

"They Have Travailed Into a Wrong Latitude:" The Laws of England, Indian
Settlements, and the British Imperial Constitution 1726-1773

by

Arthur Mitchell Fraas

Department of History
Duke University

Date: _____

Approved: _____

Edward Balleisen, Supervisor

Janet Ewald

Philip Stern

David Gilmartin

Holly Brewer

Dissertation submitted in partial fulfillment of
the requirements for the degree of Doctor of Philosophy in the Department of
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ABSTRACT

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Abstract

In the mid-eighteenth century the British Crown claimed a network of territories around the globe as its “Empire.” Through a close study of law and legal institutions in Bombay, Madras, Calcutta, as well as London, this dissertation examines what it meant to be a part of that Empire. These three cities on the Indian subcontinent were administered by the English East India Company and as such have often seemed aberrant or unique to scholars of eighteenth-century empire and law. This dissertation argues that these Indian cities fit squarely within an imperial legal and governmental framework common to the wider British world. Using a variety of legal records and documents, generated in both India and England, the dissertation explores the ways in which local elites and on-the-ground litigants of all national, religious, and cultural backgrounds shaped the colonial legal culture of EIC India. In the process, the dissertation shows the fitful process by which litigants from India, Company officials, and London legal elites struggled over how to define the limits of Empire. The dissertation argues that it was this process of legal wrangling which both defined the mid eighteenth-century Empire and planted the seeds for the more exclusionary colonial order in nineteenth century British India.

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Introduction

In 1817 the economist and historian James Mill claimed that English law in India was “...to the eye of the affrighted Indian, a black and portentous cloud, from which every terrific and destructive form might at each moment be expected to descend upon him.”¹ Even today, many like Mill harbor a vision of English law in India as an imposed colonial force used to control a subjected populace, especially after the East India Company's victory at the battle of Plassey. This dissertation instead tells a much more nuanced and contingent story about the early history of law in British India.

The narrative of the imposition of colonial law in India typically begins with the infamous trial and hanging of Maharaja Nandakumar in 1775. In that year, a bench of English judges in Calcutta condemned the Hindu rent-farmer Nandakumar to death. He had not committed a murder or any other heinous crime. Rather, the learned justices sentenced him to hang for forging commercial documents- acting according to the strict provisions of English statute law.² The case provoked a firestorm of criticism throughout India and England and continued to inspire critics for the next two centuries.³

¹ James Mill, *The History of British India* [3 vols.] (London, 1817), vol. 2, p. 561.

² Over the course of the eighteenth century, English legislators rapidly increased the numbers of crimes for which the death penalty was mandated. Importantly though, this increase in capital crimes did not necessarily translate into a larger number of executions. For an overview see J. M. Beattie, *Crime and the Courts in England, 1660-1800*, (Princeton: Princeton University Press, 1986).

³ The Nandakumar case has generated a wide variety of polemical and scholarly writing. Among others see: H. Beveridge, *The Trial of Maharaja Nanda Kumar* (Calcutta, 1886); James Stephen, *Nuncomar and Impey*, [2 vols.] (London, 1885); L.S. Sutherland, “New Evidence on the Nandakumara Trial,” *English Historical Review*, v. 72 (July 1957), pp. 438-65; J.D.M. Derrett, “Nandakumar's Forgery” *English Historical Review*, v.75 (April 1960), pp. 223-238. See also the three contemporary accounts of his trial: *The trial of Maha Rajah Nundocomar, Bahader, for forgery. Published by authority of the supreme court of judicature in Bengal* (London: T. Cadell, 1776); *A narrative of facts leading to the trials of Maha Rajah Nundocomar and Thomas Fowke* (London: T. Cadell, 1776); *The trial of Joseph Fowke, Francis Fowke, Maha Rajah Nundocomar, and Roy Rada Churn* (London, 1776). For an

In the more than two hundred years since Nandakumar's trial, historians and legal critics have generally taken a teleological view, treating the case as a signal of change and innovation, a break with an imagined governmental and legal past. Historians, moreover, rarely place Calcutta and the other English East India Company (EIC) settlements in the same conversation with the rest of the British world. The prevailing scholarly assumption is that India represented a radically different place from Philadelphia or Gibraltar. As such, the application of English law to a Hindu revenue official appears strange or even absurd. Yet, throughout the eighteenth-century, courts in London, New York, or Barbados periodically handed down similar sentences for analogous crimes. What then was so shocking and deplorable about applying English laws in Calcutta?

The answer lies in the course of later British Indian history and historiography, which reinforced a conceptual separation between India and a British Atlantic - replete with British laws, colonial assemblies, and governments. In the years after Nandakumar's trial, when Mill wrote his history of India, London observers and officials in the subcontinent forged a powerful consensus that British India constituted a place and society without imperial precedent. An emerging colonial bureaucracy in both metropole and colony took it as a sine qua non that they should understand and govern India, and its peoples, differently from Englishmen or other white/Christian peoples. Even when arguing against British abuses of power there statesmen and thinkers like Edmund Burke

account written by a contemporary Persian chronicler see: Khan, Gholam-Hussain, *A translation of the Sēir Mutaqharin; or, view of modern times, being an history of India, from the year 1118 to the year 1195... the whole written in Persian by Seid-Gholam-Hosseini-Khan*, [2 vols.] (Calcutta, 1789 [1790]), v.2, pp. 463-6.

did not believe India suitable for English liberties and justice.⁴ Accordingly, most British officials in this later period shared a broad ideological commitment to ruling India as if its people were unable to govern themselves.⁵ As a result, the justice system of this later British India attempted to maintain what British officials considered to be the customary laws and practices of indigenous peoples. Needless to say, those officials did not consider juries, English liberties, and participatory government as part of this customary constitution. Rather, Company employees muddled through, applying rough notions of Quranic and sanskritic principles to criminal and civil cases in an attempt to provide “authentic” Hindu or Muslim justice.

Even the most recent generation of historians tends to take the fundamental otherness of Indian legal culture and colonial experience for granted. The populations of the Company's settlements in Madras, Bombay, and Calcutta were of course largely non-Christian and not of European origin. In light of what scholars have demonstrated about nineteenth and twentieth century racialized imperialism, there has been a strong temptation to read analogous assumptions back into the analysis of earlier colonial experience, viewing British colonial law in India, at all times, as predicated on the radical inferiority of those it governed. I argue instead that ideas of cultural legal difference and

⁴ See P.J. Marshall, et al. ed. *The Writings and Speeches of Edmund Burke*, [9 vols.] (Oxford: Oxford University Press, 1981), vol. 5; Mithi Mukherjee, "Justice, War, and the Imperium: India and Britain in Edmund Burke's Prosecutorial Speeches in the Impeachment Trial of Warren Hastings," *Law and History Review* (Fall 2005), pp. 589-630.

⁵ On this point Jon Wilson quotes one 1780s official in Calcutta: "[T]he worst consequences might in a short time ensue...were the smallest latitude to be given to the people to enter into any discussions respective the propriety of any Regulation." See Jon Wilson, *The Domination of Strangers* (London: Palgrave-Macmillan, 2008), p.61. Also see Uday Mehta, *Liberalism and Empire*, (Chicago, 1999) and idem, "Liberal Strategies of Exclusion," in *Tensions of Empire*, ed. F. Cooper and L. Stoler (Berkeley, 1997), pp. 59-86.

racial government emerged fitfully in British India, originating out of the particular historical context of the early to mid-eighteenth century.

To put it plainly, there is almost no extant scholarship which explores the legal culture of the English settlements in India prior to the mid-eighteenth century. Those works that do exist are either antiquarian in nature or concerned with extracting evidence of social relationships through the use of legal records.⁶ In fact, with the exception of very recent scholarship by Philip Stern, those studying the early East India Company and the history of its rule in South Asia have traditionally posited a radical rupture in the history of the Company sometime in the mid-18th century.⁷ This dichotomy has resulted in a vast literature about the later imperial period, with its rich archives and clearer connections to the structures and culture of contemporary India. By contrast, the study of the seventeenth and early eighteenth century has predominantly focused on trade and

⁶ For the most useful of these see Henry Davison Love, *Vestiges of Old Madras, 1640-1800* [4 vols.], (London: Published for the Govt. of India, 1913). Also in this vein is J. Talboys Wheeler, *Annals of the Madras Presidency*, [3 vols.] (London, 1861-62). Also see P.B.M. Malabari, *Bombay in the Making: Being Mainly a History of the Origin and Growth of Judicial Institutions in the Western Presidency 1661-1726* (London, 1910). For an example of a recent attempt at a history of the courts based on secondary sources see Mrinmaya Choudhuri, *Glimpses of the justice system of presidency towns, 1687-1973* (New Delhi: Regency Publications, 2006). More recent work touching on early English law in India has focused largely on Madras, see Niels Brimnes, "Beyond Colonial Law: Indigenous Litigation and the Contestation of Property in the Mayor's Court in Late Eighteenth-Century Madras," *Modern Asian studies* 37.3 (2003), pp. 513-50.; Mattison Mines, "Courts of Law and Styles of Self in Eighteenth-Century Madras: From Hybrid to Colonial Self," *Modern Asian Studies* 35:1 (2001), pp. 33-74; Kanakalatha Mukund, *The View from Below: indigenous society, temples, and the early colonial state in Tamil Nadu* (Chennai: Orient Longman, 2005); Gagan Sood, "Pluralism, Hegemony and Custom in Cosmopolitan Islamic Eurasia, ca. 1720-90, with particular reference to the mercantile arena," Ph.D. Dissertation (Department of History, Yale University, 2008). S. Arasaratnam has perhaps the best account of how some of these courts worked in his *Merchants, Companies, and Commerce on the Coromandel Coast, 1650-1740* (Delhi: Oxford University Press, 1986), pp. 274-93.

⁷ Philip Stern, *The Company State*, (Oxford: Oxford University Press, 2011); idem, "A Politie of Civill & Military Power': Political Thought and the Late Seventeenth-Century Foundations of the East India Company-State," *Journal of British Studies* 47.2 (April, 2008). See also his survey of the field: "History and Historiography of the English East India Company: Past, Present, and Future!" *History Compass* 7.4 (July 2009), pp. 1146-1180.

merchant networks – a kind of curious preface to the glories (or nightmares) of the Raj.⁸ In addition, most scholarship on the Company in the eighteenth century has focused on its transformation in just one region of the subcontinent - Bengal.⁹ This again reflects a kind of teleology: because Calcutta and Bengal became the centers of British Indian government and trade in the later imperial period, these experiences have also attracted the most attention. This historiographic bias results in most scholars positing the military campaigns in Bengal over 1756-7 as the key causal force of legal change in India. I argue instead that while the EIC's massive territorial acquisitions from the 1750s onwards were certainly significant in bringing about changes in legal culture, these changes had their origins in prior decades.

⁸ Few probably feel as strongly now as M.N. Pearson, one of the foremost authorities on the Portuguese in the Indian Ocean, did in 1975 when he declared that “The early history of Bombay [1661-1708] would have no interest at all...were it not that later during the eighteenth century, the political history of India were such that the British were able to conquer large areas.” M. N. Pearson, [Untitled Review of History of Bombay: 1661-1708], *Journal of the American Oriental Society* 95.2 (1975), p. 343. For the literature on trade see among others: K.N. Chaudhuri, *The English East India Company; the Study of an Early Joint-Stock Company, 1600-1640* (London, 1965) as well as idem, *The Trading World of Asia and the English East India Company, 1660-1760* (Cambridge: Cambridge University Press, 1978); Holden Furber, *Rival Empires of Trade in the Orient, 1600-1800* (Minneapolis: University of Minnesota Press, 1976); R. J. Barendse, *The Arabian Seas: The Indian Ocean World of the Seventeenth Century* (Armonk, N.Y.: M.E. Sharpe, 2002); M. N. Pearson, *The Indian Ocean* (New York: Routledge, 2003); Ashin Das Gupta and M. N. Pearson, *India and the Indian Ocean, 1500-1800* (New York: Oxford University Press, 1987); Soren Mentz, *The English Gentleman Merchant at Work: Madras and the City of London, 1660-1740* (Copenhagen: Museum Tusculanum Press, 2005).

⁹ This is a vast literature – among others see: Wilson, *Domination of Strangers*; Robert Travers, *Ideology and Empire in Eighteenth Century India* (Cambridge: Cambridge University Press, 2007); P. J. Marshall, *Bengal--the British Bridgehead: Eastern India, 1740-1828* (Cambridge: Cambridge University Press, 1987). Marshall's contribution in the Oxford History of the British Empire is a short overview of his larger ideas: “The British in Asia: Trade to Dominion” in *The Oxford History of the British Empire: The Eighteenth Century*, ed. P.J. Marshall (Oxford, 1998), pp. 487-507; also see idem, *The Making and Unmaking of Empires Britain, India, and America c.1750-1783* (New York: Oxford University Press, 2005). For a recent overview of the debates about the rise of the EIC in the 18th century see Seema Alavi, *The Eighteenth Century in India* (New Delhi: Oxford University Press, 2002); Sudipta Sen, *Empire of Free Trade: The East India Company and Making of the Colonial Marketplace* (Philadelphia: University of Pennsylvania Press, 1998); Rajat Kanta Ray, “Indian Society and the Establishment of British Supremacy, 1765-1818” in *The Oxford History of the British Empire: The Eighteenth Century*, ed. P.J. Marshall (Oxford: 1998), pp. 508-29.

This scholarly preoccupation with Bengal and the period after the mid-eighteenth century in studies of British India is even more pronounced in the case of research on Anglo-Indian legal history. The vast majority of scholarship on the legal history of the English in South Asia only begins with the era of the Company's territorial acquisitions in Bengal following Clive's victory at Plassey in 1757.¹⁰ The scant scholarly literature which does mention pre-1750s EIC law tends to be dominated by recitations of the dates of charters and parliamentary legislation or reduced to simple and sketchy generalizations about the unprofessional nature of early courts. Indeed, the only volume of any size published on the topic of early EIC law to date is Charles Fawcett's antiquarian study, written when India was still part of the British Empire.¹¹ As a result of this historiography, based as it is on the later era of bureaucratic empire, we have been left with only faint, impressionistic glimpses of early English law and government in India,

¹⁰ For general literature on Anglo-Indian legal history, largely for the post-1757 period, see the standard textbook: M.P. Jain, *Outlines of Indian Legal History* (Bombay: Tripathi, 1972). Also see Elizabeth Kolsky, *Colonial Justice in British India* (Cambridge: Cambridge University Press, 2010); Nandini Bhattacharyya-Panda, *Appropriation and Invention of Tradition: The East India Company And Hindu Law In Early Colonial Bengal* (New Delhi: Oxford, 2007); Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (New York: Oxford University Press, 1998); J.D.M. Derrett, *Religion, law, and the state in India* (New York: Free Press, 1968); Tapas Kumar Banerjee, *Background to Indian Criminal Law* (Bombay: Orient Longmans, 1963); Bhawani Sankar Chowdhury, *Studies in Judicial History of British India* (Calcutta: Eastern Law House, 1972); Motilal Chimanlal Setalvad, *The Common Law in India* (London: Stevens, 1960); B.B. Misra, *The Judicial Administration of the East India Company in Bengal 1765-1782* (Delhi: Motilal Banarsidas, 1961); B.N. Pandey, *The introduction of English law into India* (Bombay: Asia Publishing House, 1967); N. Majumdar, *Justice and Police in Bengal 1765-1793: A study of the Nizamat in Decline* (Calcutta, 1960); Pamela Price, "The 'Popularity' of the Imperial Courts of Law: Three views of the Anglo-Indian legal encounter" in *European expansion and law: the encounter of European and indigenous law in 19th- and 20th-century Africa and Asia*, ed. Wolfgang J. Mommsen and Jaap de Moor (New York: BERG, 1991), pp. 179-200.

¹¹ Charles Fawcett, *The First Century of Justice in British India* (Oxford: Clarendon, 1934). While providing a detailed account (drawn from Bombay records) of the courts in Bombay prior to the 1720s it barely addresses the legal system in other EIC-controlled areas and does not explain how this system fit into any larger scheme of colonial or English law. Despite its age and faults, Fawcett is perhaps the only author that mentions that some of the early Bombay courts used juries and applied the laws of England (pp. 201-2), an important detail omitted from nearly every other account of the period.

with those depictions strongly influenced by the character of later developments.

This dissertation provides the first in-depth study of the legal culture of the EIC's Indian settlements prior to the 1770s, focusing on the period from 1726 to the 1750s. This moment, bookended by the royal charter of 1726 on one end and the dissolution of a universalist legal regime on the other, was a time full of possibility for the residents of Bombay, Madras, and Calcutta. During this period, I argue governance and legal culture in the Company's settlements shared a great deal with as the growing cities of the British Atlantic. Most importantly, at this juncture, racial, cultural, and religious difference did not immediately exclude the Indian settlements from the broader British imperial constitution. I suspect that many aspects of Anglo-Indian legal culture from this early period may surprise even the most seasoned Indian historians, since they represent such a different set of legal possibilities. Among other things, the dissertation presents a world in which Muslim and Hindu residents were tried by a jury of their peers, Parsi litigants took their cases all the way to the Privy Council, Hindu merchants in Madras and Bombay submitted written wills to English courts in accordance with standard metropolitan practice, Hindu and English merchants worked together to sue rivals, British metropolitan courts affirmed the legal subjecthood of non-Christian Indians, and juries of local “matrons” determined the validity of Hindu women's stories of pregnancy. In short, these details all stretch our conceptions of what British imperial India actually looked like.

My account of eighteenth-century legal culture in Madras, Bombay, and Calcutta will likely sound much more familiar to historians of the British Atlantic, who have developed a far more substantial body of literature on law and legal culture than their

counterparts who write about the contemporaneous activities of the British in South Asia. Legal historians of the British Americas have been particularly active in exploring what “English law” meant in a colonial context. In recent decades, these historians have established the early eighteenth century as a period of growing similarity between the legal regimes of England and those of the colonies.¹² At the same time, by the beginning of the eighteenth century, a more cohesive set of imperial legal principles emerged which bound the many parts of the British world together through a shared body of laws, practices, and constitutional rules, the growing dissemination of metropolitan legal texts, and the circulation of lawyers and colonial officials. There is an exciting and growing body of literature on the subject of this eighteenth-century British Imperial Constitution for the British Atlantic. Scholars like Mary Bilder, Vicki Hsueh, and Daniel Hulsebosch have provided important studies of the relationships and institutions which characterized this Anglo-American legal relationship.¹³ Yet, British Asia has largely been left out of this

¹² For broad surveys of the state of the field of American colonial legal history at two different junctures see Stanley Katz, "The Problem of Colonial Legal History," in *Colonial British America: Essays in the New History of the Early Modern Era*, ed. Jack P. Greene and J. R. Pole (Baltimore: Johns Hopkins University Press, 1984), pp. 464-66 and idem, "Explaining the Law in Early American History," *The William and Mary Quarterly* 50.1 (1993), pp. 3-6. See John Murrin's work broadly including his dissertation: "Anglicizing an American Colony: The Transformation of Provincial Massachusetts" (Yale University, 1966). Also see Cornelia Dayton, "Turning Points and the Relevance of Colonial Legal History," *The William and Mary Quarterly* 50. 1 (1993), pp. 7-17; Terri Snyder, "Legal History of the Colonial South: Assessment and Suggestions" *The William and Mary Quarterly* 50.1 (1993), pp. 18-27; David Konig, "A Summary View of the Law of British America" *The William and Mary Quarterly* 50. 1 (1993), pp. 42-50; Richard Ross, "The Legal Past of Early New England: Notes for the Study of Law, Legal Culture, and Intellectual History," *The William and Mary Quarterly* 50.1 (1993), pp. 28-41.

¹³ Mary Bilder, *The Trans-Atlantic Constitution: Colonial Legal Culture and Empire* (Cambridge, MA: Harvard University Press, 2004); Vicki Hsueh, *Hybrid Constitutions* (Durham: Duke University Press, 2010); Daniel Hulsebosch, *Constituting empire :New York and the transformation of constitutionalism in the Atlantic world, 1664-1830* (Chapel Hill :University of North Carolina Press, 2005) and also his "The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence," *Law and History Review* 21.3 (2003), pp. 439-82. See also Eliga Gould, "Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, Circa 1772," *The William and Mary Quarterly* 60.3

picture.¹⁴ This dissertation argues not just that the legal worlds of British Asia and the British Atlantic were linked, but that the legal cultures of the early eighteenth-century East India Company settlements fit clearly within the larger British imperial frame.

This British imperial constitution allowed Indian courts and litigants to take advantage of metropolitan legal rhetoric and substantive law while at the same time tailoring these rules and rhetorics to their own particular circumstances. The legal cultures of the Indian settlements, like those in other parts of the British world, were shaped as much locally as in England, and experienced an ongoing process of evolution shaped by vigorous legal conflicts.¹⁵ These legal cultures depended on broad communal participation for policing and prosecution, privileged local custom in the resolution of disputes, and operated on the basis of close attention to the social position and reputation of legal protagonists. Nonetheless, they remained connected to broader imperial norms, not least through periodic appeals to either EIC officials or the British Privy Council. Accordingly, litigants, merchants, judges, lawyers, and political elites of all backgrounds, in India and in London, engaged in a constant dialectic about the place of the Indian settlements and their residents in the wider world of English law.

(2003), pp. 471-510.

¹⁴ Work linking the legal world of the British Atlantic to that of British Asia is still in its infancy and focused primarily on either the seventeenth century or the period following the Seven Years War. See on the earlier period Philip Stern, "British Asia and British Atlantic: Comparisons and Connections," *William and Mary Quarterly* 63.4 (October 2006), pp. 693-713. For the later period see Hannah Weiss-Muller, "An Empire of Subjects: Unities and Disunities in the British Empire, c. 1760-1790," (Ph.D. Dissertation, Princeton University, 2010) and Marshall, *The Making and Unmaking of Empires*.

¹⁵ On local justice in England and the English world see among many: Cynthia Herrup, *The Common Peace : Participation and the Criminal Law in Seventeenth-Century England* (New York: Cambridge University Press, 1987); A. G. Roeber, "Authority, Law, and Custom: The Rituals of Court Day in Tidewater, Virginia, 1720 to 1750," *William and Mary Quarterly* 37.1 (1980), pp. 29-52; Laura Edwards, *The People and their Peace*, (Chapel Hill, 2009).

Given the power of local legal dynamics and actors in this devolved system, this study employs a similarly plural approach to legal history - neither explicitly top-down nor bottom-up. Scholarship on colonial law has tended to fall into two general categories: that which emphasizes the role of the imperial center in determining colonial legal systems, and that which demonstrates the ability of colonial subjects to mold and alter legal regimes from below.¹⁶ Older literature on European colonial law, especially in places like India, characterized by racial/cultural difference between colonizer and colonized, leans towards the former approach. Writing in this vein has focused on how colonizers used law as one of the primary tools of colonial state formation and hegemony.¹⁷ The legal scholar John Schmidhauser, for instance, has argued that this process of legal imperialism, in which occupying forces crushed local legal regimes to better serve state interests, was "...the prototype for British colonial legal imperialism throughout its expanding empire."¹⁸ Similarly, Ranajit Guha and others theorists of empire in India have emphasized the lack of meaningful exchange between Europeans and Indians in constructing the colonial regime, seeing English law as just one more imposition from above.¹⁹ This dissertation shows how such sweeping generalizations

¹⁶ See Stanley Katz, "Explaining the Law in Early American History," for an overview of essays on this theme.

¹⁷ Sally Merry, "Law and Colonialism," *Law & Society Review* 25.4 (1991), pp. 889-922; idem, "Legal Pluralism" *Law & Society Review* 22.5 (1988), pp. 869-96; John Schmidhauser, *Law & Society Review* 23.5 (1989), pp. 857-878; John Comaroff, "Colonialism, Culture and the Law: A Foreword," *Law & Social Inquiry* 26:2 (Spring 2001), pp. 305-14.

¹⁸ Schmidhauser, "Power, Legal Imperialism and Dependency," p. 875.

¹⁹ See Ranajit Guha, *Dominance Without Hegemony* (Cambridge, MA: Harvard University Press, 1997), pp. 64-5. For a review of interventions in this narrative see Sanjay Subrahmanyam, "Peasants before the Law: Recent Historiography on Colonial India," *Études rurales*, No. 149/150, (Jan. - Jun., 1999), pp. 199-209.

elide the complexities inherent in any imperial project and prove largely unhelpful as a framework for the history of English colonial law in India, especially for the period prior to the Company's post 1757 expansion.

Instead, this project emulates those historians of British colonial law who have shifted from this emphasis on the brute power of an imagined state to a focus on the central role of the colonized, or at least the indigenous elite among the colonized, in shaping colonial legal institutions. In the words of John Comaroff, one of the first to engage in this debate, "colonial regimes were, for all their materialities and brutalities, shaped as much by... those seen now as bit players as by the heroes inscribed in history books."²⁰ Historian Lauren Benton has similarly placed a strong emphasis in her work on the theme of colonial legal agency across the centuries and the globe.²¹ For Benton and others, colonial legal systems enabled particular colonized actors, largely those who possessed land, education, or strong political ties, to further their own ends and jockey for power.²² Likewise, in their recent work on late eighteenth-century British India, Jon

²⁰ John Comaroff, *Ethnicity, Nationalism, and the Politics of Identity in an Age of Revolution* (Chicago: American Bar Foundation, 1994), p. 5.

²¹ Lauren Benton, "Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State," *Comparative Studies in Society and History* 41 (1999), pp. 563-88; idem, *Law and Colonial Cultures: Legal Regimes in World History 1400-1900* (New York: Cambridge University Press, 2003); idem, *A Search for Sovereignty: Law and Geography in European Empires 1400-1900* (New York: Cambridge University Press, 2009).

²² For an example of some of this literature see Elizabeth Kolsky's work on non-official Europeans in India: Elizabeth Kolsky, "Codification and the Rule of Colonial Difference: Criminal Procedure in British India," *Law and History Review* 23.3 (Fall 2005), pp. 631-83. Also Peter Karsten's massive study of settler colony law from below: Peter Karsten, *Between law and custom: high and low legal cultures in the lands of the British Diaspora-- the United States, Canada, Australia, and New Zealand, 1600-1900*, (New York: Cambridge University Press, 2002) and Katherine Hermes' writing on Native American legal negotiation in the American colonial period: Katherine Hermes, "Jurisdiction in the Colonial Northeast: Algonquian, English and French Governance," *The American Journal of Legal History* 43.1 (1999), pp. 52-73.

Wilson and Robert Travers have emphasized the constant process of negotiation and knowledge seeking which took place between colonizer and colonized.²³

I similarly trace the story of local and imperial negotiations over law from the earliest days of the East India Company through the 1770s, when ideas about India's otherness and unsuitability for English law significantly hardened.

The narrative that follows begins with a chapter on the early growth of English legal institutions in Madras, Bombay, and Calcutta, which stress how profoundly early Company attempts to install metropolitan legal norms and institutions failed. The East India Company's hostility to outside interference, combined with a hands-off approach adopted by both the English Crown and metropolitan law courts, fostered a legal culture predicated on supreme Company authority and few legal connections back to London. I then examine how litigants from India increasingly challenged EIC legal policies, eventually forcing sweeping constitutional change over the course of 1726. In the following chapter I examine the royal charter issued that year for new Indian courts and argue that it represented a watershed moment in the history of English law and government in India. This new legal constitution reflected an attempt by metropolitan legal elites to bring legal practice in India firmly into communion with that of metropolitan England and the rest of the empire.

The following three chapters present a detailed study of the post-1726 legal order. First, in Chapter Three, I focus on the daily proceedings of these new legal institutions, focusing on their intensely anglicized formal practice. In doing so, I trace the role of

²³ Wilson, *Domination of Strangers*, especially pp. 1-18 and Travers, *Ideology*.

lawyers, judges, petty law officers, and others in establishing and maintaining an English legal culture, while taking account of subtle differences in the local contexts of Madras, Bombay, and Calcutta. Chapter Four grapples with the fact that the Company's Indian settlements featured decidedly different demographics and local legal dynamics than their counterparts in England and the Americas. It furnishes an overview of the social, economic, and political worlds of these cities outside the bounds of English institutions, and traces the participation of non-English residents of the settlements featured in the business of the new English courts. After 1726, local elite litigants, closely connected to Company trade and rule, embraced the English courts without necessarily abandoning preexisting legal institutions and practices. In essence, these elites incorporated the new English legal institutions into a longstanding context of legal pluralism.

I continue this story in Chapter Five by showing how judges, juries, and litigants in the chartered courts did not rely on any notion of fixed substantive “English law” in their jurisprudence and legal reasoning. Rather, the courts and their officials embraced communal dispute resolution systems and the consultation of local elites in their practice and jurisprudence. I argue also that like their counterparts in the Americas, these actors embraced the flexibility inherent in the early modern imperial legal order and adapted their practice and interpretation of English statutes and common law rules to local conditions. At the same time, the chartered courts fit comfortably within a broader imperial constitution, connecting local justice (whether in India or the Channel Islands) to metropolitan law and institutions. That is, in adapting to and embracing local Indian customary norms, the chartered courts were not acting strangely, but within a well-

accepted framework of local legal difference.

Chapter Six links this examination of substantive English laws and procedures to the ways that people of all kinds in India deployed the rhetoric of English law, liberty, and government. The chapter begins by highlighting the conflicts over jurisdiction and authority between the chartered courts and Company governing structures. These conflicts, especially, spawned the widespread use of English legal rhetoric in India and helped open up the previously exclusionary English legal constitution writ large. I trace this process through an analysis of the sophisticated legal claims made by several Indian litigants in metropolitan venues and the response of English lawyers, courts, and legal elites to these claims. Up to the early 1750s, metropolitan elites took seriously Indian assertions of English legal subjecthood and membership in the larger English polity, while never coming to a clear consensus on the limits or meaning of this subjecthood.

Chapter Seven continues this discussion of the limits of legal subjecthood by tracing complaints against the new courts and their laws, authority, and presumption of universal jurisdiction. I argue that opposition to the charter came primarily from those who felt their authority and jurisdiction infringed upon. In the course of articulating their objections, I show how litigants, local elites, and Company officials equated independent English royal courts with substantive English statute and common law. By the 1740s, a coalition of local Indian elites and English officials who disliked challenges to their authority, popularized an anti-universalist rhetoric which sought to exclude all non-Europeans from English laws and privileges on the grounds that such laws were not suitable to such racially and civilizationaly different people. I conclude the chapter by

detailing the acquiescence of metropolitan elites to these complaints and their request for a new exclusionary charter in 1753.

The final chapter takes the story of the charter courts past their re-formation in 1753. Most historians have blithely assumed that the black-letter provisions of this charter, which unambiguously excluded Indians from English courts, immediately governed day to day legal practice. Court records from the key colonial settlements, however, indicate just how contested and blurry these provisions turned out to be in the legal institutions of Madras, Bombay, and Calcutta. Rather than representing a single moment of legal rupture, the charter of 1753 and subsequent invasion of Calcutta in 1756, were important stepping stones along a halting and winding road toward the eventual separation of non-Europeans from the main font of English law and government. I also trace some of the legal changes brought by the Company's territorial expansion and show how Company employees throughout India embraced a particular model of Mughal legal practice born out of earlier experience in Calcutta. Likewise, this model of local legal practice bred an ideological strain amongst some officials that embraced a model of absolute power as the most suited to the Indian condition. Despite the rise of these arguments against English law, moreover, metropolitan legal elites and politicians remained broadly attached to more universal conceptions of the imperial constitution through the 1760s.

The dissertation then concludes with the story of parliamentary intervention in the legal system of EIC India over 1772-3. Little metropolitan consensus existed about the about the place of Indians and Indian settlements in the wider constitution of empire. At

the same time, Parliament's fumbling attempts at reform nonetheless accelerated a clear shift in the trajectory of law in India away from universal English subjecthood and a unitary imperial constitution.

Tracing the contours of the early eighteenth-century imperial constitution requires moving amongst a number of geographic and temporal frames. That is, in order to get a sense of the whole, one must examine cross-sections of given parts of the British legal world across a number of years. I begin my narrative then with a series of views of legal practice in EIC India from its earliest days.



Figure 1: Map of the Indian Subcontinent with key cities highlighted

Chapter 1: “By down right dint of authority:” Law and Power in early EIC Bombay, Madras and Calcutta

This chapter details the means, both legal and practical, by which the English East India Company (EIC) came to exercise jurisdiction over Bombay, Madras, and Calcutta in the years before 1726. When faced with the need to exercise civil government, English officials in India and England initially resorted to the familiar forms of English common law and government. However, within twenty years of their foundation, these courts ceased to function, replaced with tribunals predicated on local customs and the participation of local elites of all kinds. The Company's experiences in India also contrast quite noticeably with many of the other chartered companies and colonies in the Atlantic. Disease, slavery, and force of arms all helped limit the scope of non-English people's participation in civil governance in the English cities of North America and the Caribbean. In the 17th century, the EIC's cities in India depended on the willing residence and cooperation of merchants, craftspeople, mariners, local elites of varying geographic origins and religions. This heterogeneous world and the desire of the Company to maintain its authority propelled legal culture in the cities away from any consistent anglicizing trajectory and towards more fragmented legal constitutions based on local circumstances.

The East India Company began its trading voyages to India in the first decade of the seventeenth century.¹ Their ships took goods and bullion from England to ports

¹ For general studies of the early EIC see Stern, *Company-State*; H. V. Bowen, Margarette Lincoln, and Nigel Rigby, *The Worlds of the East India Company* (Rochester, NY: D.S. Brewer, 2002); K. N.

throughout the Indian Ocean and beyond. Initially, the Company had little responsibility for maintaining law and order, raising taxes, or otherwise performing governmental duties in the ports in which it maintained factories or mercantile houses. However, like any other company or imperial venture, it did have to regulate its own employees and dependents.

The Elizabethan charter establishing the Company in 1600 acknowledged this need for order and gave the EIC the power to create disciplinary regulations and punish its employees accordingly.² Nonetheless, in the early years of the Company, rowdy seafarers, corrupt factors, and the everyday realities of cross-cultural commerce created inevitable problems for Company officials in London. These employees and dependents were largely English subjects and as such could lay claim to English legal privileges and procedures when accused. Citing the difficulty of dispensing this kind of formal justice in foreign ports, the Company petitioned the Crown in 1623 to strengthen its power to discipline all Englishmen as they saw fit. The Crown obliged and gave the EIC a new commission to “chastise, correct, and punish all of *the subjects of us*” employed in the

Chaudhuri, *The English East India Company; the Study of an Early Joint-Stock Company, 1600-1640*; idem *Trading World of Asia and the English East India Company, 1660-1760*; Charles Fawcett and William Foster, *The English Factories in India 1618-1684* [17 vols.] (Oxford: Clarendon Press, 1906-1955); Philip Lawson, *The East India Company: A History* (London; New York: Longman, 1993); Mukherjee, *The Rise and Fall of the East India Company*; Patrick J. N. Tuck, *The East India Company, 1600-1858* [6 vols.] (New York: Routledge, 1998); Marguerite Eyer Wilbur, *The East India Company and the British Empire in the Far East* (New York: R. R. Smith, 1945); Antony Wild, *The East India Company: Trade and Conquest from 1600*, (London; New Delhi: Harper Collins, 1999); Ian Watson, *Foundation for Empire: English Private Trade in India, 1659-1760* (New Delhi: Vikas, 1980).

² See the 31 December 1600 charter in J. Shaw, *Charters relating to the East India Company from 1600-1761* (Madras: Madras government press, 1887), p. 7. The Crown also issued individual commissions for EIC ship captains to exercise martial law - granting them for every successive voyage. See Jain, *Outlines of Indian Legal History*, pp. 7-8.

East Indies.³ This royal grant gave the Company's own appointed heads of factory the power to administer justice but required juries of Englishmen to convict anyone of a capital offense. The grant also gave the Company leeway to punish those who acted against its own instructions, rules, and orders as well as the laws of England. These provisions delegating legal authority over English subjects to the Company were not however unique. Rather, they mirror those put in place by the Stuart monarchy for the new American colonies. In Jamestown, for instance, royal charters empowered early Virginia Company governors to promulgate rules and regulations and to discipline English subjects accordingly.⁴ Yet, as in Virginia, English subjects did not take easily to being governed in such a fashion.

The first two hundred years of Anglo-Indian legal history can be read as a struggle over this delegation of sovereign legal authority to the Company. Until the middle of the seventeenth century, the EIC's legal regime, based on martial law and the absolutism of shipboard discipline, applied only to its sailors, apprentice clerks, menial laborers, and others at sea or in its few warehouses scattered throughout Asia. This state of affairs changed markedly when the Company acquired territorial jurisdictions on the Indian subcontinent. Along with these territories came new populations and new legal challenges - foremost - how would the Company govern those living in its territories who were not

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³ This charter dated 4 February 1623 can be found in Thomas Rymer, *Foedera, conventiones, literæ, et cujuscunque generis acta publica, inter reges Angliæ, et alios quosuis imperatores, reges...* v.17 (London, 1717), pp. 450-2. Emphasis mine.

⁴ The notorious laws of Governor Thomas Dale being a prime example: see David Konig, "Colonization and the Common Law," in *The Transformation of Early American History: Society, Authority, and Ideology*, ed. James A. Henretta, Michael G. Kammen and Stanley Katz (New York: Knopf, 1991).

English?

This first test as territorial ruler came at a small port in what is today southern India. Looking for a place to expand their trade, the Company paid a local ruler in 1639 for the rights to settle and establish a trading post on the site of a fishing village called Madraspatnam. This grant, in many ways like an English charter, gave the Company, in addition to the power to collect taxes, the “full power and authority to govern and dispose of the government [of the city].”⁵ Regardless of the fact that the Company's English charters gave it no power to adjudicate disputes and execute punishments upon non-English persons, by virtue of this local grant, the EIC acquired *de jure* territorial sovereignty over all the inhabitants of Madras. Yet, as can be easily imagined, the meaning and nature of this jurisdiction proved to be fluid in practice.

In the absence of any firm legal guidelines Company officials first implemented a kind of rough and ready justice in Madras, predicated on shipboard discipline as well as English custom.⁶ In 1642, for example, an Indian woman went missing in the city. When a local man who had been her lover (presumably non-English from his lack of a name in Company records) found her body floating in the ocean, the assembled crowd and the EIC agents believed him to be a murderer. These EIC agents then notified the local ruler about the suspicious death. According to the Company officials, the ruler responded that the man should be punished “according to the Laws of England” and if they did not, he

⁵ The text of the grant is printed in Love, *Vestiges*, v.1, p.17. For more on the grant and the early history of Madras see William Foster, *The Founding of Fort St. George* (London, 1902).

⁶ Miles Ogborn presents comparisons between martial law, shipboard order, and EIC authority in his *India Ink: Script and Print in the Making of the English East India Company* (London: University of Chicago Press, 2007), pp. 52-3.

would have the man killed according to local legal custom. Not wanting to “give way their authority” the EIC agents “did justice upon [the accused]” and had him hanged.⁷ Yet EIC “authority” was in no way synonymous with substantive English law. Indeed in the particular case above it was the local ruler and not the Company who broached the issue of the “Laws of England.” While nominally under the supervision of the Company it seems that the vast majority of dispute-resolution in Madras remained in the hands of well-established local elites who judged cases as they saw fit.

Madras

The Madras territory, as granted to the EIC in 1639, was little more than 2-3 kilometers on a side.⁸ While mid-century travel accounts by Europeans mentioned coastal cities to the immediate north and south of the city, they ignored Madras. Yet the city grew quickly as the result of new trading opportunities. The entire Coromandel Coast surrounding Madras was known for its communities of weavers and dyers who produced cloth for export. The EIC in Madras attracted many of these merchants, weavers, and dyers away from other settlements on the coast or in the Deccan interior.⁹ A series of armed conflicts also forced many of the Luso-Indian residents of the Portuguese settlement at San Thome (Mylapore), fewer than 10 miles south of Madras, to migrate to

⁷ This letter sent by the EIC agents at Madras to the EIC factory at Bantam is dated 20 September 1642 and is reproduced in its entirety in Love, *Vestiges*, v. 1, pp.41-4.

⁸ The Company's “Madras” territory continued to expand and by 1700 it had acquired grants to several square miles of bordering territory and villages. Most notable of these acquisitions was the village of Triplicane confirmed by a grant from the King of Golconda on 23 February 1676.

⁹ John Richards, “European City States in the Coromandel” in *Studies in the Foreign Relations of India*, ed. P.M. Joshi (Hyderabad: Gov. of Andhra Pradesh, 1975) and S. Arasaratnam, “Some aspects relating to the establishment and growth of European settlement along the Tamil coast in the 17th century,” *Tamil Culture* VII (October, 1968), pp. 355-69.

Madras by the 1670s. At the same time, English merchants, soldiers, and EIC employees always remained an extreme minority in the city. In 1645, for example, the records of the Company listed around 40 Englishmen as residents of Madras, out of an overall population most likely in the low thousands.¹⁰

Shortly after arriving at Madras the EIC completed a fortified area, named Fort St. George, which served as the primary place of business and residence for these Englishmen and other Europeans. This walled enclosure, dubbed by some the “Christian town” or later, “white town” contained the fort itself, the Company's offices and warehouses, houses for most of its employees, a chapel (later a full church), and the governor's official meeting rooms.¹¹ Outside the walls of this area stood the “Black Town” containing the houses and places of business of Tamil merchants and functionaries, Luso-Indians, Europeans, and even a smattering of Chinese. Also located outside Fort St. George was a choultry, a kind of open enclosure which served as a meeting place and hub for mercantile and legal activity.¹² Beyond the boundaries of the black town and the EIC's walls were gardens, houses, fields, and the houses of many laborers, dyers, fishermen and others responsible for the export economy of the city.

Though the population of the city as a whole was likely quite large, the number of “substantial inhabitants” of the city, those Englishmen, Luso-Indians, Armenians and

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¹⁰ Love, *Vestiges*, v.1, p. 61.

¹¹ On the white and black towns of Madras see Carl H. Nightingale, “Before Race Mattered: Geographies of the Color Line in Early Colonial Madras and New York.” *The American Historical Review* 113 (Feb. 2008), pp. 52-6.

¹² Of uncertain etymology, Yule describes “choultry” as open halls or sheds used “for the transaction of public business.” They are common throughout South India. Cf. Henry Yule, *Hobson-Jobson: A glossary of colloquial Anglo-Indian words and phrases, and of kindred terms, etymological, historical, geographical and discursive*, ed. William Crooke, B.A (London: J. Murray, 1903), pp. 211-2.

prominent Indian merchants with business inside the EIC's fortifications, was much lower. For instance, when the Company executive in Madras ordered a census in 1678 of all householders in the white and “Malabar” (aka “Black town”) portions of the city, they recorded only a smattering of names. That is, they noted 118 householders within the white town (31 of whom had obviously English names) and only 75 householders, (including 7 Englishmen) in the “Malabar” town.¹³ These few prominent and taxable inhabitants were those whose disputes were most likely to come to the attention of the EIC executive in Fort St. George and who drove the legal culture of the settlement.

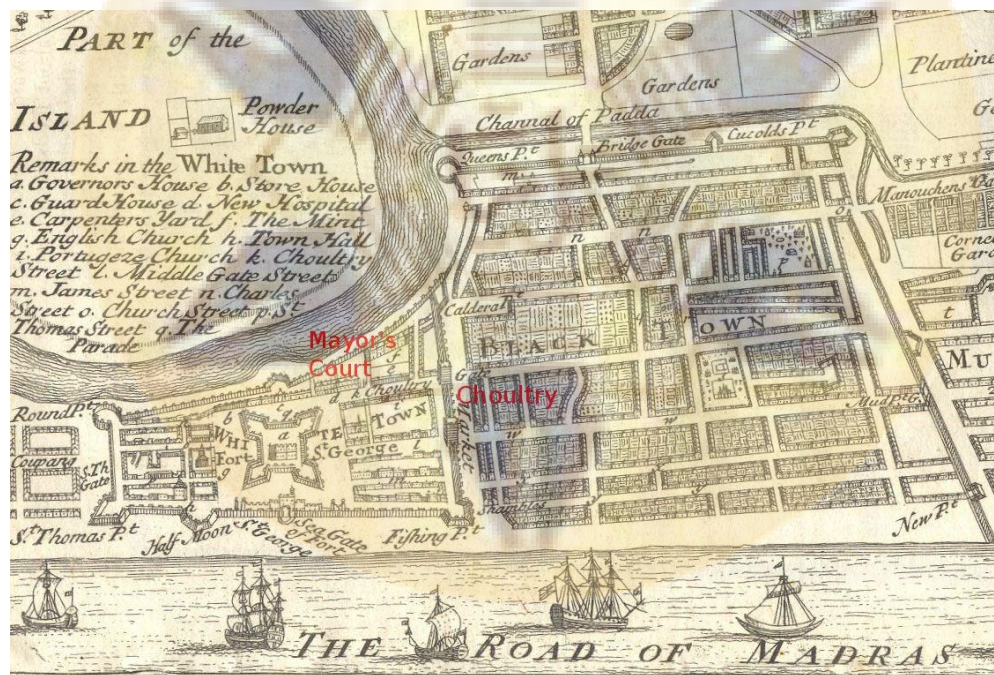


Figure 2: The City of Madras as it appeared in 1726¹⁴

¹³ The non-English inhabitants of the “white town” were Luso-Indians with the exception of Casa Verona [Kasi Viranna], one of the Company's most important Hindu merchants. This census, done in order to assess taxes for cleaning the town appears on the unpaginated final leaves of the 1678 Madras Court of Judicature's record book: BL IOR G/19/38.

¹⁴ This map was engraved by Herman Moll as “A Plan of Fort St. George and the City of Madras,” in

South Asian polities in this period, including those in the Madras area, routinely farmed out revenue and governmental functions to elite families and communities. The EIC inherited a number of these “substantial inhabitants” when it gained the rights to Madras in 1639. Amongst these was a local Adigar (*athikari*) or head of local government.¹⁵ One of his responsibilities and sources of revenue was as a kind of magistrate at the local choultry. This “Choultry court,” as the EIC would come to call it, dealt with criminal offenders as well as debtors and other civil litigants. Indian functionaries at the Choultry also served important roles in the mercantile constitution of the settlement as notaries and registers of mortgages, contracts, etc. Within a decade of acquiring Madras, EIC agents and employees came into conflict with this network of local Choultry officials and functionaries, and appointed two Englishmen to adjudicate cases alongside the Adigar at the court.¹⁶ Despite the rather byzantine proximate causes for this decision, undoubtedly the EIC agents decided they could not allow such an important source of power and authority to remain under the sole control of non-English elites. In fact, the EIC executive in Madras continued to appoint new Choultry justices until the 1770s while at the same time never attempting to lay out a specifically “English” jurisprudential framework for their practice.

Though there appear to have been no routine courts other than the Choultry in Madras during this period, its day-to-day work is difficult to explore in detail. From

Thomas Salmon, *Modern History: or, the Present State of all Nations* (London, 1734).

¹⁵ Love, *Vestiges*, v.1, pp. 126-7.

¹⁶ *Ibid.*, pp. 127-9.

extant evidence we know that residents of all origins, including Englishmen could seek justice at the Choultry in mercantile, debt, and inheritance matters.¹⁷ The business of the court was also apparently quite taxing and time-consuming. For example, in 1671, Thomas Clarke resigned as a Choultry justice because of the workload, though he was retained to translate Persian, “Jentue,” and Portuguese documents.¹⁸ The same year, the EIC executive at Madras wrote to London that a “multitude of troublesome suits” had been overwhelming the Choultry court.¹⁹ Though their exact method of proceeding remains a mystery, one imagines the justices of the Choultry to have operated as modified justices of the peace, dispensing summary punishments and ordering immediate relief without much formal law. From the 1650s to the late 18th century these summary tribunals provided an important alternative to explicitly English jurisprudence and legal procedure. However, the EIC's uncontested acceptance of Choultry justice in Madras came to an end in the mid-1660s with a growing interest within EIC circles in establishing a more anglicized system of justice in India.

Soon after taking the throne in 1661 Charles II renewed the EIC's charter. This new charter contained provisions, presumably at the Company's request, for the EIC to hold universal territorial jurisdiction in its Indian settlements. It called for the governor

¹⁷ In a case before the 1678 Court of Judicature between two English residents of Madras, reference is made to elements of the dispute having been previously decided in 1671 without any formal trial by the “justices of the choultry”. BL IOR G/19/38: Records of the Madras Court of Judicature, p.32 (11 September 1678). It remains unclear whether the Choultry took routine cognizance of English criminal offenders. On his visit in 1673 John Fryer noted that the justices of the Choultry could pass sentence of life or death on all but “the King's liege people of England” see John Fryer, *A New Account of East-India and Persia*, (London, 1698), p. 38.

¹⁸ Letter to England 6 September 1671 quoted in Love, *Vestiges*, v.1, p. 276.

¹⁹ Idem

and council of each EIC factory and settlement to have complete judicial authority over all EIC personnel, and more importantly, over all persons living in their territory regardless of origin.²⁰ Local EIC officials would not however be free to apply whatever rules they chose to these inhabitants but would instead have to apply what the charter labeled “the laws of this Kingdom.” This universal application of English law was intended to solve a kind of legal paradox. On one hand most of the residents of the Company's settlements had no ties to England and owed no particular allegiance to the English Crown. On the other, the EIC had to apply some sort of legal regime over the territories it controlled. Yet, a fundamental problem remained. Could one be subject to English law without being an English subject?

This new anglicized regime saw its first test along these lines in 1665 when Ascentia Dawes, the Luso-Indian wife of a Company employee, was accused of murdering one of her servants. The local EIC executive, perhaps nervous about her connection to the Company, wrote to London to ask for instructions. The Company's initial reply indicated that whatever their reasons for suggesting the jurisdictional provisions in the 1661 charter, they did not intend to embark on some proactive program of English legal supremacy.

Pleading that the ships to India were about to depart and that they had no idea how to proceed, the Court of Committees in London wrote to Madras to say that they would

²⁰ Charter of 3 April 1661. See Shaw, *Charters*, p. 44. The governors and their councils had by this charter “...power to judge all persons belonging to the said governor and company or that shall live under them, in all causes, whether civil or criminal according to the laws of this kingdom.”

look into the matter further and write again at a later date!²¹ The Company in turn, deferred to metropolitan legal authority and sent the matter to the Privy Council, who in turn referred it to the Crown solicitor general Heneage Finch. He wrote that the company had clear jurisdiction over Dawes under the charter of 1661.²² Accordingly, he wrote that she should be tried by a jury consisting of six English and six Portuguese members, and if found guilty of the murder, hanged. Nervous about such an exercise of power, the Company also secured a royal commission signed by Charles II confirming that this method of proceeding according to English practice was indeed licit. Following these instructions, the EIC at Madras convened a mixed Portuguese-English jury at Madras in 1666 to determine Dawes' fate. In a fit of independence typical of English juries they first found her guilty of the murder “but not in manner and form” and when prompted for a clear verdict by the EIC authorities found her instead not guilty to the astonishment of the Company.²³ The Madras executive upheld the verdict though they wrote to the council in London of their bewilderment and the need for more training in English law so they could avoid such blatant nullification.

Dawes' 1666 trial did not start an overwhelming trend towards jury trials, warrants and all the trappings of formal metropolitan English law. Instead, the Company in

²¹ Letter from London to Madras 7 March 1666 quoted in Love, *Vestiges*, v. 1, p. 273. To be fair, some of this confusion came from the fact that Madras had yet to have a governor and council appointed and still merely had a Company agent resident - perhaps exempting Madras from the letter of the 1661 charter.

²² Finch's opinion in the case survives in the Company's records and served for years as the official legal reinforcement behind the EIC's universal jurisdiction over the residents of its settlements - see BL IOR H/427: Madras legal papers, p. 121.

²³ A detailed account of the trial was made at the time but is now lost. The account here is taken from correspondence between Madras and London of 15 April 1666 fully transcribed in Love, *Vestiges* v.1, pp. 274-5.

London only slowly responded to requests from Madras for a more permanent and respectable judiciary. Through most of the 1670s our only glimpse at the proceedings of any court at Madras comes when aggrieved parties complained to the Court of Committees in London. In 1676, for instance, a “black” man convicted by the justices of the Choultry for breaking into one of the Company's warehouses complained to London that he had been transported to the island of St. Helena and thus permanently separated from his family. The Company, obviously unsure of its universal jurisdiction and legal powers, ordered the Madras executive to either allow him back or send the rest of his family to St. Helena, lest the Crown hear that “we send away the natives.”²⁴ Despite these ad hoc instructions, the Company in London did not create a plan for legal reform in Madras until the 1680s. At the same time however they did resist proposals which would weaken the Company's control over the settlement. In 1671, for example, the EIC in London equivocated about a request from the Luso-Indian population for a Portuguese judge at Madras, responding that such a move:

“...would intrench upon our jurisdiction but if you shall think fit to appoint some prudent man of that nation it may be in the nature of arbitrator to take up small offenses amongst themselves yet with liberty to appeal to our judicature we shall approve of it.”²⁵

To the Company then, maintaining itself as final authority remained more important when considering legal policy than any substantive body of law - English or otherwise.

Bombay

While the EIC acquired Madras from a local Indian ruler, its most significant

²⁴ BL IOR E/3/88: Letters from England, p. 180v (15 December 1676).

²⁵ BL IOR E/3/88: Letters from England, p.10 (13 December 1672).

territorial acquisition of the 17th century came courtesy of the British Crown. In 1661 Charles II concluded a marriage treaty with Portugal for the hand of princess Catherine of Braganza. The treaty gave Bombay and Tangier, both Portuguese possessions, to Charles as part of the new queen's dowry.²⁶ Charles sent out a royal governor to take charge of this new colony in 1662. The Portuguese officials in India did not much like this turn of events and proved obstinate in negotiations, delaying the handover of the island until 1665. Subsequently, when Bombay proved to be more of a burden on Crown finances than a boon, Charles II granted the territory to the EIC in 1668, demanding only a nominal quit rent in return.

It is difficult to look back at Bombay in the seventeenth century with ideas of the contemporary megalopolis in mind. Instead of a crowded and sprawling city of 18 million, Bombay in the mid-17th century was a conglomeration of islands, sand bars, and rice paddies, populated by perhaps 10,000 to 20,000 people. The territory ceded to Charles II by the Portuguese, collectively called Bombay, was actually made up of several estates and villages, owned by Luso-Indian landlords or religious orders and was perhaps 10 miles long north-south and 2 miles across. There were several villages or concentrations of settlement within the confines of EIC Bombay, Bombay itself, Mazagon, Sion, and Mahim to the far north – itself just across a narrow straight from Portuguese Bandra. The EIC presence was strongest in Bombay itself, where the majority of EIC employees lived and where the EIC executive council met. Bombay castle, a

²⁶ For more on the acquisition of Bombay see: Shafaat Ahmad Khan, *Anglo Portuguese negotiations relating to Bombay, 1660-1677* (Oxford University Press, 1922); Glenn J. Ames, "The Role of Religion in the Transfer and Rise of Bombay, c. 1661-1687," *The Historical Journal* 46.2 (2003), pp. 317-40.

fortification built over the remains of an earlier Portuguese manorial strong-house, commanded Bombay harbor and housed the near-daily meetings of the EIC President with his council. Like in Madras, the majority of the mercantile and agricultural population dwelt outside the castle's walls. In Bombay this population was more spread out, with larger agricultural populations on its various islands and inlets.

This agricultural population clustered around the great Portuguese estates of the territory. Some of the landlords of these estates were immensely wealthy and well-connected in Portuguese India, like the Tavora family, owners of the large Mazagon estate, who rented out their lands to a host of rice and coconut farmers.²⁷ In addition, the rents and produce from some parts of the Bombay territories went to support the Jesuit College at Agra. Still other landlords were absentee residing at Bassein, the Portuguese administrative center further to the north. Communities of agricultural workers provided the labor for many of these estates. These groups, while maintaining Hindu occupational or caste identities to varying degrees also had significant numbers of Catholic converts. Though the figures are hard to trust entirely, a Franciscan official in Goa reported the

²⁷ For a detailed description of Bombay in the early 1710s given by a contemporary Englishman see Burnell, *Bombay in the Days of Queen Anne* (London: Hakluyt Society, 1933). See also M. D. David, *History of Bombay, 1661-1708* (Bombay: University of Bombay Press, 1973). There are also several accounts of the history Mazagon estate including in James Campbell and R.E. Enthoven eds., *Gazetteer of the Bombay Presidency*, [27 vols.] (Bombay: Central Government Press, 1877-1928), vol.26, part 3, pp.431-441. Volume 26 of this series consists of the three parts published in 1894 under the title *Materials Towards a Statistical Account of the Town and Island of Bombay*; hereafter all volumes of this series will be cited as *Bombay Gazetteer*. Also see D.R. Vaidya, *The Bombay City Land Revenue Act, No. II of 1876 : as amended by Acts, III of 1900, I of 1910, IV of 1915 and II of 1919 : annotated and published with the sanction of the Government of Bombay* [new ed. revised by G.S. Gupte] (Bombay, 1931), Chapter III.

number of Catholics in Bombay in 1713 as about 11,000 worshipping at three churches.²⁸

The same report described a large non-Catholic population worshipping at 15 temples and five mosques in the territory.



Figure 3: The Bombay Territory c. 1710²⁹

²⁸ According to a 25 November 1713 letter from Goa reporting that in Bombay the Franciscans “*ministrao os Sacramentos a onze mil almas.*” Reproduced in its entirety in Achilles Meersman ed., *Annual reports of the Portuguese Franciscans in India, 1713-1833* (Lisbon: Centro de Estudos Historicos Ultramarinos, 1972), p. 75.

²⁹ Reproduced by kind permission of the Hakluyt Society from Burnell, *Bombay in the Days of Queen*

While there is little archival or secondary evidence to shed light on how the residents of Bombay adjudicated their disputes in the Portuguese period prior to 1665; it seems likely that as in Madras a melange of community elites and tribunals passed judgment on the transgressions of residents. Priests and religious elites had power throughout the Portuguese territories to punish Catholics for religious crimes or heresies. In addition, landowners and caste elders ruled on land quarrels, family disputes, and other local matters. Otherwise serious criminal or civil disputes most likely depended on the government in Bassein for resolution.

The Portuguese cessation of Bombay as part of the marriage treaty of 1661 did not instantly bring to an end to the legal and governmental status quo of the town and its environs. When the Crown governor Sir Humphrey Cooke took control of Bombay in 1665 he did not bring a mandate to reform or overhaul the system of Portuguese authority then in place. In fact, the treaty preserved the ability of Catholics to worship freely and of landowners to continue in their estates as they had done previously. As such, the two Crown governors of Bombay admitted to allowing local legal custom to prevail amongst the majority of the population, while executing a kind of martial law over EIC employees and soldiers. Governor Cooke wrote home in 1665 that he had nominated various Luso-Indian officials to monitor orphans' estates and execute basic criminal justice, as had been done prior to his arrival.³⁰ Instead, historical consensus has located the turning

Anne, p. 90.

³⁰ Charles Fawcett, *The First Century of Justice in British India* discusses this period in some detail, cf.

point in Bombay legal history at the moment when the EIC gained control of the island and its territories.

The Crown turned over the government of Bombay to the EIC in 1668 by a charter which authorized the Company to create “Laws, Orders, Ordinances, and Constitutions” in Bombay “not repugnant or contrary” to the Laws of England.³¹ Accordingly, in February 1669, the Court of Committees in London and its solicitor drew up a list of laws and regulations to send out to their new possession. This list of laws included provisions guaranteeing Catholic toleration, while at the same time urging non-forceful conversion of the population to Protestantism. The EIC also mandated that all cases of property or bodily punishment be tried by a 12 man jury and, taking a cue from the earlier Dawes case at Madras, stipulated that non-English persons be tried by a jury of half English inhabitants and half non-English.³² These regulations also established the governor and his council as a supreme court for appeals and gave the same governor power to appoint a judge to supervise a court of judicature which would meet to hear all complaints.³³ In addition to this administrative constitution, the EIC established specific crimes and punishments to be recognized in Bombay - for murder, drunkenness, adultery, theft, perjury, etc. - that is, a special set of Bombay statutes.³⁴ The Company assigned

pp. 3-6. This antiquarian tome by Charles Fawcett, a Bombay judge himself, presents perhaps the most complete picture of the mechanics of justice in the early years of Bombay.

³¹ Shaw, *Charters*, p. 49. Excepting however those provisions from the marriage treaty, like Catholic toleration, which ran contrary to English law. Referred to obliquely in the charter as “the provisoes [sic] and savings herein before contained.” Ibid., p. 52.

³² Fawcett, *First Century*, reprints this 12 February 1669 set of laws on pp. 18-28; for the jury provision see p. 24.

³³ Fawcett, *First Century*, p. 23.

³⁴ Ibid., pp. 24-5.

Gerald Aungier, head of their Surat factory, as the new governor at Bombay and entrusted him with putting this legal policy from London into action.

The legal regime established in 1670 by Aungier resembled that suggested by the Company but was also heavily inflected by the legacy of Portuguese Bombay and his own views on public policy.³⁵ In the resulting ad-hoc legal system, characteristic of early EIC settlements, Aungier, as governor delegated legal authority to other elites, while maintaining supreme authority himself. Instead of one court of judicature and jury trials for all offenses, Aungier appointed English and Luso-Indian customs officials throughout the Bombay territories to serve as justices of the peace and judges of most affairs.³⁶ This seems to have been both an attempt at appeasing local Luso-Indian elites and a reflection on the lack of qualified English personnel. Aungier even appointed a Luso-Indian lawyer “well read in the Civil and Imperial laws” to supervise the Company's legal affairs in Bombay.³⁷ At the same time though, Aungier wrote to England asking that someone versed in Civil law be sent out immediately, so that he could begin replacing Portuguese legal officers with English ones. The Company itself was not terribly worried about this state of affairs and wrote back in 1671 that it would be an expensive hassle to have a full-time legal professional at Bombay but that several of the new factors they were sending out to India had some experience in “civil and common law” and could serve part time in

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³⁵ Aungier and the Bombay council did order the 1669 code of laws to be published throughout the city in Portuguese and “Kanarese” see P. B. M. Malabari, “The Foundation of the Bombay High Court,” *Journal of Comparative Legislation and International Law* 1.3 (1919), p. 207.

³⁶ Fawcett, *First Century*, pp. 34-5 and Malabari, “Foundation,” p. 206. Malabari claims that all these officials were English but Fawcett's evidence, including the names of Luso-Indian justices, from the India Office records is much more convincing.

³⁷ Fawcett, *First Century*, p. 44.

a legal capacity.³⁸ In the meantime, Aungier himself presided over the most serious felony trials in the settlement.

Anglicization

While the Company in London and its officials in India had previously remained relatively content with maintaining plural legal regimes in their settlements, by the 1670s, a number of local EIC officials introduced more familiar, anglicized, systems of justice. That is, these officials on the ground used what they knew of English law in designing local judicial structures.

This process began in Bombay when Aungier chose George Wilcox, a former clerk in one of the English ecclesiastical courts to serve as his new chief legal officer. Over the course of 1672, both men worked to establish a new anglicized legal regime at Bombay which would, in their words, “abolish” Portuguese law and legal officials. In his account of this process, Wilcox detailed a legal system highly inflected by legal procedure as practiced in contemporaneous England.³⁹ As part of this new regime, Aungier divided Bombay up into “hundreds,” as in England, each with a justice of the peace and a constable to be elected from the “major” inhabitants of the district. Aungier and Wilcox also appointed a coroner to act as in England, created provisions for churchwardens to punish inhabitants for swearing and drunkenness, and established monthly criminal sessions presided over by Wilcox and two JPs.

Aungier and the EIC council marked this ostensible establishment of English law

³⁸ This letter quoted in Fawcett, *First Century*, p.45.

³⁹ This manuscript account is now BL Add. Ms. 39,255.

and legal proceeding on the island with a massive parade involving the entire legal staff of the island, a column of soldiers, and representatives from every caste and community on the island, led by Wilcox and purple-liveried servants. Aungier himself delivered a speech noting the lenity of the laws of England, their noble lineage going back to the Roman Empire and praising his and the EIC's new legal regime as a worthy “Abridgment” of the English law. In addition, he exhorted Wilcox, in the presence of a gathered crowd, to deliver justice impartially to the inhabitants of the island regardless of religion or birth, as they were all “his Majesties and the Company's subjects.” In short, in Aungier's mind, Bombay was firmly in communion with the wider world of English law and authority.

Though we know little about the practice of this first English court in Bombay, it served as a model for other EIC settlements. A few years after the Bombay court's inauguration, the first regular, documented, English tribunal opened at Madras. The new governor there, rather than the Company in London, designed and implemented this new court. When he took office in 1677, governor Strenysham Master found several prisoners rotting in jail, their fates uncertain pending long-delayed communications from London.⁴⁰ In addition, he claimed to have received complaints from residents that the system of Choultry justice was ill-fitting to the growing commerce and population of Madras.⁴¹ As

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⁴⁰ For this supposition that the previous governor had kept the prisoners in jail intentionally see R.C.Temple, *The Diaries of Strenysham Master, 1675–80* (London: Indian Records Series, 1911), vol 1. p. 73.

⁴¹ *Records of Fort St. George: Diary and Consultation Books 1672-1756* [85 vols.] (Madras: Madras Records Office, 1910-1943), v. 2, 18 March 1678. Hereafter RFSG *Consultations*. The RFSG series consists of verbatim reprints of manuscript records held today at the British Library and the Tamil Nadu State Archives (TNSA).

a result, Master and his council proposed a new legal regime similar to those in England, the British Americas, and that put in effect by Aungier and Wilcox at Bombay. In Master's plan, 12 man juries would decide all civil cases over 50 pagodas (~10 pounds) and the justices of the Choultry, acting as English justices of the peace, would try all felonies. In addition, these justices would continue to sit as a court for all misdemeanors and small civil suits.

Master's new court of judicature opened on 25 March 1678 in the Fort St. George chapel. It met twice a week during 1678 and included all the trappings of an English common law forum. Indeed, in marked contrast with the workaday minutes of the Madras council's meetings and the unwritten proceedings of the Choultry, the pages of the record book for its first court day were penned in an elaborate hand with splashes of colored embellishment, highlighting its seriousness as an English tribunal.⁴² English-style warrants, subpoenas, and summons fill the court's records, as well as familiar common law pleadings like the formulaic “trespass upon the case.”⁴³

However, few litigants seem to have used the new English court. No more than perhaps a dozen cases seem to have been brought to the court over the course of 1678 - out of a total Madras population numbering in the thousands. Significantly, every litigant in the court was of English descent with the exception of the Tamil broker Kasi Viranna, who joined a mass of other merchants in one suit to seek satisfaction from an

⁴² The records of the Madras Court of Judicature are now BL IOR G/19/38.

⁴³ See BL IOR G/19/38: Records of the Madras Court of Judicature, p.28 for an example of this particular complaint.

Englishman's estate.⁴⁴ In addition, the juries summoned to hear the civil cases in the court resembled each other in most actions, there not being an exceptionally large pool of Englishmen to draw on. In summary, the continued availability of the Choultry court, the intricacy of court proceedings, and the presence of an English jury all seem to have dissuaded the majority of the city's mercantile population from seeking redress at the new court.

Whereas merchants could choose whether to use the new court or not, in theory, accused criminals in Madras had no such choice. Master's intentions in setting up the 1678 court were clear - it would have jurisdiction over all persons within the bounds of the city. However, during 1678 there appear to have been only two criminal trials in the court, suggesting that the local Company executive and the community preferred taking criminal offenders to the justices of the Choultry or other local community tribunals instead.

The two criminal trials which did take place in 1678 showed just how uneasy local Company officials had been about putting their sovereignty into practice. These two trials took place, like that of Ascentia Dawes 10 years earlier, under direct royal commissions. The prisoners in both cases had allegedly committed murder in the years prior to Master's governorship and instead of trying them on the spot his predecessors had written to London for instructions. When the Company sent word on the proper course of action in June 1678, Master must have felt vindicated in his anglicized plan for justice; for the instructions from London mirrored the very provisions for criminal justice he had

⁴⁴ For this estate action, see BL IOR G/19/38: Records of the Madras Court of Judicature, 5 October 1678.

proposed just months earlier. The Court of Committees wrote that the two accused murderers were to be indicted and tried as in England.

Yet, in a situation reminiscent of the Dawes case, one of the accused murderers, Manuel de Lima, was certainly not an Englishman.⁴⁵ His case illustrates the contested and unsettled nature of Master's new anglicized court. In October of 1676 de Lima mortally wounded his Indian Christian servant, Pero Rangell, at Madras and spent the next two years locked up by the EIC awaiting trial. After receiving instructions from England, the EIC ordered the bailiff of the court of judicature to summon an all-English grand jury to the Choultry building in order to indict de Lima. The jury found a true bill and accordingly the bailiff chose a twelve-man trial jury under a slightly different set of directions.

The governor and council ordered that all the jurors for the trial were to be substantial residents of the city as usual, but that half of them must "...be such as were borne in the parts of Portugal under the allegiance of the king of Portugal."⁴⁶ As a result, when the jurors assembled for the trial they counted six members of the Portuguese

⁴⁵ De Lima had been born in Portugal and later served as a Portuguese officer in Goa and the Persian Gulf. He had then traveled to Madras, marrying into its thriving Luso-Indian community. See Arquivo Historico Ultramarino, Lisbon (AHU): ACL/CU/058 Caixa 56 no. 116: Consultation on persons to be sent out to India, 15 February 1681. For a fantastic archival study of Luso-Indians in the region see S. Jeyaseela Stephen, *Portuguese in the Tamil coast: historical explorations in commerce and culture, 1507-1749* (Pondicherry: Navajothi, 1998). Also M.N. Pearson, *The Portuguese in India* (New York: Cambridge University Press, 1987); C.R. Boxer, *The Portuguese Seaborne Empire 1415-1825* (London: Hutchinson, 1969); Idem, *Portuguese Conquest and Commerce in Southern Asia, 1500-1750*. (London: Variorum Reprints, 1985); Sanjay Subrahmanyam, *Improvising Empire: Portuguese Trade and Settlement in the Bay of Bengal, 1500-1700* (Delhi: Oxford University Press, 1990); idem, *The Portuguese Empire in Asia, 1500-1700: A Political and Economic History*, (London; New York: Longman, 1993).

⁴⁶ BL IOR G/19/38: Records of the Madras Court of Judicature, 18 September 1678.

speaking community of Madras in their number.⁴⁷ The local Portuguese community also took part in the trial beyond serving on the jury. All six witnesses who put up bonds in order to testify at the trial were Portuguese or Luso-Indian, including one who was possibly related to one of the jurors.⁴⁸ It is not known exactly what evidence these witnesses gave, although the records show them testifying against de Lima. The jury reached a verdict on the first day of the trial, taking a remarkable five hours to find de Lima guilty according to English law.⁴⁹

Only one day after the sentence had been passed, forty three men of the Madras Luso-Indian community signed a petition to governor Master asking for clemency for de Lima. Their petition emphasized the importance of the Luso-Indian community in Madras's prosperity, establishing themselves as a valuable constituency to be heeded. The petitioners were likely all men who had formerly held positions of authority at San Thome, as they boasted of bringing “painters, weavers, workmen, and other inhabitants who knew only our command” from that settlement to Madras. In addition the petitioners listed civic responsibilities which they had performed on behalf of the city, which they felt entitled them to some consideration from its EIC government.⁵⁰ Most importantly,

⁴⁷ All six of these Portuguese members were fidalgos of some standing in the émigré community from San Thome. Among these jurors was Lucas Lewis d’Olivera who later became the Portuguese governor of San Thome in 1698 after it had been reconstituted as a Portuguese settlement. The six English jurors were all EIC servants, and all had also served on the grand jury, including the local school master and Elihu Yale, the future governor of Madras.

⁴⁸ BL IOR G/19/38: Records of the Madras Court of Judicature, 18 September 1678. Jeronimo d’Olivera is listed as being a witness and Lucas Lewis d’Olivera was a juror.

⁴⁹ When the EIC reported the trial back to London they emphasized the length of the jury deliberations writing “FIVE” in all capitals.

⁵⁰ English transcription in RFSG *Consultations*, v.2, pp. 42-3; Portuguese text in BL Add. Ms. 20,846, f. 199.

they expressed the Luso-Indian community's bewilderment at the application of English law in the case, maintaining that Pero Rangell, the victim, was "...a Native of India and not under the Laws of England." Perhaps mindful of the Royal commission for the trial and the negative attention clemency might bring in London, Master did not appease the Portuguese community by granting a pardon, but instead sentenced de Lima to death. In many ways this was a savvy move on Master's part for it in effect passed this tangled legal matter out of his hands, as both de Lima and the Luso-Indian community declared their intention to appeal to England.

