat tenuous connection to upholding the "Laws of Portugal" necessary for Catholic religious freedom.[90]

For Lauren Benton and Richard Ross, jurisdictional jockeying is the essence of legal pluralism itself, which they define as "a formation of historically occurring patterns of jurisdictional complexity and conflict."[91] Certainly, Janaki and Bendu

can be cast as savvy forum-shopping legal consumers, playing off jurisdictions and drawing court and governor into conflict. Yet is jurisdiction the only means of parsing the legal pluralism apparent in the case? What the affair also suggests is the need to develop the link between jurispractice and jurisprudence. While jurisdictional politics can go a long way in explaining the drawing up of battle lines, it still leaves us grasping at why certain actions and arguments were favoured over others. As Rammell's investigations revealed, this was not simply about competition between distinct legal regimes or jurisdictions, but also about legal regimes that had themselves come to be blended and blurred. In Bombay, the traditions of the *vereadores* and the Court of Judicature had seeped into the practices of the Mayor's Court from the very beginning. In this respect, it was the pluralistic jurispractice of the court that determined the arguments of the affair as much as its jurisdictional impetus.[92]

Curtailing Litigiousness

While the Janaki affair shows how jurisdictional jockeying could lead to flashpoints in Bombay's legal regime, it did not lead to any immediate or obvious repercussions. No formal attempts were made to restrict Indians from accessing the court, and the numbers of Indian litigants for 1741 reveal a similar pattern to a decade earlier.[93] Nevertheless, a more complex picture emerges as we zoom in to the finer grain of the court's day-to-day operations. We can detect in proceedings a growing reluctance to be drawn into disputes over caste matters, especially where the relation to property of monetary value might be tenuous. When in 1731 several Kunbi peasants petitioned the court over what they alleged was an unjust caste expulsion, the court eventually dismissed the bill and ordered that costs be split between parties, a decision amounting to a joint penalty and an attempt to deter such litigation.[94] By 1734, in a similar case involving caste expulsion, we see evidence of litigants and attorneys attempting to mitigate any potential jurisdictional ambiguity that might arise. The complainant's petition thus read, "the said matters are absolutely Relievable in this Honourable Court," while the usual formulaic ending was extended, imploring the court to consider "our Laws and Customs particular to the Jentue Cast … and in this Case pleadable."[95] Although successful in getting his case heard, this complainant was ultimately dismissed with costs of suit.[96]

By the 1740s complaints of "litigiousness" became frequent. While some sought to use the court to redeem their caste status, we find evidence of others suing in court to embarrass their opponents and diminish their credit as traders.[97] While it is risky to infer too much from the number of cases recorded in the registers, since changing or poor record-keeping practices could be at play, there is a noticeable decrease in the volume of cases, especially those that came to a full Chancery hearing,[98] There were 171 recorded cases in 1731, 120 in 1741, and only 31 cases between parties in 1751, recovering slightly to 37 in 1761.[99] Furthermore, the majority of these cases in the 1750s and 1760s were restricted to brief petitions for the purpose of proving bonds,

with only four cases heard in 1761 resulting in full Chancery proceedings. The earliest evidence I have been able to find for a change of practice seems to have come about during the cow oath controversy. Indeed, it is noteworthy that the measure itself was claimed to be a means of reducing "litigious proceedings." Following the controversy, Governor Wake deprived the bench of four of its aldermen, two of whom had lived in Bombay for over ten years. Although as a free trader, the recalcitrant Mayor Anthony Upton clung on to his position, Wake blocked the election of replacement aldermen. The court was therefore operating at a reduced capacity, while also no longer making enough from commissions to cover fees. It was in this context that a measure was introduced that no bill under fifty rupees was to be admitted to court, as Upton would personally decide on all cases below that value.[100]