Seizing on the novel and uncertain constitution of English law in India, de Lima's petition to the King's Privy Council questioned not just the applicability of English law in matters involving "natives," but also the very premise of English jurisdiction at Madras.

On these points, de Lima claimed:

- "1. That neither the petitioner nor the blackamore were you majesties subjects" and
- "2. That the accident happened without the Fort of St. George and the jurisdiction thereof and so consequently not liable to the cognizance of the courts of jurisdiction [sic] there."⁵¹

His objections are worth noting as they suggest that there were, in his thinking, and presumably in the minds of his contemporaries in the Indian settlements, two ways of establishing legal authority over a person. The first involves personal allegiance to a sovereign, his delegated subordinates, and codes of law. In de Lima's thinking, since he owed no particular allegiance to King Charles II, the king's laws and judges should have

⁵¹ BNA CO/77/14: State Papers Relating to the East Indies, p. 19 (17 October 1677 - a clerical error, the date should read 1679).

no sway over his life. Yet, at the same De Lima implicitly acknowledged that even if an individual did not owe a sovereign allegiance, he could still be bound by that ruler's laws and authorities for a second reason - that of territorial jurisdiction - in this case Fort St. George and its zone of English law.

De Lima's story reveals some of the difficulties inherent in the establishment of this new anglicized legal order in India, with its necessary connections to circuits of power in England, and the uneasy relationships such a legal system created with local non-English populations. It's not difficult to imagine the merchants and tradespeople of the city being wary of entirely English juries in civil cases made up as they were by newly arrived schoolmasters and 20 year old accountants. Indeed, within a decade, the Company's fundamental uneasiness with the rigors of common law procedure and the impracticality of English juries led to an end to this early experiment in anglicized courts.⁵²

Participatory Government and Legal Change

The 1680s-90s were years of expansion and conflict within the Company in London and Asia. These years saw a greater emphasis within the London Company on the authority and prerogative of the EIC and a concomitant draw-back from the anglicized legal consciousness of the 1670s in Bombay and Madras. The increasing pressure interlopers brought to bear on the Company and its trade precipitated a sudden

⁵² The lack of any additional records from the Madras Court of Judicature make it difficult to know exactly how it fared over the next decade of its on and off existence. The Council at Madras did report back to London at one point that the residents of the city were pleased with the new court but wanted a judge and not a jury to hear disputes like at Bombay - see BL IOR G/40/3a: Abstracts of letters to London, p.28 (29 July 1678).

interest within the Company in a legal system whose judgments carried weight in the metropole. As a result, by the 1680s the Company sent the first professional English-trained legal elites out to India.

As part of its original and renewed charters, the EIC had a monopoly on all trade from England to parts of the world east of the Cape of Good Hope. Yet, throughout the later Stuart years, independent merchants and conglomerates in London and elsewhere tested this monopoly both in court and by sending illicit voyages to the East Indies. While the Company could attack these voyages in metropolitan courts, it also saw the advantages to having courts of admiralty in Madras and Bombay, ready to condemn ships and merchants in a manner legally enforceable back at home. The Company declared their intention to send out Judge Advocates in 1683, sending one to Bombay in 1684 and Madras in 1687. But these experiments in professional justice turned out to be near universal failures.

For their first admiralty judge in Bombay the Company selected Dr. John St. John, a civil lawyer trained on the continent; a man of good connections but not much professional reputation. St. John arrived in Bombay in 1684 to a city without a functioning legal system in the wake of a mutiny.⁵³ Rather than stick to his commission as an admiralty judge, St. John, as legal elites are wont, abrogated to himself the entire

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⁵³ St. John had trained in civil law at Leiden. He was so little regarded as a civil lawyer that the Archbishop of Canterbury had to force Doctor's Commons - the corporate body of civil lawyers in England - to accept him as a member. For correspondence related to this incident see Bodleian Library, Oxford: Tanner MSS v. 36, f.183 (Letter from St. John to Archbishop Sancroft, 2 October 1680 about the bishop making him an advocate by fiat) and Tanner MSS v.39, f.174 (Letter from Sir Robert Wyseman to Archbishop Sancroft, 28 January 1678 describing the resistance to St. John).

execution of justice in the territory. This brought him into nearly immediate conflict with the EIC executive in western India. Over the course of his brief tenure in India, local EIC executives overturned or lessened a number of judicial decisions made by his court.⁵⁴ Believing himself to have judicial power by virtue of a royal commission superior to any held by mere Company employees, St. John wrote vitriolic letters home pleading his cause. In one of these he complained to Samuel Pepys that the EIC executive tried to force him to “determine all matters in court against my own judgment and conscience without and against all laws.”⁵⁵ When St. John refused, the Company dismissed him and he returned to England after tenure of only a few years.

In 1683 the EIC in London sent word to Madras of their intention to appoint a new judge for the city. When this plan and instruction arrived in Madras without any actual judge, the local EIC executive felt forced to halt the existing English court of judicature, causing, in the words of the council, “many disturbances and complaints.”⁵⁶ Eventually the council ordered the court of judicature reopened and it continued to function as previously without a trained judge, until the EIC finally sent out Sir John Biggs, the former recorder of Portsmouth, as judge advocate in 1687. Like the court in Bombay, the Court of Admiralty in Madras did not last long and appears to have ceased functioning by the first years of the 1700s.

In addition to their bitter conflicts with local EIC executives, it's also possible these professional judges fell out of favor with the Company because one of their

⁵⁴ Fawcett, *First Century*, pp. 121-36 details this Bombay court of admiralty.

⁵⁵ Ibid., p.139.

⁵⁶ Love, *Vestiges*, v.1, p.492.

ostensible benefits, the enforceable seizure of interlopers, proved to be a chimera.⁵⁷ In 1688, for example, the Court of King's Bench in London dismissed a case against an interloper captain in part because the EIC admiralty court, presided over by Dr. St. John at Swally (near Surat) illegally seized the ship in question. Chief Justice Holt and another justice both expressed confusion as to whose court it was, concluding that it was not a valid court of record.⁵⁸ Whatever the combination of factors, the Company sent no additional legal professionals to India after the early 1690s.

Providing a system of criminal law as well as a mechanism for resolving civil disputes was expensive for the Company. Professional judges required a salary, local watchmen, magistrates, and clerks did not work for free, and assigning EIC employees judicial functions took time away from their other duties. Yet, these costs could be easily sustained as long as they yielded a satisfied local elite and a more flourishing trade. A result unlikely as long as haughty metropolitan judges, like St. John, exerted authority in the settlements. In addition, by the late 1670s, the Company desperately needed the help of local non-English communities to pay for the continuing prosperity of their settlements as well as to defend them, especially Madras, from an increasingly unstable interior. While the EIC did well from its trade in textiles and spices from Madras, it was reluctant to spend trading profits on civic improvements and maintenance.⁵⁹ All of the major

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⁵⁷ For recent discussions of the Bombay Court of Admiralty see Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires 1400-1900* and Philip Stern, *The Company State*.

⁵⁸ *Beake v. Tirell* (K.B. 1688) reported in three different versions: 23 Eng. Rep. 707; 87 Eng. Rep. 124; 90 Eng. Rep. 379. For more on Capt. Tyrell see Philip Stern, "'One Body Corporate and Politick': the growth of the English East India Company-State in the later seventeenth century," (Ph.D. Diss. Columbia University, 2004), pp 396-9.

⁵⁹ For nearly every month in the 1670's and 1680's the city of Madras ran a large deficit, in 1678 for

European trading companies faced this challenge and experimented with various forms of revenue-raising and taxation. The Company itself floated various proposals for raising money over the years, but in most instances the inhabitants of the city exercised their strength in numbers and threatened to leave the city if the EIC levied new taxes.⁶⁰

Wealthy non-English merchants and their trading contacts were of vital importance to both the corporate EIC and the individual fortunes of its employees in India. Armenian, Portuguese, and Tamil merchants had trade networks with the lucrative Manila market and many others around Southeast Asia and the Bay of Bengal which the Company or English merchants themselves could not replicate.⁶¹ In addition, local Indian intermediaries such as *dubashes* (cultural middlemen specializing in procuring goods and labor for European merchants), cloth merchants, and bankers, proved absolutely essential in providing the large amount and variety of goods the Company required. By the late

instance, the year of de Lima's trial and also a year with little military activity, the revenue from Madras through taxes and fees (including profits from minting) was 7,259.05.2 pagodas while civic expenses ran to 13,048.19.2 pagodas. See RFSG *Consultations*, v. 2, p. 156.

⁶⁰ When the Company ordered a collection of revenue to pay for some civic improvements in 1676 "the merchants and townspeople boarded up shop and prepared to leave" and "by intelligence their tribes in the country stopped all provisions from coming to town" so the EIC relented. The EIC in Madras wrote to London that the disgruntled residents "did not value the sum but the precedent." RFSG *Consultations*, v.1, pp. 86-7 (18/29 February 1676). In early 1678, the same year as they established the court of judicature, the local executive proposed a street cleaning tax assessed on every household. The Madras EIC council first rejected the idea because of the inhabitants' fear that Indian sovereigns in the hinterland might get access to such a list - detailing the number of important merchants and manufacturers living in Madras - see RFSG *Consultations*, v.2, p. 86 (13 July 1678). They later approved the tax and created a roll of English and non-English residents alike - see *ibid.*, p. 93. For this roll see BL IOR G/19/38 (un-numbered final leaves).

⁶¹ On Armenian Manila trade see Bhaswati Bhattacharya, "Making money at the blessed place of Manila: Armenians in the Madras-Manila trade in the eighteenth century," *Journal of Global History* 3 (2008), pp. 1-20. See also on some joint stock Tamil-English voyages to Manila: Elizabeth Saxe, "Fortune's Tangled Web: Trading Networks of English Entrepreneurs in Eastern India" (Ph.D. dissertation, Yale University, 1979), pp. 105-7. Saxe put the value of one of these joint-stocks at either 1.4 million pounds sterling (or nearly the entire capitalization of the new EIC of 1698) or the more reasonable but still large sum of 21,000 pounds: see p. 106.

1680s some of these non-English merchants had even formed private joint-stock ventures with EIC employees and governors. In addition, the non-English population served as a reserve militia in times of crisis. In January 1688 for instance, the EIC governor sent out a proclamation asking all households in Madras to send one man in arms, if Luso-Indian to the Catholic church, if Hindu, to the Choultry, in order to prepare for the defense of the city.⁶² Needless to say, the EIC and its employees saw the continued happiness of these substantial non-English inhabitants as vital to the Company's and their own survival.

Likewise in Bombay, despite the Anglicizing bluster, Aungier and other officials did not look to English law and courts alone to administer justice on the islands but understood the importance of the non-English mercantile and landowning elite and their customary institutions. Aware of this delicate balance of power, Aungier and others avoided ramming English law down the throats of Bombay residents. Thus, in 1671, while waiting to leave for Bombay from Surat, Aungier wrote to the EIC in London detailing some ideas for the governance of Bombay. Included among these was the proposal that the EIC executive “reduce or model” the many “nations” of Bombay into “so many orders or tribes” and appoint a chief or council over each of them. These chiefs would be responsible for bringing cross-cultural grievances to light and for delivering up offenders within their community for justice in inter-communal disputes. He also proposed that these chiefs or councils “arbitrate” all disputes within their communities as long as the two parties agreed.⁶³ The extent to which the EIC implemented this plan is

⁶² RFSG *Consultations*, v.14, p. 9.

⁶³ George Forrest, *Selections from the letters despatches and other state papers: Home Series* (Bombay:

unclear, but, under the supervision of the local EIC executive, communal dispute resolution mechanisms do seem to have flourished. Among these new communal elites were men like Kaji [*qadi*] Ibrahim, whom the EIC governor of Bombay appointed in 1694 “to be chief judge and decider of all differences that may happen in your caste - the Moors...”⁶⁴ In addition, there are continued references in the Company's records to a *qadi* in Bombay through the 18th century, more often than not as someone to whom disputes among Muslims should be referred.⁶⁵

Casting doubt on later assertions that Aungier had ended the tenure of Portuguese law on the island, many Portuguese dispute-resolution mechanisms continued to function due to the prominence of local elites.⁶⁶ Most important among these were the *vereadores* who were the institutional and familial descendants of the administrators and governmental system of Bombay prior to its transfer.⁶⁷ It is not too much a stretch to describe these Bombay *vereadores* as holding positions of authority and credit similar to

1887), v.1 p. 54 reprints this letter (5 February 1671).

⁶⁴ Malabari, *Bombay in the Making*, p. 177. Presumably the EIC Governor and Council made additional appointments over the decades subsequent to the 1690s which remain untraced.

⁶⁵ There are a number of such cases in the 1720s, see for instance BL IOR P/416/99: Bombay Court of Judicature records, p. 2 (11 December 1723 - Fuckro Subadar's case).

⁶⁶ See for example the opinions of Bombay judges Erskine Perry and A. Anstruther in Antonia de Silveira v. Salvador B. Texeira (1845) reported in 2 Morley 247-265.

⁶⁷ *Vereadores*, literally “administrators” were those principal property owners who made up the municipal council of Portuguese settlements from Brazil to Macau. See J.G. Da Cunha, *The Origin of Bombay* (Bombay, 1900), pp. 229-30 for a very brief explanation of *Vereadores* in Bombay. Here he quotes from the Bombay High Court in a judgment of 1843 describing the *Vereadores* in terms very similar to English JPs. Namely, that a *vereador* was “a member of Council or of the Chamber; a functionary charged with the administration of the police, or the repairs of public roads ; a bazaar superintendent; a magistrate, or a public functionary who fixes local tariffs or taxes.” For a complete description of the duties of *vereadores* under contemporary Portuguese metropolitan law see the *Ordenações Filipinas* (1603) Lib. I, Tit. LXVI-LXVII (Book 1, titles 66-7). The landowners of Bombay appear to have elected the *vereadores* from their number, including Indian Christians, and possibly Hindus - see Fawcett, *First Century*, p.183.

English aldermen. Even after the English crown and later the Company took control of Bombay, the *vereadores* held office hours, heard disputes, determined the value of property, kept the primary mortgage books on the island, and served as the guardian for orphans' property. These consultative and plural legal mechanisms established in Bombay set a precedent which would serve as the basis of its legal constitution well into the eighteenth century.

Company officials in London also recognized the value of incorporating local elites into government. For example, in March 1687, the EIC's Committee of Correspondence laid out the intellectual framework for how they expected their territories to be governed:

“We must always recommend to you to use the natives that are obedient to our laws with all justice humanity and kindness giving them an assurance that we will never oppress them or their posterities but that they shall for ever remain in the same freedom *as if they were English men born*, and enjoy a perpetual liberty as to their religion and property as to their inheritance goods and chattels but they must never expect to be freer than all free men are in England who according to their abilities must and do universally pay to the support of the good government which protects them in the enjoyment of that liberty and property...”⁶⁸

The committee was perhaps thinking of the Madras court of judicature, which seems to have done an especially poor job in meeting these goals, especially in treating all the residents of the city as Englishmen born. Though records are of course scant, there is no evidence of substantial litigation in the court of judicature by non-English persons and no mention of any Hindu or Muslim inhabitant serving on a jury in the city until the 1720s.

⁶⁸ *Records of Fort St. George: Despatches from England 1670-1757* [60 vols.], (Madras: Madras Government Press, 1911-1964), v. 8-10, p.39 (22 March 1687). Hereafter *RFSG Despatches from England*. Emphasis mine.

In addition, non-English and non-Christian persons could not take advantage of important legal privileges afforded Englishmen. For example, in 1686, after being convicted of manslaughter, an Englishman successfully pled *legit ut clericus*, or benefit of clergy in order to be discharged from punishment with only a branding.⁶⁹ It stretches the limits of credulity to think that a Hindu prisoner could successfully take advantage of such a legal maneuver both because of his religion and lack of English cultural legal knowledge.

To this end, over the course of 1687, the Company in London proposed a new, more representative and locally inflected system of justice and municipal government for Madras. Josiah Child, the political theorist at the helm of the EIC throughout much of the 1680s, spearheaded this change. He was a great admirer of the Dutch East India Company's methods of governance and "political science" in Asia and wished to emulate their system of municipal government.⁷⁰ In September of 1687 he wrote to Madras that "Our design in the whole is to set up the Dutch government among the English in the Indies (than which a better cannot be invented)....and unite the strength of our nation under one entire and absolute command *subject to us*."⁷¹ In Child's plan, the Company would establish a public corporation under the seal of the EIC consisting of aldermen and burgesses elected from the several communities at Madras, i.e. the English, Portuguese, Jews, Muslims, and Hindus. In Child's thinking, giving leaders of these communities a modicum of power would induce them as well as their constituents to pay more regular

⁶⁹ That is, he passed a reading test. Under medieval legal provisions clergy members were exempt from temporal courts' punishments - by the 18th century, sympathetic courts allowed anyone who could read to take advantage of the privilege. For this incident see Love, *Vestiges*, v.1 p.493.

⁷⁰ See Philip Stern's *Company State* as well as his "Politie of Civil and Military Power."

⁷¹ RFSG *Despatches from England*, v. 8-10, pp. 90-3 (28 September 1687). Emphasis mine.

taxes and take the burden of financing and running the civil administration off the Company. That is, in Child's words, a civic corporation with very limited powers would appease the population, "without abating essentially any part of our dominion when we please to exert it."

Royally chartered civic corporations were powerful institutions of local governance in early modern England. They were not as common outside of England but it is clear that the Crown and others in government circles believed them to be one possible instrument of governance for far-flung colonies. For example, after Charles II acquired Tangier (along with Bombay) in his marriage pact, he ordered a charter be drawn up to incorporate the African city.⁷² Though Tangier would have been available as a model, Child instead suggested the chartered corporation of Portsmouth, where he himself served as an alderman and Sir John Biggs, the new judge of the Madras court of admiralty, had worked as recorder. Besides these connections, Child turned to Portsmouth because of its status as a port and the presence there of a garrison and governor, as Child termed them, "a superior power," much as he considered the Company in the Indian settlements to be. Child recommended that the alderman members of this new Madras corporation, like their counterparts in Portsmouth, be appointed as justices of the peace and also hear ordinary civil disputes with appeal lying to the court of judicature and the EIC

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⁷² The text of the charter has never been printed and there has been little work done on the legal history of Tangier. The charter itself can be found in MS at the Bodleian Library, Oxford in Rawlinson MSS A 341, f. 194 - the best account of the chartered corporation is in Enid Routh, *Tangier: England's lost Atlantic Outpost* (London, 1912).

executive.⁷³

Without waiting to hear back from Madras, Child and the Company went ahead with this plan, and the EIC Court of Committees took the step of issuing a charter establishing a municipal government in Madras.⁷⁴ Importantly, unlike Portsmouth and Tangier, the chartered government established for Madras was formed under the Company's aegis and not the Crown's. This was not entirely novel as other English cities like New York and eventually Philadelphia also had similar private chartered governments with mayors, aldermen, and courts of law.⁷⁵ Unlike these other cities, however, the Madras charter however gave little guidance on the jurisprudence of the court, specifying only that it should rule according to "Equity and good conscience and according to such laws, orders, constitutions that we [EIC] have already made or shall hereafter make and constitute for the good government [of the city]."⁷⁶ The charter also instructed the mayor and council to elect a legal expert (recorder), "skillful in the Laws and Constitutions made by us [EIC]."⁷⁷

This last clause set the Madras Mayor's Court, its jurisprudence and authority, apart from Portsmouth as well as other royally chartered cities. For example, in Portsmouth and Tangier, the mayor and aldermen themselves had the power by charter to

⁷³ For the text of the 1627 charter of Portsmouth see Robert East ed., *Extracts from records in the possession of the municipal corporation of the borough of Portsmouth and from other documents relating thereto*, (Portsmouth: Henry Lewis, 1891), pp. 586-597.

⁷⁴ This charter is reprinted in Shaw, *Charters*, pp. 84-96.

⁷⁵ For the charter of New York City granted by Gov. Thomas Dongan in 1686 see Charles Z. Lincoln et al. eds., *The Colonial Laws of New York from the year 1664 to the Revolution* (Albany, 1894), vol. 1, pp. 181-95; for the 1701 charter of the city of Philadelphia granted by William Penn see *A collection of charters and other publick acts relating to the province of Pennsylvania....* (Philadelphia, 1740), p. 35.

⁷⁶ Shaw, *Charters*, p. 89.

⁷⁷ *Ibid.*, p. 91.

make their own by-laws but in their jurisprudence writ large they relied on an expert “learned in the laws of England.”⁷⁸ Even in other privately chartered cities like New York, the mayor and aldermen were given the instruction by charter that they “...hear and determine the same pleas and actions, *according to the rules of the common law*, and acts of general assembly of the said province.”⁷⁹ This is perhaps a fine point but it nonetheless shows that despite their civic power, the mayor and alderman of Madras, and indeed the entirety of its population were subject to the Company, its authority and laws - not necessarily those of metropolitan England. To further accentuate this point, as the Company issued the charter under its own seal, the new corporation could not expect to have any substantial judicial, legislative, or corporate independence from the EIC. Whereas in the royal Portsmouth charter not even the ruling sovereign could remove aldermen without due process, the Company and its governors and councils could remove any Madras alderman by a vote.⁸⁰

The final charter appointed twelve aldermen, three English, three Portuguese, three Jewish, and three Hindu to govern the corporation. The Hindu and Jewish members were all prominent brokers and merchants, either employed by the Company itself or indebted to it for their continued trade.⁸¹ The charter called for the election of sixty

⁷⁸ *Extracts*, p. 591; for the making of by-laws in chartered Tangier see Hugh Cholmley, *An account of Tangier*. (London, 1787), pp. 73-6.

⁷⁹ Lincoln, *Colonial Laws of New York*, vol. 1, p.194. Emphasis mine.

⁸⁰ See Shaw, *Charters*, p. 94 for this provision in the Madras charter. Charles II controversially reissued charters at the restoration which gave him the power to replace aldermen. The Portsmouth Corporation successfully lobbied James II to remove this provision in 1688 just before he was deposed.

⁸¹ See S.E.Runganadhan et al.eds., *The Madras Tercentenary Commemoration Volume* [originally 1939] (Madras, Asian Educational Services, 1994), p. 185. On the place of Sephardi diamond/coral merchants in Madras see W.J. Fischel, “The Jewish Merchant-Colony in Madras (Fort St. George) during the 17th

additional burgesses from the various communities - though the names of these early burgesses and whether or not they represented a wide swath of Madras society are not recorded. The mayor of Madras was to be elected from among the aldermen and could conceivably be of non-English extraction. The charter also separated the town government from the Company government at Fort St. George and gave the new corporation the quotidian tasks of supervising matters of public welfare as well as certain streams of local tax revenue. The charter also directed the mayor of the city and three aldermen to sit regularly as a mayor's court, as was done in other English chartered cities, to decide civil and criminal cases.⁸²

The Company also included a clause in the new charter, stating that all of these aldermen and burgesses upon their election became free men of Madras and were to be accorded all the privileges and status of natural born Englishmen.⁸³ This conceivably meant that Hindu, Muslim, or Jewish members of the corporate body could sit on juries, vote on the passage of new taxes, and participate in all other ways in the life of the English side of the city. This was a decidedly unusual clause in a civic charter. It differs markedly, for example, from the provisions in the Tangier charter which stated that all aldermen had to be Christians.⁸⁴ The Company also experimented more broadly with this model of civic inclusion. For example, in June of 1688, the EIC Court of Committees

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and 18th Centuries: A Contribution to the Economic and Social History of the Jews in India" *Journal of the Economic and Social History of the Orient* 3.2 (1960), pp. 175-195.

⁸² For the similarity in provisions between the charters compare the Portsmouth Charter in East, *Extracts*, pp. 591-2 and 596-7. Notably the Tangier charter reserved all mercantile disputes to a special court merchant, see. Routh, *Tangier*, pp. 118-9.

⁸³ For this charter see Shaw, *Charters*, pp. 94-5: (James II - 30 December 1687). There appears to have been no such clause in the Tangier charter.

⁸⁴ Routh, *Tangier*, p. 117.

signed a contract in London with representatives from Indian Ocean Armenian merchant families granting them trade and civil privileges in EIC settlements. Hoping that the Armenians would direct more of their trade towards Company settlements, the EIC gave them “liberty to live in any of the Company's Cities, Garrisons, or Towns in India, and to buy, sell, and purchase Land or Houses and be capable of all Civil Offices and preferments in the same manner as if they were Englishmen born.”⁸⁵

This explicit written grant of full legal subjecthood (or perhaps even citizenship) to non-English persons seems however to have been only a brief phase in the Company's history designed to expand governance so as to encourage migration and trade. While a few Armenians specifically took advantage of their status in the late 18th century, I have been unable to trace any examples of other non-English inhabitants explicitly taking advantage of their status of freemen or full legal subjects as granted by the Company. In addition, despite the inclusion of non-English aldermen in the Mayor's Court, the 1687 charter gave privileges to English residents over their non-English neighbors. For example, the charter provided that no warrant from a “native of India” was to be honored to put an Englishman in jail. Rather, Indians had to instead procure warrants from an Englishman or justice of the peace.⁸⁶

Thus, despite its founders' intentions, the first Madras Mayor's Court failed to create a unified civic body encompassing and representing all the substantial inhabitants

⁸⁵ R. W. Ferrier, “The Agreement of the East India Company with the Armenian Nation, 22nd June, 1688,” *Revue des Etudes Arméniennes*, N.S. 7(1971), pp. 427-43. See p. 440 for the full text of this agreement. The Armenians were also promised land for a church wherever forty of them were living.

⁸⁶ Shaw, *Charters*, p.90.

of the town. Non-English aldermen never numbered more than one or two and it remains unclear if there was ever a full complement of burgesses. In 1717-18, for instance, there were nine aldermen sitting on the court, of these seven were English, one was of Portuguese extraction, and one was an Armenian merchant.⁸⁷ However, despite this later domination by the English mercantile and EIC elite of the city, the Mayor's Court was not, as one historian has called it, merely a "Potemkin village" devoid of any real significance.⁸⁸

During one six month period (June-December 1689) the residents of Madras brought around 90 cases before the Mayor's Court. Of these, 17 involved litigants of non-English extraction, the majority of these being suits amongst Hindu Chettiar merchants or Luso-Indians. The composition and volume of litigation in the court for the next thirty years remains unknown, though by 1712 it seems to have growing year upon year.⁸⁹ In 1717, the next year for which records are available, the court saw an even greater proportion of non-English litigants.

⁸⁷ These numbers extracted from the register of that year printed in the *Records of Fort St. George: Minutes of Proceedings in the Mayor's Court of Madraspatam 1688-1746* [11 vols.], (Madras: Madras Government Press, 1915-1937), vol. 1. Hereafter RFSG *Minutes*. The aldermen were Thomas Cooke, John Legg, Richard Horden, Edward Jones, Nathaniel Elwick, Nathaniel Turner, George Pitt, Coja Simone, and Luis de Medieros. It is difficult to gauge the composition of the rest of the Madras civic corporation in this period but in an election for a new alderman at the end of 1717, the most popular candidate received 61 yes votes from the burgesses of the city. RFSG *Minutes*, vol.1, p.37.

⁸⁸ H.J. Leue, "Legal Expansion in the Age of the Companies: Aspects of Justice in the English and Dutch settlements of Maritime Asia, c. 1600-1750." In *European expansion and law: the encounter of European and indigenous law in 19th- and 20th-century Africa and Asia*, ed. Wolfgang J. Mommsen and Jaap de Moor (New York: BERG, 1991), p. 135.

⁸⁹ The records of the Mayor's court between 1689 and 1718 do not exist in Madras or London today. When, in 1755, a clerk surveyed the proceedings of the court from these years, he found that all the minutes of the court from 1688-1712 occupied three volumes only. However, he found that for 1712-1727, each volume of minutes could only hold 3-4 years of business. BL IOR P/329/69: Madras Mayor's Court Minutes, p.339 (16 December 1755).

The Court's jurisprudence also reflected its plural and convoluted roots and by the 1720s it lost most of its anglicized vestiges. As the old court of judicature became a distant memory, the culture of common law phraseology and procedure faded as well, replaced with one based more on local consultation and mercantile norms. Even as early as 1689 the Court told two English litigants that their debt dispute could only be pursued according to the common law “which this court cannot decide.”⁹⁰ In 1689 the English litigants and aldermen used the terminology and forms expected of English courts of law such as pleading an “action on the case;” by 1718 the court appears to have taken on a less rigid form with these kinds of pleadings rare.⁹¹ Likewise, in another case that year about the distribution of an English estate, the court referred not to English testamentary practice or statutes, but to “the standing rules and laws of this place” which the local Company executive itself had created.⁹² In addition, since by the 1720s there were no aldermen other than Englishmen (and the occasional Armenian) the court sometimes consulted caste leaders to help them decide disputes.⁹³

The system of criminal justice in Madras seems to have followed a similar trajectory to that of the Mayor's Court's civil work. Under the Madras corporate charter of 1687 the mayor and alderman became JPs, superseding the court of judicature. It appears that these aldermen initially sat in the Choultry to dispense justice, but with full English criminal procedure as in the old court. For example, in a case from 1689 where partial

⁹⁰ RFSG *Minutes*, v.1, p.5 (16 August 1689).

⁹¹ *Ibid.*, p. 2.

⁹² *Ibid.*, p.11 (26 November 1689).

⁹³ See the note from August 1718 in *ibid.* p. 66.

proceedings survive, an all-English grand jury and petit jury indicted and then convicted a Luso-Indian man named Francisco for murder.⁹⁴

Francisco's trial may have been one of the last jury trials held in the city before the 1720s, as the next recorded criminal trial in the Mayor's Court, from 1718, featured the aldermen themselves ruling on criminal verdicts. In addition, by 1718, the Court depended in serious felonies on the authority and approbation of the governor, who acted as the indicting agent instead of a grand jury.⁹⁵ In the only substantial criminal case recorded in the 1717-18 minutes of the Mayor's Court, the aldermen convened to hear the case of Caudojee, Perseram, and Kistnadoss, accused of murdering Ausa Dersee Trewadee (a prominent merchant) and his servant. The local Indian constabulary attached to the Choultry had arrested the accused and brought the matter before the governor, who had then sent the prisoners to be tried in the Mayor's Court. The indictment against them read as it would in any English court and the trial proceeded with the questioning of witnesses under oath. Yet, at the end of the day, no jury ruled on the prisoners' guilt, instead, the aldermen discussed the matter, declared the accused guilty, and ordered that all three be hanged post haste.⁹⁶

Similarly, in Bombay, Aungier's ostensibly English system of governance and law had had transformed into something much like that in Madras - that is, a system whereby

⁹⁴ The jury list is in *RFSG Minutes*, vol. 1, p. 12 (11 December 1689) and account of the trial in *RFSG Consultations*, v.15, p. 99. However, in this case the Mayor's Court, including one Portuguese and two Hindu aldermen commuted the sentence to a series of lashings. This decision caused one of the English jurors to protest to the EIC council that the meddling of the aldermen was unwarranted as the jury had come to the right decision. *Idem* (p.99).

⁹⁵ The Governor and Council wrote to the Mayor's Court that "We do find full and sufficient cause to put the said...on trial for their lives." *RFSG Minutes* v.1, p. 56.

⁹⁶ *Ibid.* p. 62.

elite Company judges passed judgment as they saw fit. It is difficult to gauge the impact of Aungier's Anglo-centric project of law and constitution making on the civic and social life of Bombay as few records from the courts prior to the mid-1710s survive in either Bombay or London. Even from the best sources we know only that juries delivered verdicts in civil trials and that mixed Portuguese/English juries were called on occasion to try criminals.⁹⁷ In the 1690s the regular court of judicature at Bombay seems to have had fallen out of use, no doubt interrupted by an attack on the island in 1690. The Governor and Council of the city seem to have been the supreme arbiters of disputes while other Company officials acted as JPs to mete out corporal punishments. There are some instances of jury trials, even mixed English and Portuguese jurors, in the early 1700s but these seem to have been irregular and infrequent. Nearly all vestiges of the common law practice of Aungier's day had by then disappeared.⁹⁸ Though there is little evidence of their activities, we know that other local tribunals and sources of authority continued to function during these years under the encouragement of the local EIC government. It seems safe to assume, for example, that when the Luso-Indian inhabitants of Bombay disputed over property, they turned first to the *Vereadores*. In 1715, for instance, the Company in London sent instructions to the new Governor of Bombay that he should "Take care also to preserve the Natives in all other their Civil Rights such as the ancient power of their Mattraes [sic] and Vereadores."⁹⁹

⁹⁷ Cf. Fawcett, *First Century*, p. 60-82 on this period generally.

⁹⁸ Fawcett, *First Century*, pp. 157-77 remains the best narrative of this period in Bombay legal history. For another detailed archival account of this early period see P.B.M. Malabari, *Bombay in the Making*.

⁹⁹ These instructions are reproduced in Fawcett, *First Century*, p. 169. In 1715 there were five *vereadores*

In 1717, much like in Madras of 1687, the EIC governor of Bombay decided to give these local elites more responsibilities in an attempt to lighten the Company's burden of civil administration. Charles Boone, the then governor, proposed to his council that they establish a court along the lines of the one at Madras, that is, one with aldermen and a mayor for the trial of all civil and criminal cases.¹⁰⁰ When the council finalized the plan a month later they had stripped it of its Mayor's Court appearance, deciding on a new Court of Judicature with a chief judge. The new court was however to be made up of six English justices from amongst EIC employees, plus five representatives of the Portuguese, Parsi, Muslim, and Hindu populations of the island.¹⁰¹ The EIC gave the court jurisdiction over virtually all disputes in their territories as well as appellate jurisdiction over all caste and community tribunals. Their jurisprudential base was likewise instructed to be quite broad including caste custom, the "Law of the realm of Great Britain," and the Company's orders.¹⁰² However, neither Boone nor others intended to reintroduce English civil or criminal procedure and trial by jury.

The proceedings of the court of judicature, which are extant for 1723-4 and 1726, reveal a wide spectrum of litigants and dependence by the justices on the help of community elites to determine disputes. But, the court appears to not have lived up to the

at Bombay with more at Mahim. The records of their veneration or court from that year survive to this day, showing their continued importance to the legal and administrative life of the territory. The Maharashtra State Archives holds a book of the records of the *veredores* court for 1714-7. See Sanjiv P. Desai, *The Hand Book of the Bombay Archives*, (Bombay :Dept. of Archives, Govt. of Maharashtra, 1978), p.111 (Portuguese Records no. 4). This court register was not forthcoming during my visit.

¹⁰⁰ Bombay consultations for 13 July 1717 quoted in Fawcett, *First Century*, p. 171.

¹⁰¹ A list of these justices is given *idem*. Both Pasqual Barretto and Rama Kamati - justices appointed that year - had previously served as *veredores*.

¹⁰² Fawcett, *First Century*, p.173.

promise of its foundation, that of a multi-community tribunal. The justices present at each court day are listed in the surviving registers of the court. In only two instances are any justices other than the three or four English members of the EIC Council mentioned as presiding over a case.¹⁰³ In one case the court asked for the opinion of these “Black Justices” though their names are not listed.¹⁰⁴ If anything this might indicate the perceived supremacy of the chief justice and his English counterparts in judicial matters, content to refer matters to learned parties but not willing to fully admit the “black justices” as equal members of the court. In addition, all petitions to the court as recorded were in English and the procedure of the court was definitely inflected by the justices' knowledge of the basics of English court language. The proceedings are full of “chance affray,” indictments, remand, and all manner of English phraseology which would have probably been foreign to the non-English justices.

Regardless of the composition of the bench, as with the Madras Mayor's Court, it is clear that a wide variety of litigants felt comfortable approaching the Bombay court. For example, in 1726 a “Mahim dancing woman” took a Luso-Indian man and a doctor in her employ to court for stealing one of her silver leg bracelets. The justices claimed there was insufficient evidence to convict, but ordered one of the men held anyway.¹⁰⁵ The same year Hossan Mahomet a shipping broker approached the court in order to seize a

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¹⁰³ For 21 February 1726 the register of the court reads: “Antonio Rozario, Jejee Moody [Parsi], Amboidass Tuckerdass [Bania merchant], and Tuckee[Qadi] allowed in.” But these men did not sign the proceedings like the English justices regularly did. See BL IOR P/416/100: Bombay Court of Judicature Records, p. 5.

¹⁰⁴ Fawcett, *First Century*, p.183.

¹⁰⁵ BL IOR P/416/100: Bombay Court of Judicature Records, p. 2 (2 February 1726).

boat he once leased to a joint Hindu-English rice venture, long since captured by the Portuguese and then sold to a Goan merchant now temporarily in Bombay. The court ordered the ship returned and wrote a letter to the Portuguese viceroy asking for additional restitution.¹⁰⁶

The court also referred matters to the communal leaders who supposedly constituted part of the court. When the wife of Husonjee Podar complained to the court in 1723 about her husband's abuse they referred the case to local Islamic legal authorities who subsequently claimed she was a “bad woman,” adding that while sodomy may have occurred it was fewer than the four times required for divorce in their reading of Islamic law.¹⁰⁷ The English justices took their advice and sentenced her to 15 lashes. In another case, though, the justices overruled the local *qadi*. The *qadi* had ruled that an insolvent man named Esupjee could not sell his wife's dowry lands, but the justices, perhaps creditors themselves, found this unreasonable and made their own ruling.¹⁰⁸

In addition, the EIC executive, as the appointer of justices and supreme authority at Bombay, had the power to intervene in court business as well as refer cases to its attention. In 1724 the Governor referred such a dispute between the Prabhu and Bhandari groups in the city over a caste parade to the court. The justices invited the “principal persons” of the 15 communities in the territory to give their opinion on the Prabhu

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¹⁰⁶ BL IOR P/416/100: Bombay Court of Judicature Records, pp. 2v-3 (9 February 1726).

¹⁰⁷ BL IOR P/416/99: Bombay Court of Judicature Records, p. 2 (11 December 1723). These authorities were the “Codje [qadi] and Chugulars [chogules]” For more on the chogules see chapter four.

¹⁰⁸ Ibid., p. 22 (18 June 1724).

parade.¹⁰⁹ In this mutual relationship with the EIC executive the court also likewise referred some of its own cases to the governor's discretion.¹¹⁰ Of course in such a system, the EIC council, through the aegis of the court, had almost complete control over life and limb. In 1722, for example, certain members of the council railroaded Rama Kamati, a prominent merchant and Company client, by fabricating evidence, torturing witnesses, and suppressing any contrary evidence at trial.¹¹¹ As a result, the court confiscated all of Kamati's property for the Company and had him imprisoned until his death. The Court then used Kamati's house to hold its sessions for the rest of its existence.

The Bombay court of judicature and the Madras Mayor's Court embody the pluralism inherent in the pre-1726 legal culture of the EIC's territories. Both were heavily localized tribunals, drawing on the expertise and opinions of prominent merchants and community leaders. Both operated outside the confines of metropolitan English jurisprudence, while at the same time using the language of English legal procedure and reasoning in their judgments. And finally, both operated completely under the authority and aegis of the local EIC governor and Council.

Calcutta

In Bombay and Madras, the EIC gained outright territory and jurisdiction through an initial treaty or grant. For many, the EIC's settlement at Calcutta stands apart from

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¹⁰⁹ BL IOR P/416/99: Bombay Court of Judicature Records, pp. 14-16 (18 March 1724). The records of the court do not list a resolution to the dispute but the consensus amongst the Portuguese, Parsi, Muslim, and various caste groups was that the Prabhus had only traditionally gone on parade as part of another caste group.

¹¹⁰ Ibid., pp. 19-20 (11 June 1724 - in re the case of Joao D'Mattos' slave).

¹¹¹ Charles Fawcett, "Rama Kamati and the East India Company," *Journal of the Bombay Branch of the Royal Society*, 9 N.S. (1933), pp. 1-27.

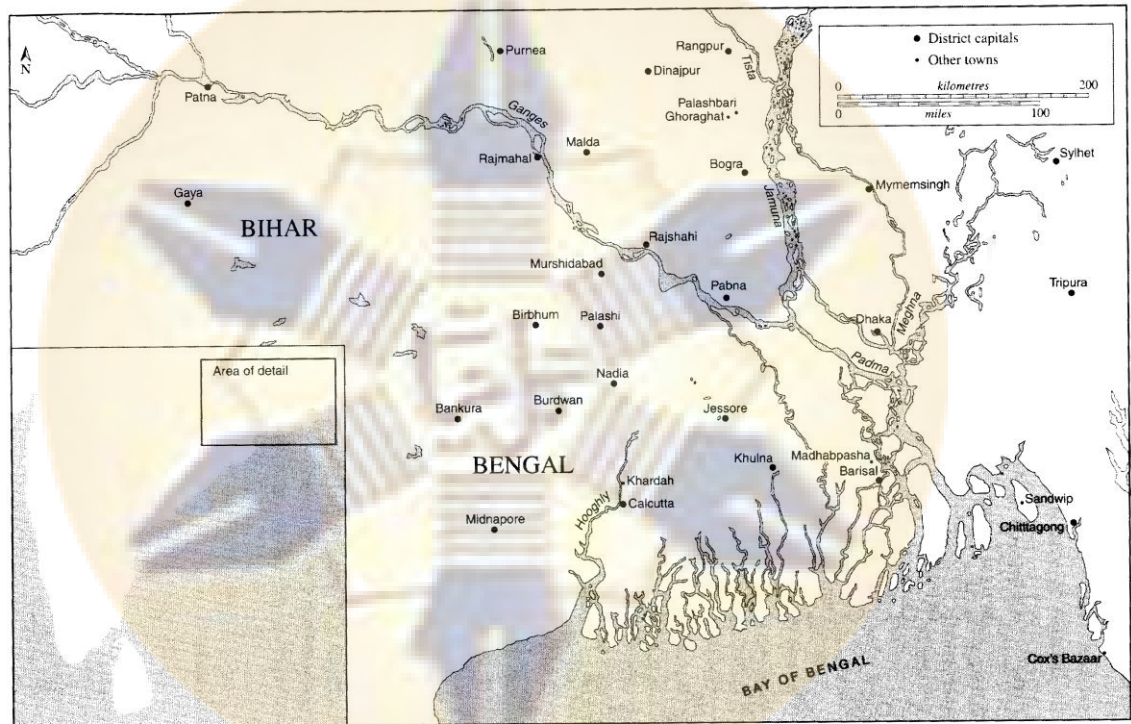
these other two cities. Located in Bengal, directly within the ambit of the Mughal Empire and its subordinate governors (*nawabs*), Calcutta at its founding was nothing more than a small trading post. In 1687, Job Charnock, an EIC factor, obtained permission from the *nawab* of Bengal to establish a factory on the Hugli River. After scouting several unsatisfactory locations, Charnock settled on a site near the run-down village of Sootanuti [Sutanuti]. The *nawab's* grant of permission mandated that the Company pay 3,000 rupees a year to him in lieu of customs and forbade them from erecting fortifications. However, between 1690 and 1715, during a time of political upheaval in Bengal, the Company successfully fortified their factory, acquired the revenue rights to two neighboring villages, and installed a president and council as the executive power in the city. Amidst all of this expansion, neither the Company in London nor its local subordinates made any substantial attempt to establish a court of judicature or introduce English legal proceedings. This is however not much of a surprise given the strong presence and watchful eye of Mughal political and revenue officials in Bengal and the swing away from legal Anglicization then playing out in Madras and Bombay.

In 1698, the Company successfully acquired a legal grant from the local Mughal governor for the landlordship of the three closest villages to their factory, including one called Kalkatta.¹¹² For most of the next half century “Calcutta” in EIC parlance referred to this nearly 1,800 acre tract of three villages along the Hugli River.¹¹³ This acquisition

¹¹² For this grant see BL Add Ms 24,039, ff. 34-6. More accessibly, it can be found reproduced in Farhat Hasan, “Indigenous Cooperation and the Birth of a Colonial City: Calcutta 1690-1750” *Modern Asian Studies* 26 (1992), pp. 68-9.

¹¹³ Around 275 of these acres were covered in dwellings in 1707 leading historians to surmise that 15,000

of revenue rights (zamindari tenure) to Calcutta made the Company a Mughal landlord with all concomitant obligations and privileges attached thereto. Though there was incredible diversity in the nature of zamindari tenure, it was common in Bengal for zamindars to exercise the power to discipline their renters, seize debts, and mete out the most basic justice.



Map 1 Map of Bengal and Bihar.

Figure 4: Calcutta and its surroundings¹¹⁴

In addition to these zamindars, a system of local *qadis*, judicial officers, *shiqdars*,

people or more could have lived in Calcutta at the time. See C.R. Wilson, *The Early Annals of the English in Bengal*, 3 vols. (London, 1895-1919) reprints this crucial 1707 revenue survey in vol. 1 pp. 284-6 (5,243 biggahs of land in all EIC areas combined, of these 840 biggahs have dwellings). His conjectures as to population can be found on pp. 191-3.

¹¹⁴ Map from Wilson, *Domination of Strangers*, p. xii.

revenue officers and others also prevailed in Bengal with appeals lying to successively more senior officials up the food-chain of the Mughal hierarchy.¹¹⁵ This was not however a unitary system of Islamic law. Mughal officials often acknowledged and permitted Hindu arbitrators and legal experts to rule on internecine matters of Hindu law.¹¹⁶ In some cases in Mughal Bengal even Muslims were subject to Hindu norms depending on the local constitution of the place.¹¹⁷ By the early 18th century though, Mughal imperial control over Bengal was becoming more and more unstable, giving zamindars increasing levels of autonomy over their lands and tenants. Though the Company's 1698 grant did not include special provisions for the execution of justice, Mughal officials did grant other zamindars complete territorial jurisdiction in matters of law and order. For example, just down the river from Calcutta, Augustinian friars served as the zamindar of a 777 biggah tract (~250+ acres). The Mughal emperor Shah Jahan had given these friars a grant allowing them to dispense whatever justice they saw fit to all inhabitants dwelling within the area - excluding only the ability to apply capital punishment. In addition he gave the friars permission to distribute the effects of the dead however they saw fit.¹¹⁸

The Company in Calcutta undoubtedly drew from the example of the

¹¹⁵ See Farhat Hasan, *State and Locality in Mughal India*, (Cambridge: Cambridge University Press, 2004) for one of the best and most recent discussions of Mughal legal practice. Also see S.P. Sangar, *Crime and Punishment in Mughal India*, (New Delhi: Reliance Pub. House, 1998).

¹¹⁶ J.D M. Derrett, *Religion, Law and the State in India*, p. 229. However, Muslim legal officials in the Mughal Empire could and did rule on matters of Hindu religious law. See idem for such a case in 1674.

¹¹⁷ See Benton, *Law and Colonial Cultures*, p. 80 for an example of a Mughal revenue officer punishing a Muslim for violating local Hindu law under the principle that Bengal was to be governed according to its local laws.

¹¹⁸ This is the Augustinian convent at Bandel. The 1646 *firman* and a wealth of information about the convent can be found in H. Hosten, "A week at the Bandel convent," *Bengal Past & Present* 10 (Jan-Mar 1915), pp. 106-18 and also in J.J.A. Campos, *History of the Portuguese in Bengal* (Calcutta, 1919), pp. 143-4.

Augustinians and other zamindars when putting into place their very own system of zamindari governance. The Calcutta EIC executive also learned from the experience of other EIC settlements, adopting a system similar to that in the Madras Choultry by appointing a member of their council to serve as the head of the zamindari office or Cutcherry [*kachahri*] in the city.¹¹⁹ Like the Choultry in Madras, tenants and inhabitants of Calcutta went to the Cutcherry to haggle over debts, settle rents, complain about neighbors, and register contracts. The nominal zamindar (a deputed member of the EIC council) along with a bevy of locally literate Indian functionaries also meted out corporal punishment to criminals at their Cutcherry office.

The EIC executive also had its own “court of justice” which met occasionally on Saturdays and which by 1707 included the titular zamindar as a judge.¹²⁰ Nothing is known about what business this court transacted but other English legal affairs, like the proving of wills, appears to have been decided by the EIC council writ large without any formal legal structure.¹²¹ Likewise, due to an absence of records, we cannot know the particulars of the jurisprudence of the zamindari court or the composition of litigants and criminals who passed through its doors. We can surmise though that the Company did little in the way of innovation. The early financial accounts of the zamindari office primarily note only the routine customary work of a typical zamindar - i.e. the collection

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¹¹⁹ Meaning court-house or administration building - see Yule, *Hobson-Jobson*, pp. 287-88.

¹²⁰ See Wilson, *Annals*, v. 1, p. 267 for a note that on 6 September 1705 two members of council sat on a Saturday court of justice. See also p.279 for mention of the EIC employee assigned to be zamindar sitting on this court.

¹²¹ In 1705, the entire council examined witnesses and ruled in a dispute over an Englishman’s will. Wilson, *Annals*, v.1, pp. 355-8.

of rents.¹²² In addition, these records also show that the English zamindar did exercise coercive power over Calcutta residents. In August of 1714, for example, Samuel Brown, the nominal zamindar, collected 77 rupees (fewer than 6 pounds sterling) from selling the goods of debtors while paying 69 rupees to peons (hired goons of a sort) and another 46 rupees in the process of recovering debts.¹²³

By the late 1710s it further appears that the Company sought a broader role in the legal life of Calcutta, though not necessarily one based on English practice. From 1715-17, for example, the Company negotiated with Mughal emperor Farrukhsiyar for a slew of grants and permits to put all of their settlements in India on secure footing.¹²⁴ The Company hoped through this negotiation to exempt Company trade and employees from taxes, impositions, and the Mughal state apparatus in general. The EIC also sought a grant enabling the Company at Calcutta to administer justice within the confines of its territory. More importantly, it appears that the EIC first asked Farrukhsiyar and his court for universal territorial jurisdiction over all persons living in Calcutta, Mughal subjects or not. Securing this clause would put Calcutta on the same footing as Madras and Bombay in that it would provide official Mughal assent to the provisions of the English 1661 charter granting full territorial jurisdiction.

Though this provision does not survive in extant records from the embassy, ten

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¹²² In 1704, the EIC council at Calcutta appointed Benjamin Bowcher zamindar “to collect the rents, and to keep the three Black Towns in order.” Wilson, *Annals*, v.1 p. 238. The same year the council ordered the Bowcher’s Indian assistant to hire around 65 men as watchmen and constables to police the city. Ibid, p. 196.

¹²³ Wilson, *Annals*, v.2 part 1, p. 149.

¹²⁴ The best compilation of sources on these negotiations is C.R. Wilson, *Annals (The Surman Embassy)*, v. 2 part 2 [orig. 1911 - Asiatic Society Calcutta reprint, 1963].

years later, the Calcutta council reflected that the attempt to gain such broad jurisdiction “had liked to upset the royal phirmaund [*firman*] by requesting power to punish the Mogul's subjects with death, the moors alleged the Company's charter could not extend to them who were subjects to another prince...”¹²⁵ Not surprisingly, sensing encroachment on Imperial prerogative, the Mughal court nixed this demand. Despite objecting to non-English residents of Calcutta being subject to the laws and authority of a foreign king, the Mughal emperor was content to confirm the EIC's power to administer justice in the Cutcherry as a Mughal zamindar.¹²⁶

As Calcutta attracted more and more immigrants, the judicial business of the Cutcherry grew as well. By 1724, it contributed upwards of 12,500 rupees (~1,000 pounds) a year to the EIC's treasury in fines levied on prisoners and other bail fees (*itlaq*) - a far cry from the seven or eight hundred rupees Brown collected in 1714.¹²⁷ This established Cutcherry culture and its important revenue function laid the foundation for a kind of schizophrenia in legal authority in Calcutta. As a result, its legacy as a site of Company and Mughal authority lingered throughout the EIC's rule in Bengal and created immediate tension on the arrival of English royal courts in 1727. Yet, in other ways, the

¹²⁵ BL IOR E/4/2: Letters to London, p. 600 (para. 600 - 5 December 1727).

¹²⁶ The third petition by the EIC to the Mughal court dated 23 October 1716 includes the provision (later approved) that secures this in a rather round-about implicit way: “...among places rented by other Jemindars [zamindars] Murder and thieving sometimes happens, wherefore we humbly petition, that all those towns we have desired may be rented by the Company, That we may live, take our diversions, and go and come in safety without any other prospect of profit or disadvantage,” suggesting that the Company wanted full Zamindari rights including that of criminal punishment. Wilson, *Annals*, v.2 part 2, p. 179.

¹²⁷ A report on these revenues is included in BL IOR P/1/8: Calcutta Public Consultations, 4 May 1730. *Itlaq*, from Arabic, literally means to set free or to liberate. It is commonly transliterated *etlack* or *estack* in the Company's records.

legal order in Calcutta remained like that in Bombay and Madras of the same period, an order predicated on local institutions and conceptions of justice - far removed from any legal formalism.

Metropolitan currents

This picture of courts and legal institutions in the three cities might seem to be missing a piece. Where were the connections to metropolitan English law? Where are the appeals to England, flows of legal knowledge, statutes, and experts? Where in other words, was the Anglicization we know about from the American colonies? The answer likely lies both in the London EIC's attitude towards metropolitan law and the antipathy of metropolitan courts to the EIC's settlements.

Although the courts of judicature in Madras and Bombay sought to apply law as it was practiced in England with some alteration for local conditions, by the 1680s, the Company bandied about the idea that it could act itself as a supreme arbiter of disputes as well as law-giver for all its settlements. In these years, under the leadership of Josiah Child, the EIC in London created an intellectual framework around its own supremacy in law-making and jurisprudence. While the local EIC executives, JPs, and juries in India were willing to ignore or alter the particularities of English statute without much complaint from London prior to the 1680s, challenging the Company's own supremacy as a law-giving institution was far more likely to cause distress in London.¹²⁸

¹²⁸ Cf. *RFSG Consultations*, v.4, pp. 18-9 for a 22 March 1680 debate and resolution about the marriage of Catholics and Protestants. The Madras council resolved in this instance that it was not against scripture or the Laws of England for Catholics and Protestants to marry and that the Catholics of Madras were not liable to the Laws of England.

A mutiny in Bombay, complaints from interlopers about their rights and liberties as English subjects, and meddlesome juries who could thwart Company governors most likely convinced Child and others in London that a preferable path towards good government in India was the establishment of the Company as supreme legal authority.

Accordingly, the Company in London wrote to their settlements in India throughout the 1680s that a strict observance of English statute law was entirely improper. In 1686, for example, the Company chided the Bombay council for referring to a book of English statutes: “...you are under a great mistake if you think our Statute book be law in Bombay, none of our Statutes or Acts of Parliament...extending further than the Kingdom of England, the Dominion of Wales, and the Town of Berwick upon Tweed.”¹²⁹ They continued by writing that the King and his agents, the East India Company, could make whatever laws they chose for Bombay. The Company repeated this same phrasing in letters to St. Helena in 1704 and 1719, adding that inhabitants and the Company locally should not have their “heads troubled with nice points of the Common Law of England.”¹³⁰ Perhaps most famous of these communications from the Company to India is the letter Josiah Child purportedly sent to John Vaux, judge of the court of judicature at Bombay sometime in the 1680s, he emphasized

“...that he expected his [Child's] orders were to be his rule and not the laws of England which were an heap of nonsense compiled by a few ignorant country gentlemen who hardly knew how to make good laws for the well being of their own country.”¹³¹

¹²⁹ Fawcett, *First Century*, p. 132 (letter of 28 July 1686).

¹³⁰ Many thanks to Philip Stern for these two references: BL IOR E/3/95: Letters from London, p.303 (30 November 1704) and BL IOR E/3/100: Letters from London, f.362 (13 March 1719).

¹³¹ Alexander Hamilton, *A New Account of the East Indies* [1727] (London, 1744), pp. 235-6. Hamilton

Philip Stern has rightly argued that this emphasis on EIC control over justice and law-making came out of efforts by Child and others to establish a sound, flexible government conducive to trade of all kinds.¹³² This Company-made law ostensibly came without the litigious encumbrances and contradictions which would accompany a strict application of metropolitan English law. It is important to note that these ideas did not originate as part of some despotical plot on Child's part, since the inapplicability of English statute and common law overseas had common currency among legal experts as well local governments from Ireland to Virginia.¹³³

The 17th century metropolitan courts largely upheld this legal interpretation. A series of cases from Ireland, Virginia, and the West Indies over the course of the century established that English law, in both its parliamentary statute and common law inflections, did not necessarily and automatically follow Englishmen into new territories.¹³⁴ In 1666, for example, an English spice merchant experienced this legal reasoning first hand when he went to the House of Lords in an attempt to receive damages from the Company for seizing a warehouse and island from him in the East

claims to have copied this letter from John Vaux's papers at Surat. Fawcett believed this story to be likely after consulting Vaux's diary, Fawcett, *First Century*, p. 134. Stern and others believe this letter to be a fabrication but regardless it shows nicely what close Company critics like Hamilton saw as a plausible sentiment from the Company. The letter if genuine is not now traceable.

¹³² Philip Stern, "A Politie of Civill & Military Power," pp. 253-83.

¹³³ See Mary Bilder's excellent *Trans-Atlantic Constitution* as well as J.H. Smith's magisterial *Appeals to the Privy Council from the American Plantations* (New York, Columbia University Press, 1950).

¹³⁴ For example see Hans Pawlisch, *Sir John Davies and the conquest of Ireland: a study in legal imperialism, Cambridge studies in the history and theory of politics* (New York: Cambridge University Press, 1985), pp 12-13. Also see *Blankard v Galdy* (K.B. 1691) 87 Eng. Rep. 356 as well as *Craw v. Ramsey* (K.B. 1670) 174 Eng. Rep. 1072 which did not extend the same reciprocity from Calvin's Case to Irish nationals and those in the American Colonies.

Indies. The House of Lords referred the petition to the primary common law court of the land, the King's Bench who ruled that such matters “beyond the seas” could not be cognizable in the metropolitan courts.¹³⁵ In reflecting upon this decision, the contemporary reporter of the case cited numerous precedents supporting the limited geographical scope of metropolitan judicial authority. That is, according to prior practice, the King's Bench and the common law could not claim authority over even those parts of the King's dominion, like the channel islands (or Normandy formerly) within close proximity to England.¹³⁶

Likewise, appellants from India could expect no relief in England from the King and his Council. Indeed, the British imperial legal constitution did not offer an official avenue for judicial appeal to the Privy Council from any outlying colony, besides the Channel Islands, before the 1690s.¹³⁷ When Manuel de Lima announced his intention to appeal from the Madras court of judicature, even the the members of the EIC council tasked with the court's operation remained unsure of how to proceed. At the very end of the record of the trial, a clerk observed

“Mannoell Brandon de Lima after he had received his sentence of death us aforesaid *appealed to the courts of England* and desires to be sent thither by this shipping which was granted him by the Governor and Council.”¹³⁸

The clerk later scratched out the note in its entirety. In its place he wrote that the Governor and Council found it agreeable to the royal charter of 1661 to allow de Lima to

¹³⁵ Skinner v. EIC (K.B. 1666) 6 State Trials 719.

¹³⁶ Ibid., 719-20.

¹³⁷ For a history of the Privy Council's jurisdiction see Smith, *Appeals to the Privy Council*, Chapters I-III especially.

¹³⁸ BL IOR G/19/38: Madras Court of Judicature records 1678, p.42. Emphasis mine.

ask for “the King's Mercy” in England, with no mention of appellate courts of any kind.

That is, the King and his Council had the ability to grant criminals pardon but the substance of a case, its jurisprudential basis, and the systems of law in place at Madras were no business for the metropolitan courts of England. As such, when de Lima arrived in London in 1679 and presented his legal arguments before the Privy Council, no court or tribunal ruled on the merits of his case. Rather, the Portuguese ambassador and Queen Catherine persuaded King Charles to order de Lima's release, leaving no mention of their actions in any English records.¹³⁹

Few other petitions from inhabitants of the Company's settlements reached the King and the Privy Council prior to the 1690s, largely because the EIC's Court of Committees remained intent on keeping their own authority intact. At one point the EIC even objected to Indian litigants being eligible for Royal pardon.¹⁴⁰ When the prominent Bombay Portuguese landlord Alvaro Pirez de Tavora petitioned the Privy Council to return various lands confiscated from him by the Company, the Company objected on the grounds that “the jurisdiction of the said Company would receive a great diminution” if the Council allowed litigants to perform an end-run around the Company's own courts in Bombay.¹⁴¹

¹³⁹ The only evidence of the outcome of De Lima's case comes from AHU/ACL/CU/058 Caixa 56 no. 116 in which the *Estado da India* suggested de Lima as a good candidate to be sent back to India in a military capacity in 1681 and in so doing giving a brief account of his trials in Madras and London.

¹⁴⁰ The Crown asked the Company on 17 October 1679 to give “...the reasons for limiting appeals in some criminal cases, his majesty declaring his inclinations to favor them in that particular if they shall desire the same.” BNA PC 2/68: Privy Council Registers, p. 237.

¹⁴¹ See Ethel Sainsbury, *A Calendar of the Court Minutes of the East India Company*, [11 vols.] (Oxford, 1907-1938), v. 11, p. 51. Philip Stern has an excellent discussion of the details of this case in his *Company State*, pp. 91-2. The Company also tried to convince the Crown in the case that the EIC's local

Likewise, the Company objected when Elihu Yale, the deposed Governor of Madras, complained to the Privy Council in 1694 that the EIC had seized his goods and would not let him return to England with his property. Hearing of the petition, the Company wrote to the Council that Yale's complaint was insulting and expressed surprise that Yale would be more “in Your Majesty's favour” than the EIC itself.¹⁴² The Privy Council, not amused, subsequently ordered the law officers of the Crown to investigate what legal powers the Company possessed in India. Perhaps fearing a continuation of the assault on their authority then ongoing in parliament, the Company relented and sent orders to Madras allowing Yale to return home with his property before the Council could rule on the merits of his petition.¹⁴³ Yale's petition to the Privy Council was the last from the East Indies for over thirty years, proving just how fleetingly connected the EIC's territories were to networks of metropolitan law and how hard the Company worked to keep their jurisdiction walled off from that of the metropole.

This chapter has detailed how the Company and its local executives struggled to find a legal regime for their Indian settlements which would both fit local legal norms and establish the Company itself as the ultimate legal authority. Allowing the residents and business of the cities to have access to alternative circuits of authority could be dangerous, threatening the bottom-line of the Company as well as its very existence. In

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courts in India were the correct place for such disputes to be heard, arguing that the decisions there were “made conformable to the Laws of England.” See Khan, *Negotiations*, pp. 558-9.

¹⁴² Correspondence related to Yale's case is reprinted in Hiram Bingham, *Elihu Yale, The American Nabob of Queen Square*, (New York: Dodd, Mead & Company, 1939), p. 292. Bingham's account seems to be drawn from Lambeth Palace Library MS 907.6: “Narrative of events at Fort St. George, Madras, mainly concerning the administration of justice and mentioning Elihu Yale, beginning 12 May 1693.”

¹⁴³ Bingham, *Yale*, pp.293-5.

this world, English procedures and statutes might be acceptable, but only if the Company maintained a final say. As a result, the metropolitan world of trained lawyers, statutes, avenues for appeal, and procedure remained far removed from that of the Indian settlements throughout the seventeenth and early eighteenth centuries.



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Chapter 2: “Depending on the Crown:” The Constitution of 1726 and the introduction of English law

Though the residents and institutions of Madras, Bombay, and Calcutta engaged to varying degrees with the English legal world prior to 1726, they nonetheless remained formally and practically very much on their own. In this period, as the previous chapter showed, the East India Company and its appointees in India had wide latitude in all matters of criminal and civil justice. The varied law courts then in existence at the settlements followed a set of hodgepodge procedures. The Company, rather than the English Crown, established all of these older courts. As a result, despite the trappings of English justice, the EIC and its employees exercised formal control over the course of justice. In addition, litigants from these cities had no formal recourse to the Privy Council or other metropolitan venues.

As the Company became more powerful and attracted even more enemies, those who had been wronged by the Company became more successful at utilizing the rhetoric of English law to fight against the EIC's de facto legal supremacy. By the mid-1720s pressures caused by the problems inherent in such a system forced the Company's Court of Directors to take steps towards a new legal constitution for its settlements. Over 1725-6 the directors, with the assistance of London legal elites, launched upon an ambitious plan to reconstitute the structure of justice in its Indian settlements. This plan resulted in a royal charter which formally established an anglocentric legal order in Madras, Bombay, and Calcutta. As such, these new royally-sanctioned courts brought with them a legal apparatus, a legal elite (albeit much different from their counterparts in England), and jurisprudential claims which tied the EIC's settlements firmly into the British legal world.

Crisis and Reform

In the late 1680s, factions of interlopers and rivals forced a parliamentary investigation of the EIC and the creation of a new East India Company.¹ During the hearings over the future of the Company, a group of settlers from St. Helena presented a petition complaining of summary executions and other unjust abuses of authority by the EIC there. The settlers claimed that they had complained to the EIC governor at St. Helena about new taxes on the island, telling him that "they thought such things could not be put upon the King of England's subjects." To this, they claimed the EIC governor replied, that

"they were not now the King of England's subjects but the Company's subjects for that they had transported themselves to the place where the King of England had nothing to do with them."²

Not unexpectedly, members of Parliament and the general public found this framing shocking. Yet, even these appeals to English government and liberties did not inspire greater supervision by the Crown or Parliament over day-to-day life in the EIC's settlements. Likewise, the practice of government in India under the newly reformed EIC (post 1708) seems to have displayed many of the same characteristics as before.

The late-17th century debates over the future of the Company failed to effect a solution to perhaps the central problem inherent in the constitution of the three cities. For

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¹ See chapter seven of Philip Stern's *Company State* for the best discussion of this tumultuous period.

² A MS copy of this petition can be found in BL IOR Eur. Ms. Orme 4, pp. 111-4. It was read in Parliament on 30 October 1689. See *Journals of the House of Commons* [56 vols.] (London, 1802-3), vol. 10, pp. 275-6. A different petition along similar lines was printed as *The Case of Katherine Taylor, the late Widow of William Rutter (who was Hanged by the East-India Company, at St. Helena), in Behalf of Her self, and Four of her Children*, [London?] [1690s]. See also Stern, *Company State*, p. 147.

the legal system of the EIC's settlements before 1726 was predicated on absolute Company authority and as such it is no surprise that some local EIC executives, like the aforementioned St. Helena governor, exercised a kind of personal rule over their inhabitants. These abuses and the failure of extant legal provisions for redress were the most significant causes of the sea change in the constitution and government of the EIC's territories by 1726.

Many of the Company's officials in early-eighteenth century Asia considered formal law and legal procedure as an unnecessary inconvenience and a threat to stable government. In Madras, the EIC governor Thomas Pitt responded to a communal riot between the *Idangai* and *Valangai* (left and right hand caste) communities by suggesting summary execution of all the instigators.³ When the other members of the governing council objected, he wrote to a friend that he wished he could follow the Dutch East India Company's model of governance and, in his words:

“cutt their heads off in the fort, at night, and have put their bodies into chests, and have sent them off to sea, but your weak council...have exhibited a notion, destructive to Government in these parts; which is, that no native is to be cut off, let his crime be what it will, but by a formal tryal, in which time a Government may be undone.”⁴

Pitt's objection that legal procedure and the hassle of a trial inhibited the effective governance of non-English subjects is central to the understanding of law in British India over the long duree. In Pitt's thinking, and in that of many later Company officials, the

³ Niels Brimnes has written a thorough account of these conflicts in his *Constructing the Colonial Encounter: Right and Left hand Castes in Early Colonial South India* (London: Curzon, 1999).

⁴ BL Add. Ms. 22,849: letter from Thomas Pitt to Cook (15 December 1707). I am indebted to the late Dharampal for this citation.

liberties and procedures inherent in English law were unsuited to Asians. Pitt was not alone in his assertions of authority. A later governor of Madras, Joseph Collett wrote to a relative in England in 1719 that,

"...the two years past of my government [in Madras] have been troublesome enough on account of the civil dissensions between our black subjects, the ill humor of some of the English and the oppositions I have met with from the country government. but I thank God I have surmounted them all, the first by down right dint of authority the 2nd by breaking those that would not bend and the last by fair fighting...."⁵

A number of other EIC governors shared Collett's philosophy of government and it was not uncommon for unhappy merchants or Company employees to complain about the personal authority of a particular official. However, a particular series of escalating crises brought to the metropole by unhappy residents of the EIC's settlements exposed the flaws in the Company's legal and administrative system and helped drive the Company to seek a new judicial constitution for their settlement by 1725.

In the 1720s a number of victims of Company abuses turned to metropolitan legal means to challenge exclusive Company rule. While the common law courts maintained with some consistency that actions relating to property or crimes in the East Indies were not tryable in England, merchants involved in the East India trade were able to contest bonds and debts, some contracted in Asia, in the Westminster equity courts. More importantly, litigants could use these equity suits, ostensibly about debts, to raise the issue of the Company's misgovernment abroad. In the early 1720s, for example, the EIC came to a £1000 settlement with former employee Theophylis Shilling, who was

⁵ BL IOR Eur. Ms. D1153/3: Collett Letter Book, 6 February 1719.

involved in several Chancery suits aimed at securing compensation for being imprisoned and having his goods seized in the East Indies (likely in Sumatra).⁶

The Company also found itself the target of litigation in metropolitan courts from an unlikely source. Rustomjee Norwojee [Nowroji Rustamji], a Parsi merchant with extensive mercantile dealings in Bombay and Surat, appeared in London in 1724 after hitching a ride on a Royal Naval vessel fresh from a disgraced tour of duty against Indian Ocean pirates. Rustamji came to London to demand the release of his brother and other members of his family, who were being held by the Bombay governor in order to force their fulfillment of a contract.⁷ Rustamji, with the help of English friends, launched suits in both Chancery and the Court of Common Pleas for payment of debts due to him by sundry persons and soon agreed to arbitration in his dispute with the EIC.⁸ The end result of this arbitration was the release of Rustamji's brother from confinement in Bombay, and £19,125 in payment to him for goods which the Bombay governor had previously rejected as of poor quality.⁹ Though Rustamji reached a settlement, his accusations, brought directly to metropolitan circuits of power, only encouraged the Company to take a more serious look at reforming their legal regime in India.

⁶ Shelling [sic] v. Farmer 93 Eng. Rep. 756 (K.B. 1725) as well as Chancery suits recorded in BNA C11/1239/25 and BNA C11/53/47. The judges ruled in a separate action by Shilling against the EIC deputy-governor that an action of trespass in the King's Bench could not be extended to a house in the East Indies.

⁷ For more on Norwoji Rustamji and his visit see Michael Fisher, *Counterflows to Colonialism* (Delhi: Permanent Black, 2006), pp.30-32 and David L. White, *Competition and Collaboration : Parsi Merchants and the English East India Company in 18th Century India* (New Delhi, 1995). Rustamji was not the first Asian merchant to enter into legal action relating to the EIC in English courts. Coja Surhaud Israel, an Armenian merchant of Bengal sued his English debtors in chancery in the late 1690s. For his bill of complaint see BNA C8/474/39.

⁸ For his arbitrators Rustamji chose Matthew Decker and Josias Wordsworth, both eventual members of the Court of Directors.

⁹ BL IOR B/58: Court Minutes, p.231 (18 January 1725). For his brother's release see *ibid.* p.55.

Bad news about the Company's government also reached the Crown directly. In September 1722, a court martial tried George Sanders, a soldier in the Bombay garrison, for sodomizing his son-in-law on the ramparts of the castle. Soon after the court martial reached a guilty verdict, the Bombay court of judicature seized Sanders for a second trial. He was found guilty a second time and the EIC governor ordered him put in irons. Sanders appealed to every authority he could think of which might release him from his imprisonment. Among others, he wrote to his garrison commander, the governor, the court of King's Bench in Westminster, and crown secretaries of state. His appeal reached one of these royal secretaries and cast a damning light on the operation of the courts at Bombay. Sanders pointed to the lack of a jury in the civil court at Bombay as well as his being tried twice for the same crime as fundamentally at odds with English justice. He closed with an appeal reminiscent of that of the St. Helena settlers thirty years earlier, imploring that he be sent to England for another trial where he and his fellows “might expect to be treated like subjects not slaves as unhappily had been the fate of several faithful subjects here who have no fence against power and prejudice.”¹⁰ Though Sanders' eventual fate is unknown, the Company was naturally loath to attract this kind of attention in the metropole - which could only raise the specter of arbitrary government and call attention to judicial failings in the EIC settlements.

However, the EIC justice and dispute resolution regime faced systemic problems beyond just one botched sodomy trial. The Company well-realized these failings, but their efforts at cosmetic reforms proved fruitless. Among the many problems endemic to

¹⁰ BNA CO/77/16: State Papers Relating to the East Indies, f.133.

EIC India was the confusion in both India and England over dividing up the estates of those who died in India. The Prerogative Court of Canterbury, thousands of miles away from the nearest Company settlement, was the closest place executors, relatives, or would-be administrators could legally apply for probate or letters of administration for those who had died in the East Indies. The distances and length of time involved made this strict course of law difficult to affect even when it was followed.¹¹ It appears from estate litigation of the period that to avoid this hassle the Company instead ordered the governor and council of the closest settlement to collect the estates of deceased employees. The EIC executives were to then disburse assets to local creditors immediately with the surplus transmitted back to London on the Company's account and advertised to relatives and creditors back home.¹² While arguably speedier than the strict course of law, this system was highly susceptible to fraud and abuse on the part of the local council and could only help reinforce public views of the company as arbitrary, extra-legal, and despotic.

In Calcutta, where there was no regular English court, the EIC exercised enormous control over the distribution of estates. In the mid 1720s, for example, the English administrators of John Surman's estate in Calcutta, took years to wrap up his affairs, writing in private to England that they could not make certain key demands because powerful members of the council would surely have quashed them.¹³ Likewise,

¹¹ Though there are certainly examples of wills probated in the prerogative court of Canterbury records for those who died abroad in the East Indies e.g. the 1713 will of John Dolben in BNA PROB 11/533.

¹² Collett v. Woollaston in BNA C11/1238/26.

¹³ See letters of George Mandeville in BNA C111/199 "Bull v. Bance" bundle – esp. 29 January 1727.

Richard Woollaston, whose son, an EIC employee, had died in Asia, complained bitterly to anyone who would listen about the Company's seizure of his son's estate.

Woollaston made his ire clear in a polemical 1722 pamphlet decrying the “illegal arbitrary manner” in which his son's estate was handled. He questioned how any justice could be done in India where malefactors lay “out of the reach of the common process of the Courts of Westminster” and made suggestive reference to the House of Commons and the Company's charter, concluding that as India was a legal sinkhole and the “Common Methods of Law” were useless, only the intervention of Parliament could rectify such dastardly dealing and bring a rational legal order to the place.¹⁴ The Company reached an arbitrated settlement with Woollaston the same year to avoid further scrutiny or parliamentary intervention but litigation continued between the former governor of Madras and Woollaston into 1724, keeping the EIC's methods open to the public and the Chancery court.¹⁵

Disputes amongst the Company's own administrators also spilled over into the metropole. In the late 1710s, EIC employees and the so-called “black inhabitants” of Madras complained about the depredations of Francis Hastings, its EIC governor - especially after he imprisoned several local merchants by fiat. The Court of Directors,

¹⁴ *The complaint of Richard Woollaston, Esq. against the East-India Company &c.* n.d. [1722]. This pamphlet may never have circulated. The only known copy is inserted in a Woollaston family book at the Ohio State University library and contains many corrections of printer's errors. The Company and its lawyers later cited Woolaston's case as one of the proximate reasons they sought a new charter in 1726 see for example: BL IOR H/427: Madras Legal Papers, pp.43-44 quoting a Company letter to Madras of 12 October 1740.

¹⁵ It is unclear if judgment was ever reached in the case as in 1725 commissioners were ordered sent to the East Indies in the case - a step that usually ushered in years of delays see BNA C33/343, p. 70 (Collett v. Woollaston).

concerned about the possible defection of Asian merchants and trade from the city, wrote angrily that their prior orders to remedy the situation had seemingly been ignored and immediately ordered a change in the governorship. In their instructions to the new Governor and Council, they ordered that all the inhabitants of the city “should have easy access to complain” and that these complaints should be investigated and damages awarded accordingly by the council with “impartiality, equity, and justice.”¹⁶

This fumbling effort by the Company to remedy the abuses, dependent on the Council and not any court of law, only attracted more attention and discredit to their methods of governance and justice. When, in 1725, the situation in Madras did not improve and it became clear that the new governor was just as bad as the old, a friend of the deposed (and now deceased) governor Hastings distributed a calumnious pamphlet in London about the whole state of affairs. Among his more pointed claims, the writer asserted that Hastings had been falsely accused and railroaded by the lawless and despotic Company. He added that Madras, being “within his sacred majesty's power and jurisdiction...should be subject to the same widely contrived body of laws and statutes by which this monarchy subsists.”¹⁷

The common thread which emerges from all of these petitions, suits, and complaints is not just that the Company failed in its government and legal institutions abroad, but that the dangerous independent legal authority of the Company was too uncertain, arbitrary, and dangerous to continue. The solution the EIC chose closely

¹⁶ BL IOR D/18: Minutes of the Committee of Correspondence, f. 44 (11 April 1721).

¹⁷ Joshua Draper [Anonymous], *An Essay Upon Friendship*, (London, 1725), p.35.

mirrored the suggestion of the 1725 pamphleteer and brought the Indian settlements firmly within the orbit of British law.

The Charter of 1726

In December 1725 the EIC Court of Directors launched upon an ambitious plan to reconstitute the entire structure of justice in its Indian settlements. They met that month and voted to obtain “such charters and powers from the Crown” to put the courts and the “company's affairs” in Bombay, Madras, and Calcutta “under a better regulation.”¹⁸ Though it is unclear which of the 20 directors present that day proposed the measure, at least one later EIC gossip pointed the finger at Edward Harrison, a former Madras governor, who purportedly suggested so bold a step so as to be able to demonstrate his influence at court.¹⁹

Applying to the Crown for a new charter was indeed a bold answer on the part of the Company to ongoing legal and popular pressure. While previous royal charters to the Company had only tangentially provided for courts and judicial processes, this new charter would be solely concerned with law and also establish the first independent Royal municipal corporations and courts in India. Given the prior history of the Company and its reluctance to cede authority to the Crown or Parliament, it seems likely that the Company's directors did not fully realize at the time just how much the new charter, with its foundation in English legal custom, practice, and Royal authority, would irretrievably

¹⁸ BL IOR B/58: Court Minutes, p. 469 (17 December 1725).

¹⁹ John Henry Grose, *A voyage to the East Indies* (London, 1757), p. 57.

link the legal regimes of India with those of England.²⁰

Charters or constitutions for colonial governance were common throughout the British Imperial world of the 17th and 18th centuries and debates over the wording, legality, and purpose of these charters had raged in London over the late seventeenth and early eighteenth century.²¹ As such, the Company's solicitor, Thomas Woodford and standing counsel John Hungerford had many models and examples to choose from while plotting this new constitution over the spring of 1726.²² In April they produced a short document to present to the Crown law officers that laid out their new legal plan for Bombay, Madras, and Calcutta. For a start, they called for the reformulation of the Madras Mayor's Court, as well as identical new courts in Bombay and Calcutta.²³

The lawyers proposed that these new tribunals have cognizance of all civil disputes and be staffed by nine royally appointed aldermen serving as judges for life, able to elect any replacement members who would be removable only through full process of law. The proposal also provided for appeals from these new Mayors' Courts to the King's Privy Council in civil suits and in the removal of aldermen, in effect integrating them into the emerging world-wide Imperial legal constitution, in which such appeals were commonplace. In addition, Woodford and Hungerford proposed holding regular quarter

²⁰ Paul Halliday has traced a similar story of unintended consequences and greater Crown authority over local corporations in England in his *Dismembering the Body Politic: Partisan Politics in England's Towns 1650-1730* (Cambridge: Cambridge University Press, 1998).

²¹ See Mary Bilder, *Trans-Atlantic Constitution* and Hsueh, *Hybrid Constitutions*.

²² Thomas Woodford (?-1759) served as the Company's solicitor from the early 1720s to 1733. He was a lawyer of wide metropolitan experience as well as a fellow of the Royal Society (elected 1708) and writer of a treatise on scientific instruments. John Hungerford (1658-1729) was a barrister of Lincoln's Inn, a Member of Parliament, and the EIC's standing counsel from the 1690s until his death.

²³ For their proposal to the Crown see BL IOR E/1/202 Miscellaneous London Letters, p.275 (8 April 1726).

sessions in each of the cities to administer criminal justice. These criminal sessions would proceed as in England “(the circumstances and conditions of the inhabitants of the place considered)” with grand juries of 24 and petit juries of 12 freemen. The Company duly forwarded this proposal to the Crown with a cover letter stating that it felt that such new courts would improve the government of their settlements and encourage “...not only your Majesty's subjects but likewise the subjects of other princes and the natives of adjacent countrys to resort to and settle in the said towns...”²⁴

After submitting their proposal, Woodford and Hungerford likely worked with the Crown attorney and solicitor general to determine the new charter's form. Though no records survive of any internal machinations or payoffs between the Crown and the Company in the months leading up to the issuance of the charter, funds almost certainly changed hands.²⁵ One disagreement did emerge between the Crown and Company concerning the EIC's proposal for a more plural and flexible notion of subjecthood and civic participation predicated on long-standing practices in India.

Woodford and Hungerford's draft plan in April allowed for two of the nine aldermen on the Mayors' Courts to be non-natural-born subjects of Britain and exempted these non-British judges from the oath of allegiance to the king required of all other aldermen. The earlier Mayor's Court at Madras had included (mostly in theory) judges of several different national communities and the court of judicature then sitting in Bombay

²⁴ See BL IOR D/99: Correspondence Committee Memoranda, p.120 for this cover letter.

²⁵ The Court of Directors later referred to a large bill incurred for charges incurred in getting the charter (BL IOR B/58 Court of Directors Minutes, 18 January 1727) and when the Company sought their next major charter, in 1753, they paid several thousand pounds to various Crown offices.

also featured (again in theory) Portuguese and Hindu justices.²⁶ It seems then that the Company and its lawyers wanted to preserve this principal of a multiplicity of constituent voices, outside the strictures of English law and allegiance, in their new constitution in order to ensure peaceful relations. However, when Philip Yorke, the attorney general, and Charles Talbot, the solicitor general, vetted the Company's initial plan on behalf of the Crown, they objected to this provision. While not opposed to aldermen who were born subjects of other princes, the law officers demanded that all aldermen regardless of birth swear oaths of allegiance to King George I, as these judges would exercise “coercive” powers “...within settlements depending on the Crown of Great Britain.”²⁷ This statement of Crown sovereignty and supremacy shows nicely the anglicizing and imperial assumptions of the metropolitan legal establishment and their constitutional philosophy, which embraced diffused legal power but not sovereignty.²⁸

The King in Council approved the new charter in August 1726 and enrolled the final version on September 24th. Nearly 12,000 words in length, the charter spelled out details as specific as a list by name of the first nine aldermen in each city. The document provided that life-tenured aldermen could be removed by the EIC governors and councils

²⁶ See Chapter 1. For a recent evaluation of this experiment in Madras see Aparna Balachandran, “Of Corporations and Caste Heads: Urban Rule in Company Madras, 1640–1720” *Journal of Colonialism and Colonial History* 9.2 (Fall 2008).

²⁷ The law officers report dated 27 May 1726 appears in BNA PC2/89: Privy Council Registers, pp.226-7 (31 May 1726) and also survives as an EIC copy in material relating to the 1760 charter of justice for Bencoolen (in BL IOR G/34/1). Though the charters of 1661 and 1698 had reserved the “sovereign right, power, and dominion over all the [EIC's] forts, places, and plantations” to the Crown of Great Britain, the Company and its employees would continue to dispute the nature of this sovereignty into the 19th century. See J. Shaw, *Charters*, pp. 71-2 (1661) and p.154 (1698).

²⁸ In the final letters patent approved by the King in Council - the clause about the nationality of aldermen stipulated that they “might be subjects of any state in amity with his majesty” without any mention of an exception to the oath of allegiance. BNA PC2/89: Privy Council Register, p.271 (8 August 1726).

only through written complaint and due process of impeachment. In addition, the charter copied other imperial charters and legal frameworks, by explicitly providing for appeal to the Privy Council in these cases.²⁹ The charter also empowered any three or more aldermen to sit as judges of a “court of record,” to pass judgment on all civil disputes between party and party, in other words a new “Mayor’s Court.” The grant endowed this court with rather extensive jurisdiction, i.e. over all cases:

“...within the said town of Madraspatnam [or Bombay, or Fort William/Calcutta], or within any of the factories subject or subordinate unto Fort St. George [or Bombay, or Fort William/Calcutta] or to the said governor and the council of Fort St. George [or Bombay, or Fort William/Calcutta] aforesaid.”

This jurisdiction then extended to all the remotest EIC settlements and factories outside the cities themselves. By the language in the charter, the Mayor’s Court in Madras would have jurisdiction over all civil disputes at Fort St. David a hundred miles to the south as well as in Bencoolen on the island of Sumatra some 1,400 miles distant.

The charter’s only instruction as to the jurisprudence of the new Mayors’ Courts was that the court make all its decrees according to “justice and right,” a slippery instruction of no practical guidance to the future judges, though perhaps indicating something about the attitudes of the legal elites who wrote it.³⁰ The phrase would have been familiar to legal experts as it came from the Magna Carta and appeared frequently in case reports and treatises on the rights and liberties of Englishmen.³¹ One of the most

²⁹ The final draft of the charter included the helpful imperial referent “as is usual in cases of appeal from any of our colonies in the West-Indies.” See Shaw, *Charters*, p.232.

³⁰ Ibid., p.235.

³¹ The Latin phrasing from the 1225 Magna Carta as entered into statute law (25 Edw. I. c. 29) is *Nulli vendemus, nulli negabimus aut differemus rectum aut justiciam*, literally translated: “We [the Crown]

well-known of these tracts used the phrase when conveying the imperative that all judges “... *do justice and right* according to the Rule of the Law and Custom of England.”³² The phrase also appears in a number of other British colonial charters and laws throughout the eighteenth and early nineteenth centuries, suggesting a commitment by metropolitan and colonial lawyers to a broad understanding of the reach of English liberties and the common law.³³ Though a seemingly subtle distinction, this English legal mandate stands in marked contrast to the EIC's charters and instructions of the earlier era, wherein the Company, rather than the laws of England, controlled jurisprudence and law in the Indian settlements.

In addition to this portentous if vague instruction, the charter also gave the Mayors' Courts broad leeway to form “rules of practice” for their courts as well as the power to determine court fees. It did not however give the Mayors' Courts final say over civil cases, instead constituting the Governor and Council of each settlement as a “court of appeal” for all appeals made from the Mayors' Courts within two weeks of a first

will sell to none, we will deny to none, we will delay to none, either right or justice” but commonly translated in the eighteenth century with the couplet “justice and right.” The famous jurist Sir Matthew Hale used this phrasing, for example, in his *History of the Common Law of England* (London, 1713), p. 46 to describe the very nature of the Common Law.

³² From this gloss on chapter 29 of the 1225 Magna Carta see Henry Care, *The Free Born Subject's Inheritance* [4th ed.] (London, 1719), p. 32. A copy of this text was present at the library in Madras at the time of the charter's arrival. Emphasis mine.

³³ For example, the charters establishing courts at Gibraltar (1742), New South Wales (1787), and Singapore (1826) as well as statutes governing courts in Maryland (“An Act for the Trial of all matters of fact” Annapolis 1732) and Barbados (Act no. 12 of the colony of Barbados, 15 January 1655). Though there were few explicit eighteenth century referents to what this phrase meant in terms of application of law in the colonies, in nineteenth-century Singapore, the Supreme Court there held that: “a direction in an English Charter to decide according to justice and right, without expressly stating by what known body of law they shall be dispensed and so to decide in a country which has not already an established body of law, is plainly a direction to decide according to the law of England,” reported in *R v. Willans* (1858) 3 Kyshe 37.

judgment. In addition, the charter's authors copied the increasingly common colonial provision for appeal of cases above a certain value (in this case 1000 pagodas or ~400 pounds) to the Privy Council in London, even going so far as to note that the procedure of appeal and the security paid by appellants would follow the precedent set in similar appeals from the West Indian colonies.³⁴

In criminal cases, the charter differed from that of the 1688 Madras Mayor's Court by establishing separate quarterly assizes presided over by justices of the peace. The charter gave the title of justice of the peace to the governor and five members of his council at each settlement, endowing them with the same powers as justices of the peace "for any county, city, or town corporate, in England."³⁵ All of the other measures for criminal justice in the charter also follow this anglicizing pattern.

Thus the EIC governor and at least three members of his council were to preside over quarterly sessions of "oyer and terminer and gaol delivery." These quarterly courts were to try all criminal offenses brought to the JP's attention from the confines of their settlement, its subordinate factories, and all areas within "ten English miles of any of the same."³⁶ The charter also instructed the newly created sheriff (the junior-most member of the governing council) in each of the settlements to "summon a convenient number of the principal inhabitants" of his choosing to serve as the grand and petit juries at the quarter sessions.³⁷ As for the jurisprudence of the criminal courts, the charter instructed them to

³⁴ Shaw, *Charters*, p. 236

³⁵ Ibid., p.237

³⁶ Idem

³⁷ Idem

proceed as close as possible to legal practice in England, with the caveat common to colonial charters that these laws be put into practice “as near as the condition and circumstances of the place and inhabitants will admit of.”³⁸

In addition to their duties as criminal magistrates, the charter gave the EIC governors and councils governmental power similar to royal governors in the American colonies. The charter allowed the governors and councils to make “by-laws” and impose punishments in their settlements as long as these laws and ordinances were approved by the EIC court of directors and not repugnant to the “laws and statutes of England.”³⁹ Also, thanks to Woollaston’s litigiousness over his son’s estate, it also included an entire section entitling the Mayors’ Courts to issue probates and letters of administration for estates in the EIC settlements, just as the Prerogative court of Canterbury did in England. The charter even included a blank form for such in its text.⁴⁰ All in all then the charter of 1726 represented a standard British imperial constitution, providing for local governance, English laws and liberties, and clear lines of appeal and authority back to the Crown and Privy Council in London.

The Crown and its officers issued this new legal constitution in London, but it was up to the EIC to transmit its contents to India and instruct the new judges in Bombay, Madras, and Calcutta on how to govern their settlements accordingly. Annual voyages to India from England left in the early winter of the new year and as such the EIC had

³⁸ Shaw, *Charters*, p. 237. See a similar instruction for Rhode Island in Bilder, *Trans-Atlantic Constitution*, p. 53.

³⁹ Ibid., p. 246.

⁴⁰ Ibid., p. 247.

several months to deliberate about how best to put the new charter into execution. On the first of November 1726, a subcommittee of the Court of Directors met to consider the charter. Signaling their commitment to the success of the new courts they made the decision to employ a legal expert to serve as a superintendent of these new Indian courts - Anthony Allen, a lawyer and future master in chancery.⁴¹ Offering him £500 per year, the title of prothonotary, and passage to Madras on the first ship out, the Company anticipated it would take him three years to visit all three cities and put the courts there on a good footing.⁴² However, Allen got cold feet about such a long sojourn in parts unknown and backed out of the plan only a month later. As a result, the Company decided instead to have its own legal staff draw up an instruction manual for use in India in lieu of an actual expert.

EIC counsel John Hungerford and solicitor Thomas Woodford, both lawyers with broad experience in nearly every aspect of English law, spent two months writing this 200-page manuscript instructing the new courts on how to practice law under the new charter.⁴³ This book of instructions offers an extraordinarily detailed exposition of

⁴¹ Allen (?-1754) became a master in Chancery in May 1728 and was also an alderman and justice of the peace in Guilford. See E. Heward, *The Masters in Ordinary* (Chichester: Barry Rose, 1990), pp.96-7.

⁴² BL IOR D/18: Correspondence Committee reports, f.126 (1 November 1726).

⁴³ This guide or book of instructions has not been cited in scholarship except for rare mentions in the context of the later trial of Elijah Impey. When facing impeachment in 1788, Impey quoted from his own MS copy of the instructions, though he believed them to date from 1753. See Cobbett, *Parliamentary History*, v.26, p. 1361. Extracts from Impey's copy were then printed as appendix 1 (section 1) in *The speech of Sir Elijah Impey...Delivered by him at the bar of the House of commons, on the fourth day of February, 1788*, (London, 1788). Impey's descendents gave his papers including the book of instructions to the British Museum. There appear to be three copies of the manuscript extant today. Citations here come from Impey's 1770s MS copy (BLAdd. Ms. 16,270) which is the most accessible. This appears to be identical to Robert Cowan's 1720s copy - possibly the original Bombay copy - held in the Northern Ireland Record Office, Belfast (MS D654 - microfilm in BL). A third 1750s copy is at the Tamil Nadu State Archives, Chennai (Public Sundry no. 8). The Company continued to

metropolitan legal attitudes towards the expanding empire, one that contrasts markedly with common assumptions about the nature of British legal approaches to India.

Historians usually write about Anglo-Indian in terms of the engagement of British legal officials, laws, and courts with Hindu and Muslim legal traditions.⁴⁴ Orientalist scholarship and the interpretation of supposedly ancient Sanskrit, Arabic, and Persian legal texts stand at the forefront of most of our understandings of British imperial law in India. Such concerns could not have been further from the minds of EIC attorneys in 1726. The Company's legal staff had little in common with the Whitehall colonial civil servants or learned orientalist of the nineteenth and twentieth centuries. They lacked expertise in Indian legal systems, or even much understanding of what actually happened in the EIC's settlements.

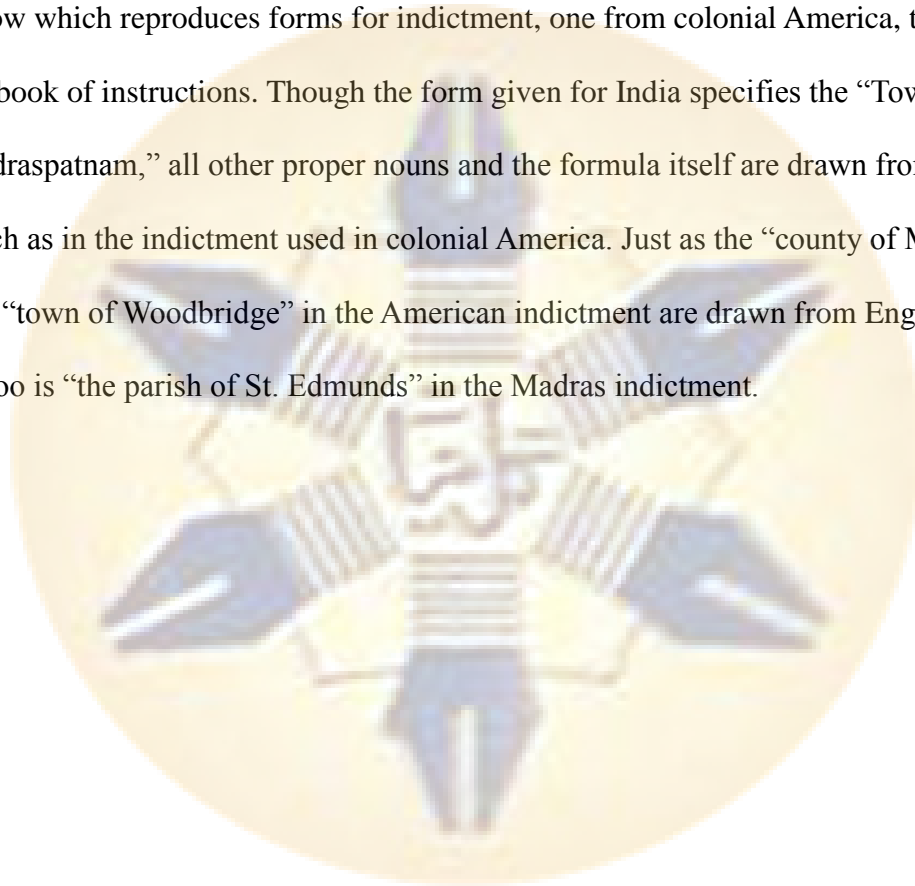
Instead the Company's lawyers were members of the metropolitan legal elite. They responded to issues, and sometimes crises, that arose from India as best as they knew how, drawing almost exclusively on their knowledge of metropolitan law. This is not to say of course that EIC lawyers could not innovate or think creatively about legal dilemmas from India, but rather to stress that they had a limited England-based set of traditions and texts from which to draw. One would have to read every page of the 1726 instructions closely to find any acknowledgment that they pertained to the East Indies and

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refer to these instructions in their correspondence well into the second half of the 18th century.

⁴⁴ For general literature on orientalist knowledge and Anglo-Indian legal history see Derrett, *Religion, law, and the state in India*; Nandini Bhattacharyya-Panda, *Appropriation and Invention of Tradition*; Jain, *Outlines of Indian Legal History*; Pandey, *The introduction of English law into India*; Bernard Cohn, *Colonialism and its forms of Knowledge*, (New York: Cambridge University Press, 1996); D.A. Washbrook, "Law, State, and Agrarian Society in Modern India," *Modern Asian Studies*, 15.3 (1981), pp. 649-721; Ramesh Chandra Srivastava, *Development of Judicial System in India under the East India Company, 1833-1858*, (Lucknow: Lucknow Pub. House, 1971).

not some county corporation in Devon or the home counties - in fact, the 70 pages of instructions on wills and estates do not once mention the Company, the East Indies, or toponyms outside England. Even those sections which do specifically name locations in India do so merely as part of a well-rehearsed formula. See for example Figure Five below which reproduces forms for indictment, one from colonial America, the other from the book of instructions. Though the form given for India specifies the “Town of Madraspatnam,” all other proper nouns and the formula itself are drawn from England; much as in the indictment used in colonial America. Just as the “county of Middlesex” and “town of Woodbridge” in the American indictment are drawn from English practice, so too is “the parish of St. Edmunds” in the Madras indictment.



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Figure 5: Forms of Indictment

The Form of an Indictment for Stealing.
THE Grand Inquest for our Lord the King, upon their respective Oaths, and Affirmations, do present, That E. F. late of the County of Middlesex, Labourer, the Twenty-fourth Day of January, in the Year of the Reign of our Lord GEORGE the Second, by the Grace of GOD King of Great-Britain, France and Ireland, Defender of the Faith, &c. the 23d, with Force and Arms, &c. at the Township of Woodbridge, in the County aforesaid, one Silver Spoon of the Value of Fifteen Shillings, of the Goods and Chattles of one Q. R. then and there being found, then and there did feloniously steal, take and carry away, against an Act of General Assembly of this Province, in that Case made and provided; as also against the Peace of our said Lord the King, his Crown and Dignity, &c.

(Above) Form of an indictment for stealing printed in Benjamin Franklin's Philadelphia edition of the popular legal manual *Conductor Generalis, or the office, duty, and authority of justices of the peace...* (Philadelphia: B. Franklin and D. Hall, 1750), p.174.

Note, In cases where an act of parliament makes the crime a felony which was not a felony at common law before such act of parliament, the indictment should conclude thus:—"against the form of the statute in that case made and provided."

Town of } The jury for our Sovereign Indictment for
 Madraspatnam, fl. } Lord the King upon their oaths felony in stealing
 do present, That John Nokes, late of the parish of goods out of a
 Saint Edmunds, within the town of Madraspatnam, Yeoman, the first day of November, in the thirteenth year of the reign of our Sovereign Lord George, now King of Great Britain, &c. by force and arms, &c. at the parish aforesaid, within the town aforesaid, one wooden drawer, with an iron lock and key thereunto belonging, of the value of two shillings, and five pounds in monies numbered, of the goods, chattels, and monies of one John Stiles, in the shop of the said John Stiles, then and there being found, privately and feloniously he did steal, take, and bear away, against the peace of our Sovereign Lord the King, his crown and dignity.

(Above) Form of an indictment for stealing from Woodford and Hungerford's 1726 Book of Instructions as printed in 1788 in *The Speech of Elijah Impey*, appendix 1 (section 1). This indictment appears on page 133 of BL Ad. MS. 16,270.

Despite the clear emphasis on metropolitan law embodied in the book of instructions, one of the reasons that later scholars have glossed over the legal regime established by the charter is that it did not establish a system based entirely on the common law. For many, the common law as theorized by Edward Coke (in the 17th century) or William Blackstone (in the 18th) has come to represent “English law” itself. Yet, what we understand as the English common law was only one of many legal traditions current in 18th century England. A tangled system of often competing jurisdictions, including ecclesiastical courts, equity courts, borough courts, admiralty courts, as well as the common law courts constituted “English law” in this period.⁴⁵ This point bears repeating - early modern English law whether in England or India consisted of a broad set of practices and institutions well beyond the confines of the common law.

The first and longest section of the lawyers' book of instructions focused on how civil disputes should be settled in the new royal courts. Thomas Woodford, the Company's solicitor, authored this guide to civil practice. Woodford had served as a secretary to two Lord Chancellors and was an active litigator in chancery himself.⁴⁶

⁴⁵ For a comprehensive overview of this plurality of courts see Christopher Brooks, *Law, Politics, and Society in Early Modern England*, (Cambridge: Cambridge University Press, 2008).

⁴⁶ In addition to being an all-purpose Threadneedle street solicitor in the 1710s, Woodford also served as legal secretary to Lord Chancellor William Cowper, eventually executing his will in 1723; see Hertfordshire Archives and Local Studies, Cowper Papers bundles DE/P/E146, DE/P/F680. In 1725 Woodford became the official chancery secretary to Lord Chancellor Peter King, a post which he continued after his retirement from the Company in 1733 (under Lord Chancellor Talbot). For his promotion to chancery secretary see “Promotions in the Court of Chancery” *London Journal* issue 307 (12 June 1725). He was also a justice of the peace later in life as shown in his correspondence with Robert Lee. See Berkshire Record Office, Downshire Papers, D/ED/O33. He also wrote a legal manual for justices of the peace in a didactic style similar to the book of instructions see *A discourse concerning some of the most important branches, and parts, of the office of the justices of the peace...* (London, 1749[50?]). The text lists no author but the Bodleian Law Library has attributed their copy (call# Cw UK 670 D611) to Woodford.

Unsurprisingly then, he laid out chancery practice as that to be followed in Indian civil cases. In 1726, the Court of Chancery at Westminster was just as much a part of English legal life and practice as the common law court of King's Bench.⁴⁷ In fact, the Chancery court was at the time the most popular equity court in England, especially so amongst merchants and others whose complex trade dealings, bonds, and accounts were ill-suited to the strictures of common law courts.⁴⁸

Previous EIC courts in India had followed the general legal dictum of deciding cases according to “equity and good conscience.” They had no prescribed method or guidance on procedure or jurisprudence, making this wholesale importation of the practice of one of the Westminster courts something altogether different.⁴⁹ Unlike common law courts, the practice of equity tribunals did not rely on juries to decide civil matters. Rather, in chancery, judges and masters pronounced decrees based on documentary evidence, sworn statements, and a variety of equitable considerations. As

⁴⁷ Traditionally the most important English metropolitan law courts were those which met at Westminster i.e. the Court of Chancery (equity), the Court of Exchequer (mixed), the Court of King's Bench (common law), and the Court of Common Pleas (common law). For the best one-volume history of these courts and English law broadly see J.H. Baker, *An Introduction to English Legal History* (Oxford: Oxford University Press, 2005 [4th ed.]).

⁴⁸ Inter alia: Henry Horwitz and Patrick Polden, “Continuity or Change in the Court of Chancery in the Seventeenth and Eighteenth Centuries?” *Journal of British Studies* 35.1 (January 1996), pp. 24-57. Christine Churches, “Business at Law: Retrieving Commercial Disputes from Eighteenth-Century Chancery,” *The Historical Journal* 43.4 (December 2000) pp.937-954. For transitions in the relative importance of common law and equity courts in mercantile disputes over the course of the 18th century see James Oldham, *English Common Law in the Age of Mansfield* (Chapel Hill: University of North Carolina Press, 2004); Christopher Brooks, “Interpersonal Conflict and Social Tension: Civil Litigation in England, 1640-1830,” in *The First Modern Society*, ed. A. L. Beier et al. (Cambridge, 1989), pp. 357-400.

⁴⁹ The 1687 charter establishing the Madras Mayor's Court, for instance, included this phrasing in its instructions for the court's jurisprudence - see Shaw, *Charters*, p. 89. On the meaning of this phrase in civil law and colonial law broadly see J.D.M. Derrett “Justice, Equity, and Good Conscience” in J. N. D. Anderson, *Changing Law in Developing Countries*, (New York: F.A. Praeger, 1963).

such, Woodford's plan for the Mayors' Courts called for bills, replications, and rejoinders “ingrossed on parchment,” summonses signed by court officers, interrogatories, cross-interrogatories, depositions, warrants of sequestration, etc. In other words, the Company's instructions attempted to produce a document-heavy clone of this segment of the metropolitan legal world.

Woodford does seem to have realized though that his instructions were intended for a setting far from London. For example, in a lengthy piece on the practice of demurrers he noted that these could only be used well by the best metropolitan lawyers and “it cant be supposed that there are any in the East Indies and places adapted to trade only any persons of such abilities in the law.”⁵⁰ However, he made only one reference, in his entire section on civil suits, to the diversity of peoples within Bombay, Madras, and Calcutta. In a segment on depositions and witnesses, he instructed that new oaths should be “formed and administered” to non-Christians as long as they fit the “solemnity of the occasion.”⁵¹ While this injunction represented a radical position vis a vis English legal custom, more relevant here is that his caveat on oaths did not appear in his earlier instructions about the oaths litigants themselves should swear to their bills and answers, in effect ignoring the possibility that non-Christians might be litigants.

The second segment of the instructions, taking up nearly two-fifths of the manuscript, concerned the application of criminal law in the three cities. Woodford and Hungerford appear to have collaborated on this portion of the manual. Like the section on

⁵⁰ BL Add. Ms. 16,270, pp. 11-12.

⁵¹ Ibid., pp. 25-6.

civil procedure, their plan for criminal justice was profoundly anglicizing and imperial. Jurists, politicians, and defendants would argue over the applicability of English criminal law to India well into the next century, but Hungerford and Woodford had no such doubts. The criminal law of the settlements was to be that of England.⁵² Their guidelines cataloged dozens of English statutory and common law crimes as being applicable to the settlements, ranging from the Jacobean statute against stabbing (1 James I c.5) to others about stealing from a dwelling house.⁵³ The manual also instructed the distant courts to behave with all the solemnity of Royal courts anywhere in the empire, noting that a court cryer should begin every one of the “King's sessions” by introducing “the King's Majesty's Justices, the King's Serjeant...” (e.g. Figure 6 below).⁵⁴

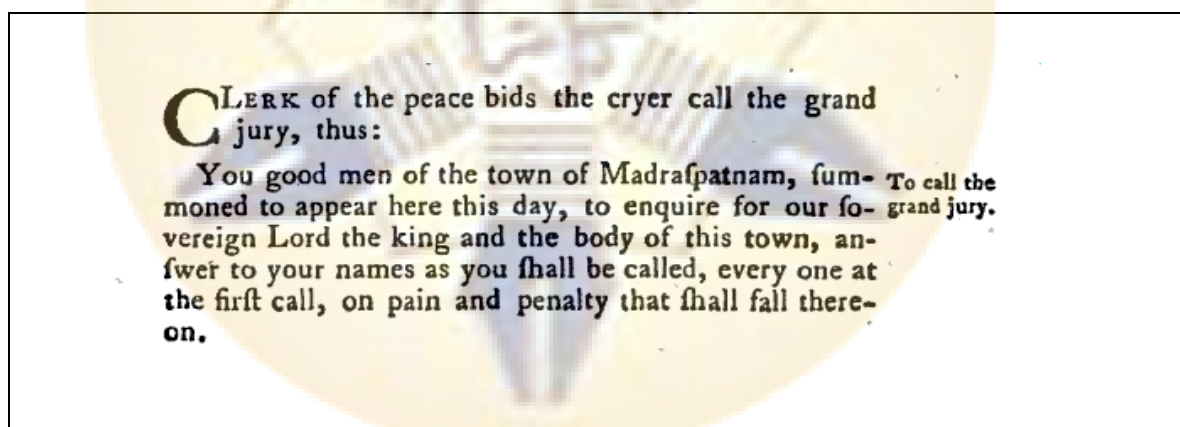


Figure 6: Grand Jury Summons⁵⁵

The instructions also direct that, as in England, all criminal cases be founded on

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⁵² For these later debates about criminal law see especially Jèorg Fisch, *Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law, 1769-1817* (Wiesbaden: F. Steiner, 1983) and Radhika Singha, *A Despotism of Law*.

⁵³ See BL Add. Ms. 16,270, pp.127-37 for a complete list. See also Figure 5.

⁵⁴ Ibid., p. 96.

⁵⁵ Reprinted instruction on summoning the grand jury from Woodford and Hungerford's book of instructions - see *The Speech of Elijah Impey*, appendix 1 (section 1).

lawful indictments made by a grand jury and proved in front of a trial jury of twelve men, “principal inhabitants” of the city. The two lawyers added no exceptions or caveats to this rule, only once nodding toward the nature of the settlements as minority English through the inclusion of the old common law provision for trying non-British subjects, an event the instruction presumed will “be often the case.”⁵⁶ In this situation, Hungerford instructed the justices and sheriffs in India to summon a jury composed half of British subjects and half of those who are subject to the same prince as the defendant, a practice common to EIC courts in the 1670s but which had disappeared along with criminal juries by the 18th century.

The instructions further clarified who, according to metropolitan lawyers, did not count as British subjects: “vizt. a Portuguese, Gentue, or other native of India not born of British parents.” Lest we take this explanation as a clear exposition of subjecthood, later in his instructions Hungerford departed from this personal notion of political identity in favor of a territorial frame. In his explanation of how the chairman of the quarter sessions should address convicted defendants when passing sentence, Hungerford suggested that he “...enlarge upon his majesty's princely goodness who...hath thought fit to extend his care and the benefit of his laws to his most distant *subjects* the British *settlements* in the East Indies.”⁵⁷ This ambiguity about just who was subject to the laws of England or a British “subject,” or whether these were two different things at all, indicates a larger

⁵⁶ BL Add. Ms. 16,270, p.144. On mixed juries see Marianne Constable, *The Law of the Other: The Mixed Jury and Changing Conceptions of Citizenship, Law, and Knowledge* (Chicago: University of Chicago Press, 1994).

⁵⁷ BL Ad. Ms. 16,270, p.145. Emphasis mine.

confusions and ambivalence toward the question - one which would remain contested throughout the period of the Mayors' Courts and throughout EIC rule in India.⁵⁸

The final third of the book of instructions, likely written by Woodford, consisted of a rather turgid treatise on testamentary practice. This section referenced a number of statutes, books, treatises, and best practices in the handling of estates but without any provision made for the particular circumstances of the EIC settlements. In addition to sending out their lengthy instructions the EIC lawyers had the Company order a number of law books which they felt needed to be sent out to India in order to assist the judges there in executing their duties.⁵⁹ These books (listed in Figure Seven below), divided up into headings, for the quarter sessions ("Crown Law") and the Mayors' Courts, represent a broad swath of the most popular and canonical texts then used by London lawyers and justices of the peace and were also those most likely to appear in any British colonial law library, whether in Virginia or Barbados.⁶⁰

⁵⁸ On these debates in the Calcutta Supreme Court from the 1770s onwards, especially the deployment of the legal categories of natural and temporary subjecthood see Sudipta Sen, "Imperial Subjects on Trial: On the Legal Identity of Britons in Late Eighteenth-Century India," *Journal of British Studies* 45 (July 2006), pp.532-555. Hannah Weiss-Muller "An Empire of Subjects: Unities and Disunities in the British Empire, c. 1760-1790."Also Paul Halliday and G.E. White, "The Suspension Clause: English Text, Imperial Contexts, and American Implications," *Virginia Law Review* 94:575 (2008), 651-66.

⁵⁹ In writing their instructions, Woodford and Hungerford assumed that officials in India would have access to these law books. See BL Ad. Ms. 16,270, p. 104 for citations to Hawkins' *Pleas of the Crown*.

⁶⁰ Cf. the book list reproduced in W.H. Bryson "Private Law Libraries Before 1776," in W.H. Bryson ed. *Virginia Law Books: Essays and Bibliographies*, (Philadelphia: APS, 2000), pp. 479-500. Also see Holly Brewer's excellent discussion of legal treatises in America of this period in her *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (Chapel Hill: University of North Carolina Press, 2005), pp. 369-75.

Mayor's Court:	Lex Testamentaria
Cooks Justice	Praxis Cancellaria 2 vols.
Woods Justice	Cursus Cancellaria 2 vols.,
Chancery cases	Practical Register in Chancery
Vernon's reports	Crown Law:
Orders Court of Chancery	Hawkins' Pleas of the Crown
Compleat Attorney	Abstracts, Pleas of the Crown
Daltons Office of Sheriff	Dalton's Justice
Officium Clerici Pacis	Officium Clerici Pacis
Godolphin's [Orphan's] legacy	

Figure 7: Law Books Sent to India in 1727⁶¹

Importantly the Company and its lawyers also decided to give the new courts a five volume set of the statutes at large on fine paper as well as a six volume abridgment of the statutes.⁶² These books included all of the parliamentary laws then applicable in England. One can hardly imagine a clearer signal that the EIC's attorneys expected Indian courts to follow English law in all its facets. Together the manual and the selection of law books reflected an understanding - that the new courts in the East Indies - civil and

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⁶¹ This list combines an unpaginated part of BL IOR H/411 under the heading "List of law books procured for the East Indies to be sent out with the charter of 1726" with other copies of books on chancery and testamentary practice. These additional books were inventoried by the Calcutta council upon receipt of the crate containing the charter in BL IOR P/1/6: Calcutta Public Proceedings, pp. 491-2 (28 August 1727). They are given in Fig. 7 though not enumerated on the H/411 list.

⁶² The Company paid £22 for these statute books. The entire book purchase for the three cities cost the Company £83.

criminal - fell within the framework of British dominion and law, broadly construed.

Woodford and Hungerford, unlike their successors in Anglo-Indian law, never imagined a hybrid legal system for the EIC settlements, in which local Hindu and Muslim law might stand beside the legal practice of London.

Yet, when EIC employees in Bombay, Madras, and Calcutta opened the chests carrying the charter materials from England, they did not first read the lawyers' book of instructions, the weighty legal tomes, or the royal charter itself, but rather a twenty-two paragraph letter from the Court of Directors offering them a summary of the charter and an additional set of instructions. It is unclear to what extent Woodford and Hungerford participated in writing these letters. They were drafted by the EIC's Committee of Correspondence soon after the lawyers delivered their instruction manual and list of law books to the directors.⁶³ The committee, made up of old India-hands and seasoned Company directors, drafted three letters, one to each city, which, while largely identical featured some commentary on local issues and specialized advice.⁶⁴ The letters stressed the importance of the charter and the effort put into it by the Company, warning that “the very intimations of Kings are commands and if not obeyed...may bring you as well as us

⁶³ BL IOR B/59: Court of Directors minutes, p. 177 (1 February 1727) notes the delivery of the material and instructs the committee of correspondence to write the letters. The committee of correspondence began work on the letters on 7 February 1727 and completed them by 17 February. See BL IOR D/18: Committee of Correspondence minutes, f.132v (7 February 1727).

⁶⁴ The letters appear in BL IOR E/3/103; Letter to Madras 17 February 1727, ff. 234-6; letter to Calcutta 17 February 1727, ff. 255-7; letter to Bombay 5 April 1727 [the shipping to Bombay was delayed], ff.280-3. The letter of instruction to Calcutta has been printed in full in Ray Smith, “Some Records relative to the Mayor's Court” *Bengal Past & Present* 8 (1914), pp. 9-13. The letter to Madras mentions Woollaston's litigation, and the other two letters mention that the Company had sought new courts along the lines of the earlier Madras Mayor's Court.

into a *praemunire*[sic].”⁶⁵ The committee further signaled its commitment to English metropolitan legal norms by stressing that the new legal constitution and legal procedures had “...been settled as coming up nearest to the mildness of our English laws.”⁶⁶

However, the most quoted part of the committee's letter, both at the time and in scholarly writing since, concerns the final paragraph contained in all three letters. In this closing paragraph the directors offered their own thoughts on the charter and its practical application. They wrote to Madras that the charter and everything sent with it “...[was] principally designed for the Government of Europeans and what relates to them directly, or wherein the Natives may be concerned with them,” and added that since the “Gentues and other natives” have “particular customs of their own in the disposal of their deceaseds estates” the new courts should not disturb them so “....that they be allowed to live in the full enjoyment of the privileges of their respective castes.” The letter to Calcutta stated this point somewhat differently, noting that since “many of the Natives living with you having peculiar customs, We are willing they should still enjoy them, so long as they live quietly” and do not break “the settled Rules of the Place.” In addition, in all its letters the EIC advised its officials in India to “avoid as much as possible putting any of the Moors to death,” except in very serious cases, lest Mughal officials intervene in Company affairs. This pragmatic extra-legal gloss of the charter, in essence counseling a substantial limit to the courts' jurisdiction, reflected the Company's divergent aims. On

⁶⁵ *Praemunire* was in essence the crime of appealing outside the power of the King for redress, a form of treason. This exact language extant in the Calcutta and Bombay letters for the Calcutta letter see: BL IOR E/3/103; 17 February 1727, ff.255-7. See below pp. 371-2.

⁶⁶ This gloss appears in paragraph two of all the letters.

the one hand, the EIC's London lawyers wished to establish an enduring system of law in India; on the other, the Company's Directors recognized the exigencies of the plural political life of their settlements and manifested a desire to maintain broad EIC governmental authority over and above the scope of the new chartered courts.⁶⁷

Despite these caveats, the officials in the EIC's settlements trusted with putting the new chartered system into effect found the formal English legal regime explicated in the book of instructions, English law books, and charter itself, more attractive and authoritative than the Company's opinions on its purpose. Unlike earlier legal plans and charters intended for the EIC's settlements, the 1726 constitution promulgated by the Crown and interpreted by Woodford and Hungerford introduced a detailed and comprehensive legal order based on metropolitan English practice and independent of all Company authority. As such, this moment yokes British India more formally to an evolving British imperial constitution.

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⁶⁷ The EIC's governors were particularly active in the pre-charter period in attempting to smooth over sectarian violence and negotiating disputes which touched on neighboring political powers. Edward Harrison, the alleged force behind the charter, when Governor of Madras, had himself intervened in massive community based civic unrest in 1717.

Chapter 3: The Chartered Courts in Action, 1727-53: Process, Procedure, and Paperwork

Critics and scholars have largely dismissed the courts introduced by the charter of 1726 as being unprofessional, ad-hoc, and unsophisticated in their jurisprudence, or in the words of one historian, “slipshod and amateurish.”¹ On the contrary, this chapter demonstrates how the royal charter of 1726 introduced a concrete English legal order to Madras, Bombay, and Calcutta, predicated on English legal procedure and practice. Despite the differences between the EIC's settlements and the legal world of London, within a year of the charter's arrival, all three cities featured criminal and civil courts functioning along procedural lines expected of any English court in England or the Americas. This chapter details the new legal regime, describing the wide array of English procedures, practices, and officers wielded by the charter courts. The arrival of the 1726 charter fundamentally transformed the Company's settlements into English cities, resembling others around the world in their legal practice and independence.

Beginnings

Copies of the charter along with boxes of law books, and the meticulously crafted instruction manual first landed in India at Madras on 14 August 1727. Three days later, the EIC executive in the city gathered the populace for a parade featuring dancing girls, horses, and ceremonial livery to celebrate the inauguration of the new legal regime.² Madras, of course, already had a functioning Mayor's Court and it appears that the new tribunal immediately appropriated the records, privileges, courthouse and funds of the

¹ Arasaratnam, *Merchants, Companies, and Commerce on the Coromandel Coast, 1650-1740*, p. 274.

² See RFSG *Consultations*, v.57, pp. 103-4 (17 August 1727) for the festivities at Madras.

former.³ The old and new corporations seem to have blended seamlessly with the new court, continuing to collect various town duties and taxes which the Company had provided it as sources of funding since the 1680s. In addition, one, if not more, of the new aldermen of the court had served on the previous Mayor's Court.⁴ The remainder of the new Madras aldermen were all well-known EIC employees and free merchants (Europeans not employed by the Company). On their first day, they appointed court officers, three official court attorneys, a register to keep the court's records, and a bailiff.⁵ The Mayor also announced that all the cases then pending in the old court would have to be re-heard from the beginning - signaling the start of a new legal era.⁶

The aldermen and litigants wasted no time in instituting and adapting to the new regime. In the first month of the Court's operation, it heard at least 17 cases, including some either originally filed in the old court or seeking ratification of former court decrees.⁷ To handle all this old and new business, the court met nearly every week in the early morning or sometimes at four in the afternoon - in some weeks - holding court two days in a row. Similarly, the justices of the peace and other members of the EIC council

³ By the 1750s the Madras Mayor's Court was in possession of the records of all former courts into the 17th century. The new court also took possession of 1,732 pagodas (~£800) for its own use from 35 different estates held by the old court, including at least 9 Hindu estates as well as some from deceased Portuguese and Armenian residents. See BL IOR P/328/65: Madras Mayor's Court Proceedings, 12 September 1727.

⁴ The Madras Mayor's Court records between 1719 and 1727 are missing. Luis de Medieros was a free merchant who served on the MC in the 1710s (and presumably through the 1720s) and on the new court in 1727 - see RFSG *Minutes*, v.1 and Love, *Vestiges*, v. 2, p.240.

⁵ For the first day of court see BL IOR P/328/65: Madras Mayor's Court Proceedings, 17 August 1727.

⁶ The court also set fees for its business and ordered them posted for the populace to peruse. This list of court fees, copied into the Public Consultations of the EIC council, reveals the Court's intention to participate in nearly every facet of civic life as specified in the charter and book of instructions. This list of fees can be found most readily in RFSG *Consultations*, v. 57, pp.145-6 (28 December 1727).

⁷ See BL IOR P/328/65: Madras Mayor's Court Proceedings, 24 October 1727: Father Thomas Capuchin v. Conacasaba.

in Madras took early steps to introduce the chartered system of English-style criminal justice in the city.⁸ After the charter's arrival, neither the Mayor's Court or the Governor and Council (as a body) adjudicated criminal matters. Instead, in November 1727, the Council instructed the JPs to punish minor offenders corporally and “bind over to the sessions” those deemed more serious. They also ordered a notice posted in several languages to inform the populace that all were now subject to a new legal regime in which certain crimes, especially theft, would be punished by death.⁹ Likewise, when an EIC employee at Fort St. David was accused of murder in October 1727, the Madras justices delayed the trial until January out of fear that there were not enough eligible jurors in the city to survive the *voire dire* challenges allowed by law under the charter.¹⁰ These references to the sessions, jury challenges, and the death penalty (mandated for a number of crimes by English parliamentary statute), were likely drawn from the book of instructions and the law books from London and indicate a change in the legal life of the city, as well as the seriousness with which the newly chartered bodies at Madras took their obligation to put the anglocentric legal order into practice.

On 20 August 1727, a week after the Madras council opened its charter materials from England, a companion crate arrived in Calcutta. The EIC executive accordingly ordered a celebratory volley from the great guns of the fort to mark its arrival and the

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⁸ No mention of any criminal quarter sessions at Madras is extant prior to January 1728 but the first meeting of the grand jury and justices could very well have been in 1727.

⁹ RFSG *Consultations*, v.57, p. 142 (27 November 1727).

¹⁰ The trial of John Vezian was held on 5 January 1727. The rationale stated above for the delay is given in *Records of Fort St. George: Despatches to England 1694-1751* [15 vols.], (Madras: Madras Government Press, 1916-1932), v. 6-9, p.31 (para. 32- 20 January 1728). Hereafter RFSG *Despatches to England*.

inauguration English justice.¹¹ This celebration hid some of the confusion amongst all parties as to how to put the new charter into execution. Unable to draw on the experience of a prior English court, the EIC council and novice aldermen had to institute the new legal regime from scratch. All but one of the eight first Calcutta aldermen were EIC employees and none seem to have had experience in other Calcutta judicial fora, though one may have been a former alderman of the old Madras Mayor's court.¹² These first aldermen drew on their uneven knowledge of English law as they established the new court. Some of this fragmentary knowledge of the common forms of English justice could however occasionally lead them into confusion. Thus, in early December 1727, prior to the first court day, the EIC executive at Calcutta reported that the appointed aldermen judges were “a little puzzled at present in their proceedings.” The confused aldermen apparently wanted confirmation from London that the Mayor's Court was indeed to be a chancery-style “court of equity” and not a “court of Common Laws.”¹³

The very first recorded day of business at the Calcutta Mayor's Court took place in December 1727, some four months after the actual arrival of the charter.¹⁴ Litigants

¹¹ There is no mention of celebratory speeches or parades at Calcutta but the Council there did report that they ordered the great guns of the fort to give three volleys to celebrate the establishment of the new corporation, see BL IOR E/4/2 Calcutta Letter to London, p.579 (para. 4).

¹² There is a Thomas Cooke recorded as an alderman at Madras in 1717 - see *RFSG Minutes*, v.1, p.37. There were several Cookes in India so they may not have been one and the same. The majority of the new aldermen had lived in India for at least a decade and the most senior of them, Phillip Mitchell, an official in the EIC's warehouse operations, had been in Asia since 1712. Previous Indian or judicial experience was however not necessarily important in this new regime as evidenced by Zechariah Gee, a young writer-secretary for the Company, and one of the new aldermen, who had only just arrived in India in 1726.

¹³ BL IOR E/4/2: Letters from Calcutta to England, p. 579 (para. 4), 5 December 1727.

¹⁴ BL IOR P/155/10: Calcutta Mayor's Court Minutes, 16 December 1727. It is entirely unclear when the court started sitting. The charter was announced to the city in early September and the Court may have met at least once before December but no records exist for this period.

appear to have been ready for the court to open operation, as nine suits were filed that first day. Relying on the book of instructions and other law books, the Mayor's Court insisted on strict chancery practice in its first few months of business. The aldermen threw out several petitions from litigants in these early months as being “wrongly laid” in form according to the instructions.¹⁵ At the same time however, the Calcutta court embraced some of their independence and the flexibility built into the charter. For example, in their first year they allowed witnesses to swear customary local oaths and abandoned their mandated parchment record-keeping for plain paper.¹⁶

The practical operation of the Calcutta quarter sessions and new system of criminal justice took longer to get underway. At the first recorded meeting of the sessions, the justices reported that they had “little or no business...more than to remind the King's Subjects of their allegiance and to lead sober lives etc.”¹⁷ This comment at least indicates that the justices took their royal obligations seriously in launching the first metropolitan-style English criminal court in Calcutta.

As the EIC's shipping for Bombay left later in 1727 than those to Calcutta and Madras, the boxes with the charter and instructions did not reach that city until 15 January 1728.¹⁸ Within a week the EIC council informed the aldermen of the new Mayor's Court of their duties and suggested they meet “as often as necessary” in the

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¹⁵ For bills being thrown out see BL IOR P/155/10: Calcutta Mayor's Court Minutes, 23 December 1727

¹⁶ For the oath see *ibid.* 16 December 1727: Ramgoram v. Ramchurn. For the note on parchment (which was being eaten by cockroaches) see BL IOR E/4/2: Letters from Calcutta, 28 January 1728 (para. 159).

¹⁷ BL IOR E/4/2: Letters from Calcutta to London, 28 January 1728 (para. 155).

¹⁸ The EIC council reported the arrival of the charter aboard the Duke of Cumberland in its consultations of 15 January 1728. Cf. BL IOR P/341/6: Bombay Public Proceedings.

month before the first court day in order to determine how to proceed.¹⁹ As noted previously, there was an English court of judicature active in Bombay when the charter arrived. This court met in a warehouse complex near the town walls, and with the coming of the charter the EIC council immediately designated that former place of court business as the “Town Hall” for the use of the new chartered courts.

In preparation for the new legal regime, William Phipps, the EIC President of Bombay, ordered the heads of all the principal castes and communities of the territory to gather in public to hear a reading of the new charter.²⁰ At this assembly Phipps gave a speech extolling the greatness of the British crown and the honor done to the people of Bombay, noting that the charter had “...put [Bombay] on the same level as the most privileged corporations in our own country.”²¹ He continued by lauding the arrival of English law, telling the crowd that the charter would enable the city to become more prosperous and “considerable” in comparison to its neighbors, since the new chartered courts would “...administer justice according to *the laws of our own nation* which are the best we know of in the world...”²²

The Mayor's Court opened five days later with the newly inaugurated Mayor,

¹⁹ See BL IOR P/341/6: Bombay Public Proceedings, 23 January 1728 for this instruction. None of the new aldermen or mayor had served on this prior court of judicature but all were either Company employees or prominent free merchants.

²⁰ Over a century later a local historian (Govind Narayan) reproduced oral tradition when writing about this speech in his Marathi language history of Bombay: “On the instructions of the chief sarkar [government] in England, a mayor's court was established in Mumbai on 10 February 1728....The proclamation was read out by the governor himself to a gathering of the ryot [people] and mahajan [businessmen/elites] of Mumbai at the Palo Bunder.” See the English translation: Prakash and Ranganathan eds. *Govind Narayan's Mumbai: an urban biography from 1863*, (London: Anthem, 2009), p.104.

²¹ An abstract of Phipps' speech is entered in BL IOR P/341/6: Bombay Public Proceedings, 10 February 1728.

²² BL IOR P/341/6: Bombay Public Proceedings, 10 February 1728. Emphasis mine.

William Draper, opening the court by delivering a speech from the bench. To the assembled aldermen and spectators Draper extolled the “bounty and favor” the Crown had shown in granting the charter and English law “to His [King George's] subjects in these remote parts.”²³ As in Madras and Calcutta, the new court appointed a register, clerks, court attorneys, and several men-at-arms to deliver processes and execute judgments according to the book of instructions. The new court also immediately petitioned the EIC council for funds in order to pay these officers and to erect a new jail. Likewise, as in the other cities, the EIC council, as justices of the peace, took their mandate seriously and convened a grand jury and full criminal sessions at some point before September 1728.²⁴

English Justice in Practice

The charter, law texts, and book of instructions sent to India all presumed that the EIC settlements would implement English justice, replete with ceremony, procedure, and documentation. Indeed, from the rough and ready initiation of the three courts, a standard Mayor's Court practice and legal culture emerged in the three cities. Though the local and political constitutions of Bombay, Madras, and Calcutta indelibly marked the practice of each city's charter courts, at their heart all of the courts shared a set of similar practices,

²³ George Forrest, *Selections from the letters despatches and other state papers: Home series*, v. 2, p. 413. The Bombay Mayor's court met for 10 months of 1728 but unfortunately, we know little else about the first days of the court since the proceedings and minutes from 1728 are not extant in London and are no longer available in India. The first year of records for the Bombay Mayor's Court was extant in Forrest's time (1880s) but is unavailable today at either the British Library or the Maharashtra State Archives. The best sources on the opening of the Mayor's Court from those who consulted the records in the 19th century are Forrest's *Selections* above and the *Bombay Gazetteer* v. 26, part 3, pp. 9-13.

²⁴ BL IOR E/4/460: Bombay letters to London, 30 September 1728 (para. 80). At this September sessions the grand jury noted the need for a new jail.

personnel, and procedure drawn from their English origins. The Mayors' Courts occupied the heart of this new chartered legal order. Unlike the justices of the peace, who were beholden to the EIC Council, the Mayors' Courts remained independent entities predicated on the royal charter alone. Over the years of the first charter from 1726-53, these corporation courts met hundreds of times to adjudicate thousands of disputes involving as many litigants and hundreds of thousands of pounds sterling.

The Mayors' Courts depended heavily on the aldermen, who served as its chief judges and determined its policies. These magistrates came from the ranks of prominent English merchants and Company employees. The sitting aldermen had the exclusive right by charter to elect new members and the EIC's governing council had no summary power to appoint or dismiss them.²⁵ In the period between the inauguration of the Mayors' Courts in 1727-8 and their reconstitution in 1753, over one hundred different men served as aldermen judges in the three cities. This diffusion of judicial power gave a large swath of the European population of the EIC's settlements first-hand access, knowledge, and power over the direction of law and justice in their cities.

For the election of aldermen the charter instructed only that the members of the Mayor's Court "...select some other fit person out of the principal inhabitants of the said Town."²⁶ Although by the terms of this instruction the aldermen in each city could

²⁵ The Company in London appointed the first aldermen in all three settlements, specifying in the charter a set of trusted inhabitants to fill each spot. But, by the time the charters arrived, some of those named in the charters had either died or moved to out-factories far from their respective cities - forcing the EIC councils at each place to appoint replacements.

²⁶ Shaw, *Charters*, p.232. The charter only mandated that the members of the corporation should elect a new mayor every December 20th, and while elections of new aldermen often took place at the same time, these could also happen whenever a vacancy occurred.

conceivably have elected new members from the entirety of the inhabitants of their respective cities, only persons of European ancestry gained election to the courts during their operation.²⁷ Unsurprisingly, given the nature of the European population of the settlements, the vast majority of men to serve as aldermen judges were in the employ of the Company. In Calcutta, only thirteen of the seventy-two aldermen who served in this period were free merchants (i.e. not employed by the Company) and most of these free merchants had previously worked for the EIC in some capacity. The same pattern held for Bombay and Madras, where only as few as five or six free merchants served on the court during the same period. Aldermen nonetheless represented considerable diversity in age, experience, and profession.²⁸

Despite the preponderance of EIC employees in the ranks of the Mayors' Courts, the aldermen held notions of governmental participation which extended beyond the Company. In 1734, for example, the Madras Mayor's Court found itself in an argument with the EIC executive over just who qualified as a "principal inhabitant" eligible to be elected to the court. The aldermen debated the matter amongst themselves and decided that the person in dispute qualified as he had married twice in the settlement with banns duly published, owned land worth 1000 pounds or more in India, had served on criminal juries, "...and that he paid the usual quit rent and taxes for such houses and land - [and]

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²⁷ See Chapter 1 for the first Madras Mayor's Court electing non-European aldermen out of the "principal inhabitants" of the city.

²⁸ For example, in 1742 Samuel Sheldrake and Edward Cruttendon both served on the Calcutta Mayor's Court. A senior merchant and warehouse keeper for the Company, Sheldrake earned forty pounds a year in formal salary and had served on the court since 1737. Cruttendon by contrast, had just embarked on a career in the Company's service, earned only five pounds a year as a lowly writer at the bottom of the Company hierarchy and, on his election to the Mayor's Court in 1742 was not yet 21 years old.

publicly entertained the best company the town afforded..."²⁹ Such a definition of full corporate citizenship would not be out of place in England or in many of the American colonies. In addition, at least one alderman was attached enough to his civic participation that he left £300 in his will for the use of the corporation.³⁰ To the aldermen then, the EIC settlements in India did not constitute strange oriental outposts, but English towns with their inhabitants held to English standards of property, tax-paying, and government participation.

Despite the importance of the charter and the prestige one would imagine attached to serving as an aldermen, the position proved quite unpopular among large segments of the European population, prompting few if any electoral contests.³¹ Furthering one's private fortune in India depended on ascending the rungs of the Company hierarchy to positions of greater responsibility, as well as the flexibility to move about and conduct trade in the many EIC out-factories and ports throughout South Asia. Free merchants and non-EIC European residents usually also had mercantile commitments, requiring months at a time spent at sea or in distant ports. None of these necessities squared very well with the work of an alderman judge. In addition, service as an alderman conveyed no special status in the Company hierarchy (with the partial exception of the mayoral office), required constant sittings at the town hall, hours of listening to arguments, reading

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²⁹ BL IOR P/326/69: Madras Mayor's Court Minutes, pp. 199-200 (5 July 1734).

³⁰ See the will of William Jennings in BNA PROB 11/798 (1 December 1752).

³¹ There are few details about elections of aldermen given in the records of the court. But a dispute in the Calcutta Mayor's Court in 1755 seems to indicate that Court elections had previously taken place by ballot and not by voice. See BL IOR P/155/292: Calcutta Mayor's Court Minutes, December 1755. Despite this electoral provision, there appears to have been little to no competition to become a member of the court.

documents, and included only meager compensation.

In Bombay all the aldermen except the mayor went unpaid.³² In Calcutta, they received largely nothing for their trouble, though by the early 1750s the EIC authorized them to each receive 15 rupees a month in salary (~£25 a year).³³ In 1734 the Madras aldermen bitterly complained that they earned no salary or perquisites for their “constant trouble and attendance which we believe cannot be said of any court of judicature in England.” In addition the aldermen claimed that they had to pay for their gowns and an annual feast for court officers out of their own pockets.³⁴ In Calcutta and Bombay at least, the expenses of the court were funded by a levy on all sums adjudicated in court and it is certainly possible that the aldermen siphoned some of this money for their own use. Turnover amongst the officers of the Mayors' Courts partly reflected the minimal privileges of being an alderman. While some aldermen died in office and several were promoted to the EIC governing council, which precluded membership on the court, more went home to England or were transferred to another location and still others simply resigned.³⁵

³² In Bombay the mayor earned a special salary of £100 a year and appeared on the EIC seniority list as “Mayor.” However, in the other cities, the perquisites were less lucrative. In Calcutta the mayor received remuneration by the 1740s through a fee of 1/2 rupee for every document to which he affixed the court's seal - leading in some cases to rather overzealous stamping. See BL IOR P/155/22: Calcutta Mayor's Court Minutes, 13 January 1744. In 1753 the mayor of Calcutta complained that his predecessors had “prodigiously stamped” nearly every page of documents to Europe - sometimes coming to over 100 seals per case! See BL IOR P/155/27: Calcutta Mayor's Court Minutes, 1 February 1753.

³³ Cf. BL IOR P/1/28: 1755 Calcutta Consultations, p540 for comments on past practice.

³⁴ BL IOR P/326/69: Madras Mayor's Court Minutes, p. 190 (31 January 1734).

³⁵ When Henry Compton, the mayor of Bombay, prepared to depart for England in 1737 he proposed a rule to the aldermen that anyone who had served a term as mayor could resign at will without a vote. The motion passed unanimously BL IOR P/416/111: Bombay Mayor's Court Proceedings, p. 257 (7 September 1737).

Though the charter made the position of alderman one held for life, comparatively few aldermen held the position for more than a few years, creating a kind of rotation in which the most civic-minded merchants eventually served on the court. The longest serving Calcutta aldermen were Holland Goddard and Robert Baldrick, each sitting on the court for fifteen years.³⁶ The average tenure for an alderman in Calcutta in this same period was a little over four years, with only three aldermen serving more than a decade. Over the same timespan, at least seventy-seven aldermen served on the Bombay Mayor's Court, each serving an average of around three and a half years, with only two aldermen serving for over a decade. These extremely dedicated aldermen also tended to be elected to the largely ceremonial position of mayor by their peers.³⁷

Aldermen accordingly faced the recurring challenge of trying to persuade those newly elected to the post to actually take up their office. The Mayors' Courts' minutes and correspondence are full of complaints about eligible candidates declining the post despite all the coercive measures the courts' could devise. The small number of suitable British inhabitants in the settlements, often fewer than 100, meant that the aldermen had limited choices in picking new members. In 1729 the Mayor's Court at Bombay elected George

³⁶ Both Company employees.

³⁷ The mayors of the three cities had little more responsibility or privileges than the regular aldermen. By charter mayors were elected anew every year, though at least nine men at Bombay and Calcutta served as mayor more than once, with Thomas Coates, a Company secretary, serving as the mayor of Calcutta four years in a row. Every mayor served at least one year on the court before being elected. In Madras, the EIC executive complained to the Mayor's Court there about the election of Hugh Naish to a second consecutive mayoral term citing a statute of 9 Anne to no avail. See RFSG *Despatches to England*, v.10-11, p.64 (para. 67 - 22 January 1735). Also in Madras, the alderman received a ballot for mayor every December 20th containing the names of all the sitting aldermen including their own. For the repeal of this rule see BL IOR P/329/67: Madras Mayor's Court Minutes (3 December 1754). No records are extant to indicate how contested these elections were or whether the post was at all a desired one.

Taylor, a local free merchant, in absentia as a new member. When he refused the election, the mayor instituted a fine of 100 rupees (~£15) for all who refused to serve. After hearing of the fine Taylor informed the court that he would quite willingly accept the penalty instead of service.³⁸ The Calcutta court even went so far as to record in its minutes that "...gentlemen are backward in serving as aldermen of this court and chose rather to fine than serve."³⁹ Five years later, the Madras court faced a crisis as eight separate Company employees elected that year to fill vacancies all refused to serve. This was due in part to rising tensions between the Court and the EIC executive, which made an appointment as alderman particularly undesirable for those dependent on Company patronage. In an attempt to recruit such unwilling candidates, the mayor exhorted those who had refused the post that serving on the court was "...the indispensable duty of every good man, to see the laws of his country duly administered to the society under whose protection we all live."⁴⁰ This plea to common notions of civic participation in English law and government resonated with two of the reluctant Englishmen who eventually agreed to serve.

Even after election to office, aldermen often proved less than eager to fulfill their

³⁸ Noting that he was then involved in a complex and time-consuming negotiations with a series of Hindu merchants, the aldermen agreed to remit the fine. The court re-elected Taylor in 1731 and he refused to serve yet again. The court charged him a fine of 400 rupees (~£60) and compelled payment. For the levy of a fine see OIOC P/416/101: Bombay Mayor's Court Proceedings, 19 February 1729; for Taylor's letter, *ibid.*, 26 February 1729. BL IOR P/416/105: Bombay Mayor's Court Proceedings, p.40 (3 February 1731). The new Calcutta and Madras Mayors' Courts were also forced to fined newly elected aldermen for refusing to serve. In Calcutta Edward Reynolds eagerly paid the Calcutta court's 200 rupee (~£30) fine in 1728 in order to avoid service. See BL IOR P/155/10: Calcutta Mayor's Court Minutes, 1 February 1728. For a similar instance in Madras see BL IOR P/328/65: Madras Mayor's Court Minutes, 26 September 1727.

³⁹ BL IOR P/154/44: Calcutta Mayor's Court Minutes, 2 July 1745. For more on these disputes see Chapter 7 below

⁴⁰ BL IOR P/326/69: Madras Mayor's Court Minutes, pp. 195-6 (1 July 1734).

duties. William Jeynson, elected to the Bombay Mayor's Court in 1731, wrote to a friend in London that he had been chosen against his will and was worried that his decisions in court could put him at odds with his Company superiors.⁴¹ Jeynson only spent one year on the court, extricating himself from the position as soon as he could. Members of the Bombay court even wrote rather wistfully that “this court consists of a number of disinterested gentleman elected contrary to their inclination.”⁴²

Due to the thanklessness of the job, full representation of all ten aldermen at court only happened on rare occasions.⁴³ Other than at the yearly December mayoral elections, court minutes indicate only one instance from the three courts of every alderman being present at the same sitting.⁴⁴ It was far more usual for a smaller number to be present - often the bare minimum of three aldermen. During the summer months aldermen would often stay away from the court; sickness all year long frequently prevented the court from meeting. In 1728, for instance, the Calcutta court had to adjourn six times (four times in the summer months) because of a lack of aldermen. Some aldermen even accepted election but then absented themselves from court for months at a time when they were gone on business, as alderman Anthony Upton did in 1744 when he spent 10 months of

⁴¹ This is surmised from communication between Robert Adams and William Jeynson in which Adams refers to such a letter. BL IOR H/37: Robert Adams letterbook, f.157v (10 June 1732).

⁴² BL IOR P/341/15: Bombay Consultations, pp. 233-4 (3 June 1746).

⁴³ See for example when the mayor asks the register to write to absent Mayor's Court members: BL IOR P/416/103: Bombay Mayor's Court Minutes, pp. 200-1 (22 July 1730).

⁴⁴ This one instance occurred in February 1743 at Bombay. The aldermen seem to have accepted that the full court would almost never meet in full. The Mayor of Madras claimed in 1734 for instance that only three aldermen were needed at any court day and moreover that aldermen at Madras often only attended court once a month. See BL IOR P/326/69: Madras Mayor's Court Minutes, p.195 (1 July 1734).

the year in Sindh instead of at Bombay.⁴⁵ The Mayors' Courts imposed fines on those sitting aldermen who failed to turn up regularly at court or abandoned their duties completely, adding public condemnations on the subject of proper civic duty.⁴⁶

These aldermen-judges, though men of credit, were certainly not legal professionals. None of the aldermen in the three Mayors' Courts over their history to 1773 had attended the Inns of Court or otherwise possessed any metropolitan legal training, though several had previously served as attorneys of the court. One must keep in mind, however, that having aldermen untrained in the law on the Mayors' Courts was common in other municipal corporations. Likewise, this lack of legal experience was not unusual in other eighteenth century colonial settings, where legal elites were expected to be scarce, leaving local merchants as the most experienced arbiters of civil disputes.⁴⁷

The more experienced aldermen of the Mayors' Courts, then, possessed meaningful legal knowledge. As EIC employees and “principal” merchants of the settlements, these aldermen typically had a familiarity with mercantile custom, the basics of English law and liberties, and a dedication to the economic and social life of the cities.

⁴⁵ There are numerous instances of alderman's names being missing from the court registers for months at a time. For an explicit mention of a Madras alderman being resident at Fort St. David (100 miles away) see BNA C103/132: letter from Thomas Cooke at Madras to Thomas Hall in London (28 January 1737).