This was to be one of many attempts at reform aimed both at discouraging litigation and recouping court fees. In early 1747, the court complained of many "Causeless and Contentious Suits," claiming that warrants of arrest and attachment were being used to harass inhabitants of Bombay, putting them to unnecessary expense and even damaging trade. In order to remedy such abuses, upon filing a bill, attorneys were required to first make application to the mayor, who would receive both parties and "endeavour by his mediation to accommodate and make up all differences and disputes between them."[101] The same year further measures were taken to cover court costs, and a 5 percent commission was levied for "the Court's use," but not to exceed Rs. 100.[102] If these measures denote the popularity of the court with Indian litigants, the bench did not draw upon stereotypes of Indian litigiousness, but instead blamed "divers evil disposed and contentious sollicitors" in the Portuguese territories.[103] Even lawyers closer to home were not spared, as in the same year the court's British attorneys were made liable for all costs in a case unless they provided a security, a measure that prompted the immediate resignation of attorney James Dalrymple.[104]

By 1749, we can detect a more summary attitude in the mayor's approach to Indian litigants who sought access to the Mayor's Court's expensive Chancery proceedings, especially when there might be a whiff of litigiousness or wilful obstructionism. In April of that year, the attorney for Sharrifam [Sharifah], a "Moor woman," requested a rehearing for her case after it was dropped. The request was bluntly refused by the mayor, who declared that "he had formerly Examined into this Dispute, and found it a litigious Prosecution of the Complainants." However, this initial examination had been undertaken by arbitrators under the direction of the mayor, as the defendant produced "an award signed by four of the Principal Inhabitants of Different Casts … that they had examined the Matter by order of the Worshipfull the Mayor."[105] It seems that the mayor was largely operating from the findings of these "Principal Inhabitants," a term of identification in eighteenth-century England associated with parochial elites, men with sufficient wealth, age, and credit to exercise authority.[106] For the British, the "Principal Inhabitants" of Bombay certainly held a recognisable prerogative as guardians of morality, since part of the

reason Sharifah's rehearing was denied was that she was a "Person of a Base Infamous Character."

This practice is similar to a proposal made by Indian petitioners in 1736 intended to resolve the difficulties they encountered using the Mayor's Court of Madras. As Brimnes describes it, these petitioners suggested "an outline of an indigenous judiciary in Madras centred on indigenous arbitration, but with recourse to colonial institutions for the enforcement of decrees."[107] The "solution" opted for at Bombay seems very close to this model, with the mayor empowering arbitration with the possibility of attachment and incarceration. Some differences to the suggested Madras procedure might be noted, however. Perhaps most significantly caste grouping was not organised along right and left hand lines. In Bombay, it seems that heads of caste drawn from Brahmans, Banians, Shenoys, and Prabhus were favoured as principal inhabitants.[108] Moreover, whereas the Madras proposal envisaged the final appeal resting with the heads of caste, in Bombay the mayor remained the notional judge.

While the court continued to hear cases between Indian litigants and arbitration continued to feature during full Chancery process, it seems that an increasingly large proportion of cases came to be heard through what was later described as the mayor's "private proceedings," exercised under a "voluntary jurisdiction." It is difficult to determine any boundaries to this jurisdiction, as rulings might be "appealed" to the Mayor's Court. For instance, in August 1751 a dispute over arbitrators appointed by the mayor came to a plenary hearing. The complainant had objected to the verdict of arbitrators who were not of his "Panchalsee" caste, but were drawn from "sundry Bramanees, Banians &ca," the so-called principal inhabitants.[109] The defendant argued, however, that the latter set-up had official sanction, "it being well known that the said arbitrators are well versed and thoroughly acquainted with their Laws and Customs or the Government would not choose to Direct and order them to Examine into any dispute that may happen in any one of the Jentue Nations."[110] The example suggests that this more formalised arbitration system may have trumped more local arrangements, perhaps reflecting the growing prominence of the town's commercial and scribal communities.[111]

It is ironic that the mayor ended up administering customary law to the indigenous inhabitants in a way very similar to how Governor Cowan handled cases in 1730, that is to say, off the book, guided by "antient & intelligent persons of the several Casts," and in return for financial reward. Instrumentalising the court in this way was perhaps the most natural course for justice to take for the mercantile community of Bombay, and similar approaches were adopted in Madras.[112] We might even see India as simply ahead of the curve in this fusion of arbitration with English law, as from the 1770s onwards legalised arbitration cases made an increasing appearance in metropolitan common law courts.[113] While arbitration may have successfully limited the more disruptive effects of a hybrid jurisprudence, the Company directors had already taken on board complaints arising from Indian settlements about the Mayor's Courts, and in 1753 they secured a new charter for the courts.