⁴⁶ In Madras, the new court appears to have adopted a rule from the old Mayor's Court there that any alderman who missed three consecutive court days would be fined 10 pagodas (~4 pounds). See BL IOR P/329/69 Madras Mayor's Court Minutes: 1+5 August 1755 for a discussion in the Madras Mayor's Court about these older rules. The records of the Bombay court also include occasional fines to members for non-attendance. For the court fining alderman Thomas Stonestreet 6 rupees for non-attendance see BL IOR P/416/111 Bombay Mayor's Court Proceedings, 7 September 1737.

⁴⁷ See for example a 1720 proposal for the Court of Judicature at Gibraltar appointing “two merchants within the town of Gibraltar” as judges on a court there along with a trained judge advocate See K.H. Ledward ed. *Journals of the Board of Trade and Plantations* [14 vols.] (London: IHS, 1920-38), vol. 4, p.191 (2 August 1720). Having merchants of little legal experience pass judgment on a case was of course common in England where juries frequently tried civil cases.

On occasion in their debates in court or in letters to others the aldermen displayed their passing familiarity with legal texts and general English legal principles. The aldermen also all had access to the law books sent from England, as well as any other texts circulating in the settlements.⁴⁸ In one Calcutta dispute over whether respondents could object to partial judges, a litigant cited Edward Coke's *Institutes*, a seminal common law text, only to have his interpretation challenged by an alderman who quoted Coke back at him replete with page numbers. Two aldermen hearing the suit then cited Jean Domat's treatise on civil law, arguing that in Roman law, litigants could object to judicial conflicts of interest. In the end the court as a whole cited more Domat against the litigant as the basis for the final decree.⁴⁹ Likewise at various points the Bombay court cited decisions by the late Chief Justice Holt and the works of famous civil lawyers Pufendorf and Grotius.⁵⁰ Even though the aldermen of the Mayors' Courts were busy merchants and functionaries instead of trained lawyers, they nonetheless injected a degree of formal

⁴⁸ The general library at Madras contained at least fourteen books on English law as well as civil law texts such as Hugo Grotius' *De Jure Belli et Pacis* as well as two copies of Justinian's *Institutes*. The Madras library catalog for 1729 can be found in BL IOR H/260. Several aldermen seem to have had access to editions of Jacob's law dictionary, one of the most common legal guides of the day. For examples of aldermen and EIC employees quoting from the dictionary, see among others: RFSG *Despatches to England*, v.12, pp. 44-5 (29 January 1737). and the printed brief in a Bombay case BL Add. Ms. 36,217 Sedgwick v. Admin. of Sevajee, f.8. See also Julia Rudolph, "That 'Blunderbuss of Law': Giles Jacob, Abridgment, and Print Culture" *Studies in Eighteenth Century Culture* v.37 (2008), pp. 197-215.

⁴⁹ Cf. BL IOR P/155/10; Calcutta Mayor's Court Minutes, 14 August 1728: John Stackhouse v. George Mandeville. They were likely citing Jean Domat's *Lois civiles dans leur ordre naturel* (1689) - however, the MS text reads "Donetti Civil Law" and as such there is some chance this refers instead to the *Commentarii de Iure Civili* (1589) by Hugonis Donelli [Hugues Doneau].

⁵⁰ For citations from Grotius and Pufendorf see BL IOR P/416/103: Bombay Mayor's Court Proceedings, p. 140 (2 July 1730). For several citations from Sir John Holt (1642-1710) see *ibid.*, p.164 (22 July 1730) and *ibid.* pp. 175-6. It is not clear here where the aldermen are citing from - perhaps from a legal dictionary or another compilation. The aldermen's knowledge of civil law authors is hardly surprising as it seems Grotius' *De Jure Belli et Pacis* was more common in 17th century English libraries than any English law book. See David Pearson, "Patterns of Book Ownership in Late Seventeenth-Century England," *The Library* 11.2 (June 2010), pp. 138-167.

legal expertise into their deliberations.

Lawyers

Though the aldermen were at the head of the chartered corporations in the the EIC settlements, they were only one part of the English legal apparatus instituted by the charter. Most historians of early British India disregard the importance of lawyers in the EIC's settlements, noting merely that these pleaders were not professionally trained in England or learned in English law. Many simply cite Charles Lockyer's 1711 description of (the old) Madras Mayor's Court lawyers as being "...as knowing as can be expected from broken linen drapers and other crack'd tradesmen who seek their fortunes here by their wits."⁵¹ This dismissive attitude partly comes from the near total lack of sources that shed light on these lawyers and their legal practice. Almost no correspondence survives from any of the Mayors' Court attorneys and their names are rarely given in letters to and from England. In addition, the framers of the 1726 charter anticipated that the Indian courts would be free of the demurrers, lengthy bills, copious precedent citation, multi-year cases, and so-called "litigiousness" which characterized the English chancery, with its proliferation of expert lawyers. Nonetheless, attorneys quickly became essential shapers of legal culture and practice in the EIC settlements.

The 1726 charter itself gave few instructions about the role of lawyers and legal experts, except to say that the Mayors' Courts had the power to appoint whatever "Clerks

⁵¹ See Mattison Mines, "Courts of Law and Styles of Self," p. 47; and Charles Lockyer, *An Account of The Trade in India*, (London, 1711), p. 6. For a perfunctory recital of the names of various Calcutta attorneys see T.K. Mukherji, "Aldermen and Attorneys - Mayor's Court, Calcutta," *Indian Historical Quarterly* v.26 (1950), pp. 51-66.

and Officers” they found necessary to administer justice.⁵² In the system outlined in the book of instructions, the alderman-judges would appoint one or more official court attorneys to manage all cases on behalf of litigants from beginning to end. Woodford undoubtedly hoped that these appointed court officers would be less likely to drag cases out and waste the time of the court, as he explicitly dismissed the idea that barristers or professional counsel would ever be employed in India. It is “not to be supposed,” he wrote in his instructions, “that there will be any counsel at Fort St. George [and by extension the other three cities],” rather, court “clerks” and “attorneys” would be the best to manage all cases in their stead.⁵³ This system was of course not unusual in the colonies, which often shared a similar shortage of metropolitan-trained legal personnel. Mary Bilder notes that by 1700 almost all law proceedings in Rhode Island were carried on by clerks and “attorneys” in the absence of trained lawyers.⁵⁴ However, while lawyers trained in English law dominated American colonial courts by the mid-18th century, the chartered courts in India always depended on a cadre of formally untrained EIC employees and other assorted local Europeans.

When a litigant of any kind wanted to bring a complaint or problem before the Mayor's Court he or she first had to approach a court attorney. In Woodford's imagination, inflected by Westminster practice, litigants could prepare their own bills of complaint, but these would have to be “carefully perused” and signed by an appointed

⁵² Shaw, *Charters*, p.236.

⁵³ BL Add. Ms. 16,270, p.42.

⁵⁴ Bilder, *Transatlantic*, pp.18-19.

court attorney prior to their appearance on the court docket.⁵⁵ These court attorneys would be answerable for any slanderous content in the bills and would also have to approve and sign all questions for witnesses submitted by litigants, ensuring that nothing reached the court except through the mediation of attorneys. Litigants themselves would appear in person only to swear to the veracity of their written filings. In this plan, justice was to be executed based on the dry summations of court attorneys and mountains of parchment, rather than in fiery oratory or appeals to a jury. However, despite this intention, the corps of local lawyers which sprung up in all three cities became the face of English justice for many residents.

Per their instructions and the powers given them by charter, the new Mayors' Courts in each city appointed two or three attorneys upon their creation. Over the years in which the Mayors' Courts operated, the aldermen never allowed more than four attorneys to practice in any city and sometimes there were as few as two attorneys on the books at any given time. The Company, always eager to save money, instructed that court officers, including attorneys, be chosen from among extant Company employees as the work would be "but very little and seldom."⁵⁶ As a result, many of the first court attorneys also held other EIC posts.⁵⁷ Though the Company promised that the occupation would be an

⁵⁵ BL Add. Ms. 16,270, p.3.

⁵⁶ Cf. Paragraph 14 of the 17 February 1727 letter sent from London with the charter to Calcutta - reprinted in Smith, *Some Records*, p. 12.

⁵⁷ In Calcutta, the Mayor's Court appointed John Forster and William Elliott as their first attorneys in 1727. John Forster was a Company servant who had already been in India some years and who would later become Governor of Bengal. He was in London in 1724 petitioning the Court of Directors to allow him to return to India after a trip home (BL IOR D/18 f107), he was later Governor of Bengal from 1745-8, married Alice Pattison in Calcutta in March 1747 (BL IOR N/1/1 f322) and died there in 1764 (BL IOR N/1/2 f59). William Elliott (or Elliott/Elliot) was also a Company employee who continued in

easy one, in practice, the court attorneys were nearly constantly employed in the complex and multi-faceted business of the Mayors' Courts.

Many of these early court attorneys seem to have had difficulty keeping up with the casework expected of them - since they performed other duties for the Company and pursued their own trade. In 1728 John Forster a court attorney at Calcutta sent the court a list of eight clients whose cases he had to delay because he was leaving on his own business for a few weeks -and later earned the court's ire for his continued absences.⁵⁸ Some attorneys nonetheless took on a large number of cases. During 1743, for example, William Dumbleton, a court attorney at Madras and later at Calcutta represented clients in at least 32 different cases before the Madras Mayors' Court.⁵⁹ This feat required him to attend court nearly every court day. Service as a court attorney also increased the risk that a Company employee would incur the wrath of his superiors in the EIC hierarchy. Thus in 1728, the Governor of Madras expelled one of the Madras court attorneys for daring to initiate a suit against him on behalf of a client.⁶⁰

Despite all of these pitfalls, the records of the Mayors' Courts include many requests from assorted Europeans asking to be appointed as attorneys. This was in part

the post of court attorney into the early 1740s. In Madras the MC appointed Charles Gee, Henry Rumbold, and Ralph Mansell as the first attorneys there. Gee quit his post within months of being appointed and Mansell, a Company servant who had been in India since at least 1723 working as a clerk, lasted only a few years longer. He was married at Ft. St. David in September 1723 (BL IOR N/2/1 f58). He later became clerk of the markets and died in 1737. When the Bombay court opened in 1728 it appointed John Morley as the register/attorney and John Sarson as an attorney. Sarson was most likely a Company servant and carried on cases as an attorney until the early 1730s. John Morley also worked for the Company and an eventual pillar of the Bombay legal community, as he served as the court register for over a decade and later as a Justice of the Peace and member of the Bombay council.

⁵⁸ BL IOR P/155/10: Calcutta Mayor's Court Minutes, 1 February 1728.

⁵⁹ Dumbleton served as an attorney throughout the 1740s and 50s until his death in the so-called Black Hole of Calcutta in 1757.

⁶⁰ See BL IOR E/3/105: Letters from Madras to London, f.83 (para. 70) 12 February 1731.

due to the fees which attorneys hoped to reap from their clients. All three Mayors' Courts established similar fee structures to govern how much court attorneys could charge for services.⁶¹ These tables give a hint of the English court attorneys' exhausting and document-heavy work. They read much as they would in England or North America and contain entries for retainers, visiting clients, pleading at the bar, composing interrogatories, as well as per folio fees for writing bills, replications, and rejoinders. Attorneys could also charge all number of miscellaneous fees, such as for visiting clients in the Madras "black town."⁶²

The records of the Calcutta Mayor's Court give just a hint of the volume of this business handled by court attorneys, and the concomitant fees they would be able to charge. For example, in just the first four months of 1753, attorneys at Calcutta submitted 1,178 pages of written bills, rejoinders, replications, and answers to the Mayor's Court. The longest of these consisted of an incredible 291 pages, while the shortest ran to just two.⁶³ Individual attorneys bills are hard to come by, but a few appear in the records of the court when attorneys took their clients to court for non-payment. Though fees in small-time suits could be much lower, in 1753 the Mayor's Court awarded experienced Calcutta attorney James Meredith 1,488 rupees (~£215) in legal fees after a protracted suit that almost went to the Privy Council.⁶⁴

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⁶¹ BL IOR P/1/6: Calcutta Public Consultations, p. 539 (28 December 1729). The Mayor's Court at Madras even sent a copy of their fees to Calcutta for reference

⁶² RFSG *Consultations*, v. 57, pp. 145-6. These fees were higher for visiting clients in the "black town" than the "white."

⁶³ BL IOR P/1/27: Calcutta Public Consultations, pp. 166-7 (1753).

⁶⁴ BL IOR P/155/27: Calcutta Mayor's Court Minutes, 20 March 1753. In a small-time suit over a disputed 25 pagoda bond (~£10) in 1743 Madras, a court attorney charged a litigant 13 fanams to attend the first

As a result of these time demands on the attorneys and the supposedly lucrative nature of the profession, the quality of representation provided by these men could vary widely. In 1755, the Madras Mayor's Court fined one of the court attorneys for neglecting the business of his client, while in 1754 Bombay one of Samuel Nucella's clients complained that he was incompetent and insane, constantly raving about the Prince of Wales.⁶⁵ Given the importance of attorneys fees, litigants and disgruntled EIC officials made frequent accusations that lawyers over-billed their clients. In 1731, the Bombay Mayor's Court heard a number of complaints about attorneys taking every opportunity to extract fees from clients including “...the attorney's making the side of paper to contain not half so much as intended.”⁶⁶ As a result the court passed a rule mandating that every billable sheet of paper submitted by attorneys contain at least 300 words. The volume of this paperwork and the necessity of having attorneys prepare all filings all suggest just how important these attorneys were to residents of the cities.

Although the court attorneys appeared primarily as supervisory figures in Woodford's instructions, in actual practice in India they played a far larger role. It is difficult to determine from extant sources how many bills and filings were prepared by the court attorneys, as opposed to those prepared by others and merely signed off upon by

reading of his complaint in court, another 39 fanams for an additional three days of court attendance, 9 fanams for one home visit, and a full pagoda for writing the complaint on four sides of paper - or about £1.25 total. See BL IOR P/328/78: Madras Mayor's Court Proceedings, p. 376 (5 April 1743).

⁶⁵ For the Madras case see BL IOR P/328/69 Madras Mayor's Court Minutes, p.28 (27 January 1755). For the case of Samuel Nucella see BL Eur. MS Orme 18. Other attorneys, like Edward Ravenscroft at Madras clearly remained focused on the pecuniary side of the business. He resigned his post by stating that it “...did not turn out so advantageous to me as I expected and takes up a great deal of my time.” BL IOR P/417/22: Bombay Mayor's Court Proceedings, p.276 (14 September 1766).

⁶⁶ BL IOR P/416/105: Bombay Mayor's Court Proceedings, pp. 229-30 (29 September 1731).

an attorney. In the first years of the courts, and to a much lesser degree in later years, a few litigants clearly decided to prepare their own bills without the aid of court attorneys, either by themselves or with the assistance of other legal advisers. But these residents and ersatz advocates did not fare well in the strict documentary regime of the court.

When Crisna Sinay [Shenvi] attempted to act as an attorney for a Hindu widow at the Bombay court in 1729, for instance, the court ridiculed his arguments as “unintelligible” and forced him to seek an English court attorney to prepare a formal written bill.⁶⁷ Likewise in 1727-8, the Calcutta court refused to accept a number of bills, including those of Michael Cotesworth, Sheik Mustapha, and Kissendas Tealy, as being inaccessible in form.⁶⁸ Even as late as 1754, a Chettiar merchant at Madras tried to submit a petition to the court of appeals written by an unnamed local petition writer. The appeals court rejected the bill out of hand, compelling the merchant to seek out the assistance of Isaac Merigeot, a stranded seafarer who had become an attorney of the Mayor's Court. After examining the litigant's rejected petition, Merigeot agreed to reshape it into a more intelligible form. In light of this rejection of informal petitions, it seems safe to surmise that given the requirements of the courts, English attorneys wrote or helped prepare the vast majority of bills and interrogatories submitted thereto.⁶⁹

In those frequent instances where attorneys composed bills and replications

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⁶⁷ BL IOR P/416/101: Bombay Mayor's Court Proceedings, 20 August 1729 and 17 September 1729.

⁶⁸ For Cotesworth and Mustapha see BL IOR P/155/10; Calcutta Mayor's Court Minutes, 23 December 1727 (both re-filed acceptable bills later the same day). For Tealy see *ibid.* 6 March 1728.

⁶⁹ In 1755 the Madras Mayor's Court rejected a complaint from an Englishman on the grounds “...that all applications made to this court of that kind must be by bill of complaint or petition, which are to be delivered in by an attorney of the court.” Cf. BL IOR P/328/69 Madras Mayor's Court Minutes, 4 March 1755.

themselves they could exercise a great deal of influence over the substance and tenor of a litigant's complaint. Without the services of a particularly skilled English legal intermediary, a litigant's case could often suffer. Despite the profit motives and lack of qualifications amongst the attorneys, there were clearly a corps of such intermediaries who were well respected for their dedication to clients, their ability to navigate the legal culture of their city, and their success in court. This class of full-time court attorneys who earned a living without working for the Company became prominent in the settlements from the 1730s.⁷⁰

This new class of attorneys largely began their jobs without any formal training. In fact, out of the dozens of men who served as Mayors' Court attorneys, it seems that only a small handful had any metropolitan legal training and in all cases this was quite limited.⁷¹ But like some aldermen, several attorneys stayed on the job for extended periods of time, becoming experts at Mayor's Court practice. As a result, city residents of all kinds trusted these new full-time professional attorneys because of their knowledge of the workings of the English courts and government.⁷²

The most influential of these elite attorneys emerged in Calcutta, where a

⁷⁰ One exception to this rule was Henry Rumbold who was an original 1727 Madras attorney from a Leicestershire family with deep EIC connections. He served as an attorney at both Madras and Calcutta with one interruption until his death in 1743. His brother was also an EIC employee and his nephew Thomas Rumbold was a later governor of Madras. See Love, *Vestiges*, v. 3, p.141. The Madras Mayor's Court made clear the degree to which these full-time lawyers became the norm in the settlements in 1755 when it refused to allow several men to become attorneys of the court on the grounds that they were Company employees - see BL IOR P/328/69: Madras Mayor's Court Minutes, p.318 (28 October 1755).

⁷¹ William Jermin, a Madras attorney in the early 1730s apparently had "served a clerkship to the profession of law." See RFSG *Consultations*, v. 59, p. 112 (20 November 1729). By the 1750s more men of legal training seem to have filled these positions

⁷² Many of these residents even approached the attorneys for other kinds of legal documents and, wills, bonds or mortgage documents, and advice outside of the strict confines of court.

substantial cohort of wealthy merchants clamored for their services. Perhaps the most famous of these was the Irishman Joshua Bodley, who, though never employed by the East India Company, appeared as an attorney in the Mayor's Court in Calcutta from the mid 1730s to the mid 1750s.⁷³ In this time he represented dozens if not hundreds of clients including many of the most prominent Bengali merchants in the area. His expertise in local legal matters earned him a reputation throughout the East Indies and as far away as London. In a brief laid before the Privy Council in 1751, the attorney and solicitor general even labeled Bodley “the most eminent lawyer” in all Calcutta.⁷⁴ He left India by 1753 and returned to London, befriending Edmund Burke before demonstrating his versatility in English colonial law by embarking on a successful career in the Americas as a land agent.⁷⁵ Unlike Bodley, the influential Calcutta attorney James Meredith began his tenure at the Mayor's Court as a lowly sergeant, ascending the legal ranks through an accumulated knowledge of the court and its workings.⁷⁶ He became an attorney by the mid 1730s and served in that capacity well into the 1750s. Most famously representing Albert Sichterman, the Dutch East India Company's chief at Hugli, in an appeal that went all the way to the Privy Council.

⁷³ Bodley (1705-1775) later moved to North Carolina and became a land agent. For a brief biographical sketch which does not mention his work in India see William Powell ed., *The Dictionary of North Carolina Biography* (Chapel Hill: UNC Press, 1995), vol. 2, pp. 186-7.

⁷⁴ For this reference see a printed brief submitted to the Privy Council by Dudley Ryder and William Murray in 1751: *Edward Holden Cruttenden Esq; and John Zephaniah Holwell Esq; attorneys for, and on behalf of, William Davis Esq...* [London, 1751], p.3. The only known copy is at the British Library.

⁷⁵ An Armenian from Calcutta who traveled to London reported: “One Sunday afternoon, as he was walking in the park, he saw among the multitude, Mr. Bodly the lawyer, whom he had seen at Calcutta, at the Old Court House, pleading at the bar, when he was a school-boy there” in the company of Edmund Burke. *The Life and Adventures of Joseph Emin, an Armenian* (London, 1792), p.88.

⁷⁶ See BL IOR P/155/10: Calcutta Mayor's Court Minutes, 3 August 1728.

Sikh tycoons, Muslim worthies, Portuguese priests, Armenian merchants, and Gujarati traders, as well as smattering of European elites all sought out Meredith and Bodley's legal assistance over the 1740s and 50s. The two were perhaps so popular because as prominent attorneys they had close connections with all the most important officials within the English courts. Both seem to have been especially close with the aldermen on the Calcutta court. Meredith frequented the offices of the court to chat about decrees while Bodley earned a possibly deserved charge of bribery, for a closed door conversation he had with the sitting mayor about a case in 1751.⁷⁷ Perhaps the best testament to the importance of these Calcutta attorneys comes from a deposition wherein a Bengali merchant named Kitteram recalled that when an Englishman's agent came to him looking to argue over an unpaid debt; his first reply was "I will go first and speak with my attorney."⁷⁸

As indicated by Meredith and Bodley's wide client base, good English court attorneys were seen as absolutely necessary to navigating the confusing world of the Mayors' Courts. In Bombay this became clear on a stifling August day in 1746 when the Mayor's Court dismissed the experienced attorney James Dalrymple for insulting the court.⁷⁹ Within days, several of Dalrymple's clients petitioned the court for his

⁷⁷ BL IOR: H/804, pp. 123-4 (22 July 1751).

⁷⁸ BL IOR: P/155/22 Calcutta Mayor's Court Minutes, 17 November 1744. Both Meredith and Bodley also took on cases lodged by those too poor to pay for an attorney. In 1752-3 James Meredith represented a non-English client who was an admitted pauper, successfully arguing his case all the way through the court of appeals, even preparing a Privy Council appeal on his behalf before the complainant finally reached a settlement

⁷⁹ Attorneys' signatures on bills are hard to come by in the Bombay minutes but Dalrymple seems to have been an attorney throughout the 1740s. There is some evidence he was an active player in Bombay land transactions in the 1730s - see the *Bombay Gazetteer* v.26 part 2, p.392. He was dismissed for his

reinstatement. They wrote that he had “a thorough knowledge of these petitioners causes” and moreover that he possessed an excellent “knowledge of these petitioners language and customs which has enabled him to manage their affairs more to their liking and satisfaction more than they could hope or expect from any other.”⁸⁰ They further insisted that the replacement attorney under consideration by the Mayor's Court was totally unsuitable and inexperienced. The English syntax of the petition was somewhat confused and the Mayor's Court responded by condemning the petitioners as “litigious.” A month later, the court received three new petitions, written in Portuguese, “Gentoos,” [Marathi?/Hindustani?] and “Banians” [Gujarati] noting that the petitioners could not produce well-composed English documents for the court, that they had an “ignorance of English law,” and absolutely needed Dalrymple to return to the bar. The petitioners then reiterated that no other attorney could possibly safeguard their property and interests as well as he.⁸¹ Faced with this popular protest, the court ordered Dalrymple reinstated and he continued to practice for at least another year.

Despite their varied non-legal backgrounds, the best attorneys were nonetheless able to martial the language of English law to the benefit of their clients. In 1730, the Mayor's Court asked the EIC executive to find them someone suitable from the European establishment to serve as fill-in attorney. The council eventually settled upon a twenty one year old non-commissioned gun room officer named John Cleland who had a

“insolence” in appealing a procedural matter on behalf of a Portuguese priest to the President and Council.

⁸⁰ BL IOR P/417/1; Bombay Mayor's Court Proceedings, pp. 340-1 (20 August 1746).

⁸¹ BL IOR P/417/1; Bombay Mayor's Court Proceedings, pp. 362-3 (20 September 1746).

working knowledge of writing and languages.⁸² Cleland thrived in the new occupation and served as an attorney for nearly ten years. When a prominent Hindu merchant at Surat wanted to pursue a case against the former EIC chief at that port, his agents turned “instantly” to the well-known Cleland to prosecute the case in the Bombay Mayor's Court.⁸³ Over the course of the ensuing trial, Cleland made several eloquent speeches accusing high Company officials of abandoning “the laws of my King and country” and caused at least one adjournment so that he could consult precedents and parliamentary statutes.⁸⁴ He argued passionately that the royal charter and the spirit of English justice mandated that the court pay heed to the plight of Indian merchants at the hands of Company abuses.⁸⁵ He lost the case and was roundly castigated by the EIC executive, inspiring him to continue to fight for his client, writing letters to his father in England containing extracts from the case for circulation at home. He later defended his role to the Court of Directors, claiming that it was his “duty” as an officer of English justice to zealously represent his clients.⁸⁶ Cleland later returned to England, not to a legal career, but to a life of literary notoriety for writing the ribald and oft-censored novel *Fanny Hill*.

Throughout the second quarter of the eighteenth-century, the legal fraternity in

⁸² For his appointment see BL IOR P/341/6: Bombay Public Proceedings, p. 210 (26 August 1730) also see William H. Epstein, *John Cleland: a Biography*, (New York: Columbia University Press, 1972), pp.33-5 for this incident. For Cleland's Portuguese ties see Lucia Rodrigues and Russell Craig, “English Mercantilist Influences on the Portuguese School of Commerce in 1759,” *Atlantic Economic Journal* 32.4 (Dec. 2004), pp. 337-41.

⁸³ BL IOR: P/341/8: Bombay Public Consultations, p. 6 (13 December 1734).

⁸⁴ Ibid., p. 8v.

⁸⁵ BL IOR: P/341/8: Bombay Public Consultations, pp. 21-2

⁸⁶ For his letter to the Court of Directors see BL IOR E/1/27: Miscellaneous Letters to London, p.77. This letter was read at an EIC meeting in February 1737. For the letters to his father containing extracts see Epstein, *Cleland*, p.211 n.61.

British India also mastered the complicated procedural logic of the charter courts. Though the name of the exact attorney behind many of the bills submitted to court is unclear, the rhetoric behind them betrays a certain amount of English legal expertise. In 1731 Bombay for example, two Hindu litigants submitted a bill to the Mayor's Court asking the judges to base their decision on "equity and good conscience," a formulation directly from English legal manuals likely unavailable to the litigants.⁸⁷ Likewise, in 1749 Sevajee Daromsett [Shivaji Dharam Seth] placed a replication before the Bombay Mayor's Court arguing that

"...it would appear morally certain to all men who know anything of the practice in Westminster hall and particularly the high court of chancery in England, that such demands would be thrown out with the utmost disrespect."⁸⁸

Though a merchant of credit with longstanding ties to the English, it seems unlikely that Daromsett or an Indian clerk composed such a statement mentioning the high court of chancery.

Other simple turns of phrase in many bills, interrogatories and replications, betray the thinking of an English court attorney who had read a few of the law books present in the settlements. For example, in Madras in 1742, a replication on behalf of Condur Moodelare [Mudialar] claimed that a particular method of endorsing a bond "...hath been custom, a custom time out of mind among the natives of India," showing the efforts of a court attorney to situate south Indian mercantile custom within the more familiar English

⁸⁷ BL IOR P/416/105: Bombay Mayor's Court Proceedings, p. 10 (6 January 1731).

⁸⁸ BL IOR P/417/4: Bombay Mayor's Court Proceedings, p. 198 (28 June 1749).

legal rhetoric which connected customary practice to common law principle.⁸⁹ Still other attorneys used their reading of the statute books sent out with the charter to challenge the court by citing particular parliamentary laws.⁹⁰ In short, both litigants and the Mayors' Courts depended on these attorneys to interpret disputes into an English frame and navigate their chancery-based court practices.

Documentary Regime

Perhaps the most striking feature of the chancery system introduced in the Mayors' Courts was its obsession with written text. Under Woodford's instructions, almost all manner of activity in the Mayors' Courts had to be done in writing. All attorneys' bills, complaints, submissions, etc. had to be submitted in writing to the court as were all depositions and evidentiary exhibits. This emphasis on documentary evidence and very particular textual forms only brought the Indian courts closer to broader imperial practice. In England and English colonies, accepted mercantile practice and statutory laws specified the conditions under which various kinds of documents could be valid for legal purposes. In order to be valid under Woodford's instructions and the rules of the Prerogative Court of Canterbury, a will required witnessing by three persons.⁹¹ Likewise the statute of frauds and perjuries of 1677 mandated that any debt action in the

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⁸⁹ In this case we know that William Dumbleton prepared the written filing. See BL IOR P/328/78: Madras Mayor's Court Proceedings, p. 33 (22 March 1743).

⁹⁰ For example, lawyer James Twiss at Calcutta in 1751 cited 3 James I c. 4 (Popish Recusants Act 1605) in court in order to prevent a catholic witness from testifying.

⁹¹ See Woodford's instructions BL Add. Ms. 16,270 pp. 150-7 for his take on the requirements for wills, nuncupative wills etc. Also see William Nelson, *Lex Testamentaria* (London, 1714), pp.530-2, the standard contemporary legal treatise on the subject - a book which all of the EIC's settlements should have received with the charter (see Fig. 7).

Westminster courts be founded on a properly witnessed written obligation only.⁹² English law abounded with even further provisions for documentary proof. The 1694 stamp act mandated that litigants pay duty to the crown on all pieces of paper and vellum entered into court or official registries.⁹³

In order to start the process of litigation an attorney or litigant had to present his or her bill of complaint and any documentary evidence to the register of the court.⁹⁴ As a result, the registers' offices at the court houses served as the hubs of English legal activity in the settlement, filled with litigants and court attorneys filing paperwork and gossiping about the latest cases in court. The immense number of documents kept, registered, and filed in the register's office serve as one indication of the scope of the documentary regime instituted by the charter. By 1753, the Mayor's Court at Calcutta was paid over 1,000 rupees a year in rent for additional space at the town hall for record storage.⁹⁵ Likewise, in Calcutta in 1740, William Weston, the register, labeled a statement relating to a deceased Englishman's estate as being registered in "Book HH fo.38" indicating the

⁹² 29 Charles II c.3 (1677).

⁹³ 5+6 William & Mary c.21 (1694).

⁹⁴ The register (in modern parlance registrar) had a job nearly as time consuming and arduous as that of the aldermen or attorneys - elected by the aldermen, he was usually either an attorney of the court or another English resident. The court registers seem to have served in their positions for extraordinary lengths of time. The Calcutta Mayor's Court appointed William Weston, a junior merchant in the EIC's service, as examiner and register in 1728 and he continued to serve in that capacity into the 1750s. For a sketch of the life of a later Calcutta register see V.C.P. Hodgson, "William Jackson: Registrar of the Supreme Court 1777-1807," *Bengal Past & Present* 50 (1934), pp.98-100 as well as P.N. Bannerjee, "The Registrar in the Early English Judiciary in Bengal," *The Quarterly Review of Historical Studies* 11.2 (1971-2), pp. 102-6.

⁹⁵ This transaction was noted in the Calcutta Public Proceedings of 1 November 1753, see Henry Hyde, *Parochial Annals of Bengal: being a history of the Bengal ecclesiastical establishment of the honourable East India company in the 17th and 18th centuries* (Calcutta: Bengal Secretariat Book Depot, 1901), p.89.

sheer number of registered documents kept by the court.⁹⁶ The registries at the Mayors' Courts also often held registers of bonds, mortgages, wills, and other documents not directly involved in ongoing litigation.

This kind of paperwork played a vital role in a mercantile world replete with questionable documents, forgeries, and complex written instruments. The impetus in part for this record keeping was the countless cases at the Mayors' Courts wherein litigants brought old bonds or mortgages into court that carried purported endorsements, transfers, or cancellation. As a result of this confusion a good number of Court decrees, especially in Madras, ordered litigants to present their bonds or documents to the court register so that he could officially cancel or register them, thereby preventing future fraudulent transfer or sale.⁹⁷

The documentary authority of English law and procedure emerged as especially important in the legal practice surrounding wills and estates. The majority of the courts' business concerned the lengthy process of commerce-related litigation, but among European litigants especially, there was a significant demand for paperwork and judicial action in estate matters. Prior to the 1726 charter, dividing up estates was largely an ad-hoc business controlled by individuals of the EIC executive; after its arrival, the Mayors' Courts and English testamentary law governed all such disputes.⁹⁸ Indeed, Woodford felt this aspect of Mayor's Court practice was of such particular importance that he dedicated

⁹⁶ Copy in BL Add. Ms. 69,389: Francis Russell correspondence, p.136.

⁹⁷ BL IOR P/328/78: Madras Mayor's Court Proceedings, p. 37 (21 February 1744: Moodelare v. Raiapah).

⁹⁸ Shaw, *Charters*, pp.246-7.

nearly one third of his book of instructions to explaining legal practice in estate matters.⁹⁹

Many residents filed their wills with the court and their executors often went to the Mayors' Courts to have them probated in turn. These actions tended to be largely restricted to Englishmen and were usually quite brief, with challenged wills being comparatively rare in the records of the court. The majority of Mayor's Court cases involving estates, however, related to persons who died without a will. According to Woodford's instructions and the practice of the Prerogative Court of Canterbury, when an inhabitant died intestate, the relatives or greatest creditors of the deceased could apply to the Mayor's Court for letters of administration to the estate and offer security to properly divide the estate. The court could then grant administration to those applicants it so deemed to be proper administrators and order them to bring an account of the estate. In cases where no one came forward to claim an estate, the courts could appoint administrators out of the largest creditors to administer it. The Mayors' Courts even periodically posted notices throughout their cities to inform the populace of recent English deaths at other EIC settlements, the Persian Gulf etc. so that potential claimants could come to the court to make demands.¹⁰⁰

Untangling the accounts of a deceased merchant was obviously a contentious business, especially where no will was present. In addition to relatives, the creditors and business partners of deceased inhabitants took advantage of this chartered testamentary practice and sought the administration of their estates. These creditors frequently tried to

⁹⁹ BL Add. Ms. 16,270, pp. 146-217.

¹⁰⁰ BL IOR P/155/10: Calcutta Mayor's Court Minutes, 17 August 1728.

jockey for position and collect their debts first, ahead of what was sure to be a ravenous pack or other lenders. Consequently, a written certificate of administration sealed and filed by the chartered court could be worth its weight in gold.

The Mayors' Courts clearly understood that it was essential to establish faith and credit in texts in order for the settlements (and their own trade) to flourish. At various times both the courts and the EIC executive even tried to force litigants to register all bonds in their registry or else not be able to litigate them. Though EIC lawyers in London vetoed this proposed policy, the court still attempted to compel inhabitants to come to the English court for documentary matters.¹⁰¹ Yet even without such a requirement, where the Mayors' Courts led, residents of the cities followed. As early as the 1730s it was well established in local legal custom that the court register's seal on a document, whether a will or a bond, could lend great weight to it in practice in the courts of both India and England. In the 1740s, for instance, a Bengali litigant involved in a difficult debt case took his mortgages and financial instruments to the Mayor's Court in Calcutta for registration prior to beginning a suit explicitly so that they would be receive greater credit in the course of any litigation.¹⁰² Likewise, when two parties in England contested the settlement of an East Indian estate in the Prerogative court of Canterbury, they submitted a Calcutta will stating:

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¹⁰¹ In Bombay, the Mayor's Court more explicitly sought to make its register's office the primary home for all mortgage and property documents - see for example BL IOR P/416/101: Bombay Mayor's Court Proceedings, p.55 (26 March 1729). They were at least successful in part if we can judge by the mention in various suits of a number of registries, including "Portuguese mortgage books" kept by the court.

¹⁰² BL IOR P/154/46: Calcutta Mayor's Court Minutes, 7 April 1747.

“...all acts certificates copys and other writings signed and attested by said William Weston as register and to which the said seal of the Mayor's Court of Calcutta aforesaid is affixed full faith and credit is and ought to be given in court.”¹⁰³

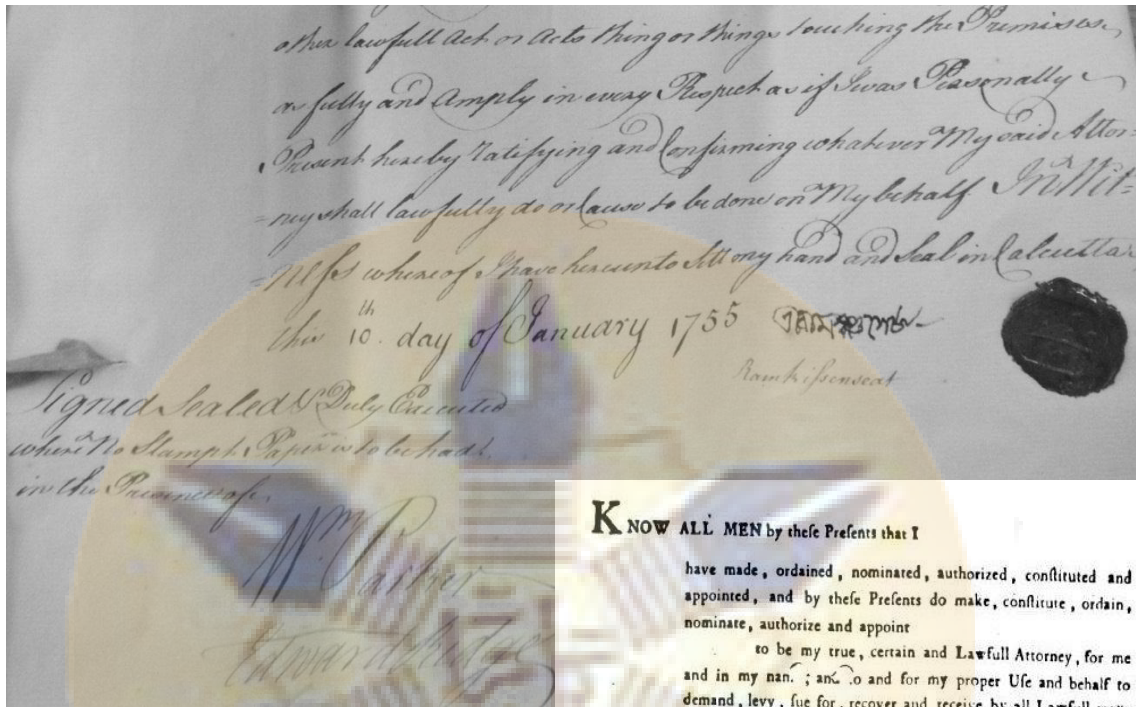
This reliance on the Mayors' Courts as sources of documentary authority was especially apparent when it came to sending documents to England. From 1728, the Calcutta Mayor's Court recognized an official notary public for the settlement to seal, draw up, or attest to any documents.¹⁰⁴ The seal of these notaries appears widely on documents sent back to England. They appear to have followed all the conventions stipulated by English law - in many cases, marking documents according to the provisions of the Stamp Act “where no stamp paper is to be had.” Figure eight below shows two examples of the detailed English paperwork used by litigants in filing claims at the court. This increasing importance of English documentary practice highlights just one place where the Mayors' Courts and English legal practice inserted itself into the everyday legal culture of the EIC settlements.

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¹⁰³ BNA PROB 18/45/56: Carter v. Cheveley (1731).

¹⁰⁴ For George Thompson becoming a notary public see BL IOR P/155/10: Calcutta Mayor's Court Minutes, 30 November 1728.

Figure 8: Court Documents



Above:

A 1755 power of attorney granted by Ramkissen Seth. Witnessed by a notary public and Edward Ridge, a Mayor's Court attorney.
Source: UKNA PRO J/90/380

Right:

A 1764 power of attorney form nearly identical in wording to the manuscript form above. This blank form was printed at Madras for use in the Mayor's Court there. It is the second oldest known imprint from Madras.

Source: Gérald Duverdier, "L'apparition de l'imprimerie à Madras et sa disparition à Pondichéry," Gutenberg-Jahrbuch (1976), p. 353.

K NOW ALL MEN by these Presents that I

have made, ordained, nominated, authorized, constituted and appointed, and by these Presents do make, constitute, ordain, nominate, authorize and appoint

to be my true, certain and Lawfull Attorney, for me and in my nan. ; and so and for my proper Use and behalf to demand, levy, sue for, recover and receive by all Lawfull ways and means whatsoever, of and from all and every Person and Persons whomsoever, whom it doth, shall or may concern, all and every such Sum and Sums of Money, Debts, Dues, Goods, Effects, and things whatsoever, which now are and shall be and grow due, owing, payable or belonging to me the said

upon or by virtue of any Bill, Bond, Book, or upon Account of trading or dealing, or upon any account, ways or means in any otherwise howsoever, and if need be to call to Account and bring to a Reckoning all or any Person or Persons concerned in the premises, and upon Receipt and Recovery of all or any such Sum or Sums of Money, Debts, Dues, Goods, Effects or other Things or any part thereof, sufficient Acquittances and Discharges for me and in my name from time to time to make and give, GIVING and by these Presents granting unto my said Attorney full Power and Authority in and touching the premises, to sue, pursue, arrest, attach, seize, sequester, implead, imprison, condemn, and prosecute, and thence and thereof again to acquit, discharge, and out of prison to release, also for me to appear, and my Person to represent in all or any Court or Courts or other places as demandant or defendant in any Suit, Action or Appeal for or by reason of the premises, likewise one or more Attorneys under him to set, substitute and appoint and again at pleasure to revoke, and generally to do, act and perform all other Matters and things in and towards the premises requisite and necessary as fully as I myself might or could do, were I personally present, and I do hereby ratify and confirm all and singular whatsoever my said Attorney or his Substitute shall legally do or procure to be done in and touching the premises. IN WITNESS whereof I have hereunto set my Hand and Seal in Fort St. George aforesaid this

SIGNED, SEALED and deliver'd
where no stamp't paper is to be had,
in the presence of

Court Day

The most visible and time-consuming facet of the new chartered legal order in the EIC settlements was the pursuit of civil litigation in the Mayors' Courts. The process of taking any such dispute “between party and party” through the Mayors' Courts was predicated on the chancery-inflected practice laid out by Woodford in his instructions. Accordingly, the procedure in each case remained standard and replete with multiple steps, each requiring progressive amounts of documentation and fees. However, the complexity of a dispute and the decisions of litigants, attorneys, and the court could result in a wide variety of actual court experiences. As such, these cases could take anywhere from two weeks to four years to reach a conclusion and involve a few folded sheets of paper or entire folio books of dense text. Regardless, these were rarely lively proceedings. As one Madras governor commented, the work of the court in civil matters consisted of listening to endless “...dry and formal pieces as were produced by the attorneys...which required a long and fixed attention to form a judgment...”¹⁰⁵

The formal English written bill of complaint produced by a litigant or attorney to begin court proceedings could not be an off-hand or colloquial screed but rather had to be constructed according to the formal requirements of the chancery and the book of instructions. Most began:

“Humbly Complaining sheweth unto this honorable court your orator [name and description of complainant], inhabitant of [city]...”

¹⁰⁵ See BL IOR E/1/38: Miscellaneous Letters to London, p.84e (9 December 1754) for this letter reporting on the Mayor's Court of 1734-5.

The bills then recited the matters of fact, details of the case, the type of complaint being made, the date and interest of debts contracted (if applicable). In equally formal language these complaints ended with requests for the respondent (defendant) to provide sworn answers to all allegations and for the court to accordingly provide the complainant particular or general “equitable relief” in the matter (usually a specific monetary sum). The length and complexity of these complaints obviously differed markedly in practice depending on the type of dispute. In Madras and Bombay, initial bills rarely exceeded several pages in length and could be as short as a paragraph in the case of simple demands for unpaid debts.

After producing this written bill of complaint a litigant or his/her lawyer brought it to the mayor or another alderman for final approval either during a court day or at their homes or court offices.¹⁰⁶ In rare cases, when approving a bill, the mayor or aldermen could order court officers to seize a respondent who they felt posed a flight risk in between court-days.¹⁰⁷ In the same vein, the mayors might sometimes order the parties into arbitration if he so chose. Otherwise, the attorney or litigant would then bring the signed bill to the register to have it docketed for a court day.

In all three cities, the aldermen of the Mayors' Courts held a court day roughly once a week at the local courthouse to hear cases and hand down judgments. In Bombay and Calcutta this court day was usually Saturday; in Madras it tended to be a Friday.

¹⁰⁶ Among other examples see a mention of the mayor of Madras signing a bill after hours BL IOR P/326/69: Madras Mayor's Court Proceedings, pp.202-8 (10 June 1734).

¹⁰⁷ See BL IOR P/155/10: Calcutta Mayor's Court Minutes, 22 June 1728 wherein the mayor put peons on a defendant so he wouldn't flee.

However, the aldermen often convened extra court days due to large caseloads or extraordinarily complex matters. The Calcutta Mayor's Court, for instance, met 47 times in a mere 6 months of 1753.¹⁰⁸ Madras aldermen complained that in order to deal with their caseload they had to meet “...constantly once a Week, and very often twice, for three Hours, and frequently for five hours.”¹⁰⁹ The courts could also meet at less frequent intervals based on holidays, the season, or the availability of aldermen.¹¹⁰ The aldermen usually sat in court during the morning or afternoon, avoiding the mid-day heat, but business could drag on into the night - as suggested by the thirty pounds of candles the Calcutta Mayor's Court consumed during the first six months of 1744. Despite these efforts to avoid the heat, court day could be positively long and unpleasant in the oppressive summer weather with those gathered in the courthouse “sweating away” during litigation.¹¹¹

Court day and indeed most chartered legal activity in the EIC settlements took place in the buildings housing the Mayors' Courts, registers offices, and the periodic criminal quarter sessions. These courthouses served as explicitly English spaces in cities otherwise dominated by local political and cultural forms. They were all located within their respective cities' walls at the heart of their European governmental and mercantile districts. In Calcutta the Mayor's Court outgrew its original borrowed venue and by 1733

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¹⁰⁸ BL IOR P/1/27: Calcutta Public Proceedings, pp. 278-9.

¹⁰⁹ Love *Vestiges*, v.2, p.498-9.

¹¹⁰ The aldermen in Bombay and Calcutta would hold court late into the day on Christmas Eve, but in Bombay would occasionally adjourn for up to two weeks to mark the Diwali holiday - see BL IOR P/417/10: Bombay Mayor's Court Proceedings, p. 164 (27 October 1755).

¹¹¹ BL IOR E/1/38: Miscellaneous Letters to London, p.84e (9 December 1754) for this letter reporting on the Mayor's Court of 1734-5.

rented rooms at Richard Bouchier's newly built school for the protestant education of poor Europeans. This building became commonly known as the court house and served as the home of the charter courts until 1773. With its coterie of robed schoolboys wandering the hallways the atmosphere of this English courthouse must have presented a marked contrast to the customary Cutcherry which stood just a matter of yards away.¹¹² In Bombay the courts remained in their warehouse lodgings within the city until well into the 1770s, acquiring the moniker of "Town Hall" after the arrival of the charter.¹¹³ The new Madras Mayor's Court took over the courthouse built for the old court in the 1690s, across from St. Mary's church in the center of the European part of Madras. The building was distinctively European in design and featured a cupola, vaulted roof, and a dragon-shaped weather vane (in honor of St. George for whom the English fort was named).¹¹⁴

At the front of these courtrooms sat long tables draped in green cloth with the aldermen dressed in ceremonial gowns of red taffeta arrayed behind them; elsewhere in the courtroom velvet cushions displayed the large corporate scepter and chain.¹¹⁵ Other English court officers arrayed in ceremonial dress would also have been present in court

¹¹² See Figure Nine below. On the courthouse see C.R. Wilson, *Old Fort William in Bengal* (London: John Murray, 1906), vol. 2, pp. 162-3 quoting a 27 April 1761 letter from the churchwardens relating the early rental of the school building to the court. For a fuller description see Kiran Nath Dhar, "Old Calcutta," *Calcutta Review*, no. 252 (April, 1908), pp. 174-185.

¹¹³ *Bombay Gazetteer*, v. 26, part 3, pp. 614-15. For several maps of the city and a discussion of its 18th century history see Dulcinea Rodrigues, *Bombay Fort in the 18th Century* (Bombay: Himalaya, 1994).

¹¹⁴ *Love Vestiges* v.1, p.559. This courthouse fell out of repair by the 1740s and the court was forced to rent a one-story low-roofed dwelling-house in the European city until the 1750s when it moved into a vacated merchant's mansion. See also *Love Vestiges*, v.2, pp. 498-9 reproducing a Mayor's Court letter on this subject from 20 June 1757.

¹¹⁵ The Calcutta Mayor's Court appears to have preferred the red taffeta gowns - see BL IOR P/1/27: Calcutta Public Proceedings, pp. 278-9 for the court buying new gowns for 29 rupees in 1754. The velvet chain cushion is mentioned by the Calcutta aldermen in 1755 BL IOR P/1/28: Calcutta Public Proceedings, p.188.

to keep order and the official minutes of the court. These impressive manifestations of English legal authority were common throughout the British imperial world and served to remind all who came before the court of the power of English law and the aldermen themselves.¹¹⁶ These court days were not amateur proceedings to be ignored or laughed at. The aldermen not infrequently wielded the power to fine or summarily imprison any litigant or resident for slighting the court. On other occasions they required more drastic penance. In 1729, an Englishman named Thomas Rich made the mistake of ridiculing the aldermen in the streets of Bombay. The mayor forced him to crawl on his knees to the front of the courtroom where the aldermen harangued him about his “presumption to treat magistracy in the manner he has done” until he publicly asked for pardon.¹¹⁷

Given the importance of the public spectacle of English justice, spectators were allowed into the town hall for each meeting of the court. As English was the official language of the court and of the attorneys, the proceedings would have been unintelligible to the large segment of the population who could not understand it. As a result, this body of spectators was most likely skewed toward the local mercantile, political, and religious elite who either had business at court or were called there to testify.

There would of course also be a variety of people waiting to appear in court, either to hear a final decree in their case or in response to a summons at the beginning of a suit. In several cases, the court register recorded the presence of these third parties in

¹¹⁶ For more on the importance of spectacle see A. G. Roeber, “Authority, Law, and Custom: The Rituals of Court Day in Tidewater, Virginia.”

¹¹⁷ BL IOR P/416/101: Bombay Mayor's Court Proceedings, 23 April 1729.

the courtroom. For example, in 1730, a spectator at the Bombay court named Bopajee “confronted” an attorney in the courtroom during the court day and accused him of lying in his representation of a cause.¹¹⁸ Likewise in a Madras case, an Armenian merchant happened to be in court on another matter when he heard a bill read against him for a debt due to a Chinese tea broker.¹¹⁹ In those cases involving prominent persons or matters of great civic import there might be even larger audiences. For instance, an English witness to one heated 1734 case at Bombay involving a wealthy Hindu merchant and a member of the EIC council reported that the oral arguments in court were quite scandalous to the “cloud of witnesses” attending, including many prominent Indian merchants and five members of the EIC executive council.¹²⁰

The spectators at court would have seen a variety of proceedings from cases at all stages of litigation from the first reading of a bill to a final decree. Typically, though, the Mayors' Courts began their court days by having the court register or some other court official read the new bills of complaint docketed for that day. The number of such new bills submitted to the court varied wildly, on some court days there were none, and on other occasions, as on one 1744 Calcutta court day, there were over a dozen. After the reading of a bill of complaint, the aldermen could decide whether to order the respondent to answer the complaint in writing within two weeks or, upon petition from the complainant, they could order the respondent immediately arrested and his or her goods

¹¹⁸ BL IOR P/416/103: Bombay Mayor's Court Proceedings, pp. 165-8 (29 July 1730).

¹¹⁹ BL IOR P/329/69: Madras Mayor's Court Proceedings, p. 11 (14 January 1755 - Transuagua v. Marcur Petrus).

¹²⁰ See the letter from Robert Cowan entered in BL IOR P/341/8: Bombay Public Proceedings, pp. 10-12 (12 December 1734).

sequestered until the suit's resolution. In the early days of the Mayors' Courts the aldermen ordered this latter step quite often. Thus, in the first year of the Calcutta for instance, nearly every suit began with the court ordering the arrest of the respondent.¹²¹ More commonly though the aldermen present at court would simply sign a warrant to the sheriff to serve a summons on the respondent to appear in court within two weeks.¹²²

The sheriffs and their officers delivered hundreds of these summons and other writs over the course of a year. According to the charter, the sheriff of each city was to be initially the most junior member of the EIC executive and afterwards elected by the executive every December 20th.¹²³ The sheriff executed all processes of the Mayors' Courts and also served as a functionary of the criminal quarter sessions. If an inhabitant of one of the EIC settlements was unlucky enough to receive a visit from the sheriff or his deputies he could not afford to ignore it. The Mayors' Courts and their officers deployed a

¹²¹ However, after several years and complaints from legal advisors in London, it seems that the courts began to require compelling reason to order immediate arrests - by the 1750s; complainants had to prove that there was an immediate risk of flight for the aldermen to take this extreme measure. The EIC's legal advisors wrote to Bombay in 1731 that the courts could not imprison respondents and sequester their goods at one fell swoop - it was to be an either/or proposition. See BL IOR E/3/105: Letters to Bombay, para.132 (12 March 1731).

¹²² Woodford, in his book of instructions, modified this instruction to allow any one alderman to sign summonses to give to the sheriff. See BL Add Ms. 16,270, p. 4.

¹²³ Shaw, *Charters*, pp. 223-4. Slightly altering this, the Company directors specified in their letter of instructions with the charter that the EIC executive was merely to "appoint a sheriff." see BL IOR E/3/103: Letters to Madras, para. 2 (17 February 1727). In Madras, at least, the EIC council considered the position a sinecure to be handed out to its favorites both because of the power of the office and the fees it generated. In 1737, the new sheriff of Madras, Thomas Cooke, wrote to a friend in London that the Governor of Madras "...had caused him to be elected sheriff...which may bring in 3 or 400 pagodas [~175 pounds] more or less for the perquisites are very uncertain." Letter from Cooke to Thomas Hall in London dated 28 January 1737. See BNA C103/132. The sheriff and his serjeants earned this money from fees levied on every process they served. The charter instructed the courts to require oaths of allegiance from all court officers and the Company further advised the courts to primarily hire EIC servants for the job. See letter of instructions in Smith, *Some Records*, p. 12 also Shaw, *Charters*, p. 247. As a result, the sheriffs of the charter courts were always Englishmen. For brief biographical notes on the sheriffs of Calcutta see Evan Cotton, "The Sheriffs of Calcutta: 1727-1930," *Bengal Past & Present* 38 (1929), pp. 1-14, 93-115 and 39 (1930), pp. 153-5.

host of persuasive measures on behalf of litigants in order to ensure that their opponents did not side-step the processes of English law. In suits involving the risk of flight or exceptionally large sums, the sheriff could arrest a debtor as soon as the court issued a warrant. If a respondent failed to appear in court after being duly summoned, the sheriff could then find him, seize his goods, and/or confine him to prison.

Each Mayor's Court also had a jailer and a jail and its disposal. The Madras and Calcutta courthouses both featured attached or basement cells and in Bombay the court sent all its prisoners to the military jail within the nearby EIC fort.¹²⁴ It is unclear how many Mayors' Court prisoners these jails held at any one time, but they were most certainly not pleasant places. In Bombay, prisoners received just a small morsel of rice every day which had to be paid for by his prosecutor and added to whatever ongoing debt was at issue.¹²⁵ In many cases the sheer act of imprisonment could compel to seek an immediate settlement. In 1744, for instance, Hindu merchants filed a bill of complaint against two Muslim supercargoes whose ship had just docked at Bombay. These two had apparently borrowed hundreds of rupees for a voyage to Goa some time prior but had never repaid their investors at the conclusion of the voyage. Given these circumstances, the Mayor's Court ordered the sheriff to seize the ship in the harbor as well as to arrest the supercargoes when he issued his summons. Within two weeks of their imprisonment, and without ever submitting a response to the charge, the supercargoes acknowledged their

¹²⁴ For the Madras jail see Love *Vestiges*, v.1, p.559. The Madras MC reported in 1734 that their jail was in such bad repair that they had to keep all debtors in the same room BL IOR P/329/69: Madras Mayor's Court Minutes, p. 189 (31 January 1734).

¹²⁵ If litigants failed to pay this allowance the court would free their debtors see for example BL IOR P/416/119: Bombay Mayor's Court Proceedings, p.30 (8 February 1744).

debt and the court ordered them released from prison.¹²⁶

The Mayors' Courts also frequently exercised their right to sequester and sell the property of those litigants who never appeared in court to answer to a complaint. The records of the courts are full of the notation “The sheriff returned the warrant endorsed non est inventus” or in other words, that the person summoned could not be found within the confines of the city. Undoubtedly some litigants skipped town entirely in the face of impossible debts. However, in a number of cases it is clear that litigants would file suit in the Mayor's Court specifically because their opponent was not present in town to respond - something which would hardly have been uncommon in a port city with many traveling merchants. In these cases the Court ordered the sheriff to seize all of the respondent's property in the jurisdiction in order that it could be eventually sold to satisfy the demand. These sequestrations were quite common in all three settlements and at any given time the Mayors' Courts could be custodians of large amounts of property and cash. After a sequestration a complainant could ask the court to order a court sale of these goods. Public sales could occur quite swiftly, in some case as little as ten days after a respondent failed to appear in court.¹²⁷ These court sales, backed up by chartered authority, allowed the speedy collection of debts but also may have contributed to increasingly large property redistribution over the course of the century.¹²⁸

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¹²⁶ BL IOR P/416/119: Bombay Mayor's Court Proceedings, 4+25 January 1744 (Jeva et al. v. Mahomet Tindall et al.).

¹²⁷ See BL IOR P/328/66: Madras Mayor's Court Proceedings, 15 April 1728 for an instance of a ten-day sale.

¹²⁸ In just one sale in 1728 Madras for example the sheriff sold seized goods at outcry for 804 pagodas (~£350). See *ibid.*, 27 August 1728.

Those litigants not interested in absconding or being imprisoned had two options - appear in court within two weeks to file a written response, or acknowledge the debt/settle with the complainant out of court. Though most litigants seem to have chosen the first option, for many others the mere filing of a bill in court, even without imprisonment or the attachment of goods, compelled them to settle with their creditors.¹²⁹ There is evidence from all three cities of complainants withdrawing their bills of complaint within weeks of filing, indicating in some cases that out of court settlements had been reached. For example, when a Chettiar merchant at Madras presented a bill of complaint to the Mayor's Court against a debtor in 1743, the debtor approached him immediately to offer a settlement.¹³⁰ Attorneys helped facilitated this process. For instance, after being hired by a respondent in a suit over a cardamom contract, Joshua Bodley visited the complainant at his place of business and implored him to accept an out of court settlement.¹³¹ This course of action spared both parties potential expense and embarrassment as well as the necessity for engaging further with the intricacies of the court.

¹²⁹ In Madras this happened with some frequency, in at least 14 cases in 1744, respondents told the court that they acknowledged their debt and asked for an end to litigation - usually doing so within two weeks of a creditor filing a first bill. I located about forty bills in the records filed that year though there were undoubtedly quite a lot more given the nature of the Madras record keeping system. In 1744 Calcutta, at least twenty complainants (out of the 130 cases brought that year) dropped their suit after coming to an agreement with their opponent. For more on negotiating in the shadow of law see Edward Balleisen, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (Chapel Hill: University of North Carolina Press, 2001).

¹³⁰ BL IOR P/328/78: Madras Mayor's Court Proceedings, p. 203 (4 October 1743 - Chitty v. Mereal). In another instance, two days after a prominent Bengali cloth broker sued a man named Shaik Diam over a debt, the broker withdrew his suit and offered to pay the court costs himself, indicating that Diam had agreed to a rather satisfactory settlement - see BL IOR P/155/22: Calcutta Mayor's Court Minutes, 10+12 December 1744. In other withdrawn cases the respondent paid all costs see *ibid.*, 5+9 May 1744 (Bingham v. Adriaens).

¹³¹ BL IOR P/155/22: Calcutta Mayor's Court Minutes, 3 November 1744 (Burton v. Langworth).

A majority of respondents though chose to engage their prosecutor through the prescribed Mayors' Court method - the answer. When a respondent received a summons to appear in court he or she had two weeks to file a written answer to the complaint. These answers, like all other court documents, had to be approved by court attorneys, and were usually written by them as well. Occasionally this process of writing and legal consultation is evident in the records of the court where respondents or attorneys ask for a time extension so that an attorney could prepare an answer.¹³² These written answers needed to be carefully prepared as according to chancery practice the major questions at issue were those of fact and a respondent could be compelled to swear to the veracity of his statements. Accordingly, these answers almost always began with the common English formulation:

“This defendant saving and reserving to himself all manner of benefit and advantage of Exception to the many Errors and Imperfections in the said Bill...”

The respondent and his attorney would then attempt to rebut the various assertions made in the original bill of complaint. These answers were often longer and more free-ranging than the original bill of complaint. Answers in the dozens of pages were not uncommon in Calcutta. Attorneys and litigants could also include both points of law and fact in their answers, which ranged from long-winded excuses to claims on customary law, to complaints about procedure.¹³³ At the next available court day the court would then read

¹³² See for example BL IOR P/416/101: Bombay Mayor's Court Proceedings, 19 February 1729 (Padre Alcantara v. Deogo d'Coasti) in which one attorney asked for an additional week to prepare a response.

¹³³ In one 1744 Bombay respondentia dispute, the respondent who had allegedly never paid back his investors claimed that it was miraculous that his ship happened to be in the harbor. He claimed to have lost it to some pirates months prior and was shocked! Shocked! to see it now returned: BL IOR

both the original bill and the answer out-loud in court and ask the original complainant if he wished to enter an official reply or “replication” disputing the facts in the answer. In some cases, largely those impinging on customary laws or perplexed matters of account, the aldermen could appoint arbitrators for both parties and ask them to settle the dispute out of court. If the original complainant chose not to file a replication both parties could then ask to depose witnesses or move directly to judgment.

When litigants did file replications it was usually a sign of a hotly contested suit and in most cases their opponents responded in kind with a rejoinder, that is, a response to the replication. These replications and rejoinders rarely appear to have added substantive or new information to a case and often included scandalous statements and indictments of an opponent’s character. Replications and rejoinders were by no means rare in the courts, but they seem to have been less common.¹³⁴ Undoubtedly the fees charged by court attorneys and the time required to continue the litigation dissuaded many litigants from taking these next steps. After the litigants completed this argumentative stage of a suit and the filing of bills, the courts moved towards making a judgment based on the evidence available, both through written exhibits and witness testimony.

Evidence

When litigants came before the Mayors' Courts they almost always supplemented their cases through documentary and oral evidence. Few of the submitted written exhibits

P/416/119: Bombay Mayor's Court Proceedings, 11 July 1744 (Sancar v. Kirojee Purvoo [Prabhu]).

¹³⁴ In the first quarter of 1753 in Calcutta, litigants filed 34 bills of complaint as opposed to only 9 replications and 10 rejoinders.

survive in the Indian archives but the most relevant documents submitted in each case were usually copied verbatim into the court record.¹³⁵ The majority of these are written commercial documents -- bonds, mortgages, contracts, etc. -- which litigants entered into court to lend credence to a claim or which were the original source of the complaint. The Mayors' Courts required that all actual complaints and bills entered in the courts be submitted in English, but written exhibits as well as spoken testimony frequently required translation from a myriad number of languages before it could be brought to court. To undertake this arduous work the courts employed examiners and translators to officially confirm the validity of written exhibits as well as to take sworn testimony from the hundreds of witnesses deposed over the course of the court's business.¹³⁶

The witness testimony phase of a trial in the Mayors' Courts brought the experience and knowledge of an entire settlement into the courthouse. The attorneys for each party first chose the witnesses they wanted to present to the court, almost without limit. The attorneys then presented the examiner and translator of the court with a list of questions to be put to the witnesses. This procedure of course matched almost identically

¹³⁵ The Tamil Nadu State Archives in Madras contains a number of account and letter books (1760s and 70s) relating to Francis Jourdan as part of the Mayor's Court records there.

¹³⁶ See BL IOR P/328/78: Madras Mayor's Court Minutes, 18 January 1744 for Joseph Githin's appointment as examiner in charge of translating all bonds and exhibits. These examiners occasionally doubled as translators or performed duties similar to the register. The courts' translators earned fees for every sheet of paper they translated, for all translated summons sent via the sheriff to "Black inhabitants," as well as varying percentages of the total award in cases requiring translation. In Madras and Bombay these translators came from a mix of European and Indian backgrounds as one would expect. However, the court at Calcutta seems to have employed primarily European court translators. This reliance on European translators possibly reflects the high opinion the aldermen of Calcutta seem to have had of their own language skills. In 1753, when the attorney for an English litigant objected that the court translator had not attended the last court day, the aldermen replied that the translator was sick but though the proceedings lasted 4.5 hours, no one took notice or objected to his absence and that they themselves had finalized and approved all translations for the official record. BL IOR P/155/27: Calcutta Mayor's Court Minutes, 6 March 1753.

that of the English Chancery.¹³⁷ Attorneys could submit lists of interrogatories as short as a couple of questions or, in rare cases, well over fifty. It might take months for the examiner and translator to administer these depositions, which usually took place outside the confines of the courtroom at their own offices or at the rooms of the litigants' counsel. In some cases this phase could drag out even longer if the court appointed commissioners to travel to distant ports in order to collect testimony.

Convincing the aldermen-judges of the truthfulness and justness of one's demand was the primary aim of the attorneys and litigants in constructing deposition interrogatories. These interrogatories were so influential and wide-ranging because the equitable principles enshrined in Chancery practice allowed judges to use nearly any information available to make their decisions. Accordingly these questions usually fell into three broad categories. The most common ones sought to establish the veracity of minute factual details at issue in a dispute. Attorneys might ask an eyewitness to a loan to state what interest rate he remembered the litigants agreeing on. Or, as in a 1746 Bombay dispute over property, attorneys could attempt to prove the authenticity of documentary evidence, e.g. “Look upon the paper marked N. 1 now shown you, is not the same the last will and testament of...”

In other cases litigants and attorneys used their interrogatories to undermine or bolster a litigant's personal credit and trustworthiness. These questions could be used to cast doubt on a litigant as in “Do you know of his [respondent's father] being put in

¹³⁷ For comparison to these Indian interrogatories below see a typical set from a contemporary English Chancery case in BNA C17/234.

chains and kept prisoner on the top of a mountain at or about Arcot for a debt?" or "do not people commonly when they see a man that has credit say that he is a rich man and afterwords when he is dead find him to be bankrupt?" In other instances litigants used their questioning to directly bolster their credit. In one Bombay case, a Muslim complainant from the Persian Gulf called seven witnesses on his behalf solely to testify to his financial situation and trustworthiness. These included many of the prominent Muslim merchants of Bombay, including Hadji Ali Ben Ahmed, who swore that the litigant was worth at least 10,000 rupees (~£1,500) and that his father was a judicial officer in Arabia as well as a "man of credit."¹³⁸

When witnesses answered these interrogatories or when litigants made claims in their own bills they did so under oath. This point is crucial to understanding one of the ways in which the chartered legal order weighed heavily on litigants and inhabitants of the three cities in general. According to English practice, as prescribed by Woodford and Hungerford, all depositions and, for that matter, any written or spoken declaration to the court, including bills and answers, had to be sworn to by their author on pain of criminal prosecution for perjury. The standard form prescribed for such a declaration in England and the English world was an oath taken on the gospels. In the strictest interpretation of English law, anyone not willing to take such an oath was barred from having any say at court. Obviously this became a sticking point from the first days of the court, given both the centrality of trustworthy testimony to the proceedings of the court and the number of

¹³⁸ BL IOR: P/416/103: Bombay Mayor's Court Proceedings, 19 August 1730, pp. 205-6 (Sheik Isooph v. Ransor Banksallee).

non-Christians appearing in court proceedings.

Woodford had anticipated this problem with depositions and had ordered in his instructions that non-Christian witnesses swear “...in such manner as to suit such witnesses and the solemnity of the occasion and thing to be done.”¹³⁹ Though a deviation from the main-stream of English legal thought, this instruction opened the door of the chartered courts to all manner of litigants.¹⁴⁰ The Mayors' Courts and criminal courts used Woodford's reasoning to formulate dozens of customary oaths for non-Christians so that they could participate in the English legal order. Yet for many inhabitants the very act of taking a binding oath of any kind brought them into conflict with the new legal regime.

The Final Decree

After attorneys and litigants finished presenting all the depositions, exhibits, and bills in a suit, the judges of the Mayors' Courts would set a date for the case to come to “issue.” Unfortunately, extant evidence makes it difficult to get a sense of what these final proceedings looked like. On some occasions, in this final phase, the attorneys for both parties came into court yet again where the Court sometimes allowed them to engage in oral pleadings if they wished.¹⁴¹ The aldermen could then clarify any questions they might have about the evidence presented to date. As part of this process, they could call witnesses into court and put questions to them of their own devising *viva voce*.

Though legal elites in London frowned on this practice early in the history of the courts,

¹³⁹ BL Add. Ms. 16,270, pp. 25-6.

¹⁴⁰ For more on Metropolitan conceptions of oath-taking and legal subjecthood see Chapter Six.

¹⁴¹ In the first month of the Court's operation the minutes record that the issues in a case were “debated before this court by the clerks on both sides.” See BL IOR P/328/65: Madras Mayor's Court Proceedings, 5 September 1727 (Charles Boddam v. the Trustees of the George Petty estate).

the aldermen continued to rely on courtroom questioning in cases of local customs or when they did not trust testimony read into court.¹⁴²

It is unclear how long the aldermen spent deliberating on the final decree in each case, but they almost always presented their decision on the same day as they called all parties to court.¹⁴³ In a very few cases it appears that before reaching a decision, the mayor or senior alderman on the bench provided the other sitting aldermen with a summary of the case to date, including the evidence on each side, and what expert witnesses had said.¹⁴⁴ A majority of aldermen needed to agree in order to issue a verdict, but the breakdown of votes amongst the aldermen in any given case remains almost completely opaque in available records. In especially contentious matters aldermen could choose to have their disapproval of a decree noted on the record, but this seems to have been exceedingly rare. The minutes of the court also provide little information on how the aldermen came to their decisions, instead merely recording a decree in the form of a summary pronouncement, usually beginning along the lines of:

“This court having maturely weighed and duly considered the Pleading therein together with the allegations of the attorneys for both partys are of opinion that the complainants bill might be dismissed...”

This form of simple decree is not surprising and would have been common in corporation courts throughout the British world, not to mention in the court of Chancery

¹⁴² The EIC's legal advisors castigated the Mayor's Court at Bombay in a 1731 letter writing that all questioning was to be done by attorneys outside of court except in cases of contempt of court. BL IOR E/3/105:Letters to Bombay, para. 151 f.129v. (12 March 1731).

¹⁴³ In one 1755 Calcutta case however, the minutes of the court report that the aldermen took a fifteen minute recess to discuss further before issuing a decree. See BL IOR P/155/29: Calcutta Mayor's Court Minutes, 14 March 1755 (Cooke v. Surmanah).

¹⁴⁴ For an example of this see BL IOR P/416/101: Bombay Mayor's Court Proceedings, pp. 140-4 (1 October 1729).

at Westminster. Decrees in matters of equity were, more often than not, basic statements of decision without elaboration or legal reasoning. The aldermen themselves understood this and acted accordingly. When Robert Allen, a prospective alderman and EIC employee expressed doubts about his own legal background and suitability for the court, claiming he was “ignorant of the justiciary [sic],” the mayor of Madras responded that no one new to the court possessed any expertise but rather they needed only “known good sense and prudence” and that “...in a court of equity as this is, there were...few qualifications [for aldermen] but probity and integrity.”¹⁴⁵ In Bombay the sitting court even said of itself in 1730 that “...we do not pretend to be lawyers.”¹⁴⁶

More often than not the court merely decreed that one party be paid his or her stated demand, but in some cases the aldermen would decree particular divisions of money or property according to their own reading of the case. In one Bombay case, the aldermen ended up granting neither party's plea but instead decreed that one merchant was due equitable relief given the “real hardship” of goods being of a much more inferior sort than he thought he was purchasing. The aldermen then ordered the contract between the two merchants reset at a lower price - at the same time permitting the seller to void the contract entirely if he wished.¹⁴⁷ Rather than pretend to be legal experts, the alderman-judges made their decrees based on the credit of the litigants and witnesses, the evidence available, and their own sense of custom and fairness. All of which fit broadly under Woodford's umbrella of English equity practice.

¹⁴⁵ BL IOR P/326/69: Madras Mayor's Court Proceedings, pp. 195-6 (1 July 1734).

¹⁴⁶ BL IOR P/416/103: Bombay Mayor's Court Proceedings, p. 164 (22 July 1730).

¹⁴⁷ BL IOR P/416/118: Bombay Mayor's Court Proceedings, p. 166 (3 August 1743).

Unsurprisingly, many losers in Mayor's Court litigation were not eager or able to comply with the decrees of the court. As with those litigants who never appeared in court, the Mayors' Courts turned to its armed officers to enforce these judgments. In addition to the sheriff and sergeants each court employed a certain number of men-at-arms. As early as 1728, the Bombay Mayor's Court petitioned the EIC executive to allow them six sepoys (hired Indian soldiers) to assist the sheriff and jailer in their duties and the Calcutta Mayor's Court had two "black" and two "European" court serjeants on staff.¹⁴⁸ These petty men-at-arms of the Mayors' Courts, common to all three cities, rarely appear in the records of the Courts' daily business but were called to testify about executing warrants when these were contested in court and most importantly they helped do the time-consuming work of putting the courts' decrees into execution. In 1734 Calcutta for instance one of the sheriff's officers waited outside of the EIC executive's offices for an entire day in order to seize an EIC employee hiding inside.¹⁴⁹

These duties could put the sheriff, sergeants, and other court officers in danger when they went to seize the effects or person of a disgruntled debtor or losing party. These were clear acts of violence and power. Under court orders the sheriff and his officers tore down houses, broke into storerooms to seize assets and arrested debtors.¹⁵⁰

In 1748, Thomas Burrows, the former sheriff of Calcutta, wrote to the EIC directors in

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¹⁴⁸ *Bombay Gazetteer* v.26 part 3, pp. 9-13. James Long, *Selections from unpublished records of government for the years 1748-1767 inclusive relating mainly to the social condition of Bengal*, (Calcutta, 1869), p. 43.

¹⁴⁹ BL IOR P/155/17: Calcutta Mayor's Court Minutes, 13 June 1735.

¹⁵⁰ Sheila Smith has argued that these violent remedies in Bombay helped increase the court's popularity in her "Fortune and Failure: The Survival of Family Firms in Eighteenth-Century India," *Business History* 35 (1993), p. 44.

London that he had not liked serving as sheriff and that “...in the execution of it [his office] I more than once ran the risk of my life as is well known here.”¹⁵¹ In 1733, a different sheriff of Calcutta sent one of his officers to seize Gorbux, a prominent Sikh salt merchant, at the order of the Mayor's Court. When his officers arrived they found the house fortified and many men ready to defend their master. Over the next two days, the sheriff and the EIC executive oversaw an assault on the compound which resulted in the deaths of six Indian court officers and many of Gorbux's men.¹⁵² For the Mayor's Court, though, this was a price worth paying in order to maintain the power of the royal courts and assert English authority in the settlements.

Court of Appeals

A decree in the mayor's court was of course not the end of the line for those litigants with time and money enough to lodge an appeal. The 1726 charter gave the EIC executive council the power to sit as a court of appeal in all cases from the Mayors' Courts. Unfortunately only one register of court of appeals proceedings survives from any of the three cities and extant records make it difficult to determine how many cases reached the appellate phase.¹⁵³ Despite the lack of original appellate records, the Mayors' Court minutes do include notes from the “clerk of appeals” telling the court when the appeals court had reached a verdict.¹⁵⁴ The only extant volume of appeals proceedings,

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¹⁵¹ BL IOR E/1/35: Miscellaneous Letters to London, p. 149 (7 July 1749).

¹⁵² See BL IOR P/155/73: Calcutta Court of Oyer and Terminer Proceedings 1733, pp. 21-25; for the Mayor's Court order see BL IOR P/155/15: Calcutta Mayor's Court Minutes, 10 April 1733.

¹⁵³ EIC lawyers in the 1730s even commented on this lack of records themselves. See for example their letter to Madras in RFSG *Despatches from England*, v.32-37, p. 21 (para. 125 - 12 February 1731).

¹⁵⁴ These notes are not always consistent and it is consequently difficult to determine just how many cases ended up going to the court of appeals.

for Bombay in 1730, contains just three cases.¹⁵⁵ Likewise, the minutes of the Calcutta Mayor's Court for 1744 contain only three mentions of appealed cases (out of more than 100 cases recorded). In Madras however there seem to have been more cases brought on appeal. Partial court minutes for 1742 include marginal notation of appeals and indicate that six of the twenty-three verdicts recorded therein had been appealed.¹⁵⁶ In addition, a disgruntled litigant at Madras wrote to a friend in 1745 that his appeal had been “...lodged but [] there are a great many before it which could not be tried in the late [Governor's] Reign and everyone must take his turn being the custom of that court.”¹⁵⁷ This seems to have continued to be true at Madras into the 1750s, since the clerk of appeals continually rebuffed an Indian litigant and his lawyer who were attempting to search his records in 1754, reporting that he was too busy to trouble with their business.¹⁵⁸

Perhaps as a result of this occasional bureaucratic backlog, it appears that the time it took for the Court of Appeals to decide a case varied wildly. For the fourteen cases which reached the Privy Council from India before 1753, the time between a final Mayor's Court decree and a decree in the Court of Appeals ranged from as little as two

¹⁵⁵ This volume is BL IOR: P/416/102.

¹⁵⁶ These are all in *RFSG Minutes*, v.6.

¹⁵⁷ Letter from John Compton to Samuel Briggs and Peter Gwyn, 9 February 1745 BNA C103/131.

¹⁵⁸ BL IOR P/329/67: Madras Mayor's Court Minutes, 17 September 1754; This disinterest may indicate more than just the business of the court considering that in Madras the clerk of appeals was in a few instances also the coroner, Company solicitor, clerk of the peace, and sheriff. George Torriano and John Savage both filled these posts concurrently at various points in the 1730s. See *RFSG Consultations*, v. 65, p.11 (27 January 1735) for Savage's appointment. These clerks were of course paid for their trouble, the clerk of appeals in Calcutta for example racked up enormous fees for his trouble. In 1753 a litigant there paid the clerk 351 rupees (~£50) in general fees and an additional 1,054 rupees (~£150) for drawing up copies of exhibits and paperwork for an appeal to the Privy Council in England. P/155/27 20 March 1753.

weeks to as long as over 400 days - with a median time between judgments of around 80 days.

While some of the delay was undoubtedly due to the heavy business of the EIC council, litigants themselves also delayed in hopes of negotiating a private settlement. For example, in 1743 the Mayor's Court at Madras passed a decree in a long-running dispute between three Indian merchants over a series of loans and mortgages. The losing party appealed to the Court of Appeals, but it took no action as over a year later the clerk of the appeals court returned the papers in the case to the Mayor's Court, noting that the parties had reached a private settlement.¹⁵⁹ In other cases there is evidence that litigants appealed solely to delay having to pay their opponent, leading the Bombay Mayor's Court to order by 1755 that appellants provide security for all appeals. Thus it is certainly possible that there were many more planned and filed appeals than those actually decided.

As a result of the variable nature of the court's business, it seems most likely that the EIC council sat as a court of appeal on an as needed basis. The proceedings of the Bombay court of appeals for 1730 indicate that at these sittings of the court, the members of the council read over all the evidence lodged during the original Mayor's Court case before making their decision. In addition, the court called a few witnesses of its own, largely specialists on local customary law to provide context for the case.¹⁶⁰ The Council would then pass a decree in the case, in some cases, providing their legal reasoning for

¹⁵⁹ BL IOR P/328/78: Madras Mayor's Court Minutes, p. 164. The original MC decree was dated 15 March 1743. The clerk returned the papers on 16 April 1744.

¹⁶⁰ The Bombay court of appeals asked Antonio d'Silva, the EIC secretary of Portuguese affairs and also several *vereadores* to testify in court about customary land practices. For this see BL P/416/102: Bombay Court of Appeals Proceedings, 10 April 1730.

such a decision. This reasoning sometimes took the form of long dispositions on law while overturning decrees, or mere pithy statements of agreement, as in 1732 when the Calcutta court of appeals wrote simply that “The decree of the Mayor's Court be confirmed it being agreeable to several other precedents in that court and in our opinion to strict equity as well.”¹⁶¹

The constitution of the Court of Appeals struck many at the time as exceedingly problematic - as it gave the EIC executive the final say in all civil cases. There were certainly cases where the court of appeals ruled in its own interest, as in a 1740s case from Madras when the Council overturned a Mayor's Court judgment against the Company and denied an appeal to England.¹⁶² In Madras especially the court of appeals may have been a popular venue, as a losing party in a Mayor's Court case might expect to capitalize on the bad blood between the two courts. However, there is evidence that the EIC executives in Madras and elsewhere felt compelled at various junctures to adjure themselves from cases because of self-interest. In other cases, the appellate court confirmed a Mayor's Court decree immediately after finding themselves interested, wishing to pass it on to the Privy Council post haste.¹⁶³ In addition there seems to have been disagreement on cases from within the Court of Appeals itself, as in one Bombay

¹⁶¹ BL IOR P/155/14: Calcutta Mayor's Court Minutes, 11 January 1732. The appeals court could also sometimes merely alter the decree of the mayor's court, changing the kind of currency awarded or decreeing a new formula for calculating amounts due. For the Bombay Court of Appeals granting better contractual terms see: BL IOR P/416/119: Bombay Mayor's Court Proceedings, p. 36 (7+14 March 1744).

¹⁶² See the petition of several Chettiar merchants [n.d. 1746?] in BL IOR E/1/33: Miscellaneous Letters to London, p. 146 stating the facts of such a case.

¹⁶³ In one such case the court of appeals referred to the Privy Council as their “superior court.” Cf. BL IOR P/155/25: Calcutta Mayor's Court Minutes, 7 July 1752.

appeal, in which the members of the court of appeals deadlocked, forcing the EIC president to cast the deciding vote.¹⁶⁴ Indeed judging from the sampled cases, the courts of appeal confirmed more Mayors' Court decrees than they overturned. For instance, in ten of the fourteen cases brought before the Privy Council before 1753, the court of appeals had upheld a Mayor's Court decree.

Privy Council

The 1726 charter provided for appeals from the Indian courts to the Privy Council in all civil cases involving over 1000 Pagodas (~£400) “...as is usual in cases of appeal from any of our colonies in the West-Indies.”¹⁶⁵ Litigants in India had, per the charter, fourteen days to give notice and 8% security for their appeals to London. In addition they had to pay a bevy of legal fees to various functionaries and copyists to prepare voluminous paperwork necessary for any transoceanic appeal. In late 1752, for instance, the Calcutta merchant Mohun Persaud threatened his opponent with an appeal to the Privy Council, forcing him to employ a lawyer to prepare a defense for England. Though Persaud eventually agreed to drop his appeal, his opponent's lawyer and the clerk of the court had already racked up bills totaling £180 just for the preparatory work involved.¹⁶⁶ Bills in London could be expected to be much higher, especially if the appeal dragged on for years, as often occurred.¹⁶⁷ Certainly many potential appellants in India were

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¹⁶⁴ BL IOR P/416/104: Bombay Mayor's Court Proceedings, 7 October 1730.

¹⁶⁵ Shaw, *Charters*, p.232. According to Bilder, *Transatlantic*, p. 87 the cut-off amount in Rhode Island was £300.

¹⁶⁶ BL IOR P/155/27: Calcutta Mayor's Court Proceedings: 20 March 1753. (1054 rupees for the court register, 805 rupees to James Meredith attorney)

¹⁶⁷ The earliest surviving bill for an Indian appeal is from the early 1770s, when a solicitor charged Ragullou Chitty 188 pounds for services over a two year period in responding to the appeal of

dissuaded by the long wait for satisfaction that an appeal entailed. Of the 14 Indian appeals that resulted in a decision during this period (the other four were withdrawn mutually or dismissed for non-prosecution) the median time from final verdict in India to Privy Council decision was around two and a half to three years, not including the additional six to eight months before that decision physically reached India.

Even if Persaud had managed to muster the finances and patience to send his appeal to London, he would have needed good contacts in London to ensure that his case made it through the labyrinthine world of colonial appeals. When prosecuting an appeal at the Privy Council from India (or anywhere), litigants depended on a solicitor or two to manage their case, visit the Council offices periodically, submit the appropriate papers, and hound individual members of the Council to appear on the actual day of the hearing.¹⁶⁸ In addition, every appeal worth pursuing required a learned brief laying out the facts in the case and offering legal arguments in favor of a given party. A litigant's solicitor usually employed eminent (and expensive) counsel, such as of the law officers of the Crown, to prepare such a document.¹⁶⁹ Such requirements constituted significant barriers for would-be appellants and Privy Council justice was therefore not for the impatient or the poor.

Christiaan Van Teylingen out of Madras. See BNA C111/229 bundle in Van Teylingen v. Russell. J.H. Smith in his *Appeals to the Privy Council from the American* cites a mammoth five-year £1,000+ legal bill for a Connecticut appeal in the 1760s, pp. 673-8.

¹⁶⁸ See Smith, *Appeals*, pp. 272-81 on procedure before the Privy Council. For an example of the services solicitors could bill to clients see the headings in the solicitor's bill in BNA C111/229.

¹⁶⁹ Counsel would typically send their elaborate arguments to printers, who would then produce small batches for delivery to each member of the Council prior to a hearing. In some cases these briefs could be even be prepared by hand. The briefs are extremely rare and often difficult to locate. For American appeals Sharon O'Connor is preparing a forthcoming bibliography. To my knowledge, only eight Indian appeal briefs survive prior to 1794 at which time they began to be retained at the PC office itself.

Between the advent of the charter and the change of the Indian courts' constitution in 1753, the Privy Council heard eighteen appeals from the Indian territories. Of these, twelve came from Calcutta, five from Bombay, and one from Madras. The median amount contested in these appeals was around £1,000, with one appeal skating through for as low as £100 and another reaching as high as around £11,000. The vast majority of these appeals involved fraught commercial transactions with multiple parties on both the appealing and responding sides. Most notable however is the fact that only three of the forty-some litigants named in the appeals were of non-European descent.¹⁷⁰ The reasons for this particularly limited distribution of litigants are fairly clear. Privy Council appeals, even more so than in the Americas, were difficult, long, and expensive affairs that depended on access to a relatively small cadre of London lawyers who were versed in imperial jurisprudence. In other words, being newly connected to the wider world of British imperial law brought with it obstacles of distance and expense as well as the benefits of strict process.

Criminal Courts and Civic Governance

The civil courts (Mayors' Courts and Courts of Appeal) were of course only one side of the new chartered order. The charter of 1726 also introduced English-style criminal procedure and civic government to the three cities. Though metropolitan English criminal procedure had been used sporadically at Madras and Bombay in the seventeenth

¹⁷⁰ Nyan Chand Mullick, Wissram Savajee, and Deepchund (nominally). I use non-European here instead of non-British because of John Albert Sichterman, an appellant from a 1741 Calcutta judgment, who was an official in the Dutch East India Company and the appeal of Moses Francia, the scion of a London Sephardic merchant family, relating to his father's estate in Bombay.

century, it had largely absent from the legal constitution of the three cities in the decades prior to the charter. As outlined in the charter and book of instructions, the new legal order featured grand juries, indictments, and criminal trials at quarterly assizes. The nature of criminal justice in the three settlements in the period between 1726 and the 1770s has largely remained a mystery, only hinted at or glossed over in the scholarly literature. In part this is due to the near total absence of records from these courts.

While copies of the minutes and proceedings of all three Mayors' Courts are extant for the period 1727-73 nearly in their entirety, there are only two years of criminal records (both for Calcutta) available in the India Office records in London, one year of additional Calcutta criminal proceedings at the Ames library in Minnesota, two years of Bombay criminal records at the Maharashtra State Archives, and records after 1760 for Madras at the Tamil Nadu State Archives.¹⁷¹ From the extant records, though, there are a few conclusions we can draw about how English law and power operated in the three cities.

While the Mayors' Courts met dozens of times a year, there were usually only four sessions of the criminal court in a year - hence their moniker as “quarter sessions.” The

¹⁷¹ The records at both Bombay and Madras are very difficult to access. I consulted the Bombay records in 2007 but as of 2010 the archives reported these as untraceable. I was not able to see the Madras records in 2007 but Prof. Ravi Ahuja consulted them in the 1990s and has very kindly lent me his working notes. Prof. N.K. Sinha surveyed the Calcutta Quarter sessions records at the Calcutta high court in 1946-7 and found them extant in some form from 1755 see N.K. Sinha “Old Records in the Calcutta High Court 1749-1800” *Indian Archives* 2.1 (Jan. 1948), pp. 8-11. For a list of those records extant in 1923 see Badruddin Ahmed, “Calcutta High Court Records” *Proceedings of the Session of the Indian Historical Records Commission* (1923) pp. 70-6. However, Prof. Sudipta Sen reported in 2007 that only those records from the 1770s are still to be found at the High Court. The Ames library Quarter Sessions records (MS B94) cover the first half of the 1762 Calcutta sessions (up to June). For more on this volume see p. __below.

charter of 1726 followed the model of common English practice and gave a set of justices of the peace responsibility for the day to day work of keeping civil order and punishing crime. By charter there were to be four justices of the peace in each city, drawn from the ranks of the EIC executive council. The justices of the peace seem to have done most of their work on court day itself, leaving the enforcement of laws to others. When an Englishman brought an alleged robber before a Calcutta JP in 1729, the justice delegated the search of the prisoner's belongings to one Sheik Garabulla, possibly a court officer.¹⁷² In 1740 residents at Madras complained that law enforcement help was difficult to find and that upon the commission of a crime "...they were obliged to seek about in the alehouses for drunken constables or other such peace officers."¹⁷³ As a result it had become common for residents to seek out members of the EIC military to act as de facto police. There were substantial garrisons at each of the cities (armed English and Indian soldiers numbering in the hundreds) as well as local militia and there were usually military guards posted at the gates of the major fortresses and city walls. The military remained of course under the control of the EIC executive and had no official law enforcement role in the charter, meaning that the EIC executive, sitting as itself (and not as royally constituted justices of the peace) possessed the greatest armed resources in the settlements. In cases of murder or other serious offenses, the EIC executive mobilized these resources to find the culprit. When an Englishman was found murdered at Fort St.

¹⁷² BL IOR P/155/72: Calcutta Oyer and Terminer records 1728-9, 16 June 1729 (Bedloe v. Paunchew and Antonio d'Rosario).

¹⁷³ BL IOR D/101: Correspondence Committee Memoranda: Proposed military regulations, 27 March 1740.

David, one of the subordinate settlements of Madras, the EIC councils at both places ordered sentries and armed men to be sent out to look for the likely culprit as well as reward of 100 pagodas (~50 pounds) for his capture.¹⁷⁴ Yet this kind of massive mobilization was rare for every-day crimes.

In the absence of a regular system of law enforcement, any aggrieved resident or the justices themselves could swear out a complaint against any individual and get a warrant issued for the arrest and binding over of the offender until the next quarter sessions. In November 1745, Mattheus Rout told of how he came to bring two lascars into court for robbery. He claimed that he was at work at the EIC's docks when his mother in law, Donna Lazaro, came to tell him that their house had been burgled. After inspecting the damage, Rout proceeded to travel to "...Mahim and other places in order to get some information of the rogue, but could hear nothing."¹⁷⁵ It wasn't until he heard of the whereabouts of some of the stolen goods that he took the matter to one of the justices of the peace. Likewise, in 1729 at Calcutta, Josiah Bedloe searched throughout the city for his missing "slave" whom he suspected of stealing silverware, and on finding the man at the fish market, extracted a confession from him. Bedloe then proceeded to travel dozens of miles to the French settlement of Chandernagore to personally drag his alleged accomplice back to Calcutta for trial.¹⁷⁶ In some cases this devolved system of law enforcement resulted in embarrassment for the justices. In 1733, an unknown resident of

¹⁷⁴ BL IOR G/18/35: Fort St. David Factory Records, p. 57 (October 1727).

¹⁷⁵ Maharashtra State Archives: Bombay Court of Oyer and Terminer records 1745, pp. 77-8 (November 1745).

¹⁷⁶ BL IOR P/155/72: Calcutta court of Oyer and Terminer records, 16 June 1729.

Calcutta brought 38 men to the justices of the peace on charges of debasing currency, he never appeared at trial and the justices were forced to release all the accused at the insistence of the grand jury.¹⁷⁷ Summarily, the justices of the peace had large amounts of discretion in how they dealt with complaints and whether they would be brought before a grand jury or the quarter sessions. In other words, the nature of the English system of justice in the period put the onus on residents themselves for policing and actual law enforcement, similar to the legal culture in the rest of the British world where formal police forces were uncommon until the nineteenth century.

In addition to the lack of effective police, there were no Crown attorneys or public prosecutors in the settlements and, as in England, it was the individual responsibility of accusers to serve as prosecutors in court. Thus, once a complaint passed the scrutiny of a justice of the peace, aggrieved parties could exercise a large degree of control over the course of court proceedings. For example, a Calcutta, Armenian merchant named Coja Gregoire claimed to have found two of his serving women stealing from him in 1728. He took them before Hugh Barker, an EIC employee and justice of the peace to have them committed to jail. When the time came for the quarter sessions Gregoire failed to show up to prosecute the case and the justices released the women. Though his story calls into question his relationship with these women, Gregoire later claimed that they had promised him that they would never steal again and that he had taken pity on them, reemploying them in his household. In 1729 the women left Calcutta and Gregoire had his own hired men at arms chase them down and bring them before the

¹⁷⁷ BL IOR P/155/73: Calcutta court of Oyer and Terminer records, p. 44 (7 July 1733).

justice of the peace again on a new charge of theft. This time he appeared in court to prosecute and upon a guilty verdict the justices sentenced the women to death.¹⁷⁸

This is not to say legal elites played no role in criminal matters. When a woman (purportedly a slave) reported she had been raped in 1735 Bombay, her master went to Mayor's Court attorney John Cleland to ask for advice. When Cleland told him to bring the matter before a justice of the peace and to have the offender arrested, the master demurred, citing required attendance at the quarter sessions as a hassle given his frequent mercantile business. Cleland then took on the woman as a client directly and went with her to George Taylor, a Bombay justice of the peace, where she swore out a complaint against her attacker as “any lawful subject might.”¹⁷⁹

The first step in actually beginning the quarter sessions process was for the sheriff to return a list of twenty-some grand jurors all drawn from the English population of the settlement. In the eighteenth-century system of English justice, these grand juries had immense power. As part of their duties they examined all the complaints made by prosecutors before the justices of the peace. They then had the duty to decide whether these complaints were valid and/or properly laid in form (*billa vera*) or not (*ignoramus*). Those complaints found *ignoramus* would usually never see their day in court. The grand jury also served as a kind of ersatz citizens' legislature and could issue presentments, that is, complaints about particular people or failings of government, mandating *de jure* that

¹⁷⁸ BL IOR P/155/72: Calcutta court of Oyer and Terminer records, p.31-33 (1+5 May 1729).

¹⁷⁹ BL IOR P/416/109: Bombay Mayor's Court Proceedings, p.134

the government or these persons comply with their decisions.¹⁸⁰ Because of the paucity of Englishmen in the cities, the grand juries appear to have consisted of a smattering of junior Company servants (many of the senior Company servants being justices of the peace), and free merchants.¹⁸¹ As a result, it seems that in at least Madras and Bombay, the aldermen of the Mayors' Courts were customarily included on grand juries.¹⁸² This separation of powers, between jurors beholden to the charter and JPs with deep ties to the EIC would eventually create substantial fissures in the legal constitution of the settlements.

Once the grand jury approved criminal complaints for trial, the sheriff in each city called twenty-four different substantial inhabitants to serve as the petit jury pool. In cases where there were English defendants, the sheriff would call twenty-four of the English inhabitants who had not served on the grand jury to be in the pool. As was to be expected, these juries primarily consisted of EIC employees, though free merchants and other assorted Europeans also appear as jurors. For one 1733 Madras petit jury pool the sheriff called several EIC employees, six aldermen of the Mayor's Court, the register of the Mayor's court, a Mayor's Court attorney, an English sailor, the English schoolmaster, and a free merchant.¹⁸³ In Madras, soon after the arrival of the charter, the justices of the

¹⁸⁰ Cf. the work of the grand jury in colonial America in Richard Younger, *The people's panel: The grand jury in the United States, 1634-1941* (Providence: Brown University Press, 1963).

¹⁸¹ In one case at least, a member of a Calcutta grand jury had to be dismissed because there was a complaint pending against him.

¹⁸² BL IOR P/329/71: Madras Mayor's Court Minutes, 28 June 1757. In Madras it was even customary for the Mayor to be the automatic foreman of the grand jury:

¹⁸³ See the jury list in BL IOR H/793: Charles Peers papers, pp. 39-40. In addition, in 1728-29 Calcutta, several English EIC employees, including Ralph Johnson, served on trial juries at three consecutive quarter sessions.

peace delayed a murder trial out of fear that there were not enough eligible jurymen in the city to allow the defendant challenges.¹⁸⁴ Likewise, in 1733 Bombay, the justices reported that “most of the persons who are to serve on the grand and Petit Jurys” were employed by the EIC and unavailable for duty.¹⁸⁵

Englishmen of course remained in the vast minority in these settlements and thus in the frequent case of non-English defendants, the jury could take on a decidedly different complexion. Whereas the grand jury was a site of purely European authority in the three cities, trial juries came to represent a broader spectrum of the population. In the years immediately after the promulgation of the charter, sheriffs in all three cities commonly called non-English merchants and men of distinction to serve on trial juries. These so-called mixed juries were not radical or new inventions but part of common English legal practice in the case of non-English defendants. Their original purpose was to offer foreign defendants a true jury of peers who could understand the same language.¹⁸⁶ Mixed juries had been used at an earlier date at both Bombay and Madras and had clearly entered the popular legal culture in those places. Woodford and Hungerford confirmed this practice by dictating that where a defendant in a capital case was not a natural born British subject, six “subjects of the same prince to whom the criminal is subject” should be summoned as petit jurymen in addition to six English jurors.¹⁸⁷

¹⁸⁴ RFSG *Despatches to England*, v.6-9, p. 31 (para. 32 - 20 January 1728).

¹⁸⁵ Forrest, *Selections from the letters despatches and other state papers: Home series*, vol. 2, p.408.

¹⁸⁶ For more on mixed juries see Marianne Constable, *The Law of the Other*.

¹⁸⁷ BLAdd. Ms. 16,270, p. 144.

Due to the scarcity of records it is difficult to say exactly how these mixed juries were constituted or how frequently they occurred in the three cities. Generally it seems that they played a greater role in the earlier years of the court, lessening as the decades went by. Evidence from Madras is scarce but we do know that in 1729 a jury “partly of Englishmen, partly of natives” found the governor's *dubash* guilty of corruption and other offenses.¹⁸⁸ Also, sometime in 1730-1 the sheriff of Madras called many Gujarati merchants to sit on a particular petit jury, only to have them refuse to serve.¹⁸⁹ Likewise, for Bombay, there is good evidence that prominent Luso-Indians routinely sat on mixed juries. In Calcutta, where more records survive, it appears that the use of mixed juries was extremely common. In the Calcutta quarter sessions of 1728-9, nearly all non-English defendants were tried by a mixed jury. In that city the sheriff actually summoned two jury pools every court day, one English and one made up predominantly of Bengali merchants.

The justices conducted the actual trials at the quarter sessions according to the book of instructions, much as they would have transpired in England. The English courthouses housed these proceedings and like the Mayors' Courts the justices of the quarter sessions approached their office with great solemnity. At the beginning of every meeting of the sessions the court crier let forth a volley of “oyez! oyez!” to indicate the commencement of proceedings.¹⁹⁰ The court officers would then bring the accused to the bar, where the justices would ask them how they wished to plead. In the thirty Calcutta

¹⁸⁸ BL IOR L/L/7/12: Legal Advisors' Papers, f.2.

¹⁸⁹ RFSG *Consultations*, v.65, pp. 89-90 (14 July 1735) includes a recounting of this event.

¹⁹⁰ BL IOR E/1/36: Miscellaneous Letters to London, p. 146b (29 December 1751).

cases in 1729 and 1733 in which defendants' pleas are recorded, only seven plead guilty, most likely in a calculated bid for clemency. These prisoners generally received whippings, monetary penalties, or transportation much as they would have in England. There was no defense counsel present for the accused. Prisoners were responsible for defending themselves. As such, many defendants, including Indian defendants, took an active part in their trials, interrogating witnesses themselves as was common in England.¹⁹¹ On the whole trials seem to have been fairly short with each side calling only a few witnesses each. At the end of witness testimony the president of the bench of justices summed up the case for the jury and delivered them their instructions.¹⁹²

Much as in England, juries usually took little time to deliberate, often listed only as a “short time” in the minutes of court.¹⁹³ The jury at Calcutta found defendants guilty in fifteen of the twenty-three cases where he or she entered a not guilty plea. In those eight cases where they returned a not guilty verdict, prosecution witnesses had been notably few or absent entirely. For those found guilty, the justices largely invoked punishments according to parliamentary statute and their instructions. For thefts and assaults sentences varied from fines to whippings to hanging. In Calcutta at least the juries, including the mixed juries were well enough informed to reduce the charge of murder to manslaughter (as was commonly done in England) in three cases after extended deliberation. However, in cases where they found a defendant guilty of murder,

¹⁹¹ The best studies of English criminal trials in this period are John Langbein, *The Origins of Adversary Criminal Trial*, (Oxford: Oxford University Press, 2003) and J.M. Beattie, *Crime and the Courts in England 1660-1800*.

¹⁹² Unfortunately none of these jury charges are traceable today for the period prior to 1773.

¹⁹³ However, in two Calcutta murder cases, the jury took three hours to deliberate

the automatic sentence was to be "hanged by the neck" at the gallows by the municipal hangman.¹⁹⁴ Over the years that the quarter sessions' functioned in the three cities, at least a few dozen prisoners of all backgrounds both male and female suffered this punishment at the hands of the chartered court.

Beyond establishing systems of justice and punishment, the new chartered order included explicit provision for many of the civic officers and institutions common to towns and chartered cities across the English world. These officers especially the clerk of the market and the coroner represented the English authority and governmental philosophy instituted by the charter. In England it was customary for an alderman or appointed local elite to serve as "clerk of the market." This clerk supervised the availability and prices of certain foodstuffs and commodities and had the power to fine those who violated the customary economic order. In all three cities these clerks intervened in the marketplace with fines and legal action whenever any baker or merchants violated price and weight rules, especially on staples like rice and bread.¹⁹⁵ In Madras, for example, the clerk armed himself with "weights, country weights, oil and rice measures, arrack [rice liquor] measures, one brass yard of 36 inches for cloth

¹⁹⁴ For a mention of the hangman see BL IOR P/326/29: Madras Mayor's Court Minutes, pp. 191-2 (31 January 1734). See also Joseph Tieffenthaler's 1750 account of Bombay in which he mentions prisoners that city's gallows: "Crimes are punished in the English manner, by the gallows," as quoted in Ernest Hull, *Bombay Mission-History* (Bombay, 1927), vol.1 p.82. Narayan (pp. 109-10) also provides a description of the gallows at Bombay which were just outside of one of the city gates.

¹⁹⁵ The Madras executive reported that the courts there upheld the weights of bread as specified in statutes of 8 Anne, 1 George II, and 3 George II. See BL IOR P/328/82: Madras Mayor's Court Minutes, p. 129 (10 May 1755). The Calcutta court and the clerk of the market set their own bread prices in 1729 - see BL IOR P/155/72; Calcutta court of Oyer and Terminer 1728-9, pp.40-43 (29 June 1729).

measuring, [and] bread weights” so that he could enforce the English statutory rules.¹⁹⁶

Almost as equally invasive into the daily life of the settlements were the English city coroners who had the duty of investigating every death within the geographic limits of their cities. The charter of 1726 made no explicit mention of the office of coroner but, like English cities around the globe, Calcutta, Bombay, and Madras all seem to have had coroners on a periodic basis prior to the introduction of the charter.¹⁹⁷ After the arrival of the charter, the office of coroner became more permanent thanks to the new emphasis on English governmental structures. For instance, most of the new grand juries in the settlements demanded that the EIC appoint a coroner within months of their first meeting.¹⁹⁸ The coroners performed their inquests much as in England according to the forms prescribed in legal manuals. From later evidence it seems that the coroner at Calcutta dragged a staff of more than a half-dozen scribes, clerks, and interpreters around the city to perform inquisitions on the dead.¹⁹⁹ Likewise later evidence from Bombay

¹⁹⁶ See BL IOR P/329/69: Madras Mayor's Court Minutes, pp. 9-10 (7 January 1755) for a list of the tools and fees of the clerk since 1732.

¹⁹⁷ A Bombay coroner was appointed in 1701 to hold inquests into deaths as in England see *Bombay Gazetteer* v.26 part 3, p.8. Likewise it appears that the Company at Madras appointed a coroner in 1697, see *Love Vestiges* v.2, p.68.

¹⁹⁸ In Bombay the grand jury petitioned for funding for a coroner writing that having such an officer was “absolutely necessary.” BL IOR E/4/460: Letters from Bombay to, 25 July 1729 (para 113-4). Likewise in 1728 the Calcutta grand jury reported that many deaths in the city went un-investigated and that a coroner needed to be appointed post haste as soon as possible. 22 October 1728. At least in Bombay the householders of the city directly funded the salary of the coroner through a general tax - see the *Bombay Gazetteer* v.26 part 3, p.21. The coroner could also seize the estate of a deceased inhabitant in order to pay for his examination see BL IOR P/416/105: Bombay Mayor's Court Proceedings, 3 July 1731 (pp. 156-7) for a man who fell into a well and whose house the Mayor's Court sold to pay the coroner's fees.

¹⁹⁹ In 1786 the same Calcutta coroner listed his office as consisting of a clerk, interpreter, Hindu and Muslim clerics, and several miscellaneous servants: Letter from Gilbert Hall to Lord Cornwallis (24 November 1786) in Duke University Rare Books, Manuscripts, and Special Collections Library, “India and East India Company Papers,” box 1, folder 3. For more on a late 18th century coroner see Suresh Chandra Roy, “A Past Coroner of Calcutta,” *Bengal Past & Present* 34 (1927), pp. 114-5.

shows the coroner there declaring the cause of death at inquests "upon the oaths of twelve good and lawful men of the county aforesaid."²⁰⁰ These extra-judicial governmental offices and procedures further indicate just how far English legal and civic practice penetrated into the life of the EIC's Indian settlements.

The English legal order which the Company and its lawyers introduced to India with the charter of 1726 was not particularly unique. The constitution of the three chartered cities would not have struck contemporary English observers as strange or radically different from that which they were used to at home. Even in actual structure and practice, the Mayors' Courts and quarter sessions in Bombay, Madras, and Calcutta adhered to the methods of proceeding outlined in the charter and metropolitan instructions. These were English courts, steeped in English practice, and as such required those who came to them for redress to acceptance their English authority and methods. Scholars often talk in terms of the "Anglo-American" legal world of the eighteenth century. This framework should be expanded even further to encompass Madras, Bombay, and Calcutta as well. The lawyer Joshua Bodley, for example, moved seamlessly around the geographic and legal world of the British Empire. Born in Ireland, he moved to India and became an expert in English legal procedure in the Calcutta courtroom, enabling him to end his legal career as a influential land agent in North Carolina. There is no reason but hindsight then to think of these Indian courts as outside the same imperial legal mold as New York or Jamaica.

²⁰⁰ See BL IOR H/732 for the papers of Robert Kitson, coroner of Bombay during the 1770s.

Chapter 4: Litigants, Tribunals, and Elites: Local Legal Dynamics in the Era of the Charter Courts

The complex English legal system introduced to Madras, Bombay, and Calcutta in 1726 was little different from that established in the West Indies or the Americas. However, in actual practice the aldermen, lawyers, and courts in India confronted far greater challenges in establishing an English legal order than their colleagues in the western hemisphere. For one, the vast majority of litigants in the English courts of the Americas were either from the British Isles or other European countries.¹ While Africans, Native Americans, and other non-Europeans were certainly constituents of the eighteenth century Anglo-American world, they rarely made up the elite and mercantile populations which drove local legal constitutions. In addition, by the eighteenth century, legislatures and courts in the Americas had greatly curtailed the ability of non-Europeans and those who crossed racial/cultural/religious boundaries to access the formal remedies of English law. In contrast, the prosperity of the EIC's Indian settlements depended on the participation and satisfaction of their elite non-European populations. The demographics of the three cities - in which the majority of residents were non-Christians and over 99% were non-British - meant that the new English legal order had to operate within and adjust to a multiplicity of foreign legal milieus.

The charter and the new English legal constitution did not land on virgin ground in 1727-8; Bombay, Madras, and Calcutta all featured extant networks of dispute

¹ This is not to suggest that there was no diversity within American colonial courts. For one incisive study of non-English groups in colonial American law see A.G. Roeber, *Palatines, Liberty and Property: German Lutherans in Colonial British America*, (Baltimore: Johns Hopkins Press, 1998).

resolution mechanisms and local legal elites. The inhabitants of these cities, especially the mercantile elite, were accustomed to the prevailing legal culture at each place - legal cultures predicated on overlapping and devolved layers of authority and jurisprudence.² As a result, the new chartered English courts never constituted the exclusive sites of law and authority in any of the cities.

However, despite the Company's expectations and instructions that the charter courts would be “principally” for the “government and benefit of Europeans,” the non-British inhabitants of Bombay, Madras, and Calcutta did not ignore the new courts with their complex rules and procedures. Neither did the chartered courts dismiss the disputes and complaints of inhabitants that fell well outside the scope of metropolitan legal practice. Rather, from the charter's first days, non-European litigants pursued complaints in the Mayors' Courts and brought criminal offenders before the quarter sessions. The prevalence of Indian litigants in the courts' business forced the aldermen and other court officials to adapt to local expectations, structures, and authorities in their practice and jurisprudence. This chapter explores the local legal culture of each of the three cities and shows the close ties between local elites and the charter courts. It also examines the nature of litigants before the new courts and the other tribunals and dispute resolution options open to them. Litigants in each of the cities adopted the new options available to them in the charter courts with gusto but never to the point of exclusivity. That is, the English chartered courts neither scared litigants away through their alien-ness, nor forced residents to abandon local modes of dispute resolution.

² See Lauren Benton, *Law and Colonial Cultures*.

Litigants and Local Constitutions

Contrary to many contemporary and scholarly descriptions of the Mayors' Courts as haphazard, and uselessly arbitrary, it is clear from the records of the court that they became crucial institutions in the life of Bombay, Madras, and Calcutta.³ There is no better evidence for this than the fact that throughout their history, the majority of all cases before the Mayors' Courts in the three settlements involved non-British litigants.

To get a better grasp on the nature of litigants coming before the courts as well as differences in local legal constitutions, I examined every complaint in the records of the three courts either filed or decided in their first year (1727-9) as well as fifteen years later in 1744 - shown in Tables 1+2 below.

1727-9	Calcutta (173) ⁴	Madras (103) ⁵	Bombay (89) ⁶
Both parties non-British ⁷	65%	60%	51%
One non-British litigant	18%	21%	36%
British only	16%	19%	13%

Table 1: Litigants in the Mayors' Courts during their first year of operation. Total number of cases filed or decided in parantheses.

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³ H.J. Leue provides such a description in his "Legal Expansion in the Age of the Companies."

⁴ BL IOR P/155/10 Calcutta Mayor's Court Minutes covering December 1727-December 1728.

⁵ BL IOR P/328/65 Madras Mayor's Court Proceedings covering August 1727-December 1727 and P/328/66 December 1727- 27 August 1728.

⁶ BL IOR P/416/101 Bombay Mayor's Court Minutes covering January-December 1729.

⁷ "Non-British" is of course a problematic designation. For the purposes of these tables I used my judgment as to naming conventions. There is always the possibility that some litigants with Portuguese names hailed from Britain.

1744	Calcutta (138) ⁸	Madras (71) ⁹	Bombay (82) ¹⁰
Both parties non-British	29%	85%	82%
One non-British litigant	30%	13%	9%
British only	41%	2%	9%

Table 2: Litigants in the Mayors' Courts 1744. Total number of cases filed or decided in parantheses.

Scholars have advanced a number of arguments for this apparent “popularity” of the English courts in India amongst non-British litigants. Some have suggested that non-British litigants went to the courts because they offered functional redress - i.e. the Mayors' Courts provided litigants the only venue for having judgments enforced by the increasingly powerful EIC state.¹¹ Others like Price, Brimnes, and Mines, in their work on Madras and South India, see the courts as offering a novel venue in which to embarrass communal opponents and perform end-runs around extant custom.¹² Both of these explanations have much to recommend them. In all three cities, the courts backed up their judgments with sheriffs and armed officers who tore down houses, seized goods, and imprisoned debtors. Likewise, in Madras and to a much lesser extent in Bombay and Calcutta, litigants appear to have hauled their opponents before the court on light pretense

⁸ BL IOR P/155/22 Calcutta Mayor's Court Minutes covering January-December 1744.

⁹ BL IOR P/328/78 Madras Mayor's Court Proceedings covering January.-December 1744.

¹⁰ BL IOR P/416/119 Bombay Mayor's Court Minutes covering January-December 1744.

¹¹ See Gagan Sood's excellent “Pluralism, Hegemony and Custom in Cosmopolitan Islamic Eurasia, ca. 1720-90” as well as Smith, “Family Firms.”

¹² Among others see Pamela Price, *Kingship and political practice in colonial India* (Cambridge: Cambridge University Press, 1996) and idem, “The “Popularity” of the Imperial Courts of Law”; Brimnes, “Beyond Colonial Law”; Mines, “Courts of Law and Styles of Self in Eighteenth-Century Madras.”

in order to expose their affairs to greater scrutiny. However, it is important to keep in mind that this class of “non-British” litigants who used the courts was of course quite diverse and varied across the three cities.

It is difficult to trace the background of most of these litigants, due not only to a paucity of records but also the English habit of mangling transliterated names to the extent that they become unrecognizable. Hard to place mobile litigants like ship captains from Arabia, Armenian priests from Persia, Luso-Indians from Goa, sailors from assorted European ports, Chinese traders, and others all appear throughout the Mayors' Courts records. However, it is clear that only the vast minority of each city's non-British population ever stepped foot in the charter courts. Of those who did, it appears that in all three cities, the most frequent users of the English courts were residents of the settlements themselves or those who held substantial commercial or property interests within their bounds. In addition, of this group, elite Indian and European merchants who had access to substantial resources as well as ties to the political and commercial world of the EIC constitute the most visible and substantial class of litigants in the history of the courts.

This is not surprising given that the three EIC settlements shared a common mercantile bond. Bombay, Madras, and Calcutta all owed much of their prosperity to distance trade and as a result of this commercial and cosmopolitan milieu, litigants at the new chartered courts came from all manner of professions, national backgrounds, and religions. Given this mercantile economy, the majority of legal wrangling in the courts came as a result of disputes over unfulfilled debts or contracts. The amounts in these

commercial disputes ranged anywhere from tiny sums, such as a four of five pound unpaid coconut account, to as much as tens of thousands of pounds sterling owed to conglomerates of Indian and English investors. The median suit in the Mayors' Courts seems to have involved sums in the hundreds of rupees (amounts of around £50-£100) and over the course of 1744, for example, the Calcutta Mayor's Court awarded litigants almost 200,000 rupees (~£30,000) in total with an average award in the low thousands of rupees.

Merchants of all kinds used the Mayors' Courts to litigate these commercial matters. Sometime before 1743 an English ship captain named Jonathan Cape purchased 2,500 pagodas (~£1,200) worth of cloth from a noted Hindu broker at Madras for a voyage to Calcutta and Bombay. When Cape reached Madras he sold his entire cargo for a loss and could not pay off his account. The broker promptly sued Cape in the Mayor's Court and delivered a long list of accounts between the two to the aldermen, who eventually ruled against the Englishman.¹³ Likewise, a man named Chola Mistree successfully used the Calcutta Mayor's Court in 1743-4 to collect a small difference of accounts (some 163 rupees or ~£40) from a recalcitrant set of Englishmen.¹⁴ Local merchants also used the courts to pursue their internecine disputes, as happened in 1744 when two Chettiar merchants sued one another over a 960 pagoda (~£400) account discrepancy incurred in the course of buying and selling long pepper and cloth.¹⁵

¹³ BL IOR P/328/78: Madras Mayor's Court Proceedings, pp. 273-4 (8 February 1744).

¹⁴ BL IOR P/155/22: Calcutta Mayor's Court Minutes, 9 May 1744: Chola Mistree v. Barwell and Lindsay.

¹⁵ BL IOR P/328/78: Madras Mayor's Court Proceedings, 8 February 1743: Chitty v. Chitty. Among many other examples, in Bombay that same year a Parsi merchant sued a Gujarati iron dealer and his English

Despite this similarity in the kind of litigation most common in the Mayors' Courts, each city had its own unique local constitution and power structure. Given this reality, the litigant pools and the nature of disputes brought before the courts differed amongst the settlements. These local variances were in part due to the diversity in the preexisting legal cultures of Bombay, Madras, and Calcutta. The English tribunals may have been “popular,” but most litigants came before the chartered courts only after consulting other local dispute-resolution mechanisms. The relative importance of these other circuits of legal authority in the settlements depended on highly local dynamics. In order to better understand these dynamics it is necessary to examine each city's population, litigant pool, and local legal culture in some detail.

Calcutta

Before 1727 Calcutta had no extant English court, instead relying on a Mughal Cutcherry run by the Company for most matters of dispute resolution and criminal justice. Despite this fact, inhabitants of all descriptions flocked to the new English courts when they opened and the Calcutta Mayor's Court remained the heaviest used of any of the Indian chartered courts. The popularity of the new courts at Calcutta, especially the Mayor's Court, likely came as a direct result of the close relationship between the Company and local merchants of all kinds.

Calcutta had grown rapidly over the previous decades from a set of small villages

partners for a balance left outstanding on their account see BL IOR P/416/119: Bombay Mayor's Court Proceedings, 13 June 1744.

to a city with over 40,000 inhabitants.¹⁶ This rapid growth and prosperity came largely as a result of the city's role as the EIC's hub for shipping commodities to Europe. The presence of the Company and its deep pockets also made Calcutta an attractive location for other merchants and those involved in more local or regional Indian Ocean trade outside the aegis of the EIC. The volume and value of goods flowing through the city was truly immense in this period. For example, in just four months of 1743, private merchants freighted goods valued at 695,000 rupees (~£100,000) by ship through the port.¹⁷ The very next year the Company itself bought more than 1,323,537 rupees (~£200,000) worth of commodities from local Indian merchants.¹⁸ For comparison, the port of New York recorded exports of slightly less than £100,000 worth of goods that same year.¹⁹ Elite merchants who brokered this trade with the Company, as well as those who served as agents, secretaries, and intermediaries to European private traders, made up the majority of non-English litigants at the Calcutta Mayor's Court throughout its history.

The most important group within this class of litigants were the Company's brokers. The European export economy of Bengal centered on woven cotton and silk

¹⁶ Population figures are always guess work in this period. For a list of Calcutta estimates from a number of contemporaries see A.K. Ray, *A Short History of Calcutta Town and Suburbs* [orig. 1902] (Calcutta: RDDHI, 1982), pp. 128-9.

¹⁷ BL IOR P/1/16: Calcutta Public Consultations 1744, pp.73-80 (reflecting Sept.-Dec. 1743). This figure is based on the customs the EIC managed to collect on these goods - the actual volume of trade was undoubtedly much larger.

¹⁸ BL IOR P/1/17 Calcutta Public Consultations, pp. 222-3 (1744).

¹⁹ American Colonial trade and taxation figures are notoriously confusing and based on average tonnage values - the true figure is undoubtedly higher. The number cited here is extrapolated from Table 6 in Peter C. Mancall, Thomas Weiss, and Joshua Rosenbloom, "The Role of Exports in the Economy of Colonial North America: Estimates for the Middle Colonies," NBER Working Paper #14334 (September 2008).

textiles, saltpeter, and other bulk goods. Every year the Company in London sent ships laden with silver specie to Calcutta in order to procure these commodities for sale in European and African markets.²⁰ The amounts of cash involved in this trade were staggering; in 1750 alone the Company sent 1.1 million pounds sterling in silver bullion to India for the purchase of trade goods.²¹ This specie arrived in Calcutta in the late summer and early fall, but in order to procure the volume of goods required, the local Calcutta EIC executive had to contract for them well in advance. In April 1744, for example, the local EIC put out contracts for 1.3 million rupees of goods (~£200,000), of which they advanced 900,000 rupees on the spot in cash.²² The EIC placed these contracts through a number of regional brokers who would then pay weavers as well as other middlemen throughout Bengal for the textiles and goods themselves. These contractors were known in England and India as the Company's *dadni* merchants (from the Persian word meaning an advance).

These *dadni* brokers were some of the prime movers in the legal, mercantile, and political world of Calcutta. Only a limited number of merchants and mercantile families had access to the *dadni* business. By and large these families were those textile merchants and minor local elites based in the Calcutta region who had the good fortune to do business with the EIC when it had first arrived in the area. Most important among them

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²⁰ One scholar recently estimated that 27% of all goods sent to Africa from Europe in the 18th century (largely in trade for slaves) were Indian textiles. See I. Habib "The Eighteenth Century in Economic History," in *The Eighteenth Century in India*, ed. Seema Alavi (New Delhi: OUP, 2002), pp. 70-71.

²¹ See Choudhuri, *Trading World*, p. 507 for a complete table of EIC export figures.

²² BL IOR P/1/17: Calcutta Public Consultations 1744, pp. 222-3. The total amount contracted by the EIC was 1,323,537 rupees - of which they advanced 926,426 rupees.

were the Basaks and Seths who had moved to the Calcutta area in the sixteenth century.²³ Shobharam Basak (1690-1773?), for instance, came from one of the local yarn and cloth dealing Basak families and made his home in the bazaar districts of Calcutta.²⁴ By the mid-18th century he became one of the most prominent Company *dadni* merchants, as well as a dealer in his own right in textiles, spices, and opium. Over his life he accumulated nearly forty houses in Calcutta as well as a fortune in the millions of rupees.²⁵ Beyond Calcutta, the EIC also had several factories and trading posts throughout Bengal, including at Kasimbazar, Patna, and Dacca. Merchant families from these market towns like the Sarkars, Dutts, Cotmas, and Mallicks also became prominent in the *dadni* business and, as a result, the business of the Mayor's Court.²⁶

These Company brokers formed a kind of local gentry with factions, leaders, and lines of influence. In the early 1740s the Company in Calcutta proposed that instead of having a single broker bound to deliver all goods from the collected *dadni* merchants, they would bind all the *dadni* merchants together in a compact so that all could be held accountable for any shortfalls. The merchants rejected this proposal and instead

²³ See also Atis Das Gupta, "The Growth of Calcutta: A Profile of Social Dislocations," *Social Scientist* 20 (1992), pp. 37-8; W.D. Goode, *Municipal Calcutta*, (Edinburgh: Constable, 1916), p.3. The best detail on these early merchants can be found in Dilip Basu, "The Early Banians of Calcutta: The Seths and Bysakhs in their own image," *Bengal Past & Present* 90 (Jan.- June, 1971), pp. 30-46 and Benoy Ghose, "Some Old Family-Founders in the 18th Century," *Bengal Past & Present* 79 (1960), pp. 42-55.

²⁴ Also transliterated: Soberam, Suveram, etc. There is a street in this part of Calcutta named after him to this day. See N.K. Sinha, *The Economic History of Bengal*, [3 vols.] (Calcutta: Mukhopadhyay, 1963), v. 1, p. 6.

²⁵ His will was filed in the English courts; see Das Gupta, "Growth," p.38. In 1758 he submitted a claim to the East India Company that he had lost over 4 million rupees in the 1756 sack of Calcutta, see *Bengal and Madras Papers*, (Calcutta: Government Press, 1928), v.3 p.52. Shobharam was also a rent farmer under the Company - see the Calcutta consultations of 3 September 1767 reprinted in James Long, *Selections*, p. 480.

²⁶ See Rila Mukherjee, *Merchants and Companies in Bengal* (New Dehli: Pragati, 2006), pp. 23-35 for a list of *dadni* brokers at Kasimbazar.

suggested that they split into groups each bound to “three leading men of credit” namely, Ramkissen Seth, Bissnodas Seth, and Omichund.²⁷ The EIC executive, who itself referred to the Seths as “men of substance and credit,” accepted the proposal. Both Bissnodas [Vishnudas] and Ramkissen [Ramakrishna] were from the Calcutta-area Seth family who became the Company's primary brokers by the mid-18th century.²⁸ Other Seths, such as Jaggo [Jadu Bindu], Rasbehary [Rashvihari], and Luckiund all also cooperated to some extent as part of the closed guild of Company *dadni* merchants. All told, these Seths took on contracts worth hundreds of thousands of rupees every year from the Company and served as important moneylenders in the region, especially to EIC employees.²⁹

Migrants to Calcutta, eager to share in the Seths and Basaks' wealth, also ascended the mercantile ladder relatively quickly, leading to rapid growth in the cadre of wealthy Indian merchants by the mid-18th century. Omichund [Amir Chand], a Nanakpanthi Sikh from the Agra area, was one of the most famous of these new arrivals. Upon moving to Calcutta with his brother in the 1720s he went into the textile business under Bustomdass Seat [Bastaiv Das Seth].³⁰ By the 1730s he had come to feature prominently in the Company's *dadni* business in Calcutta and Kasimbazar along with his brother Deep Chand at Patna. Besides textiles, he and his brother dealt in saltpetre, sugar,

²⁷ BL IOR E/4/4: Letters to England from Bengal, p.379 (para. 98 - 11 December 1741).

²⁸ Bissnodas Seth was for a time the Company's head broker at Calcutta where he apparently used his influence to favor his family at every opportunity (sometimes transliterated as Basinabdas). See Ghosh, *Family Founders*, pp. 49-51. The Company presented him with lavish presents including a horse in 1726 see BL IOR D/18: Correspondence Committee minutes, f.129.

²⁹ When John Stackhouse, the governor of Calcutta, went bankrupt in the late 1730s, Ramkissen Seth turned out to be his “most substantial creditor.” See the letter from Thomas Bradyll at Calcutta to Billers in London dated 20 December 1741 in BNA C104/325.

³⁰ See K. Chatterjee, “Trade and Darbar Politics in the Bengal Subah 1733-1757,” *Modern Asian Studies* 26 (1992), pp.244-5. His name is also transliterated as Bystanaba Doss Sett.

ginger, honey, and other local goods, sometimes in partnership with EIC employees.³¹ His business acumen and occasional underhanded dealing resulted in a roller-coaster-like relationship with the Company. In 1733, for instance, the EIC caught Omichund selling underweight textiles to them and decreed that he be prohibited from future Company *dadni*.³² His connections and capital proved irresistible, however, and by 1744 he was back in the EIC's service, obtaining nearly 120,000 rupees in *dadni* contracts from the Company.³³ He became one of the most powerful and infamous figures in early Calcutta history and at his death had amassed a fortune calculated at more than £400,000.³⁴

Merchants like Omichund and the Seths also ensured a ready and flexible supply of cash to the Company. In early 1744, for example, the EIC treasuries in Bengal fell dangerously low on bullion with none due from Europe until the summer. In order to purchase goods on contract and to get weavers to begin work the Company needed to advance sums to brokers throughout the region. The Seths, Omichund and other brokers of Calcutta stepped in to fill the void to the tune of 677,859 rupees (~£100,000) lent to the Company at 9% interest.³⁵

Omichund, and many of the Seths also had deep social roots in EIC Calcutta. They and other brokers resided in Calcutta and owned extensive properties there.

³¹ For more on these partnerships see P.J. Marshall, *East Indian Fortunes: The British in Bengal in the Eighteenth Century* (Oxford, 1976).

³² BL IOR E/4/4; Letters to London from Bengal: 18 September 1735 - referring to earlier events, see paras. 51, pp. 144-5.

³³ BL IOR P/1/17: Calcutta Public Consultations 1744, p.313.

³⁴ Amir Chand (?-1758). For the best biographical information see Sinha *Economic History* (vol. 1), Appendix A. Sinha derived much of his information from the case report of *Doe Dem. Heera Sing v. Bolakee Sing* (1793) 1 Indian Dec. (O.S.) 196-214.

³⁵ The Seths alone lent over 200,000 rupees see BL IOR P/1/17 Calcutta Consultations, pp. 295-6 (17 May 1744).

Omichund lived in a mansion within EIC territory but outside the city proper, while the Seths lived in parts of the city to the south and east with larger Bengali populations. Omichund also owned a number of properties throughout Calcutta, including many rented to Europeans.³⁶ Ramkissen Seth and Rasbehary Seth both lived in the heart of the European quarter of EIC Calcutta, where they could mingle with EIC employees and have access to the center of Company power.³⁷ By living in Calcutta and maintaining such close Company ties, these merchants also took advantage of the EIC's protection when imposed upon by other political elites in the area for taxes or debts.³⁸ Many of the brokers also had extensive dealings with those on the EIC council and some even employed English writers for their business and correspondence.³⁹ In addition, some of these elites, including Omichund, as well as Ramkissen, Jaddo, and Bissnodas Seth, maintained private correspondence with Company officials in London, sending gifts, asking for favors, and further solidifying their place in the EIC's government and finances.⁴⁰ One of the Basak merchants even owned a series of gardens south of town where he routinely entertained the Mayor and other of his English friends.⁴¹ These

³⁶ See Sinha, *Economic History* v. I, Appendix A, pp. 242-3.

³⁷ Ray, *Short History*, p.98.

³⁸ See the famous 1750s case of several *dadni* merchants who argued that they should be shielded from the *nawab's* demands while “under the protection of the Hon. English Flag” - a request the Company agreed to. BL IOR P/1/28: Calcutta Public Proceedings, pp. 297, 323-4, 409 (11+19 August 1755).

³⁹ A contemporary letter mentions that a Mr. Bedford served as a secretary to Omichund and Ramkissen Seth. See BL IOR Eur. Ms. Orme India VI, p. 1511. It is not known how many of these elite merchants could write English, though at least in the 1730s Omichund could not. See Society of Antiquaries of London (SAL) MS/207, p.16 (f33v).

⁴⁰ BL IOR H/37; Robert Adams letters: 30 November 1730, f53. In 1732 Bissnodass also sent presents to Adams (see *ibid.* letter of 14 November 1732, f179). Also see a letter from John Fullerton to Ramkissenseat and Jaggoseat dated 21 December 1737 in BL IOR Eur MS D 602, f.58.

⁴¹ Budrinath Basak (Bysakh). See Basu, *Early Banians*, p.35 and Hasan, “Indigenous Cooperation and the Birth of a Colonial City,” p.76.

brokers served as local benefactors, endowing temples and charitable institution in Calcutta while also using their own funds to dig a defensive ditch around the borders of the EIC territory during the Maratha raids of the early 1740s.

In addition to the independent *dadni* merchants, another category of Indian notables also often appeared before the Mayor's Court – the *banians* and other Indian officers serving the Company and its employees. *Banians*, literally “merchants,” were Indian intermediaries, sometimes from the same families as *dadni* merchants, who served as writers and agents on behalf of a principal merchant, whether Indian or European.⁴² Nearly every EIC employee and merchant in Calcutta employed a few of these agents as well as other local accountants. Some *banians* spoke English and formed close relationships with their employers, often trading on their account.⁴³ A few extraordinary *banians* like Cantoo Babu, who worked for Warren Hastings, and Nobkissen who worked for Robert Clive became fabulously wealthy through the largess of their employers and their own acumen.⁴⁴

Besides *banians* and *dadni* merchants, other local elites at Calcutta did little in the way of trade or commerce but instead served the Company's government as rent

⁴² In other contexts this term applied specifically to Gujarati traders but in Bengal meant any Indian employed in the management of business affairs. See Yule, *Hobson-Jobson*, pp. 63-64. Also spelled “banyan” in English records.

⁴³ For evidence of the trust relationships between *banians* and employers see N.K. Sinha, “Mayor's Court Records (1749-74) and Supreme Court Records of the Eighteenth Century in the Calcutta High Court.” *Bengal Past & Present* 69 (1950), pp. 22-36. As an example of these close ties, Sinha quotes the will of one EIC employee stating that he was “indebted “to his banian “for every rupee I have hitherto gained.”

⁴⁴ See S. Nandi, *The Life and times of Cantoo Baboo* (Bombay: Allied, 1978) as well as P.J. Marshall, *Trade and conquest : studies on the rise of British dominance in India* (Aldershot, 1993), p.79. For Nobkissen [Nubkissen Bahadur] see Nagendra Nath Ghosh, *The Memoirs of Maharaja Nubkissen bahadur* (Calcutta, 1901).

collectors and functionaries. Rutoo Sircar [Ratu Sarkar], for instance, was an illiterate rent-collector under the various Zamindars of Calcutta, who managed to amass a large fortune through graft and other perquisites of office.⁴⁵ Govindra Metre [Govind Ram Mitra] was perhaps the most famous of these local administrative elites. He ascended the ranks from his origins as a Cutcherry scribe to a position of influence and great wealth as the EIC's "Black Zamindar."⁴⁶ In this role, he served as the de facto head of the Cutcherry and had near complete control over revenue and debt collection in the city. By the time of his death in the 1750s he had accumulated over 20 acres of land in Calcutta, a mansion along Greek classical lines, and a fortune in the tens of thousands of pounds sterling.

Though other non-British Calcutta residents, including smaller Hindu, Muslim, and Luso-Indian merchants also pursued relatively small sums in court, disputes among the *banians*, administrative elites, and merchants feature the most prominently in the Mayor's Court records. Ramkissen Seth appears as a litigant on more than five occasions in my sample of cases over the 1720s and 40s, Bustom Das Seth, Omichund, Rutto Sircar, Kitteram Das, as well as various Dutts, Basaks, and Podars [moneychangers] make up the greatest proportion of non-English litigants in my sample of court proceedings. Many of these litigants also took advantage of the full range of the chartered

⁴⁵ Ray, *Short History*, p.201. Ratu was most likely related to one of the Seth families - see the evidence given in *Doe Dem Tilluckchund Doss and Rasbeharry Doss v. Ramechurry Doss and Chowdranny* (1785) 1 Indian Decisions O.S. 171-3.

⁴⁶ Mitra lived within the confines of EIC Calcutta in a grand mansion which featured Greek Classical columns and a melange of European and Bengali styles. He also endowed the great Nine Jewels Temple at Calcutta in traditional style. See Dhriti Kanta Lahiri Choudhury, "Trends in Calcutta Architecture 1690-1903," and Chitra Deb, "The Great Houses of Old Calcutta," in *Calcutta: The Living City*, ed. Sukanta Chaudhuri (Calcutta: OUP, 1990), vol. 1, pp. 58-9, 157-9. Mitra's wealth was estimated in the tens of thousands of pounds at his death see Ranjit Sen, *A Stagnating City: Calcutta in the Eighteenth Century*, (Calcutta: Institute for Historical Studies, 2000), p.71.

courts' power, taking out letters of administration to the estates of deceased residents, especially Christian debtors.⁴⁷ When the EIC governor of Calcutta, John Stackhouse died in 1741, he left behind a chain of creditors stretching all the way to England.⁴⁸ Yet, of these, only two came forward to the court to ask for administration: Annunderam Seat [Seth] and Ram Kissen Seth.⁴⁹ The Calcutta court granted them letters of administration and the two Seths took up their role with gusto, filing over fifteen actions in the Mayor's Court attempting to retrieve debts due to the estate.⁵⁰

Alternative Venues for Dispute Resolution

For those outside the Indian elite whose business rarely touched on the EIC, the Zamindar's office or Cutcherry, located near the Mayor's Court in the heart of Calcutta, represented the most important center of legal authority in the city. In its constitution and staffing the Cutcherry existed much more in the Mughal world of Bengal than the Chancery world of London. The office had been in operation since the early 1700s under the aegis of an EIC employee serving as nominal Calcutta Zamindar. While nominally supervised by this EIC Zamindar, the Cutcherry was under the de facto control of an

⁴⁷ There are a few instances of non-Christian litigants taking such measures for the estates of other Hindus and Muslims. In Calcutta, the court granted administrations for the estates of 177 persons during the decade 1742-53. Only three of these administrations were for the estates of non-European persons, and one of these was for an Armenian estate. Account in BL IOR P/155/27: Calcutta Mayor's Court Minutes, 11 May 1753. In Calcutta the practice of writing wills in a form cognizable by the Mayors' Courts did not catch on readily amongst the non-Christian population. In that city it was exceedingly rare for a non-Christian to write a will and have it entered in court as the first one I can trace dates only from 1758. This 1758 document is Omichund's famous will which is reproduced in varying forms e.g. in *Doe Dem. Heera Sing v. Bolakee Sing* (1793) 1 Indian Dec. O.S. 196-214 and W.A. Montriou, *Some Precedents and Records to aid inquiry as to the Hindu Will of Bengal* (Calcutta, 1870), pp. 9-13.

⁴⁸ He still owed Mrs. Robert Adams of London nearly 60,000 rupees (~£8,500). BL IOR H/37: Adams Letterbook - letter to William Wake, f.415 (2 July 1739).

⁴⁹ BL IOR P/154/42: Calcutta Mayor's Court Minutes, 31 October 1741.

⁵⁰ BNA C104/325: Billers correspondence: Letter from George Heath, 29 January 1745.

Indian under-Zamindar, often termed the “Black Zamindar,” and his staff of scribes and men at arms. The Cutcherry employed a substantial number of such officers, who conducted their business largely in Bengali or, as one clerk attested, the other “black languages belonging to the Jemindarry [Zamindari].”⁵¹ These clerks and officers had extensive powers to collect the Company's rents and duties.⁵² They also had significant control over dispute resolution in the city.



⁵¹ Perhaps the best source on the Cutcherry is R.C. Sterndale's *An Historical Account of the Calcutta Collectorate* [orig. 1885] (Alipore: West Bengal Government Press, 1958). He notes therein that all bond books were headed in Bengali and that the Bengali portions of the records were written in a different ink from those in English: pp.36-7. For an exhaustive summary of zamindary business in the later 18th century see D.N. Banerjee, *Early Administrative System of the East India Company in Bengal*, (London: Longman, 1943), pp. 517-31.

⁵² See Sterndale *Calcutta Collectorate*, pp. 51-2 for a detailed list of such duties and fees. The Zamindar even had control over the “begging” revenue farm. There is also some evidence that the Cutcherry collected duty on all marriages performed in Calcutta, see letter from Calcutta to London 31 January 1755, para. 71 reproduced in Long, *Selections*, p. 66.

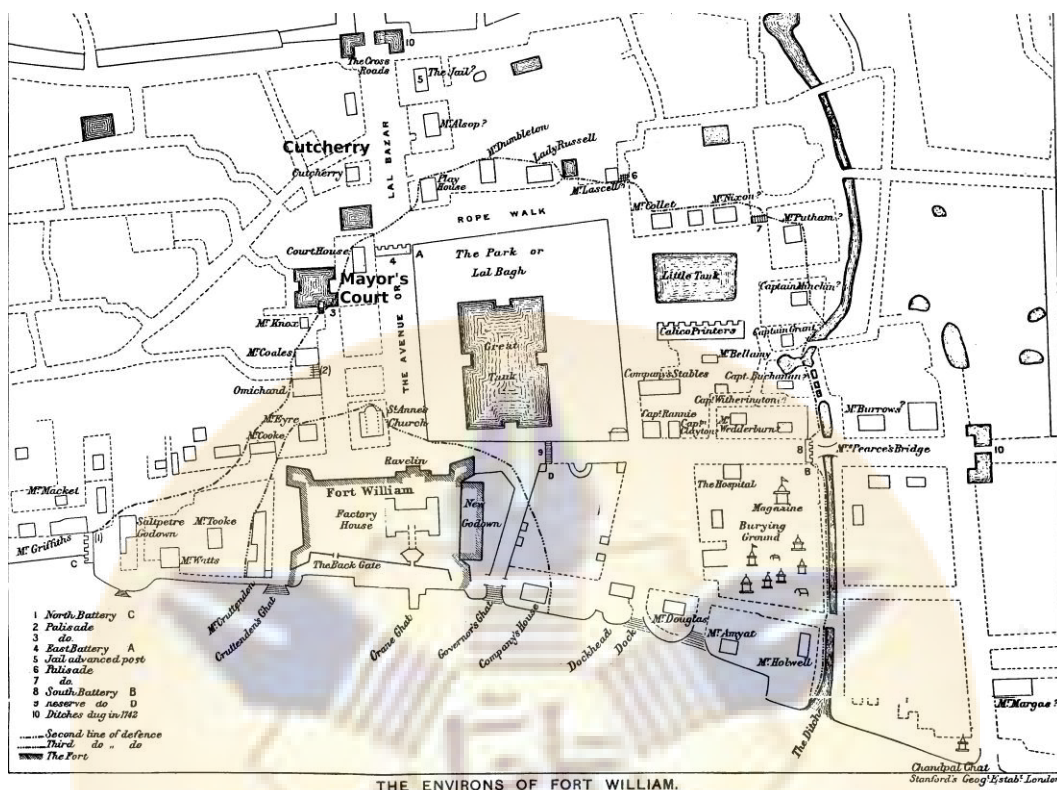


Figure 9: Central Calcutta in 1756⁵³

As an English resident of Calcutta reported in 1751, “all disputes of property under fifty rupees are decided by the jemindar, [as well as] all quarrels with blows or without.”⁵⁴ In addition, the under-Zamindar also intervened in religious and caste

⁵³ Map printed in S.C. Hill, *Bengal in 1756-7: A Selection of Public and Private Papers dealing with the affairs of the British...*, [2 vols.] (London: J. Murray, 1905), vol. 1, p. lxx (Plate 5).

⁵⁴ BL IOR Eur. Ms. Orme 12, pp. 165-6. This is one of the few sources describing the Cutcherry's role in dispute resolution in detail. It comes from a report prepared by J.Z. Holwell (former Mayor of Calcutta and later the EIC Zamindar himself) in 1751 and appears in both BL IOR Ms Eur. Orme 12, p. 155-172 as well as in its original form in BL IOR E/1/38 Miscellaneous letters to London 1751, pp. 71a-p. Holwell later used some of this material to describe the Cutcherry in detail in his *Important facts regarding the East-India Company's affairs in Bengal, from the year 1752 to 1760* (London, 1764), pp. 24-64. See also William Bolts, *Considerations on India Affairs*, (London, 1772), pp. 80-3.

disputes including those involving sexual transgressions between communities.⁵⁵ As noted in chapter one, it was common throughout Mughal Bengal for Zamindars to exercise dispute resolution powers and impose punishments, as *faujdars* [sheriff/protector], especially around matters of rent and property. The EIC zamindar at the Cutcherry executed basic criminal justice along this *faujdari* line under the nominal control of the EIC executive. However, many contemporaries claimed that the Cutcherry mostly fell under the control of the long-serving under-Zamindar, Govind Mitra, who apparently used imprisonment, torture, and other methods to extract rents or compel debtors to pay their creditors.⁵⁶ This assertion of authority apparently carried over to the Zamindar's criminal justice work, as Mitra was known to whip townspeople accused of theft or to sentence them to work upon the roads for life.⁵⁷

Perhaps because of this willingness to use force, the Cutcherry appears to have been quite popular in the collection of debts and in disputes amongst non-European inhabitants. In most cases, especially those involving debts, litigants at the Cutcherry could expect the Zamindar to order peons (petty men at arms) to shadow their adversaries or debtors until payment was made or the matter otherwise resolved. The officers of the Cutcherry received fees from litigants for this service, known as *etlack* (*itlaq*), and the records of these receipts indicate that the Court adjudicated a substantial number of disputes during the years of the charter court.⁵⁸ Actual court registers for the Cutcherry

⁵⁵ See BL IOR Eur. Ms. Orme 12, p. 167.

⁵⁶ BL IOR Eur. Ms. Orme 12, p. 165-7.

⁵⁷ Ibid., p. 168.

⁵⁸ In 1728 the Calcutta council mentioned to the Mayor's Court that it was customary to raise 5% on all

are not available for any year besides 1766, but contemporary accounts combined with this later evidence indicate that the clientèle of the court was mostly, though not exclusively, non-English.⁵⁹ In addition to those disputes determined at the discretion of the Zamindar and his assistants, the Cutcherry also frequently appointed arbitrators to resolve matters brought before it - most often senior *dadni* merchants from the Basak and Seth families.⁶⁰

The Cutcherry also had pride of place in Calcutta legal practice around matters of property and rent. The EIC held land-rights for much of Calcutta under various Mughal grants and in turn leased this land to third parties or kept it for its own use. So, in effect, the Cutcherry served as the Company's Mughal land office.⁶¹ The Zamindar and his employees collected rents from the populace, which amounted to around 1300 rupees per

disputes between Indians: BL IOR: P/1/6 Calcutta Consultations, pp. 607-8 (17 June 1728). In that year (1728) the Cutcherry raised over 8,000 rupees (~£1,200) from all such fees and fines. This table of Cutcherry revenue appears in BL IOR P/1/8: Calcutta Consultations, pp. 72-3 (4 May 1730). William Tooke, an EIC employee in Calcutta, described the practice of putting peons on debtors and raising *etlack* in 1757. See his account reprinted in Hill, *Bengal in 1756-7*, vol. 1, p. 266. Holwell gave a more extensive description of the practice in 1755, see BL IOR P/1/28 Calcutta Consultations: 19 May 1755, p. 255. The English rendering 'etlack' comes from the Arabic *itlaq* meaning to "liberate" or "set free" suggesting that residents had to pay the fee in order for the peons to leave.