The new rules contained in the 1753 charter, as well as the accompanying letter from the directors, show that difficulties arising with the Mayor's Courts' operations had not gone unheeded. The controversies around oath-taking had certainly filtered back to London, as the charter made clear that for the "Natives of India," oaths should be administered "as they, according to their several Casts, shall esteem to be the most binding."[114] The directors' letter equally revealed that the Bombay Mayor's Court had been overburdened by small suits, which under Chancery procedure were "attended with a greater expense than the nature of such suits can bear."[115] More power was weighted towards the governor, who now effectively appointed aldermen and had greater influence in mayoral elections.[116] The charter also attempted to restrict the court's involvement in Indian disputes, stipulating that if no Europeans were involved in a suit, both Indian parties had to consent to the court's jurisdiction.[117] While in Madras Indian litigants maintained access to the Mayor's Court by quite openly transferring their debts to Europeans, in Bombay these new provisions in the 1753 charter seem to have effected little change in the admittance of Indian litigants.[118]

It was, in fact, a whole decade before the Mayor's Court eventually faced up to various inconsistencies with its operations and the charter's provisions. In July 1763, the Mayor's Court heard a report from a committee appointed to devise regulations for its "better government." Noting that the mayor's "private proceedings … have of late been very extensive," the committee sheepishly admitted that "the said Charter makes no mention of any such Proceedings being lawful, or binding, or even gives an Opening for them to make such Laws as can empower the Mayor of himself to decide Causes."[119] Rather than roll back what seems to have been the best part of fifteen years of legal practice, the committee suggested simply formalising and seeking approval for what had up till that point been the norm: a non-judicial legal pluralism through arbitration. The mayor was therefore given the authority to appoint arbitrators "to adjust any difference between the black inhabitants provided both parties consent thereto."[120] An annexed table of fees makes no mention of any provision for the mayor in recompense, yet it is clear that he received payment as he was to deduct his charges from the five percent commission collected.[121]

If this was an attempt to veil the precise value of the mayor's fees, the committee did recommend a certain rationalisation of proceedings, greater scrutiny of his accounts, and a reform of the issuing of letters of administration. It sought to tighten up its written regime, introducing bills of complaint for the mayor's private cases, while the court linguist and two scribes were appointed to the registrar to help get the records up to date, which were apparently two years behind.[122] Attempts were made to reduce "Frivolous & Vexatious suits," with the mayor playing a gatekeeping role, as we saw in 1749. In general, the mayor, rather than the aldermen, exercised much more power than before the cow oath controversy, as the former was given exclusive control over the registrar, and could even call "intermediate courts" in his own house.[123] These regulations offer a particularly valuable insight into the legal culture of Bombay, since they had arisen almost organically from its proceedings. In this

sense, the semiofficial system of arbitration belatedly baptised in 1763 was the product of local conditions and practices.

Unsurprisingly, the Court of Directors were not impressed with this retrospective attempt to officialise established practices, and condemned the departure from the charter in very strong terms. Although those rules not "repugnant" were accepted, the directors were horrified at the idea of judges receiving commission on the sums they decreed, which was "temptation enough to bias their judgements."[124] While the Mayor's Court meekly rescinded their request for approval, things continued very much as before.[125] In the very same year as the Court of Directors had expressly prohibited this measure, the more sympathetic governor and Council of Bombay approved a table of fees which included the commission at the 1747 rate, even increasing the cap to Rs. 200 in 1774.[126] Notwithstanding complaints from individual aldermen about the propriety of charging commissions, as well as an attempt to provide allowances for the aldermen and mayor, the practice continued at least until the Mayor's Court was replaced with the Recorder's Court in 1798.[127]

The new charter for the Recorder's Court came at the beginning of a period of renewed scrutiny on Britain's imperial constitution.[128] The presence of legal professionals such as William Cleaver marked this as an attempt to bring order to Bombay's legal system, yet Cleaver faced resistance from established practitioners. The barrister was especially dismissive of the attorneys who lacked legal training. He was also suspicious of the intertwining of Bombay's commercial interests with its legal system, noting that for four years merchants of the powerful Bruce Fawcett & Co. had monopolised the most lucrative positions in the Mayor's Court.[129] In turn, the mayor and aldermen were vocal in demanding some compensation for the loss of their privileges. They petitioned for salaries to replace the commission charged upon indigenous litigation in what was by now recognised as the "Mayor's private court."[130] While acknowledging that the court had emerged from "established usage," the bench argued that this "separate and limited umperage" was of great convenience to the native community.[131] By their own account the fees generated by the court were certainly impressive enough, generating an average emolument of Rs. 25,000 per annum for the mayoralty.