⁵⁹ In 1766 there were around 670 cases before the Cutcherry and fewer than 5 involved Englishmen see BL IOR P/155/71: Zamindary court register 1766 and Chapter Eight. In 1755 the Zamindar reported that in the previous two decades or so the Cutcherry had adjudicated over 500 cases involving Luso-Indians or other Eurasians (Fringeers). This gives some indication of the volume of the court's business as everyone acknowledged that the court was not primarily used by Eurasians. See BL IOR P/1/28 Calcutta Consultations, pp. 255-6 (19 May 1755). However, as a key source of local legal authority, the Cutcherry also adjudicated disputes involving Englishmen. In 1748 for example, a Bengali merchant sued John Askin in the Cutcherry over a twenty rupee (~£3) debt - see *idem*. In 1766 both William Bolts and Harry Verelst filed suits in the Cutcherry.

⁶⁰ *Idem*. 43 of 670 cases were sent to arbitration in 1766. In 1734 for instance, litigants named Kipperam and Gureb submitted to arbitration at the Cutcherry in a small debt dispute. For a Cutcherry arbitration document read into court in their case see BL IOR P/155/16: Calcutta Mayor's Court Minutes, 17 September 1734. For other mentions of Cutcherry arbitration see BL IOR P/1/28: Calcutta Public Consultations, pp. 418-19 (25 September 1755) and also BL IOR P/1/34: Calcutta Public Consultations, pp. 520-1 (14 June 1762).

⁶¹ There are of course countless exceptions, most notably the land on which religious foundations like temples or mosques were built which was held largely outside the EIC's rental structure.

month (~£200) by the 1740s.⁶² As part of this task the Cutcherry scribes kept books recording all manner of land documents as well as the valuation of all parcels within the Company's bounds.⁶³

Most importantly, the Cutcherry had power to issue deeds (*pottah*) for every parcel of land in the city.⁶⁴ These *pottahs*, written in both Bengali and English, specified the name of a parcel owner, the size of a plot (sometimes with metes and bounds stated), and the details of the yearly rent owed.⁶⁵ The Cutcherry was also a place where local residents could deposit bills of sale, and mortgage documents so as to provide even greater security to their investments.⁶⁶ In an early 1730s transaction between an Armenian and a Luso-Indian merchant, the parties made sure to visit the Cutcherry to register a bond.⁶⁷ All residents of the city, including Europeans, turned to the Cutcherry for this purpose, contributing even more to a plural legal culture. Thanks to this plural culture, the Mayor's Court played no role in issuing *pottahs* or other property documents and it seems the English court remained largely outside the world of property disputes, hearing very

⁶² By provision within its land grants, the Company taxed all of these rented parcels, excepting those exempted for religious and civic purposes, at 3 rupees per bigah each year. Sterndale, *Calcutta Collectorate*, p.37.

⁶³ These rent rolls were termed *Jamabandi* a word used throughout Mughal India to refer to the valuation records kept by land-holders.

⁶⁴ There were large numbers of such parcels on the Cutcherry books - by 1743 there were at least 1,500 registered. See Pottah no. 1,561 (1 November 1743) cited in Sterndale, *Calcutta Collectorate*, p.16.

⁶⁵ The English text of a pottah for 1758 reads: "A pottah being granted unto Lokicanto Seat [Seth] for 6 Cottahs and 8 Chittacks of ground in bazar Calcutta, rent 15 annas 7 pies sicca per annum. Calcutta cutcherry, this 2nd day of January 1758, No. 1." Reprinted in Sterndale, *Calcutta Collectorate*, p. 36.

⁶⁶ This followed the custom in other parts of the Mughal Empire where parties in land transactions would frequently appear before the local *qadi*, or legal officer, to have their deeds and mortgages formally registered. On Mughal documentary registration practices see Farhat Hasan, *State and Locality in Mughal India*, pp. 91-4 and M.L. Bhatia, "Mode of Registration of Sale/Transfer deeds a case study in the second half of the 17th century" in the *Proceedings of the 43rd Indian History Congress*, (Aligarh, 1983), pp. 263-7.

⁶⁷ BL IOR P/155/14 Calcutta Mayor's Court Minutes: 1 July 1732.

few suits between non-Europeans over land matters.⁶⁸

The mercantile and political elites of Calcutta were of course not tied solely to the city and its legal institutions like the Mayor's Court and the Cutcherry. Most elite brokers and merchants maintained extensive connections in spheres of politics and trade well outside of Calcutta. They executed delicate political balancing acts vis a vis other Indian polities and elites in the region. They were perfect examples of what Bayly and Subramanyam have dubbed “portfolio capitalists,” that is, those Indian elites who invested their resources in trade as well as land rights and political connections.⁶⁹ Through their newfound wealth many brokers rose quickly from caste positions of relatively middling status to become important landlords and middlemen in territories beyond Calcutta.⁷⁰ Rasbehary Seth managed to leverage his importance in Calcutta to secure a *sanad* [grant] from the Mughal government giving him revenue rights to plots of land just outside Calcutta.⁷¹

Many of these elites accordingly maintained strong connections with the court of the Mughal governor at Murshidabad some 130 miles up-river from Calcutta. For

⁶⁸ My sampling of court records turned up only a handful of cases relating to real property in the records of the Mayor's Court. Of these, the majority relate to unpaid house rent by Europeans - as when Omichund successfully sued William Vanderburgh in 1744 for a year's back rent on one of his Calcutta mansions cf. BL IOR P/155/22: Calcutta Mayor's Court Minutes, 20 February 1744 - the rent was 120 rupees a month (~£20).

⁶⁹ See C. A. Bayly and Sanjay Subrahmanyam, “Portfolio Capitalists and the Political Economy of Early Modern India,” in *Merchants, Markets and the State Early Modern India*, ed. Sanjay Subrahmanyam (Delhi, 1990), pp. 242-65.

⁷⁰ Mukherjee details this caste shuffling and social mobility throughout her *Merchants and Companies*.

⁷¹ By 1747 he had gained *Talukdari* rights to the district of Balighata just to the east of Calcutta - an acquisition which neighboring hereditary landlords claimed was helped by intrigue and bribery, see Ray, *Short History*, pp. 52-3. Govindra Mitra also held several revenue farms from the governor at Murshidabad, see Sen, *Stagnating City*, p.71. Likewise, Omichund's brother Deepchund served as a Mughal revenue officer over several saltpetre producing areas near Patna - see Chatterjee, “Darbar Politics,” p. 260.

example, nearly all of the EIC's brokers, and the Company itself had commercial dealings with the merchant house of Jagat Seth, based out of Murshidabad. The prominent principals of this house, especially Fateh Chand, lent large sums to Company employees and also served as patrons for Omichund and other brokers at court.⁷² The Jagat Seths had enormous clout at the court of the Mughal governor and the Dutch, French, and English Companies all paid them tens of thousands of rupees to secure favors from the governor. In addition, all of the European companies and many of the Company's brokers employed *vakils* [agents] at Murshidabad in order to negotiate trade terms and resolve disputes.⁷³ These close contacts with political elites on all sides allowed brokers to petition various authorities directly for remedies in their dealings with Europeans and each other.⁷⁴ In the confusing and turbulent political world of 18th century Bengal, such political connections were essential for any merchant to succeed and it was not uncommon for local elites to play on both sides at once. Thus, in 1748, a Maratha general, enemy to the Mughal government and sometimes the EIC as well, wrote to Omichund promising to reimburse him for some looted goods and apologizing for taking Company boats.⁷⁵ These myriad connections to circuits of power exemplify the necessarily plural legal culture at Calcutta,

⁷² His full title was Jagat Seth Fateh Chand - often transliterated Fettichand or Futtichund in English records. For more see J.H. Little, *The House of Jagat Seth* (Calcutta, 1967). On Omichund's patronage see Mukherjee, *Merchants and Companies*, pp.69-70. The Mughal government in Bengal had given the Jagat Seths the right to mint all coinage at Murshidabad and as such bought much of the bullion imported by the Company as transferred through their brokers.

⁷³ The EIC employed Kissendeb Podar for this purpose from at least the early 1750s and there are frequent mentions of the EIC *vakil* in earlier documents.

⁷⁴ Omichund and his brother, for instance, employed their own *vakil* at court. See Chatterjee "Darbar Politics," p. 245. Deepchund mentioned a *vakil* named Muckmun Singh in 1744 though its unclear if this was indeed his Murshidabad *vakil* see his letter in BL IOR P/1/17 Calcutta Consultations, pp. 372-3.

⁷⁵ BL IOR H/804, p. 39. Letter dated 19 April 1748.

wherein aggrieved parties could apply to any number of authorities for redress, or tactical advantage.

The existence of the Cutcherry as well as strong alternative legal venues in the nearby country meant that the Mayor's Court played second fiddle in many ways in the lives of the average non-European inhabitant. As a result the court at Calcutta was the most dominated by Europeans of any of the Mayors' Courts. While in its early years the majority of cases heard by the Calcutta court involved no English litigants at all, by the 1740s and 50s, most cases there involved disputes related to European mercantile matters.⁷⁶ In these later years, the same *dadni* merchants and *banians* appeared in court as earlier but largely in suits involving their European trade partners.⁷⁷ Likewise, very few matters of family or religious law reached the Calcutta Mayor's Court as these were presumably settled at the Cutcherry or elsewhere.⁷⁸ It seems then that the Cutcherry, which initially lost business to the Mayor's Court, regained its footing as the primary venue for inter-Indian disputes within a few years of the charter.⁷⁹

Madras

At the charter's arrival in 1727 more than 100,000 people lived in EIC Madras,

⁷⁶ See Table 2. In 1744 only half of the suits in court involved non-English parties.

⁷⁷ One curious case from the first court day involved Nuree, a "silk man" (presumably a dealer in silk), who sued William Wittingham for an unpaid debt. Even though this was the first day any English law court had operated at Calcutta, Nuree was savvy enough to file a bill knowing that Wittingham had left Calcutta. When Wittingham did not appear in court within two weeks time, the court ordered his effects attached to pay the debt and all court costs and charges For Nuree v. Wittingham see P/155/10 Calcutta Mayor's Court Minutes, 16 and 30 December 1727.

⁷⁸ By 1750 the Mayor's Court even dismissed wholesale a suit based on Hindu adoption customs - relegating to other customary authorities. BL IOR P/154/49: Calcutta Mayor's Court Minutes, 3 March 1750.

⁷⁹ The receipts of the Cutcherry from 1726-1728 show a marked decline. See BL IOR P/1/8: Calcutta Public Consultations, pp. 72-3 (4 May 1730).

with still more residing in the surrounding villages and suburbs. Of these residents, perhaps only 400 were of British extraction, more than half of whom served in the EIC's military or in itinerant sea-faring capacities.⁸⁰ In addition to the English, diasporic trading communities of Jews, Armenians, and Gujaratis settled in the city and played a central role in the commercial life of the settlement, though their numbers never exceeded the low hundreds. There was also a more substantial population (around 5,000) of Luso-Indians and Catholics in Madras, of whom the majority were converts from lower caste fishing occupations.⁸¹ Also included in this number though were a number of prominent *fidalgos* and well-connected merchants who had migrated to Madras from San Thome over the previous century. The Muslim population of the city is difficult to estimate but Tamil-speaking Muslim merchants as well as Muslim seafarers and shipowners from the Arabian Sea were certainly active in Madras trade.

The majority of the population of the city split between the so-called left and right hand groups.⁸² The elite of these groups included Tamil-speaking higher caste Vellalars

⁸⁰ Population figures are notoriously inaccurate - see for an example Om Prakash, *European Commercial Enterprise in Pre-Colonial India* (Cambridge, 1998), p.148. There were perhaps only a few dozen English women in the settlement. For example, Soren Mentz cites the official lists of English (non-military) residents at Madras as 114 men and 33 women in 1723. Soren Mentz, *The English Gentleman Merchant at Work*, table on p. 244.

⁸¹ For this population estimate see letter of Fr. Severigni at Madras to London BL IOR E/1/35: Miscellaneous Letters to London, pp. 174-5 (10 January 1755). Naming conventions make the identification of individual religious identities quite difficult, for example, in 1691, a man named Thaniappa Mudaliar died and had a Tamil gravestone erected in the Catholic church at Madras asking passers-by to say 'Our Fathers' and 'Hail Marys' on his behalf. His Christian name was Lazarus Timothy. See J.J. Cotton, *List of Inscriptions on Tombs or Monuments in Madras*, 2 vols. [orig. 1945] (Madras, 2000), vol. 1, p.7. For more on Madras Catholics see Achilles Meersman, *The Franciscans in Tamilnad*, (Schöneck, Nouvelle revue de science missionnaire, 1962); Peter Celestine, *Early Capuchin Missions in India*, (Sahiabad, 1982); and J.H. Cunha-Rivera, *A jurisdição diocesana do bispado de S. Thome de Meliapor nas possessões inglesas...*, (Nova-Goa, 1867).

⁸² The right hand group was usually of a higher caste while those on the left were more often tradesmen

from Madras and its surroundings who had strong ties to agricultural and village revenue management.⁸³ Telugu-speaking Komati traders, various Chettiar merchants, and *kanakkupillai* accountants from the hinterlands of the city also featured prominently in these groups. The aforementioned elite mercantile and governing communities were those most represented in the litigation of the chartered courts. The vast majority of the many thousands of low to middling weavers, fishermen, craftsmen, sailors, and laborers living in the city never entered the Mayor's Court.

This being said, the Madras Mayor's Court featured an extremely active pool of Indian litigants. While this may have been due to the preexistence of the older Mayor's Court there, it also suggests the close commercial and governmental ties connecting the EIC and the *dubashi*/mercantile population of the city. The economy of Madras, like that of Calcutta, was predicated on distance trade, primarily in textiles. Most of this trade came via sea and involved complex mercantile relationships between brokers, shipowners, and merchants in ports throughout the Indian Ocean. As an indication of the volume of this trade, in 1737 the Company's customs house at Madras collected duty on around 900,000 pagodas (~£360,000) of shipborne goods and 320,000 pagodas

and merchants. See Brimnes, *Constructing the Colonial Encounter* for a full treatment of the left/right hand caste divide in Madras.

⁸³ Members of this group are often, if problematically, identified in English records by their Mudaliar and Pillai surnames. On the place of Vellalar families in the commerce and government of South India see Kanakalatha Mukund, *The Trading World of the Tamil Merchant*, (Chennai: Orient Longman, 1998) and Susan Neild-Basu, "The Dubashes of Madras," *Modern Asian Studies* 18.1 (1984), pp. 1-31. The term "Vellalar" could be used by other groups though - see e.g. Ludo Rocher, "Jacob Mossel's Treatise on the Customary Laws of the Vellālar Chettiars," *Journal of the American Oriental Society*, 89.1 (Jan. - Mar., 1969), pp. 28-30.

(~£130,000) of goods sent by land.⁸⁴ Compare this to the £150,000 worth of goods exported from Philadelphia in the same year.⁸⁵

A range of prominent merchants took part in this trade. Some, like Anthony D'Souza were Luso-Indians who had trading connections to Macau and Manila as well as contacts in the Mughal interior.⁸⁶ Others were Armenians from Persia like Petrus Uskan (1681-1751) who gave tens of thousands of pounds from his trading activities to Madras charities.⁸⁷ The majority though were Chettiars acting as independent traders or various brokers acting on behalf of their European partners.

Since the 17th century, the EIC at Madras had contracted with a series of Chettiar merchants for the procurement of goods. These merchants formed joint stock conglomerates, occasionally with Europeans, to provide goods for the Company.⁸⁸ Unlike at Calcutta, these merchants advanced their own money to buy textiles and other goods for the EIC's annual investment. In the charter court period, these traders hailed from a mix of Nattukottai Chetti and higher caste Telugu-speaking Komati families. Among the most important of these were Moodu Venkata Chitty [Vinkatte Chetti] and Tomby Chitty [Thambu Chetti], both leaders within the left hand caste as well as chief brokers and

⁸⁴ Love, *Vestiges*, v.2, p.326. Sea borne customs were 5% and land 2.5%.

⁸⁵ American Colonial trade and taxation figures are notoriously confusing - this number extrapolated from Table 6 in Mancall et al. "The role of Exports in the Economy of Colonial North America."

⁸⁶ D'Souza appears in several Mayors' Court cases. J.D. Gurney also records that D'souza was one of the most substantial Eurasian merchants in the area and that he was called Chettikar in Persian at the court of the Nabob of Arcot. J.D. Gurney, "The Debts of the Nabob of Arcot," Ph.D. Dissertation (University of Oxford, 1967), p.212.

⁸⁷ Bhaswati Bhattacharya, "The "Book of Will" of Petrus Woskan (1680-1751): Some Insights into the Global Commercial Network of the Armenians in the Indian Ocean," *Journal of the Economic and Social History of the Orient* 51 (2008), pp. 67-98.

⁸⁸ By the early 1700s the joint-stock organization died out and simple mercantile partnerships were more common. See Mukund, *Trading World*, pp.123-4 and Arasaratnam, *Merchants, Companies, and Commerce*.

revenue farmers for the Company throughout the early 1700s.⁸⁹

In addition to the Chettis, Komati merchants of the Sunkuvar family, who had moved to Madras and other cities on the Coromandel Coast, had extensive links with the Company as well as ports throughout India and the Arabian Sea. Sunku Rama, the most prominent of these Komatis at Madras, was a Company contractor and politically connected power-broker who traded in pepper, cloth, and other commodities.⁹⁰ Also of importance among these elite groups were those of the Bandla family from the Perikaver weaving caste. Members like Chinna Venkatadry had been some of the earliest *dubashes* of the EIC in Madras and the family continued in governmental and revenue farming prominence throughout the 18th century.⁹¹

However, by the mid-18th century, the civic and governmental life of the city came to be dominated by Vellalar groups from land-holding and agricultural families who had moved to Madras in the 18th century. These higher caste local elites with names like Mudaliar and Pillai became important as *dubashes*. Similar to *banians* in Calcutta,

⁸⁹ Venkata appears on the list of the Company's chief merchants in 1705 and again through to 1717-8. For more details of his departure and return to Madras after the caste disputes of 1717-8 see Brimnes, *Colonial Encounter*, pp. 66-7. Thambu Chetti was also a Beri Chitty and chief merchant of Madras in 1724 - he was given a warehouse space in the white town by the EIC see *The Madras Tercentenary Commemoration Volume*, p. 265. On both see also Mukund, *Trading World*, pp. 122-4. These two Chettis accused a series of *dubashes* of extortion at Madras in 1722-3 see Kanakalatha Mukund, *The View from Below*, p.162.

⁹⁰ Sunku Rama was also known by the formal title Sunku Venkatachalam. He was a Company merchant in 1705 as well as 1728 and owned a house in the "white town" of Madras - his descendants were later *dubashes* for the Orme family. See Love, *Vestiges*, v. 1 p.137 and v. 2 p.194; Mukund, *Trading World*, pp.139-40; and for his connection to the Ormes: Gurney, "Debts of the Nabob of Arcot," p. 43.

⁹¹ On Beri Timappa and Venkatadry see Love, *Vestiges*, vol. 1 pp. 416-17, 521-4 and Basu-Neild, *Dubashes*, p.5. The family held the rights to pack all Company goods into the 18th century. They also were patrons of public works throughout the Madras hinterland. Into the 1820s Brahmans at a local temple invoked both Timappa and the EIC in their prayers - see Robert Frykenberg, *Christianity in India from Beginnings to the Present*, (New York: OUP, 2008), p.185.

dubashes served as the crucial intermediaries in trade between Europeans, suppliers, and other merchants, but in Madras *dubashes* also served as quasi-governmental officers in many divisions of the EIC administration.⁹² Nearly every major Company employee had a *dubash* attached to him, and there was even a chief *dubash* of Madras placed in charge of translating and mediating all intergovernmental exchanges.⁹³ While many Vellalar *dubashes* carried on trade on their own and for their employers, they also maintained extensive ties to their landholding past and preserved inherited traditions of literacy, civil service, and religious endowment in their new environment.⁹⁴

These merchants and local elites depended on the Company for more than their fortunes since they also benefited from the EIC's clout and protection. In 1748, for instance, the Company wrote letters on behalf of merchant China Moota Chitty [Chinnaiya Mutta Chetti] to the local *nawab* claiming him as a Company dependent.⁹⁵

The EIC employees and officers who employed *dubashes* even helped them enhance their

⁹² Neild-Basu's *Dubashes* provides the best introduction to *dubashes* - literally "speakers of two languages."

⁹³ See Neild-Basu, *Dubashes*, pp. 4-6. In the 1740s Vyasam Venkatachalam Papaiya, the chief dubash of Madras sent a CV of sorts to the EIC in London in which he listed all that he done in the office including translating firmans, submitting reports of caste disputes, and writing letters on the Company's behalf. See BL IOR E/1/37: Miscellaneous letters to London, pp. 29-30 (20 February 1749).

⁹⁴ When the Vellalars participated in processions through Madras their corporate banner featured a plow as a symbol of their agricultural roots. The best contemporary depiction of Vellalar elites is an early 19th century Sanskrit MS *Sarva-Deva-Vilasa* which details life in 18th century Madras. For an English language commentary on the MS with details about Vellalar life see V. Raghavan, "The Sarva-Deva-Vilasa: a critical historical study," *Adyar Library Bulletin* 22 (1958), pp. 45-118 (for the note on the plow banner see p. 109). For further study of the SDV and Vellalar society see Indira Peterson, "Mapping Madras in the Sarvadevavilasa: Urban space, patronage and power in a nineteenth century Sanskrit text," in. *Passages: relationships between Tamil and Sanskrit*, eds. M. Kannan and Jennifer Clare (Institut Francais de Pondichery, 2009), pp. 333-358. The complete Sanskrit text of the SDV is printed in the *Adyar Library Bulletin* 21 (1957), pp. 315-414.

⁹⁵ *Records of Fort St. George: Country Correspondence (Public Department) 1740-51* [4 vols.], (Madras: Madras Government Press, 1908-1910), vol. 2, p. 78 (18 October 1748). He also appeared as a litigant in several Mayor's Court cases and was a close ally of John Roach the sometimes Sheriff of Madras. See a packet of their correspondence in BNA C108/95 dated 30 September 1735.

rural status by securing them grants and revenue rights in territories under EIC influence.⁹⁶ At the same time, the EIC administration of Madras could not have functioned without these Indian intermediaries to collect revenue, pay taxes, and negotiate with local political powers.

Unsurprisingly these Madras elites were the most frequent litigants at the Mayor's Court. Many merchants and *dubashes* would have been familiar with the workings of English government from their prior experiences with the Company as well as the former Mayor's Court. In fact, some of the descendants of the first Hindu aldermen on the old court were among its more common litigators.⁹⁷ In addition, on the first court day of the new Mayor's Court, Domingos Alvez and Tagapa Chitty [Chetti] reintroduced a long-running dispute over debts and false-imprisonment to the court. Showing a comfort with the English system, Vinkatte Chetti also sued Alvez several days later and both litigants in this first case appealed the Mayor's court judgment to the Governor and Council within a month.⁹⁸

Woodford and the Directors had designed a system based on English practice and predicated on use by Englishmen. However, in the first year of the new Madras Mayor's

⁹⁶ For example, Gov. Benyon of Madras who secured various outlying village revenue rights for his *dubash* in the 1740s. See Gurney, "Debts of the Nabob of Arcot," p.41.

⁹⁷ Chinna Venkatadry, of the Bandla Periakars was one of the first aldermen. His descendant Chinna Tombe [Chinnatambi] appeared in the Mayor's Court on several occasions. For more on this family see Mukund, *Trading World*, p. 148 and Ramaswamy Naidoo, *Memoir on the Internal Revenue System of the Madras Presidency*, 1820. Published as *Selections from the Records of South Arcot District* no. 2 (Madras, 1908).

⁹⁸ For Alvez v. Chitty see BL IOR P/328/65: Madras Mayor's Court Proceedings, 29 August, 8 September, 26 September, and 29 September 1727. Their appeal to the Governor and Council was entered as rejected into the MC minutes on 28 November 1727. The dispute appears to have originated at least in 1726. For the countersuit see *ibid.* Mootu Vincatte Chitty v. Alvez (12 September 1727).

Court's operation 66% of cases brought before the court involved no discernible English litigant at all. Rather, Vellalar, Komati, and Chettiar elites dominated its proceedings. In the years sampled, nearly one third of all cases involved at least one Chettiar merchant and another third involved at least one litigant from another one of the elite groups (largely Vellalars). In particular, prominent elites like Venkata Chitty, Tomby Chitty, Venkatapati, and Chinnatambi were each involved in multiple suits.⁹⁹ Other Indian employees of the EIC administration, such as conicopolies [*kanakkupillai*] and the governor's personal *dubash* Gooda Ankanna also appeared in court as litigants.¹⁰⁰ A few of these elites also embraced English testamentary practice so as to pursue claims with English authorities.¹⁰¹ In one instance an explicitly Hindu will in Madras even included the traditional English opening stanza “in the name of God Amen.”¹⁰²

Luso-Indian notables as well as the local Capuchin priest appeared in just thirteen

⁹⁹ Venkatapati (also transliterated Vencatty Putty or Vencatty Putty Naique) was the grandson of the local ruler who granted Madras to the Company in the 17th century - see Love, *Vestiges*, v.2, p.20. There were also at least a dozen different Mudialar litigants in court during these years. For example, one Copah Chitty filed twelve lawsuits in the first year of the court's existence.

¹⁰⁰ Ankanna was most likely from the Bandla Periakar family. The Pedda naique also appeared in court in 1744. On Ankanna see Mukund, *Trading World*, p.149.

¹⁰¹ In fact one of the earliest cases brought to the new Madras court in 1727 involved a will and inventory of goods produced by a Vellala *dubash* cf. BL IOR P/328/65 Madras Mayor's Court Minutes, 29 December 1727. J.D. Mayne, in his great treatise on Hindu law called Hindu wills a “pernicious anomaly”: J.D. Mayne, *Hindu Law*, (Madras: Higginbotham, 1875), p.247.

¹⁰² For the inclusion of this Christian opening stanza in a Hindu will see BL IOR P/328/78: Madras Mayor's Court Minutes, p.165-66 (case of Petombo Narrain 1742-4). Reminiscing in 1755 the Mayor's Court at Madras stated “...the natives of this country have not only made wills but likewise that the same were proved in the former [pre-1753] court when required by persons sued in this court” citing a Hindu will of 4 March 1740 as proof BL IOR P/329/69: Madras Mayor's Court Proceedings, pp.239-41 (19 August 1755 Bahee v. Conteoff). I have been unable to trace this will of March 1740. Non-Christian residents sometimes approached the court to dispute the disbursement of non-Christian estates when no will was present, but rarely took out official letters of administration to do so. In 1744 Gauly Rarna Chitty sued a widow named Lingama in Madras for a 26 pagoda debt (~£10) due him from her husband's estate, but while the court supported Chitty in his claim, there is no evidence Lingama took out letters of administration beforehand. Cf. BL IOR P/328/78: Madras Mayor's Court Proceedings, pp.562-4. (13 November 1744).

of the 174 cases surveyed. Likewise, identifiably Muslim and Armenian litigants appeared in only eight cases each, most of these being long-distance traders. Litigants also included a small smattering of poor mariners, lascars, and pariahs. The remainder though were English. Englishmen appeared in fifty-three of the 174 cases and ranged from members of the EIC council to private merchants but with a heavy concentration of the most influential.¹⁰³ This elite litigant pool and the ease with which they navigated the Mayor's Court give a sense for the importance of the chartered courts in the commercial and political life of the city.

Alternative Venues for Dispute Resolution

Even though Madras had a long history of English judicial institutions prior to the 1726 charter, its legal culture nonetheless featured a variety of alternative dispute resolution systems. Similar to the Cutcherry in Calcutta, the Choultry at Madras served as one of the most important sites of legal authority in the city. The Choultry functioned as the primary place of registration for all mortgages, deeds of sale, transfers of property as well as a tribunal for resolving disputes from the 1660s onwards.¹⁰⁴ Even during the operation of the new Mayor's Court, quarreling merchants and inhabitants went to the clerks and justices of the Choultry to have their disputes resolved.

While an appointed EIC officer served as the supervisory register at the Choultry,

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¹⁰³ Members of the permanent Madras English community like the Powneys etc. featured in a number of suits

¹⁰⁴ The Choultry, rather than the Mayor's Court seem to have continued to keep the property document archive at Madras until 1800 when its records were transferred to the new recorder's court. See the Madras Consultations of 18-19 March 1800 cited in C.S. Srinivasachari, "The Recorder's Court at Madras (1798-1801) and some of its findings," *Indian Historical Records Commission Proceedings XXVII* (Delhi, 1950), p.64.

its staff of conicopolies [*kanakkupillai*] proved powerful agents in the local legal order.¹⁰⁵ Conicopolies were those Indian accountants and scribes who served individual merchants as book keepers or in official scribal capacities with the EIC. In addition, a hereditary town conicopoly collected revenue for the Company and controlled much of the business of the Choultry. Throughout the chartered era in Madras, conicopolies continued to serve in their traditional capacity in the Choultry court, drawing up arbitration bonds, accounts, complaints, petitions, etc. and delivering their revenues to the Company itself after the 1730s.¹⁰⁶ The actual justices of the Choultry though were Englishmen of the EIC council appointed to that post by the executive. While evidence about the workings of the Choultry court is lacking, large numbers of residents clearly approached the justices and their Indian assistants to have disputes resolved relating to property, inheritance, and the like.¹⁰⁷

The Choultry court also had power over the life and limb of the inhabitants of Madras. The hereditary *Pedda Naique* (a kind of local sheriff) and his hired police (*talliar*s) all confined debtors and scofflaws to the Choultry prison.¹⁰⁸ Sometimes this process of imprisonment occurred clearly outside the bounds of the charter's strictures.¹⁰⁹

¹⁰⁵ On Kannuku Pillai see Edgar Thurston, *The Castes and Tribes of Southern India*, [7 vols.] (Madras: Government Press, 1909), vol. 3 pp.150-2. For the work of the town conicopoly as seen in testimony before the Mayor's Court see BL IOR P/328/65: Madras Mayor's Court Proceedings, 5 April 1728 (Chittee vs. Puttee).

¹⁰⁶ See Bhavani Raman's discussion of Choultry networks in the late 18th century: "The Familial World of the Company's kacceri in Early Colonial Madras." *Journal of Colonialism and Colonial History* 9.2 (2008), pp. 18-19.

¹⁰⁷ For a letter detailing a property dispute taken before the Choultry justices by two prominent dubashes see BL IOR E/1/35: Miscellaneous Letters to London, pp. 105-105f (16 October 1749).

¹⁰⁸ Cf. Love, *Vestiges*, v.2, p.228 for an example of this.

¹⁰⁹ The accounts of the Choultry indicate that there could be anywhere from three to twelve prisoners

In 1741 for instance, the EIC governor of Madras had two money changers confined to the Choultry jail and then sent to Sumatra for apparent fraud.¹¹⁰ On another occasion, a merchant at Madras told the Mayor's Court of how a conicopoly had sent him to the Choultry prison upon the mere allegation of unpaid debt.¹¹¹

Madras inhabitants also depended on the Choultry in most matters of property and legal documentation. Land tenure in Madras worked in a way similar to that in Calcutta, but with much looser ties to Mughal structures. The Company had the right to lease all land within its boundaries at Madras and collect annual quit-rent on all of the parcels, fields, and buildings it rented out.¹¹² In 1735 the EIC executive ordered that the Choultry be established as sole document registry in the city with all inhabitants having to prove title to land there.¹¹³ These Choultry registers served to keep track of the value and owners of these parcels as well as the myriad mortgages contracted by their owners.¹¹⁴ Residents even wrote out small transfers of property amounting to no more than five or six pagodas on palm leaves (*cadjans*) in order to bring them to the Choultry for

confined at the jail there at any one time - see RFSG *Consultations*, v.74 for tallies of Choultry prisoners in 1744. E.g. there were 12 such prisoners in February of that year.

¹¹⁰ Love, *Vestiges*, v.2 p.311.

¹¹¹ BL IOR P/328/78: Madras Mayor's Court Proceedings, p. 386 (5 April 1743).

¹¹² In a land survey of 1727, the Company found 628 houses in the city and 1,405 in the suburbs within their bounds. During the period of the Mayor's Court it was customary for the Company to charge 2.5 pagodas (~£1) per 60 square feet when selling land reserved to itself. The Company collected 2,603 pagodas in quit-rent on these properties in 1727 or about 1/20th of total civic revenue. Love, *Vestiges*, v. 2, pp. 205,240, 273-4.

¹¹³ Ibid., p.237.

¹¹⁴ By 1743 for example there were at least 2,735 mortgages registered on the books at the Choultry. See *Records of Fort St. George: Pleadings in the Mayor's Court 1731-1745* [5 vols.], (Madras: Madras Government Press, 1936-1939), vol. 5, p.223 for an 18 April 1743 mortgage bond registered as "no. 2735." Hereafter RFSG *Pleadings*.

registration.¹¹⁵ The records created by these officials were essential to the mercantile and legal constitution of the settlement. In a typical 1751 bond, for example, both parties (one Armenian, one Chettiar) specified that a certain document had to be deposited with the Choultry officials for registration in order to be valid.¹¹⁶ Because of the importance of the Choultry in this regard, the records of the Madras court teem with bonds, deeds, and other instruments registered there. In other words, residents appear to have preferred it as venue for solemnizing documentary matters.

There were of course other sites of legal authority and dispute resolution at Madras outside of the Choultry. The complexity of community and caste relations in Madras ensured a whole host of caste tribunals and other bodies who handled dispute resolution. In one instance, two Hindu merchants went to twenty-three caste elders in order to broker and resolve a commercial dispute.¹¹⁷ In a different case, a widow went to her “cast heads” in order to force the powerful administrator Venkatapati to return some of her husband's property.¹¹⁸ Madras residents from other communities also went to their own communal elites, such as Catholic priests, or Muslim *qadis* to have disputes

¹¹⁵ Wheeler, *Annals of the Madras Presidency*, vol. 2 p.314. On “cadjans,” (from the Malay word for palm leaves) see Yule, *Hobson-Jobson*, pp.139-40. See especially his example on p. 140 of a cadjan letter posted in Madras in 1707 by the right hand caste. See also *ibid.*, p. 636 for examples of the use of these palm-leaf documents by kings and judicial officials. These bonds and instruments were for the large part written on *cadjans* in languages other than English. Largely Tamil - multiple conicopies testified in 1744 that they could not write the Devanagari script. See *RFSG Pleadings*, vol. 5, p. 106.

¹¹⁶ BL IOR P/328/83: Madras Mayor's Court Proceedings, 14 September 1756. The bond in the case is dated 11 November 1751. See also *RFSG Pleadings*, vol. 4, p. 1 for an entry in the Choultry register written by the town conicopoly. There are also numerous examples of Madras residents approaching the Choultry to ask for new titles to land or certificates proving a sale valid. See BL IOR P/328/78: Madras Mayor's Court Proceedings, Case of the estate of Poncala Kistna v. Canacamah et al. (especially p. 513).

¹¹⁷ BL IOR P/328/78: Madras Mayor's Court Proceedings, p.451 (13 September 1743). Case decided in November 1744.

¹¹⁸ See *Vencatama v. Vencatty Putty [Venkatapati]* *RFSG Pleadings*, vol. 4, pp.i-iii (24 December 1744).

resolved. In 1754, a Muslim merchant brought a bond before a *qadi* named Abdul Becker at Madras so that it could be registered and sealed.¹¹⁹ Roman Catholics, especially Luso-Indians, at Madras relied on the French and Italian Capuchin friars there to serve as notaries “for last wills, deeds, and letters of attorney.”¹²⁰ In addition, Sebouh Aslanian has shown that Armenian merchants at Madras established its own mercantile tribunals to determine communal disputes.¹²¹ The EIC executive and the governor's *dubash* also continued in prominence into the age of the new Mayor's Court. Inhabitants sometimes asked the EIC governor and his *dubash* to resolve disputes or appoint arbitrators. In other instances the *dubash* could use force to compel a settlement without much consent.¹²² Regardless of their particular constitutions, these dispute resolution mechanisms all depended on the participation of local elites, whether merchants, religious figures, or communal leaders, creating a diffuse constellation of authority in the settlement.

Bombay

Though population figures for Bombay are unreliable, it is likely that between 20,000 and 40,000 people lived in the entire island territory during the period of the first charter.¹²³ Unlike in Calcutta and Madras where most of the litigants in the Mayor's Court came from narrow merchant groups, litigants at the Bombay court represented a wider swath of the population. One reason for this difference was the unique economic and

¹¹⁹ Abdul Becker is identified as a 27 year old “priest” in the Mayor's Court records and testifies on Muslim law. See BL IOR P/328/81: Madras Mayor's Court Proceedings, p. 260 (10 September 1755).

¹²⁰ BL IOR D/102: Correspondence Committee memoranda, Letter from the Capuchins at Madras to the Duke of Bedford (11 April 1749).

¹²¹ See Sebouh Aslanian's forthcoming work.

¹²² Arasaratnam, *Merchants, Companies, and Commerce*, p.287; Brimnes, *Beyond Colonial*, p. 539 et al.

¹²³ See the *Bombay Gazetteer*, v. 26, part 3 p.525 for a survey of 1780 which put the population at just shy of 50,000.

social makeup of the territory. Before Bombay became a mercantile entrepot by the mid-18th century, it was dominated by a population involved in agriculture, revenue-farming, government office-holding, and land-ownership.

Litigants of all kinds in Bombay embraced the new chartered order and did not hesitate to use the the Mayors' Courts to pursue their claims. Thus, in 1730 the Italian Carmelite pastor of the Catholic church at Mahim sued a local Shenvi landowner in order to get him to pay a customary percentage of its produce towards the church.¹²⁴ Likewise, several Muslim widows approached the court in 1737 to effect a settlement to a dispute over their fractional rights in agricultural real estate on the island.¹²⁵ Even Kunbi agriculturalists, long considered feudal laborers permanently attached to land, used the court to pursue their property claims.¹²⁶ Bombay was also unique in the degree to which residents of all kinds embraced English testamentary practice, as a greater number of non-Christian elites used European-style wills to dispose of their effects there than at the EIC's other settlements.¹²⁷

¹²⁴ The friar in this case was Peter d'Alcantara who came to India from Rome in 1719. In 1731 the Pope appointed him Bishop of Arepolis (in today's Turkey), Golconda, Idalchan, and Bombay. That year he also petitioned the EIC executive for an annual salary. For more on his history and the role of the Catholic Bishop of Bombay see Humbert, *Catholic Bombay, her priests and their training* [2 vols.] (Bombay, 1960-4), vol.1, pp.106,111 and BL IOR P/341/7A: Bombay Public Consultations, pp.38-42.

¹²⁵ BL IOR P/416/111: Bombay Mayor's Court Proceedings, pp.29-32 (9 February 1732).

¹²⁶ See especially the Matra case in the Court of Appeals BL IOR P/416/102: Bombay Court of Appeals records, 30 March 1730.

¹²⁷ In Bombay, residents of all kinds took out letters of administration on the estates of non-Christians. In 1744 for example, three carpenter brothers named Sinajee, Mayamjee, and Gopauljee asked for letters of administration to the estate of their father's cousin, only to be beat out at the courthouse by the deceased's niece who successfully received the administration - see BL IOR P/416/119: Bombay Mayor's Court Proceedings, 10 October 1744. As in other legal matters, those with close ties to the Company and the old Luso-Indian order seem to have used the courts in this regard. When longtime EIC employee Bhicu Sinay [Shenvi] died in the 1740s, the Mayor's Court at Bombay granted merchants and landlords Crisna Naique and Ragonath Comatty [Komati] administration of his estate.

Though this practice is undoubtedly rooted in the city's Portuguese past, it seems to have flourished rather than withered under the new English legal order.¹²⁸ The Mayor of Bombay even declared in 1729 that he was interested in lowering registration fees of the Mayor's Court as to encourage "...the inhabitants to prove their wills in our court."¹²⁹ Further, one late 1750s case revealed that a Muslim merchant had written a will in Portuguese conforming to common court standards, freeing 11 of his slaves, appointing executors, and setting aside funds for charitable donations.¹³⁰ In short, the residents of Bombay made the chartered legal order their own.

One of the reasons for such an embrace of the charter courts and their structures undoubtedly lies in the distinct role played by two Bombay communities - the Purvoes [Prabhus] and the Sinays [Shenvis]. Members of these groups appeared as litigants in perhaps 15% of cases surveyed but played a behind-the-scenes role in many more. Both communities traced their roots in Bombay to the Portuguese era when they had served as scribes, village registers, and court officials. The Brahman Shenvi had even originated

¹²⁸ In August 1724 the old Bombay court of justice had heard a dispute involving a Hindu will (written in Portuguese) and after hearing the testimony of various Hindu religious elites, declared that it was valid and that the testator could indeed dispose of property as he chose (BL IOR P/416/99: Bombay Court of Judicature Records, p. 25 (19 August 1725). For the note on the will in Portuguese see Ibid., 23 September 1724. In addition, in 1731 the Bombay Mayor's Court heard a dispute involving a Hindu will made in the 1720s, in which one litigant claimed the will to be invalid because the decedent's signature was misspelled. The decedent's name was only misspelled in Portuguese - but spelled correctly in an unknown Indian language so the will was held to be valid cf. BL IOR P/416/105: Bombay Mayor's Court Proceedings, 8 December 1731.

¹²⁹ BL IOR P/416/101: Bombay Mayor's Court Proceedings, pp. 132-3 (10 September 1729).

¹³⁰ See the case of Fatima the widow of Abdul Carim, BL IOR P/417/12: Bombay Mayor's Court Proceedings, pp. 85-90 (1 November 1756)- includes a transcription of the will. Parsi merchants also disposed of property by will. See Monackji's will of 1747 mentioned in Jivanji Modi, "Bombay as seen by Dr Edward Ives in the year 1754 AD," *Journal of the Asiatic Society of Bombay* 22 (1905), p. 289.

from the area around Goa itself.¹³¹ The EIC employed individuals from these communities in scribal occupations, the prior court of justice, as well as in service to the EIC executive.¹³² The famous Rama Kamati who served as a rent-farmer, merchant, militia captain, and all around intermediary for the EIC at Bombay hailed from a Shenvi family with ties throughout Portuguese India.¹³³ These Prabhus and Shenvis continued to serve as the primary clerks, translators, and scribes for all manner of Bombay institutions, including the Mayor's Court throughout the charter period. They were vital to all government function and appear to have had a wide knowledge of languages and facility in dealing with different forms of governmentality.¹³⁴

The career of Bhiku Sinay [Shenvi], a well-connected and trusted member of the EIC governmental system, serves as a good example of the space these scribes occupied

¹³¹ For a detailed if dated description of the history of the Prabhu generally see the *Bombay Gazetteer*, v. 13 pp. 87-107 as well as P.B. Joshi, "History of the Pathare Prabhus and their Gurus or Spiritual Guides," *Journal of the Anthropological Society of Bombay* 10.2 (1913), pp. 100-39. For Shenvis see J.A. Saldanha, "Kanarian-Konkani Castes and Communities in Bombay," *Journal of the Anthropological Society of Bombay* 10.7 (1916), p. 541. For evidence of the activities of Shenvis in the wider Portuguese world see Teotonio R. de Souza, "Some Contrasting Visions of Luso-Tropicalism in India," *Lusotopie* 1997 (Paris: Editions Karthala, 1997), p. 379. The EIC appears to have not fully understood differences between Prabhus and Shenvis - sometimes interchanging them to mean scribe or writer generally. In one instance the records of the Mayor's Court describe a Shenvi scribe as a "Bombay Purvoa." Cf. BL IOR P/416/101: Bombay Mayor's Court Proceedings, (13 January 1729).

¹³² Shenvis also served as important brokers and merchants as seen in a 1 September 1717 warrant from the EIC governor of Bombay making Sonu Sinay the Company's broker for all trade to Cambay and Broach. Presented as evidence in a later case. Cf. BL IOR P/416/119: Bombay Mayor's Court Proceedings, pp. 90-2 (23 May 1744 - Madowjee v. Kensouram).

¹³³ For a description of the work of a Prabhu clerk in the Portuguese territory vis a vis notaries public see BL IOR P/416/101: Bombay Mayor's Court Proceedings, pp. 118-21 (20 August 1729). For the best discussion of Kamati see Charles Fawcett, "Rama Kamati and the East India Company," (on his origins see pp.26-7). Kamati's relatives continued to play a prominent role in Portuguese India as well as in Bombay - appearing many times in the Mayor's Court and also in Goa records. For mentions of these Kamatis, the coconut trade, and their losses from the Maratha capture of Salsette see AHU/ACL/CU: Caixas 183+260.

¹³⁴ For example, Narayan noted in his nineteenth-century Marathi history of Bombay that in previous decades "...many of the older [Prabhu] men could speak the Firangi language and possessed documents written in it" Prakash and Ranganathan eds. *Govind Narayan's Mumbai : an urban biography from 1863*, (London: Anthem, 2009), p. 69. Also see the *Bombay Gazetteer*, v. 13 pp. 87-107.

in the wider legal culture of Bombay.¹³⁵ Bhiku first appears in English records in 1729 as the collector of ground and quit rents for the Company at Bombay, a post of considerable responsibility. He was at least once sued by the Company in the Mayor's Court for mismanaging funds, though the case was later dropped, and also had significant local economic power.¹³⁶ In 1729, for example, he bought two large plots of land in Bombay from various Luso-Indian landholders.¹³⁷ In addition, by 1751, he was in business with Manoel Texiera, part of the Luso-Indian elite, as the owner of the EIC's monopoly license for the sale of salt in Bombay, a privilege for which he and Texiera remitted 9,725 rupees (~£1,500) per annum.¹³⁸

Most importantly Bhiku and other Prabhus and Shenvis used their expertise and connections to assist litigants at court in their traditional scribal occupation and served as a constant presence in the law courts of Bombay. From at least 1729 until 1746 the Bombay Mayor's court employed Bhiku as its official translator.¹³⁹ He also worked as a

¹³⁵ Frequently transliterated as Bhicu, Bicca, Bicca, or Bhica in EIC records. Sometimes given as “Bhiku Shenvi Newrekar.” When the EIC executive needed someone to serve as a gift-bearing ambassador to the Marathas in 1739 they turned to Bhiku, as the “best qualified” person for the task - see *Bombay Gazetteer*, v.26 part 1, p.213.

¹³⁶ See BL IOR P/416/101: Bombay Mayor's Court Proceedings, EIC v. Sinay (beginning on 13 January 1729 and ending 12 October 1729).

¹³⁷ BL IOR P/416/101: Bombay Mayor's Court Proceedings, de Penha v. Padre valla de Fonseca 19 Nov 1729

¹³⁸ See BL IOR P/417/10: Bombay Mayor's Court Proceedings, 15 March 1755 (Texiera vs. Sinay estate). Bhiku also served as one of the holders of the EIC rent farm on tobacco from 1733 for which he paid 28,200 rupees/year and for which he received two colorful shawls as a present from the EIC. See the *Bombay Gazetteer*, v.26 part 1, p.268 and part 2, p.479.

¹³⁹ He is mentioned as “interpreter to the court” in BL IOR P/416/101: Bombay Mayor's Court Proceedings, 12 March 1729 (Condajee v. Jevan) and he resigned on 22 May 1746. Obviously a man of significant means and credit, the court paid Bhiku no salary until 1737 and trusted him to interpret oaths at witnesses' houses, serve as an arbitrator, give expert testimony and submit written declarations to court. BL IOR P/416/101: Bombay Mayor's Court Proceedings, 6 August 1729. For his salary see Malabari, *Bombay in the Making*, p. 479 where he also notes that Sinay served as an interpreter to the EIC government.

legal intermediary, as in 1731 when a respondent named Ducarjee hired him for 100 rupees to write up papers for the Mayor's Court.¹⁴⁰ Litigants and parties from all over Bombay employed Prabhu and Shenvis like Bhiku as agents, translators and scribes. Even Portuguese landlords residing in Bassein and other cities used Prabhu agents for their transactions in Bombay.¹⁴¹ These scribes also helped spread English legal procedural and testamentary culture and appear often in the records of the court, as when when Dadajee Purvoo [Prabhu] sat down to write a will for a “dancing girl” named Camala Naquin in 1746.¹⁴²

In addition to the Prabhus and Shenvis, the Luso-Indian elite at Bombay also thrived while straddling both the English and Portuguese worlds. Nearly a quarter of all cases before the Mayor's Court in the years surveyed included at least one litigant with a

¹⁴⁰ See BL IOR P/416/105: Bombay Mayor's Court Proceedings, 1 September 1731. Even though the English court attorneys had a near monopoly on transacting official court business, some Bombay residents also approached Prabhus and Shenvis for legal help. Sometime in the 1720s, for example, a Bombay man asked Puttajee Purvoo [Prabhu], a former scribe for the EIC military, to serve as his lawyer, at which time Puttajee wrote down the state of his case in Portuguese and had another Prabhu clerk translate it into English for him. Puttajee was evidently very unsuccessful at court and the Mayor's Court at Bombay eventually ruled that he barely deserved to collect legal fees. See BL IOR P/416/105: Bombay MC Proceedings, p.23 (1+29 September 1731).

¹⁴¹ In 1731 Matinio d'Silveria a Luso-Indian elite at Bassein sold the giant Mazagon estate in Bombay through an agent named Visso Sinay [Vishvanath Shenvi?]. Various of the Mazagon estate document were copied into BL IOR P/417/14: Bombay Public Proceedings, p. 27 (10 February 1758). See also Vaidya, *The Bombay City Land Revenue Act*, p. 69 and the *Bombay Gazetteer* vol. 26 part 2, p.40 for details of the transaction. EIC offices like the customs house also employed Prabhus to serve as official writers, in which capacity they provided receipts, passes, and official documents to a Bombay merchants both European and Indian. The EIC also relied on these customs Prabhus as intelligence experts to screen incoming vessels for harmful intent and information about pirates. See directive from the Bombay EIC to Pootlaji Purvoo [Prabhu] dated 24 August 1733. Reprinted in *George Forrest, Selections from the letters despatches and other state papers: Home series*, v. 2, p.58.

¹⁴² For mention of Naquin's will see the Bombay Mayor's Court Records at the Maharashtra State Archives (27 March 1747), p.82. Many of these wills appear to have been written by Shenvis or Prabhus who would have had good knowledge of Portuguese and English legal practices. In 1729 for example, the court delayed the probate of Sonu Sinay [Shenvi]'s will until his wife and executrix arrived from Mahim. The practice of women writing wills was apparently not uncommon as in 1730 a widow of the Goldsmiths caste died leaving a will providing her nephew with some land BL IOR P/416/103: Bombay Mayor's Court Proceedings, pp.53-4, 59 (15 April 1730 Narranset v. Bopojee).

Luso-Indian name. Some lusophone landed elites, like Simon Murzhello, a revenue officer and Antonio d'Lima a large landowner and revenue farmer appeared especially frequently in court.¹⁴³ Likewise, when rich Luso-Indians arrived in Bombay from the conquered territories of Bassein and Salsette in the 1740s some of their number turned to the Mayor's Court.¹⁴⁴ These Luso-Indian landlords, a few of whom resided elsewhere in India, controlled immense estates of rice and palm trees obtained through inherited Portuguese crown grants and opportune purchases. As an example of the scope of these agricultural lands, in 1727, Portuguese intelligence reports indicated that there were over 100,000 palm trees under cultivation in Bombay and that the territory produced 2.6 million pounds of rice in a year.¹⁴⁵

Unsurprisingly, the EIC went to great lengths to appease these landowners, offering compensation for land appropriated for Company projects and trees destroyed by military maneuvers "...so that none of the inhabitants might be drove to quit the island."¹⁴⁶ However, while these agricultural elites did appear in court as expert witnesses and occasional defendants, a number of those litigants with Luso-Indian names came

¹⁴³ Antonio D'Lima (sometimes D'Lime, D'Lyme) engaged in several suits over the course of the 1740s. He was in charge of some of the Company's liquor concessions in the 1740s and was also one of the proprietors of the Mazgaon estate. See the *Bombay Gazetteer*, v.26 part 3, pp.350,436.

¹⁴⁴ These Portuguese territories fell to the Marathas in 1737 and 1739. For example, members of the influential D'Souza Tavora family from Bassein fled to Bombay where they filed several suits in the 1740s. In 1738, some of the Portuguese clergy in the neighboring territories even took measures to evacuate all their gold and silver to Bombay. See J. Humbert, *Catholic Bombay*, vol. 1, p. 83.

¹⁴⁵ The original figure is 1,358 Murahs of rice according to the Portuguese report reprinted in S. Lobo, "A document with the early revenue of Bombay" *Quarterly Journal of the Mythic Society Bangalore*, XVIII (1927), pp. 100-14. Not all this production came from private land as the EIC itself controlled a large amount of agricultural production. Compare this figure with 11 million pounds of rice exported from all of British North America that same year. See the *Yearbook of the United States Department of Agriculture 1909* (Washington: GPO, 1910), p. 526 for comprehensive American eighteenth-century rice production statistics.

¹⁴⁶ BL IOR E/4/462: Letters to London from Bombay, pp. 270-1 (para. 122 - 20 November 1760).

from a much broader stratum. It is difficult to make solid conjectures about the composition of this wider Luso-Indian group made up of small-time farmers, soldiers, and merchants with Portuguese names.¹⁴⁷ Among them certainly are those Indian converts to Catholicism who hailed from a variety of communities and whose naming practices varied widely. There were a few thousand such Catholics in Bombay by 1750 but it is difficult to say exactly how frequently they appeared in court.¹⁴⁸

In addition to those who had converted to Catholicism there were large numbers of Hindu agricultural laborers, small renters, and craftsmen on the island. Many of these laborers were Kunbi serfs who had to meet certain production obligations to their landlords.¹⁴⁹ Yet even this group produced a number of litigants at the Mayor's Court. The agricultural life of Bombay also depended on a substantial community of Bhandari palm

¹⁴⁷ A man named Deogo d'Coasti for instance appears often in court records as a small landowner and indigent debtor, forced to sell his property to a Parsi merchant in order to pay his debts. BL IOR P/416/101: Bombay Mayor's Court Proceedings, pp. 22, 71 (21 May 1729).

¹⁴⁸ For the example of "Antonio Luiz Parbu," a Prabhu Catholic, see Achilles Meersman, *The Franciscans in Bombay* (Bangalore: St. Anthony press, 1957), p.64. There were also many Bhandari and Kunbi Catholics as attested by the 18th century baptismal registers of the churches of Bandra (just opposite Mahim) printed and analyzed in Clement J. Godwin, "Village History: Settlement and Cultural Patterns - An Exercise in the Use of Catholic Parish Records in Bombay," *Indian Church History Review* 9.3 (1977), pp. 165-180.

¹⁴⁹ Often spelled "Corumbée" in English records. The origins of this amorphous group of agricultural laborers are unclear. In Portuguese India they served as *abunhados* or laborers bonded to particular pieces of land. A contemporary observer describes them thus: "These Corumbees are a sort of husbandmen who in the time that the Portuguese were possessors of this island paid them a sort of vassalage and the like custom prevails in all the neighboring governments a certain number of them being allotted to such a proportion of land and they and their children are by custom or prescription obliged to cultivate such proportion of land without quitting it to go to any other place and for the seed sown and their labor they are allowed one half of the produce and the other half goes to the landlord or proprietor of the said lands..." BL IOR Eur. Ms. Orme MS OV.162 pp. 405-6. In his examination of baptismal records, Godwin posits though that the designation Kunbi "...seems to have been a generic title given by the Portuguese for all non-Brahman (and other high caste) cultivators." Godwin, "Village History," p. 178.

tappers.¹⁵⁰ Under Portuguese and then EIC rule, these Bhandaris tapped palms and distilled liquor from the sap, paying rent to landlords and revenue officials alike.¹⁵¹ While many Bhandaris were small-time laborers, others served in the Company's militia and still others held leadership positions within the larger community. Similar groups like the Panchkalshis also worked in both agricultural and Company occupations and occasionally came before the court as litigants.¹⁵² Overall, nearly ten percent of cases surveyed in the Bombay court of 1728-9 and 1744 included litigants from these agricultural and service communities.¹⁵³

Despite the unique importance of landholding and service groups at Bombay, as in the other courts, a large percentage of litigants were long-distance merchants and brokers. The customs figures for 1737 give some indication of the volume of this trade. In that year, the EIC's customs houses weighed 1,130,800 rupees (~£165,000) worth of goods, of which 729,500 rupees (~£105,000) was imported by Indian merchants.¹⁵⁴ All manner of people participated in this trade and accordingly there was considerable diversity in commercial litigants at the Mayor's Court. Nearly a quarter of all court cases surveyed involved English merchants, either employees of the Company or private traders, while about 15% involved Muslim traders, and another third featured Parsi or Hindu merchants.

¹⁵⁰ According to the chronicler Narayan and other local traditions, the Bhandaris had been formerly powerful on the island and were given ceremonial privileges by the Portuguese and then EIC. Cf. Narayan *Mumbai*, pp.65-6.

¹⁵¹ On the mechanics of this see the *Bombay Gazetteer*, v.26 part 3, pp.344-9.

¹⁵² On the Panchkalshis see the *Bombay Gazetteer*, v.26 part 1, pp. 236-8.

¹⁵³ The court had its regulations permanently posted in court in English, Portuguese, and Kanarese, suggesting the nature of the court's clientèle. P/416/105: Bombay Mayor's Court Proceedings, pp. 229-30 (29 September 1731).

¹⁵⁴ *Bombay Gazetteer*, v.26 part 3, p.310.

A number of small-time Muslim and Hindu traders, shipping modest quantities of rice, metal, and textiles between Bombay, Surat, the Malabar Coast, and the Persian Gulf, appear in this one-quarter of the court's business. However, a particular cadre of more prominent merchants seems to have filed the majority of commercial actions in the Bombay court. Most of these elite merchants were connected with the Company's Surat trade and had moved to Bombay from Gujarat at the EIC's urging over the previous decades. Twenty-one of the 190 cases surveyed had at least one Parsi litigant. These Zoroastrian merchants and craftsmen came largely from the area around Surat and numbered in the thousands in Bombay by the 1780s. However, in the period surveyed here, only a select number of the most influential Parsis appeared in court. These included members of famous broker families such as Hirji Lollji, Rupji Dhanji, and Framji Rustomji.¹⁵⁵ Likewise, a sizable number of Gujarati brokers and bankers (*banias*) also appeared in court. These traders largely came from Surat and served the Company in official capacities while also engaging in private trade. The most prominent of these also appeared the most often in court - most especially Shivaji Dharamset and other Vaishnava *banias* like Ambaidas Takidas and Narayan Das.¹⁵⁶ These men had strong ties to the EIC

¹⁵⁵ The descendants of Rustom Manock (1635-1721) including Framji, Rustomji and Manockji appear in several cases in my sample. The best biography of the family is found in Jivanji Jamshedi Modi, "Rustam Manock (1635-1721) the broker of the EIC (1699) and the Persian Qisseh (history) of Rustam Manock: a study," *Journal of the Bombay Branch of the Royal Asiatic Society* v.6 N.S. (1930), pp. 1-220. Also see S.S. Pissurlencar, *Portuguese records on Rustamji Manockji, the Parsi broker of Surat*, (Nova-Goa, 1933-36).

¹⁵⁶ For more on these Vaishnava *bania* families see Makrand Mehta, *Indian Merchants and Entrepreneurs in Historical Perspective*, (New Delhi, 1991), chap. 5. For more on Surat-Bombay merchants see Ashin Das Gupta, *Indian Merchants and the Decline of Surat: C. 1700-1750*, (Wiesbaden: Steiner, 1979); Lakshmi Subramanian, *Indigenous Capital and Imperial Expansion: Bombay, Surat and the West Coast*, (Delhi: Oxford University Press, 1996); Michelguglielmo Torri, "Trapped inside the

and served as Bombay revenue farmers as well as brokers in most English trade with Surat.¹⁵⁷ The Company depended on these inhabitants and trusted them to such an extent that it allowed sixteen of the most substantial Parsi and *bania* merchants a whole year of credit on their contracts and farms.¹⁵⁸ In short, EIC Bombay's prosperity and administration depended on a wide range of merchants, landowners, and administrative elites.

While nearly every suit in the Mayors' Courts of Madras and Calcutta related to estates or commercial contracts, debts, and bonds with comparatively little litigation relating to landed property, the Mayor's Court at Bombay heard a large number of suits relating to property and local custom.¹⁵⁹ The status and ownership of real estate in 18th century Bombay was perhaps even more confused and fraught than in the other two English settlements.¹⁶⁰ Whereas in Calcutta and Madras, the Company owned and sub-

Colonial Order: The Hindu Bankers of Surat and Their Business World during the Second Half of the Eighteenth Century," *Modern Asian Studies* 25.2 (1991), pp. 367-401; and also his "Mughal Nobles, Indian Merchants and the Beginning of British Conquest in Western India: The Case of Surat 1756-1759," *Modern Asian Studies* 32.2 (1998), pp. 257-315.

¹⁵⁷ Dharamset for instance owned the right to distribute local liquor in Bombay as well as many properties on the island; see the *Bombay Gazetteer* v.26 part 3, pp. 326,356,360. He was also sometimes called into the Mayor's Court as an expert witness on Hindu law and custom - see BL IOR P/416/103: Bombay Mayor's Court Proceedings, pp. 204-5 (19 August 1730 - Gomatee v. Tullsee). Ambai Das was the town broker of Bombay and head bania from at least the 1720s and had an official shawl of office bestowed upon him by the EIC. See BL IOR P/416/119: Bombay Mayor's Court Proceedings, p. 90 (12 October 1744).

¹⁵⁸ These credit worth merchants in 1742 were: "Shivji Dharamset, Keshavram Vithaldas, Ramdas Rupji, Kharsedji Hirji Modi, Narandas Santok, Rupji Dhanji, Ambaidas Takidas, Manekji Nawroji, Banaa Limji, Ramset Gambaset, Nagar Lalji, Dhanji Gopal, Gangadas Rupji, Framji Baman Jiva, Lakhmanset Lakhmichand." See the Bombay Public Proceedings for 1741-2 (pp.143-4) reprinted in the *Bombay Gazetteer* v.26 part 3, p. 326.

¹⁵⁹ In Madras and Calcutta, the Choultry and Cutcherry courts seem to have served as the primary venues for property litigation.

¹⁶⁰ The best treatise on land tenure in Bombay is the extensive report compiled by a Bombay EIC official in 1814 and printed two decades later: F. Warden, "Report on the Landed Tenures of Bombay," *Proceedings of the Bombay Geographical Society* v.3 (June-August 1839), pp. 1-65. For a more

leased all land as rightsholder and landlord, land tenure at Bombay was divided into many categories dating to the Portuguese period. Under the semi-feudal system of landed property common in Portuguese India, a series of Viceroys from the 16th century onwards had given lands in Bombay and surrounding territories to notable Portuguese families with some feudal fiscal, ecclesiastical, and military obligations attached. Even after the British Crown and eventually the EIC took over the administration of the city, they were never the sole owner of all land on the islands. Rather, residents sold, mortgaged, and alienated all manner of Portuguese grants, customary rights, and other forms of tenure.¹⁶¹ Though the Luso-Indian *vereadores* at Bombay resolved some property matters, there were no competing Company-run property institutions at Bombay to compare with the Cutcherry at Calcutta or Choultry at Madras. As a result, inhabitants who wanted to have the power and efficacy of the English government on their side were forced to approach the Mayor's Court.

Alternative Venues for Dispute Resolution

The world of Bombay dispute resolution resembled that of Madras and Calcutta but with greater formal ties connecting the chartered legal order with these alternative legal structures. The most important of these legal authorities were the *vereadores* of Bombay city and Mahim who held pride of place in the legal constitution of the island.

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concise summary see Vaidya, *The Bombay City Land Revenue Act*, pp. 95-100. Mariam Dossal has also written extensively on the history of land tenure in Bombay. For an in-depth treatment see her "Customary Rights and State Control in Colonial Bombay c. 1780-1820" in the *Proceedings of the 55th Indian History Congress*, (New Delhi, 1995), pp. 479-482 as well as her recent *Mumbai: Theatre of Conflict, City of Hope*, (Mumbai: Oxford University Press, 2010), pp. 11-13, 38-45.

¹⁶¹ In addition, throughout the 18th century, the residents of Bombay constantly reclaimed land from the shallow lagoon at its heart, creating new property subject to particular forms of land tenure.

As discussed in the first chapter, the *vereadores* in EIC Bombay were elected landowners who served as holdover Portuguese town councilors of a sort. In the period of the Mayor's Court, the *vereadores* at both Mahim and Bombay were all Luso-Indian local elites with ties to the Company as well as to the rest of Portuguese India. Prominent among these *vereadores* were Ignacio and Manuel Baretto whose family owned land and engaged in commerce all over India. In addition, *vereador* Antonio da Silva worked as an EIC clerk and also controlled significant hereditary properties on the island.¹⁶² Likewise, Pascoal Texiera served as a rent-farmer and land owner on the island while at the same time conducting business with other Portuguese cities and sending his son to study for the priesthood in Goa.¹⁶³ The Company valued these elites to such an extent that they waived some of their rent and military service obligations on the grounds that the *vereadores* were exempt under English law given their public “offices and employment.”¹⁶⁴

The *vereadores* routinely met as a body in a house or some other building called the “vereration” by the English where they conducted a court, held public sales, and stored

¹⁶² See BL IOR P/341/6: Bombay Public Consultations, 26 April 1728 for the deed granting D'Silva several coconut groves. For details of his landholdings see Lobo, “Early Revenue of Bombay,” p.109. He also bought part of the massive Mazagon estate in 1731 - see Vaidya, *The Bombay City Land Revenue Act*, p. 69. In addition, he served as a *vereador* and was sought after in local disputes. See for example his consultation in a property dispute: BL IOR P/416/101: Bombay Mayor's Court Proceedings, p.28 (12 February 1729).

¹⁶³ Church documents record that “Manoel Teixeira de Menzes son of Pascoal Teixeira and Antonia da Silva” came from Bombay in 1759 to study for the priesthood at St Paul's in Goa. See the ordination records printed in Humbert, *Catholic Bombay*, vol. 1, p.67.

¹⁶⁴ This exemption is explained in BL IOR P/341/7: Bombay Public Consultations, p. 103 (24 July 1732). In his report on landed tenure, Warden claims that the *Vereadores* entered into an agreement with the EIC in 1715 to exempt them from military service on payment of a yearly sum. He notes however that no record of this agreement or further payments is available. Warden, “Report on the Landed Tenures of Bombay,” p. 23.

an archive of land and legal records.¹⁶⁵ All manner of “Christian natives” and the occasional Hindu or Muslim approached the *vereadores* to have their disputes resolved. Though the actual dispute resolution work at the vereation remains opaque, it appears that parties involved in a dispute could go before the *vereadores* and sign bonds agreeing to abide by their decision. Bombay inhabitants, though few Englishmen, also went to the *vereadores* to have bills of sale, wills, and other documents written and registered.¹⁶⁶

Most importantly, the *vereadores* served as the primary adjudicators of all real estate matters in the island territories throughout the 18th century. According to older Portuguese custom, the *vereadores* had the power and obligation to determine the value of all parcels of land in the city and its environs, giving them immense clout in the local constitution of landed property as well as the credit market of Bombay. The EIC bank, worried about land values, even engaged the *vereadores* to make a complete and thorough survey of all property in the Bombay territories.¹⁶⁷ It was customary then when borrowing money from the EIC bank to use the vereador-determined value of land as collateral. In addition, the *vereadores* had the power under local custom, to adjust

¹⁶⁵ For mention of a public sale at the “Vereation at Mahim” see BL IOR P/417/8: Bombay Public Consultations, p. 461 (7 December 1753). Also mention of a will “lodged at the Vereation at Mahim” BL IOR P/416/112: Bombay Mayor's Court Proceedings, p. 363 (20 September 1738). Likewise, in 1744, the *vereadores* claimed that a Luso-Indian minor was under the care of one of the “members of the vereation.” BL IOR P/416/119: Bombay Mayor's Court Proceedings, p. 132 (12 September 1744).

¹⁶⁶ There are several references in the court records to the “scrivan” of the *vereration* writing wills, registering documents, or taking notes of proceedings. See BL IOR P/416/119: Bombay Mayor's Court Proceedings, pp. 47,58 (14 March 1744), also see BL IOR P/417/13: Bombay Mayor's Court Proceedings, p. 233 (20 May 1757) for a Muslim litigant mentioning a document that he had seen in his case at the *vereration*.

¹⁶⁷ BL IOR P/341/14 Bombay Public Proceedings, pp. 314-17 (26 October 1744).

property taxes for tenants and landowners if a given harvest was particularly poor.¹⁶⁸ As a result of this power and delegated authority, Hindu, Christian, and Muslim landowners and renters approached them in order to resolve disagreements involving boundaries, rent, trespassing, and agricultural produce.¹⁶⁹

The *veredores* were not alone though in managing this highly local property and dispute resolution regime. They worked closely with other bodies of communal elites such as the *Matteras* [*mhataras*], *Chougla*s [*chogules*], *mukkadam*s, and *patels*.¹⁷⁰ The *mhataras* were an informal group of Hindu elite landowners and caste elders, holdovers from Portuguese Bombay.¹⁷¹ Though their role in resolving communal disputes is unclear, they appear to have signed a variety of certificates and awards which were later litigated in the Mayor's Court, suggesting their importance in the local legal culture.¹⁷² In matters of property the *mhataras* worked with the *veredores*, and the two groups seem to have performed many property inspections jointly. The local legal constitution at Bombay also included a body of *chogules* - Hindu and Muslim functionaries who served

¹⁶⁸ In some years the Company was willing to waive taxes on the *Veredores*' recommendation, but in at least one year the EIC executive ordered a Company employee to shadow them to make sure their evaluation of the badness of the crop wasn't exaggerated. See for instance BL IOR P/341/14: Bombay Public Proceedings, pp. 38-9 (4 February 1743).

¹⁶⁹ Cf. BL IOR P/416/105: Bombay Mayor's Court Proceedings, p. 108 (5 May 1731) for an example of a boundary dispute wherein the *Veredores* placed marked stones to demarcate a contested boundary. The names of the seven *Veredores* involved are given on p. 118.

¹⁷⁰ English transliterations vary and include: *Mhatteras*, *Materas*, *Chowgulas*, *Chugulars*, *Muckadum* etc.

¹⁷¹ *Mhataras* (from the Sanskrit word for headman) served in an official capacity in most Portuguese territories. The Portuguese appointed *mhataras* to supervise revenue and land functions in small villages in their territories into the 18th century. For this see the *Bombay Gazetteer* v.13, part 2, p. 552. In Bombay there seems to have been a single body of *mhataras* drawn from amongst Hindu elites regardless of community background.

¹⁷² See for instance a certificate from 1723 signed by the "Matteras" with assistance from the *Veredores*. BL IOR P/416/105: Bombay Mayor's Court Proceedings, pp. 206-7 (1 September 1731).

in “minor law and order” capacities throughout western India.¹⁷³ In Bombay these *chogules* seem to have been largely local Muslims of note and often appear paired with the *vereadores* in deciding controversies about property, inheritance, or religious law.¹⁷⁴

The *chogules* worked especially closely with the “Head Codjee” [*qadi*] of Bombay who the EIC had recognized since the 17th century as having cognizance of most inter-communal Muslim disputes.¹⁷⁵ The Roman Catholic hierarchy of Bombay also took charge of at least some of the legal affairs of the Catholic residents of the island under the approval of the EIC executive.¹⁷⁶ Likewise, Hindu residents could approach their local caste or community *mukkadam* or *patel* [headmen] to have disputes resolved. Some communities like the Bhandaris had a *mukkadam* whom the EIC charged with collecting revenue from his constituents as well as settling agricultural and communal

¹⁷³ *Chogules*, from the Marathi for “deputy village officer.” Described in Asiya Siddiqi “Ayesha's World: A Butcher's Family in Nineteenth-Century Bombay” *Comparative Studies in Society and History* v.43 (2001), p. 114. A Marathi description of the *chogules* duties from 1915 includes, “...to sweep the village hall; to maintain village records; to call people to the village hall in connection with civil and criminal works...” T.N. Atre, *The Village Cart*, [orig. 1915] translated by Ram Deshmukh, (Bombay, Popular Prakashan, 2000), p. 53.