Upon the demand of the Company's counsel, an enquiry into the nature of this court was undertaken by Harry Forrester Constable, a registrar connected with the Recorder's Court.[132] He described the mayor's private court as having "no sanction whatsoever, but what the habitual assent and submission of the Native Inhabitants gave it." However, the "defective nature of the Mayor's jurisdiction" meant that this could simply form a prelude for more complex equity proceedings, as we saw with the 1751 case of disputed arbitrators. An annexed table of fees which Constable obtained from the mayor's Indian clerk suggests that arbitrators continued to play an important role, although their "award or Report, was to be subject to the Mayor's Revision."[133] Constable offered a mixed assessment of the efficacy of the private court, yet given the Company's unwillingness to provide salaries for judges, its fees at least ensured the regular attendance of the mayor.[134] Filling a lucrative niche between

Chancery proceedings and arbitration, the mayor was a gatekeeper to the coercive remedies of the Mayor's Court, and an important contractor in power in Bombay's legal landscape.

Conclusion

In thinking about how dispute resolution was practised in Bombay, we have seen evidence for multiple forms of "legal pluralism." As Indian laws and customs came to be fused into the jurisprudence of the court, the contested realm of the equitable belonged neither solely to maritime Asia nor to the laws of England. It follows that the court itself exercised a kind of plural and composite sovereignty, with the bench even presenting itself as the rightful authority on the "Laws of the Gentoos." Since there was no native ruler imagined to hold competing claims over Bombay (as in Calcutta, and to a lesser extent Madras), a more prominent role for the English court of law in administering justice to local inhabitants was paradoxically all the more necessary due to the comparative absence of more formal indigenous forums. While, as with the Janaki affair, this may have led to jurisdictional disputes between the governor and court, the fluid and voluntary jurisdictions of Bombay's legal order resist coherent categorisation and definition. In this respect, the jurisdictional definition of legal pluralism recently advocated by Benton and Ross can be complimented by a careful attention to the court's jurispractice.[135]

Agency was not only invested in forum-shopping litigants, but also in the more shadowy figures of arbitrators, caste heads, and religious leaders. Although the set-up of the mayor's private proceedings may have notionally vested the final verdict in a British judge, the prominent place of indigenous arbitration in this arrangement suggests that Indians exercised a large degree of adjudicative power in such cases, not least because the mayor had little basis or incentive to challenge their interpretations of customs.[136] Here we are left to gaze "through a glass darkly," as where the extant ledgers suggest a diminishing involvement of the British in administering justice to Indians, they mask a countervailing increase in the commission acquired by the mayor through an arrangement which relied upon local elites.[137]

In this article, I have shown some of the ways in which the British in Bombay attempted to solve the difficulties of administering English law to a cosmopolitan population. I have also sought to emphasise the sense of commensurability displayed in the use of terms like "antient customs," "equity," or "principal inhabitants." This should not be taken as implying an idyllic respect for, or even an understanding of Bombay's local customs, lifeways, and people, but instead it shows that the British believed they could readily apply concepts of their own, most notably with the weight of precedent. Indeed, what is especially remarkable in the cow oath controversy is the confidence the Mayor's Court exhibited in claiming to be able to determine which oath was most valid among Indians. One member of the bench, John Neilson, is even recorded as telling the petitioners that he "knew their Laws and Religion as well as themselves."[138] In this sense, and as an institution of political administration, what

the Bombay Mayor's Court perhaps best illustrates is a period before the "domination of strangers" and the emergence of a modern, colonial state.[139]

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BL IOR/P/416/108.
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Notes

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1 This article uses contemporary place names, e.g., Bombay not Mumbai. The

term "Gentoo" is borrowed from the Portuguese *gentio* meaning gentile. The British used the term to refer to Indians who were not Muslim or Christian.