¹⁷⁴ In some instances there were Hindu *chogules* as indicated by a 1770 petition from the “Chouglass” of the Hindu Bhandaris. Forrest, *Selections*, vol. 2, p. 162 (13 July 1770).

¹⁷⁵ See Chapter 1 on Ibrahim, the first appointed head Qazi. In 1754 the head Qazi of Bombay was a 35 year old man named Noordeen. BL IOR P/417/9: Bombay Mayor's Court Proceedings, pp. 21-25 (26 January 1754).

¹⁷⁶ In 1724 the EIC court at Bombay even sentenced a Luso-Indian soldier to “39 lashes at the Portuguese Church door on the Fryday following during the celebration of mass and that then he be delivered to the Padre to be better instructed and to suffer their customary church discipline as limited by the laws and rules of this government.” BL IOR P/416/100: Bombay Court of Judicature records, pp. 21v-22 (20 July 1724). The ecclesiastical history of Bombay after the EIC takeover is fraught. In 1718 the Company expelled the Luso-Indian Franciscan clergy which had staffed the Bombay churches under salary from the Portuguese government at Bassein. In 1719 the EIC invited Italian Carmelites to come to Bombay and take-over administration of Catholic life on the island. In this role, the Company required them to take formal oaths “to inculcate and enforce in them [Bombay Catholics] an exact and unalterable obedience to Your Honorable Government.” On this history see Humbert, *Catholic Bombay*, vol. 1 pp. 103-7; Achilles Meersman ed., *Annual reports of the Portuguese Franciscans in India*, p. 75; idem, *Franciscans in Bombay*, pp. 98-101.

disputes.¹⁷⁷ Bombay also had an EIC-appointed Patel or headman who served as the ceremonial leader of the Kolis (marginal-caste fisherfolk) and had the power to decide all disputes amongst them.¹⁷⁸ Other communities like the Goldsmiths [*Lothars*] and the Kunbis at Mahim had headmen who spoke for them in relations with the Company and who undoubtedly also exercised dispute resolution powers.¹⁷⁹ In addition, the growing Parsi community at Bombay also had its own tribunal staffed by the most prominent Zoroastrian merchants in the city.¹⁸⁰ A profusion of Luso-Indian and Hindu petty revenue collectors and EIC functionaries also held offices on the island and could exercise summary judgment over minor disputes and order fines and punishments.¹⁸¹ This diffusion of legal authority amongst many elites, functionaries, and communal groups required the charter courts at Bombay to be especially open to flexibility and the participation of these elites in their work.

Although Bombay, Madras, and Calcutta received identical legal frameworks from England, the extant social and legal makeup of each city produced similar but

¹⁷⁷ The Bhandari Mukaddam (from Arabic for 'head-man') was in charge of taxing all the Bhandaris on the island. Edjee Naik, a sometime litigant in the Mayor's Court filled this post in the early 1740s. For details see the *Bombay Gazetteer* v.26 part 3, p.353.

¹⁷⁸ The office of Bombay Patel was hereditary and given to the Parsi family of Rustom Dorab (1667?-1763) by the Company in the 1690s. For details see Narayan *Mumbai*, pp. 71-2 and the introductory note in Kavasji Sorabji Patel, *Cowasjee Patell's Chronology*, (London, 1866), pp. v-vi.

¹⁷⁹ For an example of a consultation with these communal leaders see BL IOR P/417/9: Bombay Mayor's Court Proceedings, pp. 21-5 (26 January 1754).

¹⁸⁰ Banaji Limji, Framji, Bomanji, and Norworji Rustomji as well as Jijibhoy Jamshedi Modi established the Parsi Panchayet of Bombay sometime in the late 1720s. Though little is known of its early workings, Limji held a title indicating that he was a "dispenser of justice." See Sohrab P. Davar, *The History of the Parsi Panchayet of Bombay* (Bombay: New book company, 1949), pp. 1-4. Framji also served as an arbiter of Parsi disputes elsewhere on the west coast of India; see Modi, "Rustam Manock," pp. 34-5.

¹⁸¹ For an account of the day-to-day power of these petty officials see the 1751 petition of complaint against Miguel Gonsalves, the Company's customs collector at Mahim. BL IOR E/1/36: Miscellaneous Letters to London, pp. 131a-h (3 December 1751).

divergent legal cultures in practice. The local legal constitution of each settlement depended on groups of commercial and governmental elites. However, by the 1750s each city had developed its own hybrid legal order based on both local and metropolitan legal practices. In Bombay, aldermen, residents, and local elites, with the help of intermediaries, all turned to the Mayor's Court alongside a set of preexisting institutions and legal authorities. Similarly, the Madras Mayor's Court attracted a wide variety of eminent inhabitants while not decreasing the importance of the Choultry. In contrast, in Calcutta, close commercial, administrative, and geographic ties between the inhabitants of the city and surrounding Mughal authority and institutions ensured that the local legal constitution would remain more strictly divided between the chartered courts and non-English legal venues like the Cutcherry. That is, while elite litigants in Calcutta turned to the Mayor's Court throughout its history, the Cutcherry proved a more unified and independent dispute-resolution center than either the Choultry in Madras or the *vereadores* and other elites in Bombay.

These highly particular local differences in legal culture were of course not unique to EIC India. British cities and colonies all over the Atlantic world each had their own legal constitutions based on regional variation, whether the prominence of race slavery in the Caribbean and American mainland, or the differing commercial and religious cultures of Massachusetts, Rhode Island, and Maryland. More important is how the chartered courts in India dealt with their local legal milieus, and whether they rammed a strict metropolitan interpretation of English law down the throats of their litigants or embraced local difference in their jurisprudence and practice.

Chapter 5: “Like practice in the Plantations:” The Imperial Constitution, Indian Subjects, and Local Difference

Given the complex and multilayered legal cultures of Bombay, Madras, and Calcutta, one might predict that the English aldermen and justices in India would have been overwhelmed with such a wide array of competing tribunals, laws, and customs. Also, considering the strict English documentary and procedural regime practiced by the chartered courts, it might seem that they would remain walled-off from local legal customs and institutions, unable to reconcile them with English law. The post-1726 legal regime in India was certainly not identical to that of metropolitan England. This chapter examines these differences and locates them at the heart of an eighteenth-century imperial constitution which brought cities and colonies around the world under a similar British legal umbrella.

The connection between the English settlements in India and the imperial center in London in the first half of the eighteenth century has usually been understood in terms of networks of capital or patronage, but not law or government.¹ This chapter shows that the Indian settlements, their inhabitants, and courts all fit within contemporary imperial legal frameworks. Like their cousins in the Americas, the aldermen and justices of the peace in India were separated by thousands of miles from metropolitan legal institutions and expertise. But English judges in neither India nor the Americas believed that it was their duty to enforce the entirety of English statute and common law in their remote settlements. Rather, the charters and grants establishing English law and procedure in

¹ See Marshall, *The Making and Unmaking of Empires*, pp. 24 and 44 who modifies this view only slightly for the period prior to 1750.

various areas of the world often contained provisions allowing local officials and judges to apply these laws only insofar as the circumstances and “local difference” of the place allowed. In addition, the Crown gave legislatures and courts in many of these territories power to make new laws as long as these were not “repugnant” to extant English statutory laws.

The latest scholarship on English law in the American colonies has established that this concept of “local difference” formed the basis of a British imperial constitution, uniting metropole and colony in one conceptual framework.² This system allowed remote courts and colonists to make their own laws and interpret extant English laws to fit their own unique situations. As a result, courts throughout the British world responded to local customs and dynamics by establishing hybridized legal constitutions based on these local circumstances. Through this adaptive practice, colonial officials could relieve litigants from the strictness of the letter of English law while still asserting the authority and legitimacy of English law writ large, at the same time as protecting property and commerce.

In their day-to-day practice and jurisprudence, the officials of the Indian chartered courts followed this model and embraced the flexibility of English imperial law to create a robust Anglo-Indian colonial legal order. Indeed, even when introducing the arrival of English law to the gathered multitudes in 1728, the Governor of Bombay added that these same laws would be put into effect “...with a latitude according to the circumstances of

² For the best recent work on the subject see: Mary Bilder, *The Transatlantic Constitution*; Vicki Hseuh, *Hybrid Constitutions: Challenging Legacies of Law, Privilege, and Culture in Colonial America*; Daniel J Hulsebosch, “The Ancient Constitution and the Expanding Empire.”

the place to render the same as easy to the subject as possible.”³ In adapting to these local circumstances, the royally chartered courts in the EIC's settlements freely stretched the Englishness of their jurisprudence. That is, the aldermen in India dispensed English justice without necessarily applying substantive English law.

This narrative begins with an exploration of how the Mayors' Courts co-opted or incorporated a wide variety of local legal elites and traditions into their decision making. This chapter examines how the chartered courts' developed their own jurisprudence, reflecting both English law and local difference. In doing so, it explores the ways that the courts adapted English statutory law to a particular set of commercial customs relating to the priority of debts. This hybridized jurisprudence, with its emphasis on local legal conditions, fit squarely with familiar British imperial frameworks and connected to the broader British imperial legal constitution. I also locate the EIC settlements in the world of London-centered imperial law, showing how Company lawyers, metropolitan experts, and imperial courts all used their knowledge of imperial law to understand the Indian courts, their constitutions, and their place in the English legal world.

Dispute Resolution and Local Custom

While the charter courts in all three settlements each faced different local conditions, all parties involved, from aldermen to local elites, believed in and depended on consultation and community participation in most matters of dispute resolution. As such, most litigants, both European and non-European, seem to have understood that the Mayors' Courts were not the appropriate venue of first recourse in most disputes.

³ BL IOR P/341/6: Bombay Public Proceedings, 10 February 1728.

Throughout South Asia, respected members of the community and other elites regularly resolved disputes over debts, contracts, social norms, and other inter-communal matters outside the strictures of official courts of law.⁴ At Porto Novo, a Mughal port to the south of Madras, a special group of elites from various European and Indian communities met under the approval of the local authorities to determine all mercantile disputes.⁵ In addition, when the EIC at Bombay signed a treaty with the Maratha leader Baji Rao I in 1739, the two sides agreed that any debt disputes between merchants residing in their respective territories would be handled through the “arbitration of five persons.”⁶ Likewise, arbitration seems to have been accepted mercantile practice in Bengal. When the EIC complained to the Governor of Bengal in 1747 about some account disputes between itself and Mughal merchants, he appointed arbitrators to decide the dispute.⁷ Even other legal institutions within EIC cities, like the Choultry in Madras

⁴ Brimnes and others have shown this emphasis on communal resolution to be true for the whole of Southern India and the Madras region where caste and community tribunals were crucial in resolving all manner of disputes. See Brimnes, “Beyond Colonial Law,” pp. 518-9, 538-9 and Arasaratnam, *Merchants, Companies, and Commerce*, pp. 286-7. Notably, Brimnes cites a 1714 Jesuit text on the different levels of arbitration in south India.

⁵ See Holden Furber, *Rival Empires of Trade in the Orient 1600-1800*, (Minneapolis: University of Minnesota Press, 1976), p.372 n.28 on this arbitration court. For more details on Porto Novo see S. Jeyaseela Stephen “Port Administration and Maritime Trade of Porto Novo on the Coromandel Coast of India (C. 1733-1767)” *Proceedings of the 51st Indian History Congress* (New Delhi, 1991), pp. 517-23.

⁶ Treaty of July 1739 printed in C.U. Aitchison ed., *A Collection Of Treaties, Engagements And Sanads: Relating To India and Neighboring Countries*, (New Delhi, 1909) vol. 6, part 1, p.11. This seems to have followed on practice within the Maratha dominions where it was common for local headmen (Patels) to resolve mercantile disputes by appointing four or five men of credit to determine an award. Shri V.S. Kamat “How Civil disputes were settled in the Deccan during the regime of the last Peshwa” *Proceedings of the 22nd Indian History Congress* (Bombay, 1960), pp. 351-2.

⁷ Chatterjee, “Trade and Darbar Politics,” pp. 248-9. Similarly, in the 1720s an EIC merchant at Patna wrote to a friend in England that “...differences are for the most part decided by arbitration.” Letter from Mitchell at Patna to unidentified friend at Exeter, 10 January 1729. Cambridge University, Archives of the Society for Promoting Christian Knowledge, East Indian Mission Letters Received, vol. 3, p.210. (Microfilm - reel 35).

and the Cutcherry in Calcutta, commonly appointed arbitrators in disputes and compelled litigants to sign penalty bonds to abide by their judgments.⁸

Arbitration and communal consultation were of course also familiar to European residents of the settlements and the English legal system generally. England itself had an established arbitration culture, which many of the English merchants in India embraced. As early as 1698, the English Parliament had passed an act at the behest of City merchants encouraging the practice, allowing certain arbitration agreements to be binding in courts of law.⁹ Indeed, when Norwoji Rustamji went to London from Bombay to pursue his disputes with English merchants in 1724, he ended his dispute by having an official arbitration award drawn up according to the 1698 statute. Rustamji swore out his agreement to this arbitration before Matthew Decker, an alderman of London and EIC director.¹⁰ Tellingly, in his 1744 treatise on problems faced by English merchants, Decker labeled law-suits “destructive to trade” and suggested that it would save much trouble and expense if merchants themselves decided their own disputes directly rather than relying on the English courts.¹¹

This opinion seems to have had currency throughout the English mercantile world. After a massive bond dispute between English merchants at Calcutta and Madras reached England on appeal in 1734, one of the litigants wrote to a friend that he wished he didn't have to take the case to the Privy Council but that his opponents kept delaying

⁸ One such Madras arbitration award appears in *RFSG Pleadings*, vol. 4, p.29.

⁹ See the Arbitration Act: 9+10 William III c.15 (1698).

¹⁰ See the arbitration bond sworn before Decker in London on 1 January 1724 and kept by the Manock family in Bombay. Reproduced in Modi. “Rustam Manock,” p. 217.

¹¹ See Matthew Decker, *Essay on the causes of the decline of the foreign trade...* (London, 1744), p.34.

arbitration, to his mind “the best and easiest way to adjust the difference.”¹² The EIC itself also settled many of its legal problems by arbitration and encouraged its employees in India to do the same.¹³ The Company wrote repeatedly to its executives in India that “disputes and quarrels are always detrimental to merchants” and that it was “abominable for merchants and traders to be exercised at law instead of pursuing their business,” concluding that arbitration was the proper course of action for traders to take in case of disagreement.¹⁴ The EIC's legal staff even went so far as to write to the Madras executive in 1731 that they should encourage arbitration amongst Indian inhabitants and that the best practice would be to follow the model of the arbitration act of 1698.¹⁵ The EIC executives and Mayor's Court aldermen in India clearly took this advice to heart and wrote frequently to London of their commitment to arbitration.¹⁶

Accordingly, private arbitration of disputes was extremely common in the EIC's settlements even after the arrival of the charter. A significant number of cases in all three Mayors' Courts contain mention of prior arbitration or an attempt at an extra-judicial settlement. In other instances, the aldermen themselves appointed arbitrators to determine disputes rather than letting a bill go through the usual judicial process of the court. In one 1743 case at Madras, a local textile painter and an Englishman entered into an argument

¹² BL IOR H/37: Robert Adams letter to Stackhouse, Braddyl, and Cole in Calcutta, dated 2 February 1734 (f.219v.).

¹³ For a list of the 49 disputes in which the London EIC sought arbitration see BL IOR E/1/204: Miscellaneous Letters from the London EIC, pp. 159-61 (undated but probably June 1739).

¹⁴ BL IOR: E/3/105: Letters to Bengal from London, para. 64 (12 February 1731) also *ibid.* to Bombay, p.128, para. 146 (12 March 1731). In 1734 the Aldermen of Madras declared “...we have made it our business to encourage arbitration among the natives.” BL IOR P/326/69: Madras Mayor's Court Minutes, p. 192 (31 January 1734).

¹⁵ RFSG *Despatches from England*, v.32-37, pp. 16-23 (para. 113 -12 February 1731).

¹⁶ BL IOR E/4/3: Letters to London, para. 132 (25 February 1732).

over a cloth contract. Well before the dispute wound up in the Mayor's Court, they each agreed to appoint one arbitrator each. The Hindu painter chose a local conicopoly while the Englishman picked a Chettiar acquittance.¹⁷ Likewise, in Calcutta, the Sikh salt merchant Deepchund asked that the names of members of the EIC council as well as the most prominent English, Armenian, and "Native" merchants be put into a hat and drawn in order to determine arbitrators in his cause.¹⁸ For Bombay too, there is ample evidence that merchants of all backgrounds frequently sought private settlements in most financial and commercial disagreements. During a 1734 dispute amongst a group of English and Hindu Surat/ Bombay merchants, the English and Hindu traders agreed to choose three arbitrators each to determine the balance of the account between the two. The English merchant in the case labeled such a method "the most common custom amongst merchants and all fair dealers."¹⁹ Even his opponent's attorney acknowledged that such a course of action was the most appropriate in "perplex matters of account."²⁰

The Englishmen who served on the Mayors' Courts clearly embraced this arbitration culture as the preferred method of resolving mercantile disputes. Indeed, like

¹⁷ Cf. BL IOR P/328/78: Madras Mayor's Court Proceedings, p. 534, *Empson v. Tennapah* (11 October 1743).

¹⁸ This translated petition appears in BL IOR P/1/17: Calcutta Public Proceedings, p. 423 (2 December 1744). Likewise, in 1753 merchants named Dadaroo and Shazeed both picked arbitrators from the trading community of Calcutta to arbitrate their shipping dispute. Only after the arbitrators declared the matter too complex to decide did the two go to the Mayor's Court for a formal trial. See BL IOR P/155/27: Calcutta Mayor's Court Proceedings, 9 February 1753.

¹⁹ These six arbitrators would then pick an additional member themselves to break any tie. BL IOR P/341/8: Bombay Public Consultations, p. 6 (13 December 1734).

²⁰ *Ibid.*, p.13. Likewise, in 1744 a bevy of Hindu and Muslim witnesses testified at the Mayor's Court that it was usual in cases of insurance and shipping disputes amongst them to send the matter to mercantile arbitrators. See the testimony of Vittulset in the case *Taccour v. Taccour*: "...he hath not made demand thereof but intends to leave the same to arbitration and which all the other deponents say is usual in these cases." BL IOR P/416/119: Bombay Mayor's Court Proceedings, p. 58 (28 March 1744).

their counterparts in England or the Americas, they encouraged arbitration outside the sphere of the official chancery practice of their chartered courts. In all three settlements, mayors served on varying occasions as informal arbitrators - assigning referees in cases and bringing parties together under their rooves.²¹ In 1737, for example, two English and Jewish merchants at Bombay submitted an account dispute between the two of them to the mayor and one other alderman for a non-judicial arbitration.²² Reminiscent of the 1698 arbitration act, merchants in Madras also frequently approached the mayor there to solemnize and register penalty bonds - giving private arbitration teeth in the eyes of the court.²³

Even more significantly, the Mayors' Courts themselves would often send litigants to arbitrators of the courts' choosing. In Bombay, the court frequently referred disputes to prominent *vereadores* as well as local power brokers like Narraindas Takidas and Ragoo Sinay [Shenvi].²⁴ At Calcutta, the court likewise appointed *dadni* merchants like Sobaram Bysakh, Ramkissen Seth, and Ram Sarkar to decide complicated mercantile disputes.²⁵

²¹ In Calcutta the mayor would occasionally even resolve disputes on his own at his office without having the matter brought before the full court. BL IOR P/155/22: Calcutta Mayor's Court Minutes, 2 May 1744.

²² The mayor and aldermen then spent five months combing through their accounts before declaring the matter too perplexed to be decided by arbitration alone. See the printed brief in *Francia v. Hope* from Bombay, "Appellants Case," BL Add. Ms. 36,217.

²³ See BL IOR P/328/78: Madras Mayor's Court Proceedings, pp. 38-39 (21 June 1743 - *Hammond v. Tomban*). A later bond filed at Madras specifically stated that the arbitration would be held binding as if it were a court judgment BL IOR P/328/82: Madras Mayor's Court Proceedings, p. 57 (1755).

²⁴ The aldermen handed one 1744 case to Manuel Barreto, Pasqual Mediera, and Antonio d'Soas [Antonio d'Souza] for arbitration - see BL IOR P/416/119 : Bombay Mayor's Court Proceedings, 22 February 1744.

²⁵ For example in 1732 the aldermen appointed Ram Sarkar as an arbitrator in a dispute and found his ruling "just." BL IOR P/155/14: Calcutta Mayor's Court Minutes, 22 March 1732 (*Duberamseat v Ramkissore*). In another case, the aldermen assigned Samsunderseat [Seth], Ramkissenseat [Seth], Monick Chund, [Manik Chand], and Sookmoysat [Seth] to arbitrate a dispute between Omichund and

The courts also looked quite harshly on those inhabitants who refused their orders to settle things amongst themselves, on occasion even refusing to hear a case if it had been arbitrated previously.²⁶ The merchant aldermen embraced arbitration with such gusto that the EIC's lawyers in London even had to scold them that they could not force parties to accept appointed referees.²⁷

When arbitration failed and mercantile, religious, or local customary disputes outside of the scope of English practice and legal knowledge reached the active litigation stage, the aldermen of the new Mayor's court turned to preexisting webs of legal knowledge and authority. In these cases, litigants, attorneys, and the aldermen themselves called local elites to the stand to testify to the validity of any given reading of local custom. These experts were usually those closest to the English power structure. In Calcutta, *dadni* brokers appeared in court often to testify on mercantile practices and the particulars of Bengali book-keeping. Attorneys in Madras also attempted to sway aldermen by calling local notables. In one case for example the court called for the testimony of several local *qadis* and men “of credit” concerning the fraught question of whether Muslim merchants could demand interest on loans to other Muslims.²⁸

This reliance on local elites also included those involved in alternative dispute

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Boonmotty - BL IOR P/155/20: Calcutta Mayor's Court Minutes, 3 June 1738. Sobaram Bysakh is mentioned as having been a Mayor's Court arbitrator in the later case *Doe Dem. Tilluckchund Doss and Rasbeharry Doss v. Ramchurry Doss and Chowdranny* (1785) 1 Indian Decisions O.S. 171.

²⁶ As the Court recorded in its minutes, “The cause between Rammisertealy and Gopalldass coming to issue...decreed that as this cause had been before arbitrated in the Cutcherry and that as by the arbitration paper, produced in court it appears that the plaintiff has no demand on defendant.” BL IOR P/155/140: Calcutta Mayor's Court Proceedings, 13 June 1730.

²⁷ BL IOR E/3/105: Letters to Bombay, p. 128v (12 March 1731 para. 146).

²⁸ BL IOR P/329/69: Madras Mayor's Court Minutes, pp. 268-74 (10 September 1754).

resolution systems. In Madras, the aldermen fell back on the preexisting documentary constitution and gave responsibility for various legal registration matters to the *talliers* of the Choultry.²⁹ Likewise, conicopolies and other minor officials at the Choultry undoubtedly continued as important legal interlocutors in the new court. The Madras aldermen even recognized their role in the local constitution by financing a goat feast for the town writers and conicopolies every Christmas into the 1740s.³⁰ Local Vellalar and other elites also worked with the Madras charter courts as interpreters and intermediaries with broad influence over the course of disputes. One of the first official translators of the Mayor's Court was the (unnamed) brother of Rayasam Papaiya, a Brahman of local note in the Company's administration.³¹ Later, the Madras court retained the translation services of Conacapah [Kanakappa Mudaliar], who served in that post for over two decades and used his influential position to settle disputes amongst his fellow residents on his own initiative.³² The Madras court also occasionally employed a Portuguese translator from amongst the Luso-Indian population of the city, who undoubtedly informed the court about Luso-Indian norms by his very presence.³³

²⁹ For a list of court fees including those to *talliers* of the Choultry see RFSG *Consultations*, v.57, pp. 145-6 (28 December 1727).

³⁰ RFSG *Consultations*, v.74, p. 27.

³¹ For mention of this brother see BL IOR P/329/69: Madras Mayor's Court Minutes, p. 165 (24 June 1755).

³² Kanakappa, a Vellalar patron of some note, served as translator from the late 1730s to the 1750s at least. See Raghavan, *Sarva-Deva-Vilasa* (1958), p. 73 and RFSG *Minutes*, vol. 4, p. 97.

³³ The Court made John de Friez the Portuguese translator in 1753 (BL IOR P/329/69: Madras Mayor's Court Minutes, 25 September 1753). Even the interpreters who were European had extensive local ties. The first court interpreter in 1727 was Charles Nero who married Christina, "a Mallabarian woman" and daughter of an Indian translator in April 1728 - suggesting a source for his familiarity with local languages. See the St. Mary's church wedding registry reprinted in *The Genealogist* 20 (1904), p. 100. For Christina's 1726 baptism in the German mission at Madras and the note about her father see Hugald Grafe, "Beginnings of the first Indian Protestant Church at Madras" *Indian Church History review* vol.

In addition, there is also at least one contemporary suggestion that the Indian dubashes or brokers of the various English court officers received court fees at the end of a suit, indicating that they played a role in the official business of court, as they did in nearly every other aspect of their employers' lives.³⁴ The Calcutta aldermen themselves also found local dispute resolution fora useful and even privileged extracts from the Cutcherry rent rolls, *pottah* books, and registers as definitive proof in court.³⁵ They also respected the expertise of Cutcherry functionaries, calling them into court to testify about contested documents.³⁶

Given the peculiarity of its local constitution, the Bombay court's approach to alternate sources of legal authority and jurisprudence varied from that of the Calcutta and Madras courts. Whereas the Cutcherry at Calcutta and the Choultry at Madras remained largely independent from the Mayors' Courts there, the Mayor's Court at Bombay explicitly co-opted the services of the *vereadores*, *chogules*, *mhatteras*, and other local legal authorities.

The Mayor's court at Bombay depended on the *vereadores* and other local legal institutions to perform much of the gritty legal work on the island. The Court even formally announced in 1730 that:

II no. 1 (1969) pp. 48-50.

³⁴ See the didactic court dialog created by Benjamin Schultze, a local missionary, meant to mimic the proceedings of the aldermen. Schultze, *The large and renowned town of the English nation in the east-indies upon the Coromandel...*, (Saxony, 1750), p. 65.

³⁵ On litigation around in the Calcutta Mayor's Court around an entry in the "Jama Bundee" [*jamabandi*] (meaning rent roll) books see BL IOR P/154/48: Calcutta Mayor's Court Minutes, 24 October 1749. For the Mayor's Court ruling on a case solely based on a Cutcherry register see P/155/15: Calcutta Mayor's Court Minutes, 10 November 1733 in the case of Maria de Moore.

³⁶ Inter alia BL IOR P/155/12: Calcutta Mayor's Court Minutes, 22 September 1730 (Takermaymud v. Johnkee).

“...we have continued the ancient practice of vereadores both in the districts of Bombay and Mahim chosen out of the landedmen and yearly sworn into office to whom it has been usual to refer petitions of complaints.”³⁷

In addition, the aldermen of the court frequently delegated to the *vereadores* the power to administer oaths to both Catholic and Hindu witnesses and had them serve as auctioneers for many public sales.³⁸ Instead of collecting the details of deaths and estates themselves, the aldermen bowed to previous practice and had the *vereadores* deliver lists of all those who had died “within their several districts” every year.³⁹ The Mayor's Court also regularly summoned the *vereadores*, *mhattaras*, and *chogules* to evaluate properties in dispute or to render official opinions on matters of customary law.

In the dozens if not hundreds of property cases brought before the court, the alderman judges upheld common-place local legal understandings, but with significant input from local elites and other judicial institutions in the city. Most if not all of these suits had as their basis particular principles of local custom. Litigants, aldermen, and local elites referred to any precept of this supposed customary law as a “Cassabe custom” or in other words, the immemorial custom of the place.⁴⁰ Cassabe customs regulated relationships between landowners and tenants as well as those between property buyer and seller.⁴¹ These principles mitigated against a broad market in land, allowed neighbors

³⁷ BL IOR: P/416/103: Bombay Mayor's Court Proceedings, pp. 131-2. (1 July 1730).

³⁸ On oaths see BL IOR P/416/119: Bombay Mayor's Court Proceedings, p.62 (7 March 1744) and for a *vereador* administering oaths to a Hindu witness per the "usual custom" at the order of the Mayor see BL IOR P/417/8: Bombay Mayor's Court Proceedings, p. 461 (7 December 1753).

³⁹ BL IOR P/417/8: Bombay Mayor's Court Proceedings, p. 102 (4 March 1755)

⁴⁰ Cassabes (from the Arabic *Qasba*) were Indo-Portuguese administrative and taxation districts. Bombay city was the capital of the cassabe of Bombay while Mahim was the capital of the cassabe of Parel, Sion, and Mahim. See Sebastiao Dalgado, *Glossario Luso-Asiatico*, (Coimbra, 1919), pp. 224, 479.

⁴¹ See Vaidya, *The Bombay City Land Revenue Act*, pp. 93-4 for a description of cassabe land customs at

to have the right of first refusal in any sale, and maintained a complex set of inheritance practices combining Hindu and Portuguese customs. In nearly every property dispute found in the records of the Bombay court, the aldermen called upon the *vereadores* as expert witnesses or employed them to write a report on the matter directly. Accordingly the aldermen frequently accepted the opinions of local elites like the *vereadores*, *mhattaras*, or *chogules*, thereby upholding some version of local or religious custom.

The court adopted these elites so much into their practice that when a Luso-Indian man disregarded a judgment made by the *vereadores* and *mhattaras*, the aldermen chastised him that "...he may as well say that he will not abide by the sentence of the court for the [judgment] was done by order of the worshipful the Mayor."⁴² In addition, the coroner's inquest juries at Bombay included *vereadores* and other Luso-Indians, while the *vereadores* at Mahim even maintained their own coroner.⁴³ The Bombay chartered courts also depended on a range of Prabhu and Shenvi clerks who moved fluently between multiple worlds of authority and served as the common denominator amongst the different sources of authority at Bombay.

These scribes inserted themselves successfully into the new chartered legal order to such an extent that in 1747 the Bombay Mayor's Court faced an overwhelming proliferation of Prabhus and Shenvis working in semi-official court roles. As a result, the

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Bombay as communicated in 1782 by the *vereadores* of Bombay.

⁴² BL IOR P/416/105: Bombay MC Proceedings, 5 May 1731. There are a number of *vereador* documents in the records of the Mayor's Court. These are signed by at least seven or eight *vereadores*. See BL IOR P/416/119: Bombay Mayor's Court Proceedings, p. 185 (5 December 1744) for the Mayor's Court asking the *vereadores* for a certificate of age for a litigant.

⁴³ BL IOR H/732: Records of the Coroner of Bombay.

court erected an official register of licensed “Courts and Registers Purvoes.” The list records that the register of Bombay that year employed two Shenvi clerks as translators and writers and that each court attorney likewise had two Shenvis or Prabhus serving under him in a scribal capacity.⁴⁴ Residents of Bombay apparently saw these clerks as part and parcel of the English legal order, as in 1752 the court scolded various parties for addressing communications with the Mayor's Court to the court Prabhus instead of to the aldermen.⁴⁵

The new English quarter sessions in the three settlements also adapted to local conditions and adjusted their practice to accommodate the opinion of powerful local elites on whom the EIC's government depended. This accommodation took its most important form in the practice of employing mixed juries in cases involving non-English defendants. The non-English jurors called by the sheriff in these cases included many of the most prominent local elites in the Company's settlements. At the 1728 Calcutta sessions, influential *dadni* merchants such as Dybuck Bysack [Basak], Uckror Dutt, Collichund Dutt, Nandaram Ghose, and others served as jurors for the three criminal trials held for non-English defendants.⁴⁶ In spite of the formal legal rationale for mixed juries - allowing the accused a jury of similar allegiance and language - this same core

⁴⁴ This list is appended to the proceedings of 9 June 1747 in the records of the Mayor's Court held at the Maharashtra State Archives. For the role of these intermediaries in the copious business of translation see the marginal note on a translated petition in BL IOR P/416/103: Bombay Mayor's Court Proceedings, pp. 204-5 (19 August 1730 -Gomatee v. Tullsee).

⁴⁵ BL IOR P/417/17: Bombay Mayor's Court Proceedings, p. 172 (20 December 1752).

⁴⁶ These defendants included a mariner named Cour tried for murdering another Indian sailor, a local man accused of stealing one rupee worth of rice from a Sikh merchant, and two men accused of stealing six geese. For more on the Dutt family and their role as brokers as well as a genealogical table see Haradhan Dutt, *Dutt Family of Wellington Square* (Calcutta, 1995). Four of the twelve called for duty did not show up and were fined 80 rupees by the court.

group of Bengali merchant jurors served on all non-English cases in Calcutta, including those with Luso-Indian defendants.⁴⁷ This trend of using mixed Indian-English juries for both capital and non-capital offenses continued at every recorded criminal sessions into at least the 1730s, and knowledge of it as a common practice remained into the 1760s.⁴⁸ Likewise, in Bombay, mixed-juries took on a particularly local form, drawing on the city's unique legal culture. When Damuljee Undeker and two other sepoys faced trial for theft at the November 1745 Bombay sessions, the sheriff called a jury of six Englishmen and six “natives of the country.” These “natives” however, were not other sepoys, fellow caste members, or even Hindus but rather six of the Luso-Indian *vereadores*.⁴⁹ It appears from the extant records of the court that regardless of the nature of the defendant in Bombay, if he or she could be considered a “native,” then the sheriff called the *vereadores* to serve on the jury.⁵⁰ By the 1740s this system had become customary to such an extent that in July 1744 the court adjourned because the standard pool of “native” jurors, undoubtedly Luso-Indian landowners, were all tending to crop collection or indisposed on business.

⁴⁷ BL IOR P/155/72: Calcutta court of Oyer and Terminer 1728-9, 16 June 1729. On this day Paschal Peres was found innocent and Antonio d’Rosario found guilty of murder by a jury of half-English half Bengali jurors.

⁴⁸ By 1733 it appears that in the Calcutta quarter sessions no one was tried by a mixed jury unless he first asked for the privilege.

⁴⁹ Maharashtra State Archives: Bombay court of Oyer and Terminer records, f.77 (November 1745). The “native” jury in this case consisted of Francisco Barreto, Domingo D’Cruz, Pasquel Texiera, Diego D’Souza, Bartholomew Bautista, and Andrew Machado. Many of these same men are mentioned in the Mayor’s Court records as being *vereadores*. Three of these same individuals served on the petit jury for trying a woman named Ganguly only a month later.

⁵⁰ Maharashtra State Archives: Bombay court of Oyer and Terminer records, f.2 (1743). These jurors included Domingo D’Cruz and Andrew Machado who also served on Undeker’s jury. In 1743 a Bombay grand jury indicted Gopall Bhimjee and others for theft and “being natives of the country” the sheriff called a petit jury consisting which included *vereadores* and other Luso-Indian notables to try them.

Taken as a whole, these mixed juries in practice had little to do with their original purpose, i.e. giving foreigners a trial by their co-subjects. In none of the cities were there significant debates about the formal political subjecthood of jurors or the rationale behind mixed juries. Rather, court officers and justices of the peace, as well as local Indian elites, adapted the already flexible English system of criminal justice to the extant system of local consultation and co-operation in matters of justice and government.

Jurisprudence and Custom

The Mayors' Courts' made their eventual decisions in most contract or mercantile disputes based on the testimony of such elites, local functionaries, and business partners. This testimony could have divergent effects on the court's decision making. The aldermen could either adjust contracts according to local practice or they could decide, based on mercantile testimony, that contracts should be honored.

In one Bombay suit between an itinerant English wood merchant and a Parsi trader, the two parties presented the court with depositions from nearly fifty different merchants of all faiths and origins. The attorneys on both sides constructed the questions for these depositions so as to establish the nature of common contractual custom in the Japan wood trade - e.g. should a merchant make specific allowance for the type and size of wood bargained for or, rather just its gross weight? The aldermen later drew on this testimony about particular local understandings of lumber contracts and mercantile norms to dissolve the contract and establish a fair price for the wood.⁵¹ Likewise, in a 1728

⁵¹ See BL IOR P/416/118: Bombay Mayor's Court Proceedings, pp. 31-41, 166 (4 May 1744 + 3 August 1744 - Lambton v. Rupji Dhanji).

Madras dispute between two Tamil merchants over a bond, the Mayor's Court inquired into “the custom of the country” as to commercial partnerships and overturned the plain language of the instrument in favor of customary practice and the plaintiff.⁵²

In other cases though, the aldermen could uphold contracts which they felt met communal standards. In 1743, one English merchant at Calcutta sold a load of 30 chests of opium to another Englishman. When the cargo reached a port in modern-day Burma, the crew found the opium to have the consistency of “elephant dung,” making it unsellable. In the course of litigation, the Mayor's Court decreed that the buyer had to honor his contract. They based this decision on testimony from merchants and witnesses describing the rigorous customary assaying and sorting process for opium in Calcutta - procedures that the wronged merchant should have followed.⁵³ In the aldermen's view, the buyer was either ignorant of how to pick the best opium or made a mistake, neither being adequate grounds for upsetting a contract. Again, as in similar cases in other local American and English courts, their decree was made based not on dry legal manuals but on the opinion of the most respected members of the community.⁵⁴

Outside of the realm of mercantile disputes, the charter courts had to grapple with the preexisting legal culture of all three cities, which featured a myriad of religious and

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⁵² BL IOR P/328/66: Madras Mayor's Court Proceedings, 24 June 1728 and 28 June 1728 (Arambauca Mooteapa v. Copa Chittee Paupa).

⁵³ This case, John Rennald v. Wadham Brooke for William Barwell was decided originally in Calcutta in 1744 and heard by the Privy Council in 1748 which upheld the contract. See BNA PC2/101: Privy Council Registers, p. 32 as well as the detailed printed briefs filed in the case held at the Beinecke Library, Yale University, William Lee Papers (Osborn MSS 52) Box 22, items 28+29.

⁵⁴ See Oldham, *English Common Law in the Age of Mansfield*, especially pp. 93-4 for mention of how London mercantile courts decided freight matters between traders.

customary rules, oaths, and customs.⁵⁵ As a result of their adaptive vision, an English visitor to a court day in one of the EIC's settlements might well have been shocked at the strange proceedings before the bench. Over the years of their operation, the Mayors' Courts and quarter sessions embraced the plural oath-taking practices of their predecessor institutions and accordingly swore witnesses and litigants in a variety of manners including on the Old Testament, the Gospels, the Quran, the Baghavad Gita, the head of a cow, the feet of a Brahman, a copper pot, and on a lily pad from a local temple.⁵⁶ The Calcutta quarter sessions even purchased a 6 rupee copy of the Quran for use in swearing witnesses.⁵⁷ The aldermen depended on local elites and their own India experience to shape the exact nature and seriousness of these required oaths. Chief among these oath-experts were religious elites paid by the court for their services.⁵⁸ These court officials would not only have appeared at court, but as the table of fees indicates, they would have accompanied English legal officials on visits to homes and lawyers' offices for the taking of depositions.

⁵⁵ The old Madras Mayor's Court had sometimes employed a court Brahman to conduct all Hindu oaths, and the previous Bombay court of justice occasionally brought in priests to conduct oaths for Catholics as well as the "principal braminy" for Hindus. On Bombay see BL IOR P/416/100: Records of the Bombay Court of Judicature, f.4v (16 February 1726).

⁵⁶ For examples of some of the customary oaths used at Madras see K.R.S. Narasimhachari, "Annals of old Madras: The Braminy," *Journal of Indian History* 26.2 (1948), pp. 135-9.

⁵⁷ See BL IOR P/1/8: Calcutta Public Proceedings, p. 133 (5 May 1729).

⁵⁸ From 1729, for example, the Bombay court instituted fees on litigants for payments to Islamic, Hindu, and Catholic religious elites on every oath administered. BL IOR P/416/101: Bombay Mayor's Court Proceedings, pp. 155-7 (5 November 1729). By 1746 the court instructed that a Roman Catholic priest be present every other court day on payment of 2 rupees per month. See BL IOR P/417/1: Bombay Public Proceedings (30 May 1746). In Madras the court depended on Roman Catholic priests and "Mollahs" to attend the swearing in of witnesses from their communities and in Calcutta the Mayor's Court paid an unknown Brahman 3 rupees per month to attend the court for oath-swearing. For the list of fees to Mullahs in Madras see BL IOR P/329/69: Madras Mayor's Court Minutes, 14 October 1755. On the Brahman's salary in Calcutta see BL IOR P/1/8 Calcutta Public Proceedings, p.134 (5 May 1729). He continued to receive this same meager salary into the 1750s.

The Mayors' Courts also solicited testimony from these local religious elites and communal leaders about customs surrounding family property, inheritance, and religious restrictions. The attorneys in one 1746 Bombay case deposed several “Cadjees” [qadis] including 25 year old “Cadjee Nowrodin” and 55 year old “Codjee Mahomed,” on Islamic inheritance practices.⁵⁹ The Bombay aldermen also called other religious figures like local priests, or the “head Bramine” into court to ask them point blank for their opinion on religious disputes and local custom.⁶⁰ Similarly in a 1729 Bombay suit by a husband over his deceased wife's estate, the court accepted a Catholic priest's appeal to the “laws and customs of the Portuguese” and ruled against the complainant's demands.⁶¹ The aldermen at Calcutta seem to have depended more on *dadni* merchants and other familiar local elites than on religious figures in matters of customary law. For example, when a Hindu widow sued for her husband's property in 1728, the Calcutta court asked Bissnodas Seth and other “substantial” people to instruct them on the “custom of the country.” The aldermen subsequently passed a decree in favor of the widow based on the opinion of these experts.⁶²

⁵⁹ MSA: Bombay Mayor's Court Records, 27 March 1747 (Ibram Gunizan v. Motty Dancing Girl). There were also clearly learned *qadis* at Madras as well. See Ziyaud-din A. Desai, *A topographical list of Arabic Persian and Urdu inscriptions of south India* (New Delhi: ICHR, 1989), no. 1154 for an inscription at Mylapore recording the death of a “Qadi who was a teacher of great erudition and learning in the principles of jurisprudence and theology” dated c. 1724.

⁶⁰ For this case see BL IOR P/416/101: Bombay Mayor's Court Proceedings, 1 October 1729 (Sevantyboy v. Janohkyboy)

⁶¹ BL IOR P/416/101; Bombay Mayor's Court Proceedings: Deogo de Coasti v. Padre Frey Pedro de Alcantara (17 September 1729 and 1 October 1729). Pedro de Alcantara was not Portuguese but Italian, see p. 218 above.

⁶² BL IOR P/155/10: Calcutta Mayor's Court Proceedings, 1+18 June 1728 (Krishna v. Monuick). See also Bhattacharyya-Panda, *Appropriation and Invention of Tradition*, pp. 42-5 for a summary of this case and others. Armenian merchants also testified on customary Armenian laws in court see BL IOR P/155/22: Calcutta Mayor's Court Minutes, 17 August 1744 (Coja Petrose v. Coja Manuel).

Importantly, however, unlike in the later era of Anglo-Indian law, these legal experts and appeals to customary law rarely included citation to legal texts or references to hard-and-fast laws. There were no Hindu *pandits* or Islamic legal experts in the Mayors' Courts. Likewise, the aldermen, litigants, and attorneys appear to have had very little knowledge of those South Asian legal texts which would come to prominence in Anglo-Indian courts by the 19th century.⁶³ Bombay poses a partial exception to this generalization, as the Mayor's Court and the previous Anglo-Portuguese system adjudicated social and religious matters more frequently given the Portuguese-inflected constitution of the city.

In a very limited number of Bombay cases, litigants and attorneys explicitly mentioned textual and extra-local sources of authority. The Mayor's Court there heard testimony, especially in inheritance cases, concerning what was valid "Jentoo [Hindu] law."⁶⁴ In one 1754 Bombay case, for example, the attorney for a Hindu litigant presented several questions, including: "look on the said paper no. 1, Is not the same a true copy of the paragraph of the Jentoo law..." to local experts including Brahmans and Prabhu scribes.⁶⁵ The witnesses as well as the attorneys used these texts including the "Mita

⁶³ None of the courts owned any law books from India (with the possible exception of the Qurans used to swear Muslim witnesses). The first widely available English translations of the Baghavad Gita and other Sanskrit texts weren't published until 1772. A few Company employees like James Fraser did collect legal manuscripts in local languages. When he left India in the 1740s he owned copies of a number of Islamic law texts as well as Bhagavad Gita in MS. See James Fraser, *A catalogue of manuscripts, in the Persian Arabic, and Sanskerit languages. Collected in the east by James Fraser* (London, 1742), pp. 31-34. These manuscripts are now at the Bodleian Library, Oxford University.

⁶⁴ The *veredores* sometimes sat with other elites like the Parsi merchant Rupji Dhanji to make these declarations on "Hindu law." See BL IOR P/417/8: Bombay Mayor's Court Proceedings, p. 483 (7 December 1753).

⁶⁵ BL IOR P/417/129: Bombay Mayor's Court Proceedings, p. 5 Naransett v. Puttlyboy (11 January 1754).

Cassar [Mitaksara],” “by lawyer Yadnavalkee [Yajnavalkya],” throughout the case to make competing points.⁶⁶ This kind of formal citation was rare however. Litigants presumably took such disputes to alternative tribunals and dispute resolution mechanisms where such formal legal claims might be more accepted.

Confusingly for later scholars, the aldermen appear not to have stuck to any consistent interpretation of these customary laws and norms.⁶⁷ Bombay’s aldermen sometimes overruled certain *cassabe* customs, such as a property owner’s right to first refusal of neighboring land sales.⁶⁸ Yet, the aldermen clearly valued this kind of testimony and had no clear-cut objections to using customary religious laws in their jurisprudence. In fact, one could argue that their very understanding of customary issues had its origins in the terms of debate introduced by such local experts.

English Law and Local Difference

When litigants did appeal to substantive English laws, the aldermen, much like their counterparts in the Americas, decided which English laws they felt could and could

⁶⁶ Ibid pp. 6-14. This refers somewhat confusingly to the Mitaksara jurisprudential tradition based on Vijnaneshwara’s 12th century commentary of that name. Vijnaneshwara’s treatise was based on the *Yajnavalkya Smṛti* - a 3rd-4th century BCE Vedic text. In the same case an expert witnesses also quoted “out of [the] law book called Metayasar [Mitaksara] [as] declared by lawyer Bhraspaty [Brhaspati].” Bhraspati was one of the traditional first authors of the *Smṛti* and was often cited by later commentators. See Robert Lingat, *The Classical law of India* (New York: Oxford University Press, 1973).

⁶⁷ For examples of this from Madras see Arasaratnam, *Merchants, Companies, and Commerce*, p285, Brimnes, “Beyond Colonial Law,” pp. 539-550, Mukund, *View from Below*, pp. 26-49, and A.F.T. Reyes, “English and French Approaches to Personal Laws in South India 1700-1850,” (Ph.D. Thesis, Cambridge University, 1986).

⁶⁸ For example see BL IOR P/416/101: Bombay Mayor’s Court Proceedings, pp.75-7 (4 June 1729) and also BL IOR P/416/105: Bombay Mayor’s Court Proceedings, p. 202 (25 August 1731 - de Cruz v. Redriques). In another case from 1729, a plaintiff invoked the custom and gained possession of land just by filing a bill. A month after she filed her bill, the new buyer of her neighbors’ property appeared before the court and offered to end the dispute by selling the plaintiff the land - the last proceeding recorded in the case. BL IOR P/416/101: Bombay Mayor’s Court Proceedings, p.167 (19 November and 10 December 1729).

not apply in their settlements. Deviation from strict metropolitan statutes in favor of local practice was not a sign of a failure of English law but rather the very essence of the imperial system. Legislatures as well as colonial courts in the Americas established a significant number of local commercial norms, laws, and practices. As in India, the differing commercial climate of the Americas provided the impetus for new laws around limitations, interest rates, land, and the seizure of assets.⁶⁹ The chartered courts in India embraced this devolved imperial system and applied English laws and norms according to the local constitutions of their cities.

In some cases the Mayors' Courts applied substantive English law in a strict manner. For example, in one suit, the Calcutta aldermen decided that a gambling debt between two Englishmen was not recoverable from an estate as it contravened the English "Gaming Act."⁷⁰ Similarly, in 1731, the Bombay court dismissed a suit based on a litigant's plea of nonage despite the protestations of his non-British creditor that such English law should not be enforced.⁷¹ However, by and large, the Mayors' Courts took a more cautious approach to their application of English substantive laws - an approach

⁶⁹ Karsten, *Between Law and Custom*, p. 519 mentions that certain land tenure and debt statutes contrary to English law were allowed in Australia given local exigencies. Also in this 19th century vein, the historian P.G. McHugh, makes much of an 1833 case (*Macdonald v. Levy*) in which the Supreme Court of New South Wales held that local usury laws could allow higher rates of interest than under English statutory law. Paul G McHugh, *Aboriginal societies and the common law: a history of Sovereignty, status, and self-determination*, (New York: Oxford University Press, 2004), p. 37. For more on the case see "Why the History of Australian Law is not English" Bruce Kercher, Macquarie University, October 2000 <http://www.law.mq.edu.au/html/staff/kercher/Castles.htm>>. Kercher distinguishes between questions of statutory "local differences" and common law/customary law applicability.

⁷⁰ Most likely the statute: 9 Anne c. 14 (1710). For this case see BL IOR P/155/10; Calcutta Mayor's Court Proceedings, 3 August 1728 (*Nicholas Rowe v. Thomas Hawkey estate*).

⁷¹ In English common law, underage parties (generally under 21 years of age) could plead 'nonage' i.e. that they could not be held responsible for a contract. See BL IOR P/416/105: Bombay Mayor's Court Proceedings, 24 November 1731, (*Juma Coja v. Enos Dabrew*). For an exploration of election, age, and new colonial contexts see Brewer, *By Birth or Consent*, especially Chapter 1.

well honed in the broader British world.

Out of a desire to provide practical justice for the demographic majority, the aldermen in India simply ignored some English principles, such as the requirement that evidence in court be sworn on the Gospels. On these grounds the courts also ignored an array of the other exclusionary provisions in English law. A Calcutta lawyer attempted to protect his client in 1747 by arguing that a Luso-Indian witness could not be required to answer a question about Catholic sacraments in court. In defense of this proposition he cited an English statute which provided penalties for all those who admitted being involved in the practice of the Roman Catholic Church.⁷² Catholics, including even Catholic priests, were frequent litigants in the Indian courts, and given the importance of Luso-Indians in the settlements, the aldermen refused to apply the English law, writing, "It is the unanimous opinion of the court that the said statute doth not extend to this settlement."⁷³

Beyond these matters of litigant admissibility, the Mayors' Courts established even more complex and sophisticated constitutional rules for applying English law in cases involving commercial and documentary practice. Residents of all three cities, especially those in Madras and Bombay, frequently turned to the Mayors' Courts in order to collect on outdated written obligations. Perhaps because of the array of other dispute resolution mechanism of first recourse, many inhabitants litigated these account debts and bonds years if not decades after they were first contracted. For example, in Madras,

⁷² The lawyer brought a copy of this statute, 3 James I c. 4 (Popish Recusants Act 1605), with him to court (though he misidentified it as 3 James I c.5).

⁷³ BL IOR P/154/47: Calcutta Mayor's Court Minutes, 3 August 1748.

Narrain Moodelare [Mudialar] sued a weaver named Arnicara Raiapa in 1742, hoping to force payment on a bond dated some twenty-six years prior.⁷⁴ In addition to these commercial obligations, traders in Bombay and Madras depended on written mortgages and other property instruments to secure loans.⁷⁵ Litigants could present large volumes of these documents to the court, often contradictory or of competing dates. In another 1742 Madras case, a merchant named Shivanma sued a local Hindu widow over a 1713 mortgage entered by her late husband at the Choultry on their “brick and tiled” house. Over the course of litigation, various witnesses and additional parties dredged up further deeds and mortgages dating from as recently as 1735 and as far back as 1687.⁷⁶

As explained earlier, metropolitan English legal institutions relied heavily on documents and textual proof in their business. Parliamentary statute and common law practice dictated strict rules for the admissibility of documentary evidence and made proper legal form something of an art. However, the approach of the aldermen to the written obligations brought before their court did not follow the strict provisions of English statute law, but rather steered a middle path towards upholding the spirit of these laws in novel circumstances.

Litigants and their attorneys did occasionally attempt to argue that particular texts

⁷⁴ BL IOR P/328/78: Madras Mayor's Court Proceedings, 19 October 1742. Likewise in the same year two other Hindu merchants sued each other over account balances dating to 1718-21. The same was true in Bombay, where in one case merchants Madowjee Ransor and Deodass Sancar spent over a year litigating unpaid bonds and account debts going back as far as 1722-3.

⁷⁵ See Brimnes, “Beyond Colonial Law,” pp. 547-8.

⁷⁶ BL IOR P/328/78: Madras Mayor's Court Proceedings, pp. 156-64 (6 July 1742 + 16 November 1742). See also *Ibid.*, 18 September 1744 for a Tamil merchant offering the bills of sale to two gardens as security for a loan. His creditor eventually sued him in an attempt to recover the debt from his goods and property. In 1733 another Tamil merchant offered 1,300 square feet of property as collateral on a 48 pagoda loan (~24 pounds), suing to recover the debt some ten years later

were invalid according to English law, drawing on either the Statute of Limitations or the Statute of Frauds.⁷⁷ But the Mayors' Courts rarely gave credence to such arguments. When an Englishman tried to invalidate the will of a Calcutta merchant in 1728, he argued to the court that it had been nuncupative (oral) and done in front of fewer than the three witnesses required by the Statute of Frauds. The Mayor's Court roundly denied his plea on the grounds that it was too much of a legal nicety to be followed by common people in India.⁷⁸ Likewise, in Bombay, a Hindu merchant's attorney specifically argued in court that a suit against his client could not continue as the bonds involved did not meet the formal requirements for legal action as set out in the Statute of Limitations. The aldermen ignored his complaint outright and continued the case regardless.⁷⁹ Similarly the aldermen at Madras allowed *cadjan* bonds into court which had not been properly witnessed according to the Statute of Frauds. The aldermen accepted at least some of these bonds based on testimony positing that it was well established custom to merely insert the names of witnesses to financial instruments without the named persons being present.⁸⁰ In still more cases from Bombay and Madras, litigants attempted to argue that the Statute of Limitations prevented them from being held to written obligations over ten years old.⁸¹ While the courts sympathized with these pleas, they chose not to enforce the

⁷⁷ Acts passed by Parliament as 21 James I c. 16 (1623) and 29 Charles II c.3 (1677).

⁷⁸ BL IOR P/155/10: Calcutta Mayor's Court Minutes, 7 December 1728 (Weatherly v. Vanes). In this case the court asserted "it is not to be supposed that persons here should be instructed or knowing in all forms of law."

⁷⁹ BL IOR P/417/8: Bombay Mayor's Court Proceedings, p. 311 (13 November 1751).

⁸⁰ See BL IOR P/329/69: Madras Mayor's Court Proceedings, p. 45 (26 July 1754). Also see BL IOR P/328/78: Madras Mayor's Court Proceedings, p. 129, 139 (1 March 1743 and 5 April 1744) for the Appeals Court at Madras ruling an aberrantly signed bond valid.

⁸¹ See e.g. BL IOR P/416/119: Bombay Mayor's Court Proceedings, pp. 16-7 (8 January 1744) and BL

statutory limits.

The Courts took a more nuanced approach in those cases where interest rates on disputed written obligations exceeded English legal norms. In 1660, Parliament had set 6% as the maximum annual enforceable interest rate for all contracts and loans.⁸² Interest rates charged by mercantile lenders and bankers for simple loans were however much higher in the EIC's Indian settlements - somewhere in the 10-12% range.⁸³ The aldermen, as merchants themselves, knew full well that imposing 6% interest rates in court would result in economic disaster and dry up the credit available to them. Consequently, the Mayors' Courts ignored nearly all pleas predicated on English usury laws. In 1727, for example, the executors of a disputed estate at Madras asked to be exempted from paying the full amount of a bond claiming, "that by the laws of Great Britain they humbly conceive the said bond to be forfeited by reason of extortionate interest...." The court ignored the argument entirely and awarded interest at the original higher rate.⁸⁴ British courts in India did not attempt to govern interest rates in some instances. The aldermen understood the importance of keeping extortionate interest out of the marketplace and as

IOR P/329/65 Madras Mayor's Court Proceedings, p. 63 (7 March 1755).

⁸² Known as the "Usury Act," 12 Charles II. c. 13 (1660).

⁸³ See Arasaratnam, *Merchants, Companies, and Commerce on the Coromandel Coast*, pp. 279-81 for a good discussion of this. Indian interest was notorious for adding to the wealth of British merchants as Company Director Laurence Sullivan instructed his son in 1778 - see Gurney, "The Debts of the Nabob of Arcot," p. 38. Also see Marshall, *East Indian Fortunes: The British in Bengal in the Eighteenth Century*. In perhaps the first book printed in Bengali, a Portuguese missionary tract, the clerical author asserted to his Bengali audience that anyone who took more than 12% interest "...will have incurred the penalties of usury, that is excommunication." See H. J. Hosten, "Three first Bengali type-printed books" *Bengal Past & Present* 9 (1914), pp.40-63. The VOC in India limited interest in their courts to 12% as well, see BL IOR Eur. Ms. Mackenzie Private 67, pp. 187-8 (article 23 of the 1736 Coromandel Coast regulations).

⁸⁴ BL IOR P/328/65 Madras MC proceedings: 12 September 1727 (Thomas Wendy v. George Tullie estate). The court shot down the same extortionate interest argument in a case a month later *ibid.*, 10 October 1727 (Peter Labonde v. Maria Duverger).

bearers of civic trust they established general norms enforceable in court.⁸⁵ The Madras court, for example, routinely awarded interest of 8% in cases where the original disputed bonds carried higher rates.⁸⁶ In Bombay, where some interest rates exceeded 75% a year, the Mayor's court set simple interest at 9% in 1730 after hearing a particularly contentious interest-related case.⁸⁷ This hybrid solution to uniting the two commercial cultures appears to have met little resistance amongst the mercantile population at large and demonstrates the kind of pragmatic legal thinking characteristic of the aldermen.

The Mayors' Courts developed an even more sophisticated jurisprudence in the frequent cases of merchant failure brought to their doors. The trading world of the East Indies featured violent swings of fortune as the vicissitudes of fate, weather, or politics could combine to ruin merchants nearly overnight.⁸⁸ The settlements could also be rocked to their foundations by the death of a prominent trader and the concomitant process of unwinding his outstanding contracts and unpaid debts. When a merchant failed or died leaving behind a confused estate, creditors and prominent merchants commonly gathered

⁸⁵ Arasaratnam in his *Merchants, Companies, and Commerce* (p. 281) asserts that the Madras Mayor's Court struck down Indian interest based on one 1734 Madras case (which the appeals court later overturned) I have found no other corroborating examples.

⁸⁶ See BL IOR P/328/78: Madras Mayor's Court Proceedings, p. 343 (25 September 1744) for the Madras court reducing 9% interest to 8% and *ibid.*, p. 213 (24 April 1744) for reducing 12% to 8%. This 8% figure seems to have been the customary rate charged between prominent merchants, as indicated by other Madras bonds which stated merely "usual interest" in place of 8%. This phrasing appears on the bond dated May 1744 between Ponapah Chetti and Poncala Gopaul entered into the record in BL IOR P/328/78: Madras Mayor's Court Proceedings, (9 October 1744).

⁸⁷ Inhabitants of Bombay complained of this interest on small loans. See BL IOR P/341/7: Bombay Public Proceedings, p.60 (14 April 1732), and BL IOR P/416/103: Bombay Mayor's Court Proceedings, p.62 (29 April 1730).

⁸⁸ BNA C103/131 Letter from John Powney at Madras to Thomas Hall in London about events in Calcutta, 16 January 1739.

together to decide the distribution of remaining assets amongst themselves.⁸⁹ These creditors often had claims on assets varying from complex respondentia bonds to back-rent, to simple oral market debts. The sums involved could also be massive. In one well-litigated case involving a failed merchant venture, thirty-five investors in a single voyage appeared in court with combined demands on respondentia contracts totaling around 60,000 pagodas (~£24,000).⁹⁰

These “respondentia” contracts were the most frequently litigated type of mercantile relationship in the Mayors' Court at Calcutta (and to a lesser degree in the courts at Bombay and Madras).⁹¹ Few merchants or shipowners possessed enough capital themselves to finance an entire trading voyage and as a result they turned to contracts at respondentia. These financial instruments, rare in the British world outside the East Indies, represented an amalgam of maritime insurance and fixed-term loans secured upon a ship's cargo.⁹² That is, in respondentia, merchants and other lenders in one port lent a supercargo or shipowner money for a particular voyage at an interest rate commensurate with the difficulty and length of the venture. Each loan was accordingly secured against

⁸⁹ See BL IOR P/416/119: Bombay Mayor's Court Proceedings, p. 58 (28 March 1744) wherein a litigant's bill suggests that respondentia cases were usually sent to arbitration. See also the 20 December 1740 letter from Thomas Braddyll at Calcutta to a friend in London about resolving the debts of a friend “...it was lately concluded by the creditors in India that he should adjust his accounts and pay whatever he might receive into the hands of Samsunderseat and Ramkissenseat (two of our most substantial merchants and very large creditors to him).”

⁹⁰ BL IOR P/328/82: Madras MC Proceedings, pp. 317, 331-5 (12 October 1755). One merchant named Linga Chitty invested around 2,000 pounds in the voyage.

⁹¹ About one quarter of all cases begun or ended in 1744 before the Calcutta court related to respondentia, about a tenth of all cases in Bombay for that year, and a much smaller number for Madras.

⁹² Similar loans, called Bottomry bonds, were extremely common in the English Atlantic world of the 17th century, but differed in a one crucial instance from their respondentia cousins. Bottomry bonds were secured on ships themselves whereas respondentia bonds were secured on the ship's cargo alone. See George Steckley, “Bottomry Bonds in the Seventeenth-Century Admiralty Court,” *American Journal of Legal History* 45 (2001), pp. 256-77.

the cargo of a ship alone, rather than the ship itself or any other collateral.⁹³ This provided a kind of insurance for cargo owners, as one could borrow all the money necessary for a trading voyage on respondentia and not have to pay it off completely in the event the ship sank or did not complete its voyage.⁹⁴

Respondentia contracts united the commercial population of the settlements in a way few other things did. Types of respondentia investor and the sums invested varied widely as a result. As an example, in 1743 a merchant named Vitulset lent a ship captain named Banna Tacur 800 rupees (~£115) on respondentia at 25% for a rice cargo being carried from Bombay to Muscat aboard the *Jenny*.⁹⁵ Investors also came from outside the settlements themselves, as was the case in the 1730s, when the head of the Dutch East India Company in Bengal invested over 18,000 rupees (~£2,500) at 18% in the cargo of the *William and Mary* sailing from Calcutta.⁹⁶

As a result of their prevalence, much of the fortune of the three cities' merchants constantly floated in these respondentia arrangements. This was especially true of Englishmen, as the London EIC mentioned in 1746 that "...the trade carried on by the Company's servants in India is for the most part with money borrowed at respondentia,

⁹³ Investors could also take out bonds predicated on different goods as Omichund did when he gave an English merchant at Calcutta three separate respondentia bonds in 1744, all worth more than 1,000 pounds. See BL IOR P/155/22: Calcutta Mayor's Court Minutes, 15 December 1744 (Omichund v. Lauder).

⁹⁴ In fact it seems that in many instances these bonds took the place of marine insurance - as noted by one Bombay merchant when he wrote that he had secured all risk on a voyage "...by taking up respondentia which is better than insurance." BL IOR P/416/211: Bombay Mayor's Court Proceedings, p. 227 quotes a 1732 letter from James Hope to Moses Francia to this effect.

⁹⁵ BL IOR P/416/119: Bombay Mayor's Court Proceedings, (22 January 1744 - Tacur v Tacur). For another example, sometime before 1748, James Frazer lent an English captain 5,000 rupees on respondentia at 16% interest for a voyage aboard the ship *Fuckro Marrackol* from Bombay to Surat see BL IOR P/417/3: Bombay Mayor's Court Proceedings, 8 June 1748.

⁹⁶ BNA PC 2/97: Privy Council Registers, pp. 465-7 (5 July 1743).

few of them having sufficient capitals of their own.”⁹⁷ In addition, old India hands recommended respondentia bonds to their younger charges as good investment vehicles, as the promised rates of return were often quite high.⁹⁸ The stipulated interest on these contracts rates were of course dependent on the length and difficulty of a voyage, but could range from 14%/annum to 25%/annum or higher.⁹⁹ Without a functioning respondentia market to insure cargo and provide consistent returns, trade ground to a halt in the settlements. In 1744 the combined Indian and English merchants of Bombay sent a petition to the EIC executive bemoaning late acts of piracy and the decline of trade, claiming that credit was tight with merchants unwilling “to lend respondentia” anywhere on the coast of western India as a result.¹⁰⁰

As might be predicted, shipwrecks, storms, pirates, and the exigencies of trade caused a certain number of voyages to fail. These voyage failures resulted in near continuous respondentia litigation at all three Mayors' Courts. Given the sums invested and the number of parties involved, respondentia creditors as well as those to deceased or insolvent merchants frequently disagreed over how to distribute remaining assets.¹⁰¹ In

⁹⁷ BL IOR L/L/7/20: Legal Advisors' Papers, 30 April 1746.

⁹⁸ In Madras, even the orphans fund of St. Mary's church invested part of its monies at respondentia See to this effect BL IOR E/3/110: Letter from London to Fort St. David, paras 12-23, 148-151, especially pp 74v-77 (17 June 1748).

⁹⁹ E.g. a translated respondentia bond presented to the Madras Mayor's Court listed interest of 50% for two monsoons see BL IOR P/328/66: Madras Mayor's Court Proceedings, 28 June 1728 (Comrapa v. Mooteapa). Arasaratnam has a good discussion of differential rates from Madras in his *Merchants, Companies, and Commerce*, pp. 278-9. The EIC lent money to its own supercargoes at 18% for voyages between England and the East Indies. See BL IOR H/37: Letter from Robert Adams to Hezekiah King, 14 October 1737.

¹⁰⁰ BL IOR P/341/14: Bombay Public Proceedings, p. 275 (21 September 1744).

¹⁰¹ For example, in 1747 a group of creditors holding one class of bonds sought letters of administration at the Bombay Mayor's Court so as to head off the ability of another syndicate made up of other classes of debt holders to distribute the estate. See the Sivaji Dharam Seth case summarized in BNA PC 2/103:

these cases, the Mayors' Courts became battlegrounds pitting factions of merchants and individuals against each other in a scramble for a share in a pool of assets. In respondentia cases especially, this pool could be disastrously small if a ship carrying thousands of pounds worth of investment had plunged to the bottom of the sea. These disagreements amongst creditors occurred most frequently when one set of creditors proposed a division of assets purely by proportion - making all categories of obligation equal. Respondentia lenders could prove especially refractory in such cases by claiming an entitlement to their full investment in a failed voyage, in preference to others, arguing that a given ship's captain had voided his contract by proceeding in a different manner than that explicitly specified.¹⁰² Cases like these became some of the most hotly disputed at the court. In fact over one third of all cases which reached the Privy Council from India in this period involved disputed estates and/or the priority of debts. The aldermen of the Mayors' Courts handled these disputes by establishing and then enforcing an evolving set of asset distribution norms.

Woodford's instructions to the courts and the metropolitan English legal order both contained specific rules for the priority of debts in the case of a merchant (or his estate)'s inability to satisfy all creditors. According to these statutes, norms, and the common law, creditors holding preexisting court judgments collected first, followed by those whose debt could be considered a “specialty.” Any signed and sealed written obligation (meeting the requirements of the Statute of Frauds) could be considered a

Privy Council Registers, pp. 251-2 (7 December 1752).

¹⁰² BL IOR P/416/103: Bombay Mayor's Court Proceedings, pp. 19-21 (18 February 1730).

specialty obligation, including respondentia bonds. Those creditors holding simple unsealed account debts and oral obligations then collected last out of any remaining assets.¹⁰³ This priority schema was no idle matter for the aldermen on the court, many of whom relied on respondentia and lent or borrowed widely.¹⁰⁴

In the early days of the Mayors' Courts, the aldermen seem to have taken a rather loose approach to these legal maxims, preferring a broadly equitable approach to the priority of debts. In 1728, for example, an English merchant tried to claim that his respondentia contract with a recently deceased inhabitant had priority over all other claims on the estate. The aldermen of the Calcutta court squabbled amongst themselves on the issue and eventually split 4-3 against the merchant, ordering that all creditors to the deceased were entitled to come into a percentage of the estate.¹⁰⁵ Likewise, in the same year at Madras, the Mayor's Court sided with a group of disgruntled creditors who did not want all the remaining assets of their insolvent debtor to end up with the one creditor who possessed a large number of respondentia bonds.¹⁰⁶ The aldermen of the Calcutta court explained the rationale for this equitable approach in a 1732 case:

“...the black merchants here (who are the chief lenders of money) are strangers to the nature of bonds, never ask for any, and content themselves with promissory notes, and [] it would be very destructive to the trade of this place not to allow all just debts to be of an equal nature.”¹⁰⁷

¹⁰³ Woodford and Hungerford clarified this hierarchy in 1729. See their letter to Calcutta in BL IOR E/1/202: Letters from the London EIC, pp.392-3 (20 February 1729).

¹⁰⁴ The Calcutta court noted in 1746 that they had trouble deciding certain respondentia suits because all of the aldermen were interested in the case. See BL IOR L/L/7/20: Legal Advisors' Papers, 30 April 1746.

¹⁰⁵ BL IOR P/155/10: Calcutta Mayor's Court Minutes, 9 July 1728 (Posney v. Harnett in re the estate of Henry Harnett). Three aldermen dissented in this case, believing instead that respondentia bonds should be paid out of the effects of the predicated voyage immediately.

¹⁰⁶ BL IOR P/328/66: Madras Mayor's Court Proceedings, 30 May 1728 (English v. Collison).

¹⁰⁷ BL IOR P/155/14: Calcutta Mayor's Court Minutes, 21 September 1732. The court of appeals concurred

In making this decision they had undoubtedly heard repeated pleas like that of Parsi merchant Rupji Dhanji, who asked the Bombay aldermen in 1743 that his oral agreement with an English trader be held "as sacred" as "bonds, notes of hand, or any other specialties."¹⁰⁸ The merchant aldermen on the court clearly realized that it was more important to ensure good relations with Indian merchants and easy access to credit than to uphold any strict English hierarchy of debts.

Not all merchants and creditors, however, benefited from such an equitable distribution. Over the 1730s and 40s, in the very wording of respondentia contracts and in a number of cases before the courts, merchants established that respondentia relationships explicitly linked creditors with the goods of a particular voyage and as such these goods if salvaged from a wreck or seized as part of an insolvent's assets belonged first of all to respondentia lenders.¹⁰⁹ The case of Mordecai Walker, an experienced Calcutta-Bombay wood dealer, shows just how wide-spread this mercantile understanding had become.

June 11, 1744 was a terrible day for Walker. A well-regarded merchant with his own ship, he had taken large sums at respondentia to finance a trading voyage that April. However, a sudden storm at the onset of his trip had damaged his vessel and forced him to return to Calcutta only days later. On that June day, after what must have been two months of failed negotiations and broken promises, eighteen of Walker's creditors,

with this ruling on 11 November 1732.

¹⁰⁸ BL IOR P/416/118: Bombay Mayor's Court Proceedings, p.34 (4 May 1743).

¹⁰⁹ See an extant copy of a 1742 respondentia bond which states explicitly that though "God forbid" the chance of shipwreck or piracy, if these did happen the lender would receive an average out of all salvaged goods. Found in BNA J/90/380.

including Sikhs, Hindus, Muslims, and nearly half of the aldermen of the Calcutta Mayors' Court, filed suit to collect on their debts.¹¹⁰ Yet, the aldermen did not have an opportunity to divide up Walker's remaining assets to all classes of creditors. After many months of inactivity in the court, outside of the gaze of the official record, Mordecai's creditors gathered together, possibly with Joshua Bodley, Walker's attorney, and agreed to a private out-of-court distribution. To finish the matter, in November, Omichund appeared before the Calcutta court with his lawyer James Twiss to announce that he was withdrawing his suit against Mordecai. Walker's other creditors followed Omichund's lead and dropped all court actions. Under the resulting private settlement, the creditors appointed commissioners to liquidate all Walker's assets and pay dividends first to all specialty creditors and then to those holding no special instruments.¹¹¹ Mordecai's creditors, the most powerful of whom were respondentia contract holders, likely came to their own solution to the insolvency in order to head off both court fees and the possibility that the aldermen would revert to an equitable understanding of debts, splitting the estate proportionally.