2 British Library (hereafter BL) India Office Records (hereafter IOR), P/417/1, Register of Proceedings of the Mayor's Court (hereafter MCP) 1746, 173. For similar concerns about the validity of oaths in eighteenth-century Dutch Ceylon, see Seneviratne-Rupesinghe, "Negotiating Custom," 97–120.

3 BL IOR P/341/15, Bombay Public Consultations (hereafter BCP) 1746–1748, 506–11.

4 BL IOR/P/341/15, BPC 1746–1748, 183–5.

5 BL IOR/P/341/15, BPC 1746–1748, 234, 237.

6 BL IOR/P/341/15, BPC 1746–1748, 233; see also BL IOR/H/432, "Register of Proceedings at the Sessions of the Peace."

7 This seems to have been done in their capacity as employees rather than aldermen, as the mayor, a free trader named Anthony Upton, remained: BL IOR/P/417/1, MCP 1746, 353.

8 For different accounts of the cow oath controversy see, Anonymous, "An Age of Progress in Bombay," 177–80; Fraas, "'They Have Travelled into a Wrong Latitude,'" 348–54.

9 For the classic synthesis see Bayly, *Indian Society*. For western India, see Nightingale, *Trade and Empire*; Subramanian, *Indigenous Capital*. On Indian merchants more generally in this region see Sood, *India and the Islamic Heartlands*.

10 Das Gupta, *Decline of Surat*; Stern, *Company-State*, 192.

11 This is not to downplay the importance of non-legal means for imperial financial networks; for Bombay see Finn, "« Frictions » d'empire."

12 Merry, "Legal Pluralism," 870.

13 Travers, *Ideology and Empire*, 112–26

14 Burbank and Cooper, "Rules of Law," 280.

15 Benton and Ross, "Empires and Legal Pluralism," 1. See also Ertl and Kruijtzer, "Introduction."

16 Stern, *Company-State*, 22–23.

17 Benton and Ford, *Rage for Order*.

18 Spagnolo, "Portents of Empire," 259; Marglin, *Across Legal Lines*, 157.

19 For example, for evidence for Indian family firms in Bombay, see Smith, "Fortune and Failure," 44–65; for ways of self-representation among Indians in Madras, see Mines, "Courts of Law and Styles of Self," 33–74.

20 Price, "Anglo-Indian Legal Encounter," 179–200.

21 Fraas, "'They Have Travelled into a Wrong Latitude,'" 108.

22 Sood, "Sovereign Justice," 49–51, 51, 56.

23 Erickson, *Women and Property*, 5–6; Baker, *English Legal History,* 50; Ross and Stern, "Reconstructing Early Modern Notions of Legal Pluralism." Even the common law has been characterised as far more flexible than many historians allow during the eighteenth century: see Lobban, *The Common Law*.

24 Reyes, "Personal Laws in South India," 24; Fraas, "'They Have Travelled into a Wrong Latitude,'" 98–100, 137.

25 Fraas, "'They Have Travelled into a Wrong Latitude,'" 237.

26 For eighteenth-century notions of equity in Britain, see Fortier, *Culture of Equity*.

27 See Oidtmann, "Qing Jurispractices," 153. For the original and slightly different idea of jurispractice used in the context of Native American law, see Hermes, "Law of Native Americans," 33.

28 For descriptions of arbitration in India during the eighteenth century, see Barendse, *Arabian Seas*, vol. 2, 694–6; Sood, *India and the Islamic Heartlands*, 169–77.

29 The charter establishing the Mayor's Courts can be found in *Charters Relating to the East India Company*, 230–51.

30 Ibid., 233.

31 Ibid. 231.

32 Charles Fawcett, *British Justice in India*, vi.
33 *Charters Relating to the East India Company*, 236. A number of cases involving Indian litigants reached London, see Fraas, "Making Claims."
34 BL IOR E/3/103, Letter from the Court of Directors to Bombay, 5 April 1727, 569.
35 These are the copies held in the British Library consulted here. For the important ways in which such documents might "assuage the anxiety of distance" in the metropolitan imagination, see Raman, *Document Raj*, 9.
36 *Charters Relating to the East India Company*, 232.
37 Ibid., 246.
38 Ibid., 235.
39 Rankin, *Background to Indian Law*, 1; Setalvad, *The Common Law in India*, 12–3; Jain, *Indian Legal History*, 35.
40 Derrett, "Justice, Equity and Good Conscience," 132. See also his "Justice, Equity and Good Conscience in India," 8–27.
41 BL IOR E/3/103, 570–1.
42 Extracted from BL IOR P/416/105, MCP 1731. The vast majority of "mixed" cases involved a non-European litigant.
43 For the Court of Judicature see Fawcett, *British Justice in India*, chap. 11.
44 For the letter in full, see BL IOR P/341/7 BCP, 1730–1732, 108–10. For the *vereadores* see Fawcett, *British Justice in India*, 183–4; Malabari, *Bombay in the Making*, 465–6. For the *vereadores* in Goa see Boxer, *Portuguese Society in the Tropics*, 12–42.
45 BL IOR/P/341/18, BCP 1751–1752, 358; BL IOR/P/417/5, MCP, 1750, 65.
46 BL IOR P/341/7, BCP, 1730–1732, 109. This mirrors Reyes' contention that the Madras Mayor's Court simply built upon "a 'duality' inherent in the English attitude to personal laws in India from the earliest times of the Company's administration"; Reyes, "Personal Laws in South India," 18.
47 According to Reyes, "equity" in the Madras Court was also used in relation to caste matters, see Reyes, "Personal Laws in South India," 196–7. Sood also notes appeals to equity in Bombay, but does not explore its specific legal connotations in relation to Chancery: see Sood, "Sovereign Justice," 56.
48 Fortier, *The Culture of Equity*, 17–18.
49 Francis, *Maxims of Equity etc.* Cited in ibid., 17.
50 Lieberman, *The Province of Legislation Determined*, 81–2; Finn, *Character of Credit*, 203.
51 Hermes links the notion of equity to legal reciprocity between Algonquian societies and English colonists in North America: see Hermes, "Algonquian Demands for Reciprocity," 128–30.
52 Bl IOR P/416/105, MCP 1731, 245, 277, 283, 292, 305.
53 BL IOR P/417/1, MCP 1746, 426.
54 Brimnes, "Beyond Colonial Law," 522.
55 Stern, *Company-State,* 8–9.
56 Elliott, "A Europe of Composite Monarchies," 48–71.
57 Of course, unlike the personal pluralism of Bombay, the application of Scots law was more clearly territorialised. Scotsmen arrived in Bombay through East India patronage networks that were part and parcel of state-forming processes which drew England and Scotland together. See, McGilvary, *East India Patronage and the British State*.
58 Landau, *The Justices of the Peace*.
59 This is similar to how the British attempted to understand the "Ancient Constitution" of the Mughal Empire, see Travers, *Ideology and Empire*.
60 Sood, *India and the Islamic Heartlands,* 170n55.
61 See for example the disputed claims around "the Custom of the Parsee Cast," BL IOR P/416/116, MCP 1741, 222–30.
62 BL IOR P/416/103, MCP January to September 1730, 222.
63 BL IOR P/416/116, MCP 1741, 33.

64 BL IOR P/416/116, MCP 1741, 29, 226; BL IOR/P/416/105, MCP 1731, 37, 49.
65 BL IOR P/417/5, MCP 1750, 39–40.
66 BL IOR/P/416/105 MCP 1731, 49, 95.
67 BL IOR/P/416/105 MCP 1731, 105.
68 Guha, "Wrongs and Rights in the Maratha Country," 16.
69 Brimnes, "Colonial Law," 452. For the English context see Bailey, "Voices in Court," 392–407.
70 For a list of fees in 1728, 1767, and 1774, see *Materials Towards a Statistical Account*, vol. 3, 11–12.
71 BL IOR/P/417/6, MCP 1751, 264–5, 293–4. For the beginning of the case in early 1750, see IOR/P/417/5, MCP 1750, 39.
72 On early British enquires into Hindu testamentary power in Bombay, see Fawcett, *British Justice in India*, 199.
73 BL IOR/P/417/6, MCP 1751, 290–4.
74 In 1753 the Court of Directors condemned the "prolix and impertinent" form of bills, as well as "other special proceedings," which were taken as evidence for fee-inducing delaying tactics of attorneys. See BL IOR/E/3/111, Court of Directors to Bombay Council, 24 January 1753, 598–9.
75 BL IOR/P/417/6, MCP 1751, 265.
76 On this, see Ames, "The Role of Religion"; Stern, *The Company-State*, chap. 5.
77 Benton, *Law and Colonial Culture*, 29. In Madras disputes between the Mayor's Court and the governor and council could also become very acrimonious: see Love, *Vestiges of Old Madras*, vol. 2, 264–5.
78 IOR/P/416/103, MCP January to September 1730, 116–7.
79 IOR/P/416/103, MCP January to September 1730, 120.
80 BL IOR P/341/7, BCP 1730–1732, 75–7.
81 BL IOR P/341/7, BCP 1730–1732, 75–7.
82 BL IOR P/341/7, BCP 1730–1732, 87–8. The edition was Samuel von Pufendorf's *Of the Law of Nature and Nations*, 369–72. Grotius's views on children are cited within.
83 Travers, *Ideology and Empire*, 196–7; see also Benton, *Law and Colonial Cultures*, 140–49.
84 BL IOR/P/341/7, BPC 1730–1732, 88–89.
85 BL IOR/P/341/7, BPC 1730–1732, 98–102.
86 BL/IOR/P/341/7, BCP 1730–1732, 95.
87 BL IOR/P/416/104. MCP September to December 1730, 100. For further disputes, see Davies, "British Private Trade Networks," 299, 308.
88 See BL IOR/E/3/105, "Bombay General Letter, 3 March 1731," 493; BL IOR D/19, "Correspondence Reports: Reports and Resolutions of the Committee of Correspondence, 1727–1736," 69f.
89 BL IOR/P/341/7, BPC 1730–1732, 110.
90 BL IOR/P/341/7, BPC 1730–1732, 93–4. For the treaty, see *Selections from the Bombay Secretariat*, vol. 2, 369–74.
91 Benton and Ross, "Empires and Legal Pluralism," 4.
92 Benton and Ross do acknowledge a role for jurispractice, see ibid., 7. For further consideration about the limitations of a jurisdictional definition of legal pluralism, see Yannakakis, "Beyond Jurisdictions."
93 Out of 120 cases recorded in the register, only 8% were between litigants with British names, 9% Portuguese, 55% non-European, and 28% mixed. Extracted from BL IOR P/416/116, MCP 1741.
94 MCP, 1731, 154, 163, 247–9.
95 BL IOR/P/416/108, MCP, 1734, 190–1.
96 BL IOR/P/416/108, MCP, 1734, 206.
97 BL IOR/P/417/4, MCP 1749, 130.
98 Rene Barendse has also noticed this change, see Barendse, *Arabian Seas*, vol. 2, 655–6.
99 Extracted from BL IOR/P/416/105, MCP 1731; BL IOR/P/416/116, MCP 1741; BL IOR/P/417/6, MCP 1751; BL/IOR/P/417/17, MCP 1761.
100 BL IOR/P/417/1, MCP, 1746, 352–3.
101 BL IOR/P/417/2, MCP 1747, 47.
102 BL IOR/P/417/2, MCP 1747, 319.

103 For metropolitan hostility to the legal profession in the eighteenth century see Finn, *Character of Credit*, 205.
104 BL IOR/P/417/2, MCP 1747, 685–6, 689.
105 BL IOR/P/417/4, MCP 1749, 163.
106 See French, "The Middle Sort of People in England," 285.
107 Brimnes, "Colonial Law," 520. The method is also similar to the more formal *Chambre de Consultation* set up in Pondicherry, whereby French judges consulted the town's principal inhabitants: see Parasher, "Administration of Justice in Pondicherry," 43–64.
108 On Madras caste divisions, see Brimnes, *Constructing the Colonial Encounter*, 25–35. For an account that stresses the participatory role of caste heads in the government of Madras, see Balachandran, "Of Corporations and Caste Heads." In Bombay, a report was heard in 1724 from the "the Principall persons of the [several] Casts of this Island in Number fifteen, Including the Portugueze Christians, Moors and Persees," see BL IOR/P/416/99, "Report Concerning the Purvoes," 16.
109 BL IOR/P/417/6, MCP 1751, 216.
110 BL IOR/P/417/7, MCP 1752, 61.
111 The closely intertwined commercial and political interests of British-ruled Surat have been described as an "Anglo-Bania" order. However, this has not been without controversy; for an overview of the dispute, see Gommans and Kuiper, "The Surat Castle Revolutions," 361–89.
112 Brimnes, "Colonial Law," 525, 538–41.
113 Horwitz and Oldham, "Arbitration during the Eighteenth Century," 137–59. Fraas notes that the Company's legal counsel in London wrote to encourage the use of legally enforced arbitration in Madras, citing the Arbitration Act of 1698: Fraas, "'They Have Travelled into a Wrong Latitude,'" 240.
114 *Charters Relating to the East India Company*, 260. By this time Indian litigants had also brought the question of non-Christian oath-taking to metropolitan courts: see Fraas, "Making Claims."
115 BL IOR E/3/111, Court of Directors to Bombay Council, 24 January 1753, 597.
116 *Charters Relating to the East India Company*, 256–7.
117 Ibid., 258.
118 Brimnes, "Colonial Law," 531.
119 BL IOR/P/417/19, MCP 1763, 92. The charter of 1753 created a Court of Requests staffed by commissioners to hear cases under five pagodas (two pounds), see the charter reproduced in *Materials Towards a Statistical Account*, vol. 3, 30–33. While the governor dutifully appointed eight British commissioners, the bare minimum required to pass judgement, the 1763 regulations make no mention of this court. On the Court of Requests at Calcutta, see Ganguly, "Evolution of the Small Cause Courts in India," 98–108.
120 "Intricate" suits above Rs. 800 could still be referred to the full court.
121 BL IOR/P/417/19, MCP 1763, 91; for the fees, 104–7.
122 BL IOR/P/417/19, MCP 1763, 103.
123 BL IOR/P/417/19, MCP 1763, 97–100.
124 Letter from the Court of Directors to the Mayor's Court, 12 and 26 March 1766, reproduced in *Materials Towards a Statistical Account*, vol. 3, 39.
125 Letter from the Mayor's Court to the Court of Directors, 4 May 1767, reproduced in ibid.
126 See the table of fees and relevant consultations in ibid., 11–2, 40–1.
127 *Selections from the Bombay Secretariat*, vol. 2, 216–22, 226–32.
128 Benton and Ford, *Rage for Order*.
129 BL IOR H/432, "William Cleaver's letter, 29 May 1799," 29–47. On Bruce Fawcett and Co., see Bulley, *Bombay Country Ships*, 103.
130 BL IOR F/4/60/1405, "Memorial from the Corporation of Bombay," 29 January 1799, n.p. A similar complaint was sent from the Madras Mayor's Court,

which had also been deprived of their commission, BL IOR F/4/60/1353, "Application of the Mayor & Aldermen of Madras." On the Recorder's Court in Bombay, see Haruki, "The Rule of Law and Emergency in Colonial India."

131 BL IOR F/4/60/1405, "Memorial from the Corporation of Bombay," 29 January 1799, n.p.

132 Constable suggests the date of 1731 for the establishment of the mayor's private court, yet we have argued here for the 1740s.

133 BL IOR F/4/60/1405, "Extract of Bombay Public Consultations," 15 January 1799, n.p.

134 Letter from the Government of Bombay to the Court of Directors 29th January 1799, reproduced in *Materials Towards a Statistical Account*, vol. 3, 46.

135 Benton and Ross, "Empires and Legal Pluralism," 4.

136 Gauri Parasher makes a similar argument for the *Chambre de Consultation* of French Pondicherry, Parasher, "Administration of Justice in Pondicherry."

137 Yannakakis, "Beyond Jurisdictions," 1071.

138 BL IOR/P/341/15, BCP 1746–1748, 515.

139 Wilson, *Domination of Strangers*.