Though it is difficult to determine which direction any causal relationship might flow, the Mayors' Courts seem to have responded to basic mercantile understanding that

¹¹⁰ BL IOR P/155/22: Calcutta Mayor's Court Minutes, 11 June 1744. These outstanding debts ranged from a private account claim by Rasbehary Seat [Seth] of 195 rupees to a 6,000 rupee respondentia bond held by Robert Massey (an alderman) - all told, Walker's creditors claimed debts equaling 41,258 rupees (~£5,500)

¹¹¹ BL IOR P/154/48: Calcutta Mayor's Court Minutes, 17 January 1749. The Mayor's Court mentioned in this case that the bankrupt would have the distribution as described above even though the English statutes of bankruptcy didn't apply to India as supported by Dudley Ryder's opinion on Mordecai Walker's case (now untraceable). The commissioners appear as representing the "estate" of Walker in a 29 November 1744 suit by Coja Solomons about some of Walker's goods (BL IOR P/155/22: Calcutta Mayor's Court Minutes).

respondentia creditors held pride of place in distribution. Given their popularity and bedrock-role in local trade, the aldermen in India eventually standardized a jurisprudential approach to these bonds. As such, the aldermen came to privilege respondentia contracts so as to ensure their speedy payment and the availability of credit.

This local legal principle was established most universally at Calcutta, where it became common in the 1740s for the aldermen there to grant respondentia creditors all the privileges stated in their bonds to the disadvantage of others.¹¹² Elsewhere in India this understanding took longer to spread. In 1747, an English respondentia creditor at Bombay resisted a settlement made amongst the other creditors of an insolvent *bania* merchant which divided the debtor's assets equally regardless of class of debt. The Englishman objected, citing Jacob's law dictionary to prove that "creditors on specialty must be paid first" and when rebuffed took the case to the Mayor's Court.

Similarly, when the aldermen at Bombay ruled against another English respondentia creditor in an estate dispute, the creditor wrote angrily to England that seven of the eight knowledgeable Calcutta respondentia merchants he had consulted believed he was entitled to salvaged goods first before other creditors.¹¹³ In Calcutta, the Court's preference for respondentia bonds led the aldermen there to also branch out and privilege other formal specialties as well. In a landmark case three years after Walker's disaster, the

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¹¹² See BNA PC 2/97: Privy Council Registers, p. 297 (19 January 1743) for a record in the proceedings in a Calcutta case wherein one litigant had to come into a regular distribution because he only had a bottomry bond and not one on respondentia (which was privileged by the court). See also the description of the jurisprudence of respondentia in BL IOR L/L/7/20: Legal Advisors' Papers.

¹¹³ See the letter from James Frasier (Fraser) to the EIC in BL IOR E/1/35: Miscellaneous Letters to London, pp. 165d-e (12 February 1752).

Calcutta aldermen found themselves “obliged” to uphold the “rigours” of English law and give an Englishman first crack at an estate because of his signed and sealed bond.

However, this kind of recourse to the letter of English law, tolerated in respondentia cases according to local practice, did not gain much support amongst the broader community in the Indian settlements, including amongst the aldermen themselves. On the whole, the Courts' approach to specialty instruments continued to have a strong equitable component. In the above case where the Calcutta Mayor's Court followed the “rigours” of English law, the aldermen prefaced their decision by stating apologetically that “This court is of opinion that by the law of nature and conscience a debt on simple contract is as just a debt as a debt on specialty.”¹¹⁴ Robert Baldrick, a seasoned alderman, found even this caveat too tepid and openly objected in the minutes that he could not countenance following strict English law, “because the natives of that country were ignorant of the difference between specialtys and notes of hand.”¹¹⁵ The EIC council at Calcutta agreed with Baldrick on appeal and struck down the Mayor's Court ruling, writing “...it would be a great price of injustice that all the Natives of this country should be excluded from a share in the division... [as they] have never so much heard of the laws of England.” This equitable logic, reflecting the importance of Indian mercantile elites to the EIC settlements, continued to have traction. Thus, in the Bombay dispute above in which a litigant quoted from Jacob's law dictionary, the aldermen ruled

¹¹⁴ See the case of Francis Russell's estate BL IOR P/154/46: Calcutta Mayor's Court Minutes, 8 September 1747; BL IOR P/155/25: Calcutta Mayor's Court Minutes, 7 July 1752 and BNA PC 2/101: Privy Council Registers, 12 March 1751.

¹¹⁵ Idem. Baldrick served as an alderman for nine years and was mayor twice.

that he "was entitled to no more than a dividend in common with the other creditors "as it was customary for all debts to be treated equally at Bombay."¹¹⁶ The aldermen knew all too well that the commercial make-up of their cities would not stand for such radical innovation. Their selective application of English statute and common law fit squarely within Imperial legal traditions and allowed them to adapt to local customs and circumstances without abandoning the authority and structure of English law entirely.

The Mayors' Courts did not only establish unwritten norms about the applicability of English laws, but also attempted to promulgate new laws of their own in accord with the local constitution. In response to the problem of document fraud and entangled property titles, the Mayors' Courts all attempted to establish official registries, whereby they could give priority to the instruments registered therein to the exclusion of others - a provision certainly at odds with English Common Law. Likewise, in order to prevent "the evil" of murky obligations, the aldermen in Calcutta and Madras proposed special laws intended to serve as local statutes of limitation by setting locally acceptable time limits for litigating written instruments.¹¹⁷ The Mayor's Court at Calcutta was by the far the most aggressive as a rule-making body and in 1746 sent a long list of proposed laws to the London EIC in an attempt to codify its local constitutional norms.¹¹⁸ These included a regulation mandating that respondentia bonds on a given voyage be paid off before any

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¹¹⁶ The English merchant won on appeal to the Privy Council see BNA PC 2/103: Privy Council Registers, pp. 251-2 (7 December 1752).

¹¹⁷ BL IOR L/L/7/20: Legal Advisors' Papers and Arasaratnam, *Merchants, Companies, and Commerce*, p.290.

¹¹⁸ BL IOR L/L/7/20: Legal Advisors' Papers, 30 April 1746. The court proposed six by-laws concerning respondentia, seizing goods of off ships, registration of mortgages, recusing interested aldermen, time limits on legal action, and suits in which the EIC was itself a party.

other demands upon a debtor. In their description of this proposed rule, the aldermen explicitly argued that altering English law in this matter was necessary and would “tend greatly to increase and promote trade” in the settlement.¹¹⁹ The Indian chartered courts did not however have the unfettered ability to make or apply whatever laws they thought appropriate to their local circumstances. Like their American counterparts, all of the Indian courts' law-making and interpretation was subject to the metropolitan oversight and review characteristic of the imperial constitution.

Indian Constitutions and the Metropole

Because the Company sent no one trained in English law to India with the 1726 charter, all meaningful and knowledgeable supervision of the courts from metropolitan legal experts took place at a distance. In the Americas, the Privy Council, Board of Trade, and Crown Secretaries of State all had varying powers to send advice, establish rules, or overturn judgments from its distant courts.¹²⁰ In the case of the East India Company, the EIC's own legal staff, other metropolitan elites, and the Privy Council filled this supervisory role.

Every year the charter courts in India sent their records back to London for review.¹²¹ Starting in 1728-9, the Company's legal staff examined court proceedings, answered questions, and provided critiques. These lawyers along with the regular

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¹¹⁹ *Idem*

¹²⁰ Only the Privy Council could overturn court rulings but other bodies had wide leeway in transmitting instructions and establishing local norms. On the power of the Privy Council see Smith, *Appeals to the Privy Council*. For a comprehensive guide to instructions sent from London to English colonies in the Atlantic world see L.W. Labaree ed., *Royal Instructions to British Colonial Governors 1670-1776* [2 vols.] (New York: Appleton, 1935).

¹²¹ The majority of court records quoted in this dissertation are those copies sent to London every year.

Committee of Correspondence drafted numerous paragraphs of advice and orders on legal business for the EIC Directors' semi-annual letters to the settlements.¹²² By 1732, however, a deluge of legal records and business from the Indian settlements led the Committee to farm out the task of legal oversight to a series of metropolitan lawyers.¹²³ Even with these lawyers handling most legal business, the directors still lamented the stream of complaints, questions, and legal records pouring out of India. After receiving a set of letters from the Madras EIC executive on law matters, the Directors replied that “...your general letters must not be filled with these things; we are merchants and not lawyers.”¹²⁴ It is no surprise then that by the mid-1730s, diligence in supervising the business of the charter courts waned considerably, with some letters from London containing no paragraphs on legal business at all. Instead, the Directors solicited opinions from prominent lawyers on issues raised by the courts in India, to be enclosed in the letters as addenda.

The lawyers working on behalf of the Company served on the front lines of the imperial constitution, expanding and creating it anew as they read and commented on each year's proceedings. Every one of these legal advisers enjoyed excellent “connections” in the metropolitan legal world. Much of the work of the Company legal staff centered on domestic affairs and, as such, required broad knowledge of English law

¹²² In a 12 February 1731 letter to Calcutta the Directors included over thirty paragraphs on the charter courts, including many paragraphs written directly by Company lawyers. See BL IOR E/3/105: Letters to Calcutta, 12 February 1731.

¹²³ The Committee passed the responsibility of reading the court proceedings to solicitor Thomas Woodford and standing counsel John Browne, asking that their “...observations and remarks thereon be sent annually [to India] together with their opinions upon questions in law when asked.” BL IOR D/19: Committee of Correspondence minutes 1732, f.73v.

¹²⁴ BL IOR E/3/108: letter to Madras: 20 January 1742, para. 59.

in all its facets. The London press even dubbed the coveted post of Company solicitor one “of great profit and honor.”¹²⁵ As seen earlier, John Hungerford and Thomas Woodford, the EIC's general counsel and solicitor, had extensive experience in the metropolitan legal milieu. Upon Woodford's retirement as Company solicitor in 1733, an Irish lawyer named William Wall, who had done sporadic legal work for the Company over the previous years, took up the post.¹²⁶ The expert London lawyer Nathaniel Cole succeeded Wall in 1743 as solicitor and remained on the job until the 1750s.¹²⁷ While Cole had an extensive practice amongst London elites, he also had some background in imperial legal matters. In this imperial legal business he learned about the contested nature of the Imperial Constitution firsthand. When representing a client from Jamaica in a 1736 Privy Council appeal, he traveled around London interviewing former Jamaica

¹²⁵ *Daily Advertiser* (London), Friday, September 9, 1743; Issue 3945. EIC lawyers were indeed quite well paid. Over the period 1720-5, for example, the Company paid their solicitor Thomas Woodford £5,256 for his legal services. BL IOR L/AG/1/1/15: EIC General Ledger 1720-28, p.115. Given that the going rate for each legal document or opinion drawn up by outside counsel ran somewhere in the one to three pound range, this hints at a fairly large load of business. In comparison, David Lemmings has argued on good evidence that only the top ten lawyers in the country could hope to make sums exceeding 2,000 pounds a year. See David Lemmings, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century*, (London: Oxford University Press, 2000), pp. 198-9 as well as 294-5 for a detailed contemporary legal bill.

¹²⁶ Wall followed a traditional path to the law, entering the Middle Temple sometime prior to 1730. After he left the EIC's employ he became a Master in the Irish Court of Chancery. For his letter to the Directors see BL IOR E/1/24: 2 November 1733, p.137. The EIC hired him initially on a small retainer (25 pounds per year), but in 1735 the Company paid him a total of £2,267. See BL IOR L/AG/1/1/16: EIC General Ledgers, p.215.

¹²⁷ Nathaniel Cole (?-1759) was a solicitor of Basinghall St. in the City. He worked previously as a solicitor for the London Assurance Company as well as the Stationers Company, and had the distinction of representing the poet Alexander Pope in copyright disputes. Cole's notebooks and letterbooks for the late 1720s and early 1730s are held at the London Guildhall library: MSS 18,760 and 18,779. For copies of his correspondence with Pope (contained in Guildhall MSS) see *The Collected Works of Alexander Pope* (London: Murray, 1886) Vol. 10, pp. 236-38. David Lemmings reproduces a fascinating and instructive letter by Cole on the qualities of a good lawyer in Appendix B of his *Professors of the Law*, pp. 342-6.

residents about which English statutes were customarily enforced on the island.¹²⁸ Cole put this knowledge into practice by representing the EIC in cases at the Privy Council where the Company was party to a dispute.¹²⁹

While Company solicitors sometimes provided their own opinions on legal matters to the Directors, they also hired noted London counsel to lend official legal heft. These counsel were drawn from a small group of eminent London barristers whose opinions shaped legal policy around the British world. In the charter period, the EIC tapped the expertise of noted lawyers like John Hungerford, Exton Sayer, John Browne, John Browning, Dudley Ryder, William Murray, and John Strange, especially to produce learned opinions on particular questions.¹³⁰ After John Hungerford's death in 1729, Dr. Exton Sayer took over the post of standing counsel briefly until the Company hired John Browne in January 1732.¹³¹ Browne (or Brown), a sometime Member of Parliament from Dorchester, had been called to the bar at the Inner Temple in 1722 and rose to become one of the most active metropolitan litigators. In 1740, he managed to represent clients in an incredible 765 suits in Chancery, with 93 more appearances in the Exchequer.¹³² Like

¹²⁸ He describes this business in a letter to Lord Chancellor Hardwicke. See BL Add. Ms. 36,216: 5 November 1736, f96.

¹²⁹ BNA PC2/103 Privy Council registers, p. 167 (15 July 1752). Wadham Brooke v. Calcutta EIC council.

¹³⁰ Of these, John Browning (c. 1694-1780), who wrote several opinions for the EIC in the 1730s-40s, is the most mysterious. He was the son of a master in Chancery, trained at Gray's Inn, was called to the bar, but then seems to have practiced mainly in the equity courts. He was a master in the Court of Chancery from 1760 until his death. See Heward, *The Masters in Ordinary*, p. 109.

¹³¹ For more on Hungerford see chapter two above. Dr. Exton Sayer (?-1731) earned his LL.D. from Cambridge in 1718 and served as an advocate in the Admiralty courts as well as a Member of Parliament, a functionary for the Bishop of Durham, and briefly as Royal Surveyor General. He was also the son-in-law of Charles Talbot (later Lord Chancellor of England 1733-7), the Crown Solicitor General who signed off on the Charter of 1726.

¹³² Brown is mentioned as a prominent litigator several times in Lemmings, *Professors of the Law*, see p. 35 and table on pp. 351-2.

Cole, he also took on imperial matters, including one 1742 case in Chancery in which he argued that English statutes relating to debt applied in other parts of the empire.¹³³ The Company also turned to officials like John Strange, who served as the Crown Solicitor General from 1737 to 1743, to write opinions on their behalf.¹³⁴ Likewise, the most famous of the Company's legal advisers, Dudley Ryder and William Murray (later Lord Mansfield), held the posts of Attorney General or Solicitor General when they wrote the majority of their opinions.¹³⁵ Both also later became Chief Justice of the Court of King's Bench, the foremost common law court in England. These elite Crown lawyers were well versed and influential in imperial jurisprudence. During the 1730-50 period, Ryder, Murray, and Strange wrote countless opinions relating to imperial law, on topics ranging from wastelands in New Hampshire and trade in Georgia to debts in the Channel Islands.¹³⁶

As such, these legal advisers attempted as best they could to fit the Indian chartered courts into their understandings of the Imperial Constitution. The Company's lawyers in London urged the chartered courts to conform to the laws of England and English practice.¹³⁷ In the first years following the charter, both the Company's solicitor

¹³³ See *Connor v. Earl of Bellamont* (1742) 26 Eng. Rep. 631. In a touch of irony, the Lord Chancellor ruled against Browne, noting that in the East Indies usurious interest was allowed on maritime bonds contrary to the laws of England.

¹³⁴ Sir John Strange (1696-1754) later ascended to the bench as a Chancery judge.

¹³⁵ For more on the work of the Crown law officers see James Oldham, "The Work of Ryder and Murray as Law Officers of the Crown," in *Legal Record and Historical Reality. Proceedings of the Eighth British Legal History Conference, Cardiff 1987*, ed. Thomas G. Watkin (London, 1989), pp. 157-74.

¹³⁶ See William Forsyth ed. *Cases and Opinions on Constitutional Law* (London: Stevens and Haynes, 1869) one of many printed compilations of prominent opinions on Imperial law.

¹³⁷ Woodford even suggested that the Indian judges had never even read his carefully crafted book of instructions: "there is room to doubt that they were never so much as looked at," BL IOR E/3/104;

and a specially contracted barrister even offered specially tailored pieces of advice for each city's courts based on a line-by-line reading of their proceedings.¹³⁸ This commentary was especially detailed and betrayed a certain amount of metropolitan irritation about insufficiently English processes and bungled verdicts. The lack of dates or times in the 1729 Madras records struck the lawyers as profoundly disturbing, as did the absence of the regnal year under which the court was convened.¹³⁹ They similarly complained about the Bombay proceedings, especially the sentencing of two men (Bendia and Changa) to death for robbery since the crime was not proved to have been out of a dwelling house (as required per Parliamentary statute) and the value of goods stolen was not stated in English sterling.¹⁴⁰ In 1732, Robert Adams, sometime director of the Company and prominent former employee, approached Thomas Woodford for his help in a shipping case touching Adams' interests in Calcutta. After Woodford read through the proceedings in the case, he became quite agitated and insisted that Adams have the affair arbitrated rather than brought before the Privy Council. Adams reported that the fastidious Woodford believed the proceedings in Calcutta to be so irregular that the Council might demand the Company forfeit their charter.¹⁴¹

letters to Calcutta: 21 February 1729, para. 61. There is no positive evidence that Woodford wrote this particular line but it fits with his opinions on the matter. For other nitpicky critiques see BL IOR E/3/105 letter to Calcutta 12 February 1731 para 71.

¹³⁸ This hired barrister named Matthews maintained an office in Chancery Lane, appears to have worked for the Company only once. For his line by line readings of criminal court proceedings see, for Madras: BL IOR H/427 ff. 5-10, for Bombay BL IOR H/432.

¹³⁹ BL IOR H/427: Madras Legal Papers, ff. 5-10.

¹⁴⁰ BL IOR H/432 ff. 5-6. Matthews exhaustive and no doubt expensive commentary may have encouraged the EIC to draw back such close oversight of the new charter courts. After 1731 the Company never hired another lawyer to critique criminal court proceedings.

¹⁴¹ BL IOR H/37: Robert Adams letterbook, f.129; 25 November 1732 letter from Robert Adams to Dean,

The charter of 1726, like the charters of other colonies, had established that the law of the remote settlements in India was to be that of England “as near as circumstances would allow.” This common caveat obviously led to disagreement over which pre-1726 parliamentary statutes were valid in India and which were not. Metropolitan lawyers tended to err on the side of the applicability of English law. In an anglicizing gesture, the EIC's legal advisers often sent particular English parliamentary statutes to India in order to encourage compliance. In some cases the lawyers would even send new statutes, inapplicable to India, as suggestions of good practices to emulate, so far as conditions were practicable. In 1741, to cite one example, London suggested that the Mayor's Court of Bombay put in effect a measure from “the legislature here” intended to safeguard the property of litigants held by the Court of Chancery.¹⁴² The 1726 charter authorized the Mayor's Courts to make their own by-laws or rules of practice and as noted previously some of the Mayors' Courts tried to use this rather narrow privilege as a legal basis to establish new laws for the settlements.

Like many American colonial laws, these Indian rules often incensed the metropolitan legal authorities in their divergence from London-based English law. As early as 1736 the Company, at the insistence of John Browne, scolded the Mayor's Court and the EIC executive at Calcutta for establishing a rule of practice that respondentia

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Wastell, and Bouchier at Calcutta. Woodford did threaten various parties that they were likely to incur a praemunire (a crime commensurable with treason see pp. 371-2 below) if they ignored the charter. the Clearly, for some of the EIC's legal advisors like Woodford, incorrect procedure, shoddy execution of the law, and disregard for the seriousness of the black-letter provisions of the charter could be construed as close to treason.

¹⁴² BL IOR E/3/109: Letter to Bombay, 13 March 1744, para. 98.

bonds receive preferential treatment over all others in court. Regardless of local custom, Browne believed that this new rule “would vary the common law of England” adding that “no attempt should be made to overturn the constitution of things.”¹⁴³ Notably, for Browne and many other elite London lawyers, the natural order or constitution of things was that of England as laid out in the body of expectations, procedures, and rules of metropolitan law.

In addition, after the Calcutta and Madras courts established a series of by-laws dealing with bond distribution and time limits on suits, as mentioned above, the Company asked several London counsel including William Murray and Dudley Ryder to give their opinion on the matter. While framing all of their critiques in the language of the Imperial Constitution, the lawyers noted that there was “no legislative power at any of the Company's settlements” (i.e. there were no colonial legislatures in India as in the Americas).¹⁴⁴ As a consequence of this absence, the lawyers unequivocally declared that the courts in India could not make new laws and that existing by-laws were unambiguously illegal. When the Directors and Nathaniel Cole reported this news to Calcutta in 1746, they explicitly forestalled any attempt at drawing imperial legal analogies “to like practice in the Plantations [i.e. the Americas],” noting that such precedent would “not hold in this case,” because the Indian settlements lacked

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¹⁴³ BL IOR E/3/106: Letter to Calcutta: 11 March 1736, para. 76. They refer to an opinion written by John Browne on the matter, now lost.

¹⁴⁴ A cluster of these opinions dated 30 April 1746 can be found in the legal advisors' papers BL IOR L/L/7/20.

legislatures by their “original constitution.”¹⁴⁵

While the EIC's lawyers could complain about aberrant and innovative practices in the Indian courts, neither they nor the Company had the power to overturn verdicts or directly change local legal practices. No matter how strongly they made suggestions, their ability to change the day to day practice of the Indian courts was severely limited. Letters and court records from the settlements could take six months or longer to reach London, making the task of the EIC's legal staff quite difficult. For one thing, no one in London addressed correspondence directly to the charter courts. Rather, all correspondence went through the EIC executive, who often saw no need to pass it on to the Mayors' Courts. In addition, by the time the lawyers' advice reached India, cases might be completed or the matter forgotten. Also, while EIC employees were bound (at least in theory) by covenants to follow the Directors' orders and instructions, the members of the Mayors' Courts, grand juries, and the court of appeals, in their judicial capacities, were not.¹⁴⁶ The Company lawyers themselves acknowledged as much at the end of their voluminous instructions to the settlements in 1731, noting that as courts of record, the Mayors' Courts did not have to listen to any of their prior advice.¹⁴⁷ Rather, all binding decisions over the applicability of English statute and common law to India, as well as the amenability of Indian customary rules of practice to English law, had to be made by the Privy Council in London.

¹⁴⁵ BL IOR: E/3/109: Letters to Calcutta, p. 235v (para 60 - 7 May 1747).

¹⁴⁶ On the practice and use of covenants for order compliance see Santhi Hejeebu “Contract Enforcement in the English East India Company,” *Journal of Economic History* 65.2 (June 2005), pp. 496-523.

¹⁴⁷ See BL IOR E/3/105: letter to Madras: 12 February 1731, para 123

The Privy Council committee for hearing appeals from the plantations was at the center of the struggle between colonial litigants and London legal and political elites over the very nature of the British Empire, its constitution and boundaries.¹⁴⁸ This committee of the Privy Council consisted of many of the principal judges of the realm, as well as other members of the Cabinet, and served as the final court of appeal from many of the courts of the British Atlantic as well as the Channel Islands. By the 1720s and 30s, the Council had come to be the main player in correcting and regulating colonial American courts and legislatures. It could force colonies into line with metropolitan norms through its power to determine how much legal localism as decided by colonial legislatures and courts was repugnant to the main font of English law. From the 1720s to the 1750s, the Privy Council heard hundreds of appeals from Britain's Atlantic colonies and possessions, on issues ranging from property inheritance to currency controls. Local courts and legislatures in the Americas could ignore or try to circumvent these Council rulings, but they nonetheless determined the tenor of the imperial constitutional discussion.

From the late 17th century into the 1720s, litigants from the American colonies brought a series of cases before metropolitan legal bodies like the Privy Council, forcing judges and legal elites there to formulate a series of principles to determine where different English laws applied and how much local legal customs could be countenanced.¹⁴⁹ By the time of the charter of 1726, these constitutional principles had

¹⁴⁸ Bilder, *The Transatlantic Constitution*. See also her more recent "Colonial Constitutionalism and Constitutional Law" in *Transformations in American Legal History: Essays in Honor of Morton J. Horwitz*, Alfred Brophy and Daniel Hamilton eds. (Cambridge, MA: Harvard University Press, 2008).

¹⁴⁹ The Court of King's Bench saw many of these early constitutional cases - the two most important are:

received fairly systematic treatment thanks to a 1722 appeal to the Privy Council from a colony in the West Indies.¹⁵⁰ According to the resolution reached by the Privy Council in the case, any “new and uninhabited country” was to be governed by the “laws of England” including all parliamentary statutes up to the date of settlement, though any subsequent parliamentary laws would be unenforceable unless parliament named the colony specifically in the statute. More importantly for India, (and more confusingly), in all already inhabited, conquered, or acquired territories, the King of England could “impose upon them what law he pleases” and if he remained mute, all the previous laws of a country not inherently evil or contrary to “our religion” would remain in force - with the caveat that in all cases where local law was silent, the Law of England would be considered applicable.¹⁵¹ This way of framing the issue of legal reception left ample opportunities for litigants in almost any dispute to argue either that metropolitan law controlled in a given instance, or that local law held sway.

The Privy Council did not aggressively impose these constitutional guidelines on the imperial world. Rather, litigants themselves had to bring complaints about specific

Craw v. Ramsey (1670) 174 Eng. Rep. 1072 and Blankard v Galdy (K.B. 1691) 87 Eng. Rep. 356.
¹⁵⁰ Case of “Anonymous” (1722) 24 Eng. Rep. 646. The exact identity of the case is debatable, see B.H. Macpherson, “The Mystery of Anonymous” *Australian Law Journal* (March 2001), pp. 169-180. Macpherson suggests Mendez v. Batyn from Barbados or Orby v. Long from Jamaica as the best candidates, pp. 174-5.

¹⁵¹ The reasoning laid out in “Anonymous” gained almost immediate traction in Privy Council appeals as seen in Chief Justice William Lee’s case notes in Phillips v. Savage a 1737 cause from Massachusetts, see the William Lee papers at the Beinecke library, Yale University, (Osborn MSS 52) box 16 folder “Colonial,”. Though not explicitly stated in the 1722 report, it seems likely that these principles stemmed from readings of Roman law as well as continental jurists of the 17th century such as Grotius and Pufendorf. See for example the arguments prepared by various doctors of civil law for a case between the Crown and the Massachusetts Bay Colony in 1730-1: Historical Society of Pennsylvania (HSP), George Lee Papers (coll. 361), Box 3, folder 16, p. 313. An extract from the opinion of the law officers of the Crown on this matter was printed later in Forsyth, *Constitutional*, pp. 144-5.

matters of legal applicability in order to force the issue. As a result, litigants and others in remote settlements controlled what constitutional issues came before the Council. As seen throughout this dissertation, the Indian chartered courts adjudicated a wide array of constitutional and legal questions, concerning the amenability of non-English persons to English law, the role of various customary or religious laws in Indian courts, and the independent authority of royal courts. However, because of the particular obstacles facing litigants and the nature of appeals, the Privy Council in London only ruled on one species of constitutional issue facing the Indian settlements: the validity of local mercantile practice.

Of the eighteen cases brought to the Privy Council from India between 1726 and 1753, all but one revolved around a commercial dispute. This is perhaps no surprise given the mercantile nature of the settlements and the resources available to those involved in Indian trade. Likewise, the Privy Council was accustomed to appeals raising questions about the authoritativeness of local commercial usages, as Britain's Atlantic colonies were rife with competing, contradictory, and (in the eyes of the metropole), questionable mercantile practices.¹⁵² Thus, appeals to the Privy Council usually revolved around the validity of these new rules and the applicability of English statute and common laws outside the confines of England.

As seen above, the most contentious cases from India involving local norms revolved around insolvent merchants and creditor preference. The Privy Council appeal which sprung from Savaji Daromsett's [Sivaji Dharam Seth] disputed Bombay estate

¹⁵² See Bilder *Transatlantic*, pp. 168-96

nicely illustrates how metropolitan elites grappled with local customs and the Imperial constitution broadly. In April 1747, the noted EIC broker, landlord, and general portfolio capitalist Sivaji Dharam Seth died without a will. He had long been considered one of the most credit-worthy merchants in Bombay and his many creditors were undoubtedly reassured when his sons passed around a report in May of that year stating that there was a “great surplus” in their father's estate.¹⁵³ However, soon enough Dharam Seth's many creditors grew unhappy with the slow pace of liquidation and payment. When the sons revealed that their father's estate was in fact insolvent, a group of his Indian and English merchant creditors went to the Mayor's Court for letters of administration to the estate. One English creditor, however, refused to sign an agreement with the others to come in to an equal distribution of the estate, as he claimed preference for his specialty bond. This disgruntled creditor lost his resulting suit seeking to compel a differentiated payout to creditors based on a hierarchy of obligations. He then took the case to the Court of Appeals which, being largely made up of creditors themselves, passed it on to the Privy Council.

In the three years it took the case to reach a hearing at the Council, the wealthy litigants used their commercial and social contacts to hire the best metropolitan lawyers to argue their cause.¹⁵⁴ These elite lawyers, most often the same counsel as the EIC used,

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¹⁵³ See BNA PC 2/103: Privy Council Registers, pp. 251-2 (7 December 1752) for a summary of these events.

¹⁵⁴ In 1753, John Coales wrote a letter to Attorney General Dudley Ryder from Calcutta enclosing the proceedings from a recent estate distribution case there and 215 pounds, asking that Ryder pursue his appeal in front of the Privy Council: Dudley Ryder Diary vol. 3 (1747-56), 27 October 1753, pp.21-3. I thank Prof. James Oldham at Georgetown University Law Center for allowing me to consult transcriptions of these diaries - originals held at Harrowby Hall.

transformed the reams of documents and proceedings from India into a short list of arguments and justifications to present to the members of the Council.¹⁵⁵ In Dharam Seth's case, the disgruntled creditor's lawyers, William Murray and Charles Yorke, distilled the matter down to an argument over the applicability of English statutes. Their brief contended that the English statutes of bankruptcy “had never yet been extended to the settlements in the East Indies” and that only English common law controlled the distribution, which would allow diligent creditors to secure the full value of their claims in the courts, rather than compelling an equal division amongst all the parties.¹⁵⁶ On the other hand, Robert Henley and Dudley Ryder argued for the respondents that it was customary in Bombay and the other English settlements in India to have an equal distribution of insolvent estates. Importantly, they added that it was an established commercial norm for “natives of India,” as many commercial litigants were, to observe no rules about the priority of debts.¹⁵⁷

Lord Chancellor Hardwicke, who sat on the Privy Council in addition to his duties in Chancery, read the briefs in the case (including that by his son Charles Yorke), heard the arguments of the attorneys on each side, and took vigorous if barely legible notes on the proceedings.¹⁵⁸ These fragmentary notes present a picture of confusion about just how the courts in the East Indies operated, what statute law applied there, and how Indian

¹⁵⁵ In this period, Ryder and solicitor general William Murray prepared briefs for one of the parties in all but one of the Indian Privy Council appeals for which briefs survive. Other eminent lawyers listed on briefs include Robert Henley (future Attorney General and Lord Chancellor) and Alexander Hume-Campbell (MP, lawyer, and son of a member of the Privy Council).

¹⁵⁶ William Murray and Charles Yorke brief for appellants BL Add. Ms. 36,217, f.18.

¹⁵⁷ Dudley Ryder and Robert Henley brief for respondents *ibid.* ff. 15-16v.

¹⁵⁸ BL Add. Ms. 36,217, f.18. Hardwicke's notes appear at f. 24.

litigants should be considered.¹⁵⁹ At one point in reading the briefs or hearing the arguments, he jotted down “East Indies Mayor's Court, power to hold plea in civil cases, court of record, Jurisdiction common Law” only to cross it out sometime later. He did the same for “Subjects (in settlmnts) carry col.[onial] Stat.[ute] L.[aw] as far as applicable” though he did leave the note “King has dominion” intact, suggesting his acceptance of the 1722 constitutional principles mentioned above. In the end the Council overruled both Indian courts and ordered that the appellant's specialty bond be paid out of the estate first before other debts, upholding English common law and rejecting local custom.¹⁶⁰

The Council's insistence on English jurisprudence against local norms did not mean, however, that Indian litigants faced an inherent disadvantage. The Privy Council also upheld English legal norms in commercial disputes where English judges in India had ruled against Indian litigants on the basis of supposed local customs. This phenomenon is nicely illustrated by a mid-century contract dispute between a prominent Calcutta cotton merchant named Nyan Mullick [Nayan Chand Mallika] and several high ranking EIC employees, including sometime members of the Mayor's Court.¹⁶¹

Though the Calcutta Mayor's Court upheld Mullick's contract against the attempts

¹⁵⁹ Nearly two decades earlier when the Company had asked his opinion on a Madras matter - Hardwicke (then Philip Yorke) reported that he didn't know much about "the constitutions and distribution of the powers of government as well as with the other circumstances of the company's settlement" See BL IOR L/L/7/12: Legal Advisors' Papers, Macrae case opinion of Charles Talbot and Philip Yorke, 31 August 1732.

¹⁶⁰ BNA PC 2/103: Privy Council Register, pp. 251-2 (7 December 1752).

¹⁶¹ Mallika possessed immense resources and clout in Calcutta- by the time of his death he was worth around 400,000 pounds. For a brief biographical sketch see Lokenath Ghose, *The Modern History of the Indian Chiefs, Rajas, Zamindars, & C* (part II), (Calcutta: J.N. Ghose, 1881), p. 67 This figure (40 lakh rupees) is suspicious for its similarity to other large reported Bengali estates but nonetheless the amount was undoubtedly in the hundreds of thousands of pounds. See BL IOR P/154/47 Calcutta MC proceedings 15 April 1748 for the interrogatories in this case.

of Englishmen to have it voided, the Calcutta Court of Appeals overruled them and ordered that the price in the contract be voided as being too high (and fraudulent to boot), substituting the median price of cotton. Mullick appealed their decision to the Privy Council through the offices of the foremost London lawyer for Indian litigants, Philip Carteret Webb.¹⁶² A specialist in legal business from the expanding British world, Webb was then hard at work learning Armenian and representing a group of Madras and Calcutta merchants in front of the high court of Admiralty. He had previously represented Calcutta merchants in London, and was known to the EIC legal staff for his work on behalf of some Jamaican litigants before the Privy Council.¹⁶³ Webb arranged for Robert Henley and Alexander Hume-Campbell to write a brief on Mullick's behalf arguing for the sanctity of the original contract.¹⁶⁴ Despite the fact that his opponents secured the services of Dudley Ryder and William Murray, in late 1751, the Privy Council ruled for Mullick and upheld the original £1,200 contract as written, but ordered both sides to pay their own legal costs.¹⁶⁵ A judgment in keeping with the decreasing willingness of

¹⁶² See BNA PC 2/102 Privy Council Register, 4 July 1751 p.258 for Webb's appearance before the PC on Mullick's behalf.

¹⁶³ Webb had a long history arguing for clients who both had financial resources and faced difficulties in accessing metropolitan courts. On Webb's role in Armenian admiralty litigation see Sebouh Aslanian's excellent "Trade Diaspora versus Colonial State: Armenian Merchants, the English East India Company, and the High Court of Admiralty in London, 1748-1752" *Diaspora* 13.1 (2004), pp. 37-100. See below for Webb's work on Omichund's case. Company lawyer Nathaniel Cole wrote about Webb's involvement on behalf of Jamaicans in BL Add. Ms. 36,216 f.95. Webb was also the primary lawyer for the Sephardi community of London over the course of two decades, see A.S. Diamond, "Problems of the London Sephardi Community, 1720-33; the notebooks of Phillip Carteret Webb" *Transactions of the Jewish Historical Society of England* 21 (1968) pp. 39-63.

¹⁶⁴ The briefs for this case (10 December 1751) are held at the British Library: *Between Nian Mullick, a Banian Merchant of Calcutta in the East Indies, --- Appellant. John Zephaniah Holwell, of Calcutta, Esq; attorney for William Davis, Esq; --- Respondent. The case of the said Nian Mullick, Appellant in the original, and respondent in the cross appeal.*

¹⁶⁵ BNA PC2/102 Privy Council Register, pp. 415-7 (20 December 1751).

English metropolitan judges to rule on the reasonableness of consideration in contracts regardless of local circumstances.

Members of the courts in India and those knowledgeable in Indian legal practice and custom found this lack of local consideration and knowledge troubling. In 1743, for example, the Privy Council overruled the judgment of the Calcutta courts in a matter relating to priority of debts and the custom there of privileging respondentia bonds in estate divisions. This difficult commercial controversy hinged on particulars thousands of miles away. Even Nathaniel Cole, the Company's own solicitor, could say little about respondentia bonds, referring a friend to London's specialized notaries public when asked for advice.¹⁶⁶ The Privy Council's final decree in the case overturned the Indian courts and used the terms “bottomree” (another form of maritime insurance) and “respondentia” interchangeably, seemingly ignorant of Indian usage.¹⁶⁷ The Mayor's Court in Calcutta subsequently wrote a frustrated letter in response to the verdict, claiming that local practice around respondentia bonds was “not understood in England.” The Company's legal advisers nonetheless rejected their complaints and attempts to establish hard and fast respondentia laws.¹⁶⁸

The Privy Council's decrees were in keeping with their desire to bring colonial courts into line with metropolitan norms. In essence, when the Privy Council decided

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¹⁶⁶ BL Add. Ms. 42,591: 25 March 1746: Letter from Cole to James Brockman, f.11v.

¹⁶⁷ I assume this is the case of *Sichterman v. Sheldrake, Guion, et al.* found in BNA PC 2/97: Privy Council Register, pp. 465-7 (5 July 1743). The decree in this case is horribly convoluted and uses “bottomree” and respondentia interchangeably.

¹⁶⁸ BL IOR L/L/7/20: Legal Advisors' papers: “By law proposed relating to respondentia bonds” 30 April 1746.

cases from the charter courts in India, the law of England reigned supreme – but only for those relatively few litigants with the ability to take an appeal all the way to their chambers. Although the Privy Council and other metropolitan legal bodies constantly frowned on Colonial legislation and commercial practices in preference to the metropolitan laws of England, by the mid-18th century they also began to accept more and more arguments in favor of expanding English law to fit local constitutions within the empire.¹⁶⁹ Both London lawyers and the aldermen in India knew that the nature of English law allowed for innovation given local circumstances and the pursuit of substantive justice - they merely disagreed on the permissible extent of this innovation. Thus, the British Imperial Constitution was never a fixed set of laws or rules but rather a set of processes, institutions, and ways of thinking about law common to judges and lawyers whether in India or Cornwall.

Perhaps more importantly, none of the legal elites in Dharam Seth's case challenged the capacity of a group of creditors to influence an English legal process on the estate of a non-English born, non-Christian merchant in a remote EIC settlement. Despite references to the customs of “natives of India,” no party in these cases questioned whether English laws or courts applied. While legal elites and metropolitan courts were skeptics about some practices of the Indian charter courts, they nonetheless consistently

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¹⁶⁹ For example, the Privy Council allowed American legislatures to pass their own statutes of limitations and later, in cases from the West Indies, the court of King's Bench decided that some English commercial statutes did not transmit to the islands as they did not fit local colonial circumstances. On American colonial laws see *Bilder, The Transatlantic Constitution*, pp. 112-4. For two prominent West Indies cases see *Rex v. Vaughan* (K.B. 1769) 98 Eng. Rep. 308 and *Campbell v. Hall* (K.B. 1774) 98 Eng. Rep. 1045.

expressed this criticism in terms of imperial norms, oversight, and anglicization. Indeed, metropolitan legal elites viewed these East Indian appeals as merely part and parcel of the complexities of the expanding British Empire, and did their best to fit these realities into extant modes of thinking about law.



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Chapter 6: The Rhetoric of English law: Subjecthood and Power

The charter and its royal courts brought Bombay, Madras, and Calcutta into the British imperial constitution through their procedure, substantive law, and connections to the metropole. They also introduced the rhetoric of English legal subjecthood, rights, and liberties to a broad spectrum of the settlements' population. In using this powerful language of English law to make claims, both aldermen and residents of the settlements forced both metropolitan and local authorities to examine a series of fraught questions about the place of the three cities in the imperial constitution. Were the residents of the EIC settlements British subjects or not? Could non-Christian residents be subject to English laws? Were these cities even part of the British dominions? This chapter argues that these legal and constitutional questions never received centrally determined comprehensive answers from the metropole. Instead, London officials hashed them out on a case by case basis across the courts and council rooms of India and England. The chapter further paints a picture of the devolved nature of authority in the early modern British imperial system and the importance of contingent circumstance and contestation in defining its nature and extent.

The Language of English Privilege

The Charter of 1726 altered the constitution of the EIC's Indian settlements beyond just the realm of substantive law and procedure. In creating independent royally chartered civic corporations, the charter directly undermined the authority that the EIC executive had traditionally exercised over Company employees. Even more so, the

existence of new royal sources of authority profoundly weakened the Company's control over the non-English inhabitants of the cities. What made the charter courts so novel in the history of EIC India was not so much their jurisprudence as their claims to authority beyond that of the EIC executive - claims predicated on royal power, English law, and hundreds of years of popular English political thought. These claims to authority offered litigants alternatives to a status quo centralized administration dominated by the EIC executive. As a result, inhabitants of all kinds within the three cities seized upon the new courts as effective ways to pursue disputes, circumvent extant power structures, and solidify their importance in the settlements.

The Company in London expected the chartered legal order and the introduction of English law to improve the health of the Indian settlements by promoting good government and the security of wealth.¹ In their plan, the officials of this chartered system - the alderman judges, the justices of the peace, and the courts of appeal - were all to be trusted Company servants or well-known local merchants and so likely to share the EIC's interests. Likewise, when the EIC governors and councils in the three settlements initiated public pageants full of music, gunfire, and parades to usher in the 1726 charter, they did so to reinforce the authority and majesty of the Company, and by extension themselves as the true arbiters of power in their cities. Yet, in practice, the relationships between the chartered courts and local Company executives became frequently

¹ See the Company's 1731 note: "...but in a little time the Laws of England translated to the East Indies will prove a lasting security to the Companys interest as well as to the lives (and properties) of all the inhabitants under your jurisdiction and...you will become the envy and admiration of your neighbors." BL IOR E/3/105: Letters from London to Madras, f. 92 (12 February 1731).

contentious if not downright hostile.

The courts which preceded the 1726 charter were utterly beholden to the EIC executive in the cities and by extension the Court of Directors back in London. By contrast, the new Mayors' Courts and quarter sessions created a separate and nominally independent circuit of authority dependent only on the world of English law writ large. The merchants and junior EIC employees sitting on the Indian Mayors' Courts and grand juries asserted their independent authority from an early date, sparring with the Company's local executive council at nearly every opportunity. As argued in the previous chapter, few, if any, of the Mayors' Court judges wanted to strictly apply all parts of English statute or common law to every resident of their cities. Yet, in belligerently asserting their authority and independence vis a vis the EIC executive and other local authorities, the courts relied on the rhetoric of English legal privilege and English law. Even in their choice of wax seals for court business the aldermen made a point about their independent nature. In Figure Ten one can see how the Mayors' Courts chose symbols of impartiality, justice, and royal authority in their official seals rather than the Mughal or Company motifs common to most other iconography in the settlements.²

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² Philip Stern discusses the EIC's use of iconography on coins and flags in his *Company State*, pp. 34-36.

Figure 10: Court Seals



Seal reading "Fort St George & Madras" used by the Madras Mayor's Court c. 1760.
Note the British union flag flying above the fort instead of that of the EIC.



Seal used by the Bombay Mayor's Court c. 1780
It reads "The Mayor...Of Bombay" around its edges
and features a hand holding a set of scales above a coiled
serpent. A banner at the bottom reads in Latin:
"Nec Spe, Nec Metu," meaning "Neither in hope, nor in fear."

Seal used by the Calcutta Mayor's Court
c. 1750. It reads "Mayors Court of Calcutta
in Bengal" around its edges. Below sits
blind lady justice holding sword and scales.
She rests on the motto "Fiat Justitia."

Most importantly, the aldermen asserted their authority through their public rhetoric and refusal to bow to outside pressure. Over the late 1720s, Richard Bouchier (Bouchier), a member of the EIC executive council at Calcutta and also a wealthy merchant, appeared collaterally in front of the Mayor's Court there in an attempt to claim debts or proceeds from various estates then working their way through the court.³ In 1730 the aldermen ruled against him and awarded administration of one of the contested estates to others. Bouchier lashed out at the court and claimed that one of the sitting aldermen had ties to other creditors. More scandalously, he told several friends that the court had surely forfeited their charter by their malfeasance. This bromide made its way back to the Mayor's Court, which promptly opened an investigation into such a slander against their body. The court deposed several witnesses and heard testimony that Bouchier had also advised various residents to circumvent the authority of the Mayor's Court, applying directly to the EIC executive instead of the court for administration of estates.⁴ Within a week Bouchier went before his friends on the Council and claimed the Mayor's Court was meeting behind closed doors and taking evidence against him. The EIC president of Calcutta immediately demanded that the Court turn over its records.⁵ The aldermen, prompted by this perceived assault on their independence and authority, responded angrily that the Council had “no power to intermeddle in any affairs or

³ See especially BL IOR P/155/10 Calcutta MC Proceedings 1727-8: Sheik Mustapha v. Benaick 13 January 1728 and Capt. Posney v. Ann Harnett 9 July 1728.

⁴ For these depositions see BL IOR P/155/12: Calcutta Mayor's Court Proceedings, 30 May 1730.

⁵ See BL IOR P/1/8: Calcutta Public Proceedings, pp. 101-3 (8 June 1730) for proceedings in the case.

proceedings of the Mayor's Court for we look on our selves as such immediately under the jurisdiction of His Majesty of Great Britain."⁶

This appeal to English royal authority precipitated a six month long war of words between the Council and the Court. As the dispute escalated, the aldermen complained that the Council refused to lend them peons (hired men-at-arms), which greatly hindered executing the decrees of the court. To head off any attempt by the Council to harm them in London, the aldermen also sent a letter directly to the EIC Court of Directors warning them about the Council's dangerous actions. As we are a court, they exclaimed,

“...erected by Royal authority, we should be very unworthy of the trust placed in us if we tamely suffered our court to be vilified and set at nought...by any private person whatsoever, however superior to us as Company's servants.”⁷

Even those aldermen who depended on the Company for their personal prosperity asserted their independence and rights under the royal charter. In this instance, two aldermen who happened to be Company employees wrote separately to the EIC Executive that though it was “a difficult task to serve two masters,” the Mayor's Court was indeed “erected and supported by royal authority” and thus they would have to stick by their decision against Bouchier.⁸

These disputes in Calcutta paled in comparison however to the remarkably hostile relationship between the EIC executive and the Mayor's Court in Madras. The Madras EIC executive had been in a constant state of turnover since the late 1710s, with each

⁶ This letter was sent on 4 June 1730 and appears at both idem above and in BL IOR P/155/12: Calcutta Mayor's Court Proceedings, 4 June 1730.

⁷ Letter copied into BL IOR P/155/13: Calcutta Mayor's Court Proceedings, 9 February 1731.

⁸ Letter by Hinde and Carteret to Council see BL IOR P/1/8: Calcutta Public Proceedings, p. 341 (18 January 1731).

successive governor supposedly more corrupt than the last. James Macrae, the governor of Madras at the arrival of the charter and into the late 1720s was certainly no exception to this trend. Contemporary observers painted both him and his personal *dubash* Ancona [Ankanna] as petty dictators who used force to gain financial advantage and ruin opponents. Under the new charter, both the aldermen and the grand jurors of the city found opportunities to challenge this despotism. In 1728 a Madras grand jury bravely began the campaign by investigating the hoarding of food by the Company, the false imprisonment of Hindu merchants, and the general misrule of both Ancona and Macrae. The jury attempted to indict both men, but a furious Macrae immediately dissolved the jury and adjourned the quarter sessions for a lengthy period of time.⁹ Thus stymied, the Mayor's Court maneuvered to thwart the Macrae government's absolutism from another angle. Over the late 1720s and early 1730s, the Mayor's Court agreed to hear a slew of civil suits against Macrae and his proxies. The governor responded by attempting to exact personal revenge against the aldermen. Among other methods, he used his role as their EIC superior to transfer several aldermen, including his long time enemies Charles Peers and Henry Barrington, to EIC outstations far away from Madras. The whole Mayor's Court cried foul and claimed these orders as direct violations of the charter, English law, and their privileges as aldermen.¹⁰ In Macrae's relation of their complaints, the aldermen

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⁹ Most of these facts come from the legal documents prepared against Macrae in London by the Company's lawyers: BL IOR L/L/7/12: Legal Advisors' Papers. For more on Macrae and Ancona see Love, *Vestiges*, v. 2, p. 225. Charles Peers, one of the Mayor's Court aldermen who may have also been on the grand jury, wrote a letter to the Court of Directors accusing the governor of hounding and interrogating members of the jury - see BL IOR E/1/20 : Miscellaneous Letters to London, 27 January 1729.

¹⁰ This case led to the first Privy Council appeal from India stemming from the 1726 charter: EIC v.

argued that “...[the EIC executive] have no power to disenfranchise them from their privileges as aldermen as being but agents for a company of private merchants.”¹¹ An obviously angry Macrae wrote to London that the aldermen “talk of nothing but franchises, immunities, and privileges granted them by his Majesty's Royal Charter.”¹² The aldermen also alledged that Macrae had forcibly seized Barrington and sent him back to England for claiming the supremacy of English legal institutions, which, in the governor’s words, “undervalu[ed] your [EIC] sovereignty and authority in such an unparalleled manner.”¹³ The Court of Directors, however, sensed the danger of meddling with the Charter and quickly replaced Macrae as Governor, even attempting to bring charges against him in England. At the same time, however, when Barrington filed an appeal to the Privy Council protesting his dismissal, the Company and its lawyers put in a vigorous defense for the Madras Council as a proxy for the EIC itself.¹⁴ The bad blood between the Council and Court in Madras did not end with Macrae's departure. The new governor, Thomas Pitt, found the English legal order just as troublesome, as indicated by a dispute over testimony.

Charles Barrington. The Company in London privately ruled that the Madras governor had acted wrongly but put in a brief against Barrington anyway. The dispute never came to a decision however and was dropped in light of Barrington's subsequent illegal actions on behalf of the Swedish East India Company.

¹¹ BNA C108/95 no. 48. Letter from Gov. Macrae to court of directors 12 February 1730. This is the full text of the letter. A summarized and abridged version can be found in E/4/3 letters from Madras under the same date.

¹² Idem

¹³ BNA C108/95 no. 48. Letter from Gov. Macrae to court of directors 12 February 1730.

¹⁴ Barrington's appeal appears at BNA PC 2/91: Privy Council Registers, p. 340 (10 August 1730) but both parties later withdrew their cases (ibid., pp. 612-3 -24 February 1732). See also BL IOR E/1/203: Letters from the London EIC, pp. 62-7 (12 May 1731) for the petition put in to the Privy Council by Thomas Woodford against Barrington.

In March 1733, a witness in a complicated Madras commercial account case submitted a sworn affidavit giving evidence seemingly contrary to what he had sworn to previously. This witness, Ram Chendru [Ramachandra], was a prominent *dubash* closely linked to the finances of the Company.¹⁵ Faced with such perjury and the constant attempts of the Governor to shield his friends from harm, the Mayor's Court made an example out of Ramachandra, fining him 50 pagodas and sending him to prison at 7 pm when it was too late to raise bail. An undoubtedly surprised Ramachandra immediately appealed to his friends on the executive council to free him from jail, as he was “a renter of one of the most considerable of the Honorable Company's [revenue] farms.”¹⁶ The Council convened and sent one of their men to the jail to release him.

The furious aldermen claimed that this action constituted an unforgivable breach of their chartered “privilege,” which would bring the royal court into disrepute amongst the populace, especially the “black merchants” of the city.¹⁷ The dispute raged on over the next month with the aldermen clinging to their royal rights and the EIC executive quoting letters from the Directors in London as justification.¹⁸ The aldermen then raised the stakes, taking their rhetoric of chartered rights and privileges to a new level by invoking English law as a source of authority beyond the reach of the Company. When many of the aldermen were summoned along with most other able-bodied Europeans to serve on the

¹⁵ He paid large sums each year to the EIC for monopoly rights to sell tobacco, betel nut, and other goods within the city.

¹⁶ See RFSG *Pleadings*, vol. 2, pp. 88-92 (3 March 1733).

¹⁷ *Ibid.*, p. 98

¹⁸ Tired of having letters from London cited as justification by the Council, the aldermen asked to see all correspondence from England referring to the Court. The Council refused but said that any person might peruse the books at the Council office *ibid.*, p.103 (6 September 1733).

grand jury at the winter 1733 quarter sessions, they all refused in protest over the Ramachandra case, citing as a pretense the irregularity of the balloting procedure. In a joint letter to the Council - who also served as the presiding officers of the sessions - the Madras aldermen declared that a recently passed parliamentary statute (3 George II c. 25) mandated secret balloting for grand juries - a procedure not followed in Madras. They were even able to provide a printed copy of the statute from a compilation kept by them at the Mayor's Court.¹⁹ When the EIC Council, sitting as justices, rebuffed their complaints and refused to even minute the objection, all of the aldermen took a 20 pagoda fine and declined to serve on the jury.

The crisis reached its zenith in January 1734 when the collected aldermen sent a long and cantankerous letter to the Court of Directors in London. In it they lambasted the Council for insisting that Ramachandra and all those employed by the Company were exempt from the Mayor's Court's jurisdiction, a claim they asserted went against all “rules of justice.” In addition, the Court expressed their profound displeasure that the Council had infringed on their privileges by springing Ramachandra from jail. They also complained that the inland customs of the town, which had formerly been allocated to the aldermen and the civic corporation, had been seized by the Council. To add insult to injury, the aldermen noted that they themselves had to buy their own formal judicial gowns and pay for the customary court-employee feast out of their own pockets. Finally, they reminded the Company that the chartered courts were necessary independent sources

¹⁹ BL IOR H/793: Letters of Charles Peers, 7 December 1733.

of English justice and authority, “a check to power which is always impatient of being circumscribed by set forms and rules whereby everything is brought to the general inspection.”²⁰

Despite these protests the Madras executive did not budge and used its power to oppose the court at every opportunity. Indeed, even in the late 1730s, the EIC executive continued to nullify fines and commitments to prison made by the aldermen. The Mayor's Court complained bitterly to all parties that the English legal order had been discarded in favor of arbitrary government. In 1734, the aldermen informed the executive that they would not remit any fines until they were advised to do so by competent experts in “the Laws of England,” “which the court have hitherto found no reason to think are the president and council.”²¹ In addition, the Mayor of the Madras court claimed immunity from all civil prosecutions by virtue of his royal office.²² This particularly contentious period only ended when nearly the entire complement of aldermen resigned their posts in protest.²³

Though not quite as vitriolic as their Madras counterparts, the Mayor's Court in Bombay also used the language of English law and authority when sparring with local authorities. Just a year before the Ramachandra affair, the Bombay aldermen complained to the executive that the town hall in which they met properly belonged to the chartered

²⁰ The letter can be found in BL IOR P/329/69: Madras Mayor's Court Proceedings, pp.185-92 (31 January 1734).

²¹ Ibid., 26 July 1734

²² RFSG *Despatches to England*, v.10-11, p.64 (para 66 - 22 January 1735).

²³ Ibid., v.12, pp. 44-5 (para 115 - 29 January 1737) noting the resignations.

corporation and not to the Company.²⁴ Additionally, in 1730, the EIC factory at Surat declined to comply with legal instructions sent from the Bombay court and complained that the aldermen, as mere Company employees, should not have addressed them in a directive tone. Needless to say, the Bombay aldermen did not take this insult lightly. They wrote back, noting that the behavior of the EIC employees at Surat showed “premeditated contempt of his Majestys authority,” and indicating that as an English “court of justice” they could address private persons, such as EIC employees, however they wished.²⁵ The aldermen also took a hard line in terms of their supremacy and royal authority with the *vereadores* and other local tribunals. On several occasions during the 1740s and 50s, the Mayor's Court officially scolded the *vereadores* for their “contemptuous manner” in neglecting their fealty to the English court.²⁶

The Bombay aldermen similarly came to loggerheads with the EIC executive over matters of religious customs, jurisdiction, and law. Perhaps the most famous example of this kind of conflict came in June 1730 when a Catholic convert named Zanky came to the Bombay Mayor's Court to sue a fellow caste member over some contested jewelry. Zanky announced through her lawyer that she was from Chaul, a Portuguese settlement to the south of Bombay, and that she had been sent to Goa six years prior where she was forced to convert. Now that she had found her relatives in Bombay she wanted her valuables back - or so her petition argued on its face.

²⁴ BL IOR P/341/7: Bombay Public Proceedings, pp. 48, 54 (29 March 1732).

²⁵ BL IOR P/416/103: Bombay Mayor's Court Proceedings, p. 145 (8 July 1730).

²⁶ BL IOR P/417/7: Bombay Mayor's Court Proceedings, p. 172 (20 December 1752). In 1746 the Mayor's court fined the *vereadores* neglecting to submit accounts. Cf. BL IOR P/417/1: Bombay Mayor's Court Proceedings, p. 358 (24 September 1746).

Bendoo, the man to whom she had entrusted the jewelery, appeared in court and not only refused to return the baubles but claimed that Zanoky was in fact indebted to him. He told the court that she owed him money because he had taken care of her son for the six years she had been in Goa. In rebuttal, Zanoky (who most likely used the jewelry dispute to bring her son into court), claimed that her son was being kept away from her on account of her conversion.

A week after the dispute started, the Mayor's Court aldermen decreed that Bendoo had to return the boy to Zanoky under the condition that she would not “force” him in matters of religion. She agreed, promising to raise him in “a gentue home.”²⁷ Furious with this imposition, the combined members of Bendoo's caste went to the EIC executive, demanding the return of the boy and lamenting the meddling of the Mayor's Court. The governor wrote to the Court, demanding that they turn over the dispute to the Council, stating that the Mayor's Court had no cognizance over such domestic matters. The aldermen immediately responded, citing their royal charter and the fact that it established “judicial power separated into two branches,” with the Council having jurisdiction in criminal matters as justices of the peace and the Mayor's Court having complete jurisdiction in civil disputes.²⁸ As such, they voted unanimously that the matter at hand was in fact a civil one and within the jurisdiction and authority of English justice as laid out in the charter.

This insistence on English royal justice as an alternative and independent circuit

²⁷ See BL IOR P/416/103: Bombay Mayor's Court Proceedings, p.116 (24 June 1730).

²⁸ BL IOR P/416/103: Bombay Mayor's Court Proceedings, pp. 130-1

of authority also emerged in the day to day practice of the grand juries in the settlements. The necessity of calling twenty-four grand jurors prior to the meeting of the criminal sessions gave junior Company employees, aldermen, and the middling English merchant population a chance to thwart or temper the day-to-day hierarchy which gave the EIC executive extensive control over their lives.

The Madras grand jury, mentioned above in the case of James Macrae, not only attempted to indict him for hoarding food and despotism, but also went in person around the city to pry open houses, interview Hindu merchants, and generally assert their own authority as a powerful and consequential body.²⁹ A decade later, the Madras jury similarly protested the usurpation of the provisions for criminal justice contained in the Royal Charter. Though we lack first hand accounts, a memo from a 1740 London committee reports that the grand jury objected strenuously to the practice of having Company soldiers arrest criminals and imprison them on the spot, as ill-befitting a city subject to a “free government.”³⁰ The Bombay grand juries displayed the same kind of cantankerousness, demanding in 1744 that the EIC executive dissolve the monopoly of grain distribution, sowing dissent on the Council when their pleas went unheeded.³¹ However, due to a highly fragmentary archival record the most substantial evidence about the operation of the grand juries comes only from Calcutta.

The Calcutta grand jury, like the Mayor's Court there, was more than willing to

²⁹ BL IOR E/3/105: Letters to England from Madras, f. 88v (para 116 - 12 February 1731).

³⁰ BL IOR D/101; Correspondence Committee Memoranda: Proposed military regulations, 27 March 1740.

³¹ BL IOR P/341/14: Bombay Public Proceedings, pp. 98-114 (16 March 1748).

assert its authority against the Company executive and its organs of power. The Calcutta Council controlled the post of head judicial officer in the Cutcherry or Mughal magistrate's court, and the grand jury first took aim at this powerful extra-charter institution. At one of their first meetings, the jurors described how there were countless prisoners then mouldering in the Cutcherry jail, imprisoned there by the Council or by Cutcherry underlings. The grand jury in their official capacity ordered that the prisoners be tried before the English sessions and let go if found innocent. The jury went on to describe the Royal Charter and the power it gave them as a body to "administer justice even to...contemptuous, disobedient, and ingrateful [sic] inhabitants."³² Later, a different grand jury at Calcutta continued this tirade against those who would disrespect their royal authority, both on the Council and in the community. At the opening of the spring 1733 sessions, the jury read a list containing the names of 38 "natives" who had been imprisoned without bail or "any legal commitment or examination" under the watch of the Council.³³ The Council pleaded the unusual political circumstances of Calcutta, noting that proceeding according to English practice would "embroil" the Company with Mughal officials, but left unsaid that this would also interfere with the Council's sanctioned Cutcherry practice.³⁴ The grand jury refused to countenance such an imposition on their authority as supported by the charter. They claimed that by accepting such an excuse they wouldn't be doing their "duty [to] sufficiently maintain the privileges of a grand jury."

³² BL IOR P/155/72: Calcutta Court of Oyer and Terminer records, pp. 6-7 (22 October 1728).

³³ BL IOR P/155/73: Calcutta Court of Oyer and Terminer Proceedings, p. 12 (16 April 1733).

³⁴ Ibid., p. 28 (19 April 1733).

One can see the effects of this struggle for authority in the rise of the rhetoric of English subjecthood across the Company's settlements. The inhabitants of EIC settlements were bound by the decisions and authority of the Company and its officers and in prior decades the Company had often referred to these residents as its “subjects.”³⁵ As seen in the first chapter, some litigants and residents of the three cities did use the rhetoric of royal subjecthood in the seventeenth century to make claims over and against the Company. However, these claims to wider English subjecthood seem to have been more limited in the pre-charter period, restricted to Englishmen and others at Bombay and St. Helena (which were by their legal constitution deeded from the Crown to the Company). The presence of the charter courts thus greatly expanded the availability of this rhetoric throughout the EIC's territories.

English residents of the settlements, including the aldermen and grand jury members stood at the forefront in advancing this language of royal subjecthood in the settlements. Many of the English inhabitants, including some members of the EIC executive council, itself used rhetoric suggestive of a broader imperial frame when trying to make a point. In Bombay, the English grand juries talked of the hazards to all of “his majesty's subjects” posed by various ditches and unsafe wells.³⁶ More clearly, in 1728 a Calcutta grand jury full of Englishmen delivered a scathing public rebuke to several Hindu witnesses and prosecutors when they refused to swear oaths to the liking of the

³⁵ As did the Governor of Madras in 1719, for example, when he wrote home about “our black subjects” see BL IOR Eur Ms D 1153/3: Letter from Collett to unknown, 6 February 1719. See Philip Stern's work broadly for this idea of Company subjects.

³⁶ BL IOR H/432: Bombay legal papers, pp. 57-78 (unpaginated excerpt from Bombay quarter sessions July 1746).

jury. Those individuals, the grand jury declared,

"are persons screened and protected from the tyranny, oppressions, and insults of the country government and enjoy equally with the free born subjects of England the lenity and great advantage of the British Constitution."

This "great advantage" included the availability of English legal institutions like the Mayor's Court, which the jury reminded those assembled, had already been used extensively by the same people who refused to co-operate with the criminal court.³⁷

According to the grand jury these Hindu litigants may not have been "natural born subjects," but by virtue of living under the protection of the Crown and being subject to its advantages, they were thus also subject to its punishments, and owed it deference, to be demonstrated through obedience. The grand juries maintained this expansive definition of subjecthood throughout their tenure - i.e. that everyone in the settlements was subject to the privileges as well as the punishments of British law. A Madras grand jury made this assumption clear, sometime prior to 1740, when it decried the practice of soldiers making criminal arrests in the city, claiming: "...it was shocking circumstances that his majesty's liege people (for so they call all nations and languages inhabiting there) should be taken up in the streets..."³⁸

Clearly many Englishmen in the settlements believed them to be zones of English law just as Boston or Liverpool. When the EIC executive at Bombay ordered a subordinate jailed for fomenting discord at one of their out-factories, he struck back with numerous letters and petitions asserting his "rights and liberties" as an Englishman and

³⁷ BL IOR P/155/72; Calcutta court of Oyer and Terminer records, 22 October 1728.

³⁸ BL IOR D/101; Correspondence Committee Memoranda: Proposed military regulations 27 March 1740. The explanatory note describing "liege people" was added by the London-based writer.

resident of one of the “places under the Dominions of the Crown of Great Britain.” In one of these missives he demanded a writ of habeas corpus “founded on the Magna Charta of that kingdom of which we are all subjects” to release him.³⁹ Likewise, Englishmen in the settlements also frequently used words like “colony” to describe their place of residence and referred to documents from Maryland, the West Indies and elsewhere when trying to make sense of their surroundings.⁴⁰ One missionary in Madras even reported back to his superiors in London that:

“...since we live under an English government and have some houses and grounds belonging to the mission it were good to have at hand upon occasion the Book of the Common Law of England.”⁴¹

The Mayors' Courts adopted similar reasoning in some cases. In 1746, the Mayor's Court at Bombay ruled in a dispute between two Hindus, that since the defendant owned land “part of the Dominion of Britain” and lived at Bombay, he was “now a subject to the King of Great Britain” and amenable to the court.⁴² In short, this conflation of English law with “English government” and, by extension, English legal subjecthood was

³⁹ See BL Orme Eur. MS 18, p. 48 (6 January 1755). For more on the use of Habeas Corpus in India at a later date (post-1773) see Paul Halliday, *Habeas Corpus: From England to Empire* (Cambridge, MA: Harvard University Press, 2010).

⁴⁰ See mention of Maryland in a letter from Madras BL IOR H/427: Madras Miscellany, f. 33-34v. 31 January 1741) and for mention of ‘colony’ see for example “our colony is abundantly provided” (BL IOR P/1/17: Calcutta Public Proceedings, p. 306 (8 October 1744); also “...which your petitioner is likewise advised is the customary allowance to the gaol keepers in his majesty's plantations in the west indies.” RFSG *Consultations*, v.59, p. 111 (20 November 1729); and a letter to the EIC president at Bombay from an Englishman, imploring him as one of “...his majesty's justices of the peace and chief of the colony.” BL IOR E/1/34: Miscellaneous letters to London EIC, p.207b (28 January 1749).

⁴¹ Letter from John Sartorius at Madras to the SPCK headquarters in London, 28 January 1734. Cambridge University, Archives of the Society for Promoting Christian Knowledge, East Indian Mission Letters Received, vol. 4, p.95. (Microfilm - reel 35). In response, the SPCK sent him Woods' *Institutes*.

⁴² Maharashtra State Archives: Records of the Bombay Mayor's Court, 20 February 1740 (Crisna Naique v. Raganaut Sanzagurry).

commonplace.

However, while depending on the authority and rhetoric of English government and liberties, the Mayors' Courts always remained more committed to their own privileges than any broader ideological point about the supremacy of English law. As in Zanoky's case, Mayors' Courts' claims did not so much concern the strict application of substantive English law, but rather the authority, independence, and judicial privilege of the charter courts. Aldermen did not argue in Zanoky's case that the laws of England gave a Christian mother better claim on a child than his Hindu family. Rather, they argued that natural law, fairness, and precedent backed up their decision. In fact, in their correspondence with the governor, they bolstered their decision not by citing English statutes or common law but by quoting from Pufendorf, Grotius, and other natural and international law texts. Likewise, in a later case, the Bombay aldermen condemned a series of prominent *bania* merchants who threatened to ignore a court order to take a specific oath, claiming that the parties not only defied "the Laws of England" and "the Constitution of the Government" but also "the Laws and religion of the Gentoos."⁴³ In the courts' view then, the chartered courts were not just the supreme arbiter of English law but at the very heart of all law, authority, and power in the EIC settlements. The Mayors' Courts, and to some extent the settlement's grand juries, often came at notions of English law and authority collaterally through their quest to assert their own authority.

⁴³ BL IOR P/341/15: Bombay Public Proceedings, p.238 (3 June 1746). In another example of this reasoning, the 1733 Calcutta grand jury claimed that crimes at issue were not just against the laws of England but also "against the laws of all nations." BL IOR P/155/73: Calcutta court of Oyer and Terminer records, p. 44 (7 July 1733).

Testing the Boundaries of English Subjecthood

Regardless of the chartered courts' intentions, their insistence on their own authority was so often couched in terms of English law and rights that it is perhaps no surprise that non-British residents of the settlements began adopting this constellation of ideas for their own use. This transition came about as inhabitants of the settlements became savvier at using the English chartered system and saw the Mayors' Courts themselves use the rhetoric of English law to thwart their rivals.

Indian litigants quite readily tested the boundaries of English law and legal subjecthood through their use of its laws, legal fora, and rhetoric. This was especially true in Bombay. Soon after the promulgation of the charter, the Kunbis, a group of tenant farmers on the Company's lands, first asked the Company for a reprieve from rent-in-kind and then quit the fields entirely over a manuring dispute.⁴⁴ When the President and Council at Bombay attempted to explain this desertion to the Court of Directors they exclaimed that

“since the publishing of the Royal Charter they[the Kunbis]...say they *are free men and British Subjects* refusing to cultivate any grounds but such as they think proper, and on their own terms...”⁴⁵

Despite this impassioned plea, the directors wrote that it was a “strange and unheard of doctrine” that the farmers would throw off their “subjection” and “prior obligations” to

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⁴⁴ Control over Kunbi agricultural labor was a priority throughout western India. In the original treaty giving Bombay to the English, the Portuguese inhabitants had insisted that the Kunbis attached to them be forced to remain bonded. The Portuguese in Bassein also faced a constant out-migration of Kunbis, some to Bombay. See Barendse, *The Arabian Seas*, p. 432.

⁴⁵ The original letter is not in the Company records but Robert Orme, an 18th century EIC employee and historian, copied paragraphs 75 and 76 of the letter dated 18 August 1733: BL IOR Eur. Ms. Orme OV.162 pp.405-6. Mention of the Kunbi petition is in P/341/7A: Bombay Public Proceedings, pp.84-51 (16 February 1733). Emphasis mine.

the Company and demanded that Bombay take action to get them back to work.⁴⁶ Other petitioners more successfully channeled their complaints directly towards the charter courts. When the Mayor's Court turned down a Gujarati merchant's complaint in 1744, he and a group of other merchants responded by appealing to “the court's charter,” which opened English justice to “all under the jurisdiction thereof.”⁴⁷ Likewise, in a related Bombay case, three Hindu prisoners at the sessions sent a letter to the justices demanding that they be released on bail. The petitioners, through a hired writer or lawyer, cited their English liberties, particularly the Habeas Corpus Act, which forbade dilatoriness in felony trials and required defendants to be released on bail if not able to be tried immediately.⁴⁸ The justices then duly released all three defendants.

However, the use of English legal rhetoric by non-British litigants had the greatest impact in London legal circles. As we have seen, those Indian litigants who used the charter courts most often and who had the most experience with their legal culture also had significant financial resources and connections which allowed them to pursue their interests in England itself.⁴⁹ These litigants also found many legal elites in London willing to lend credence to their causes based on English law and the British Imperial Constitution writ large. This is perhaps surprising as the very presence of Indians in an English courtroom, whether in Bombay or London, disturbed some of the core principles

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⁴⁶ BL IOR E/3/106: Letters to Bombay: 5 March 1735, para 70 p.442.

⁴⁷ Idem

⁴⁸ BL IOR H/432: Bombay legal papers, pp. 57-78 (unpaginated excerpt from Bombay quarter sessions June 1746).

⁴⁹ For example during one 1735 case in the Westminster Court of Chancery, EIC lawyers went so far as to call one set of Bombay-Surat factors “the greatest merchants in the world” See Wyche v. EIC. Brief for the East India Company. BL IOR uncatalogued box L/L /714 no. 919.

of English legal practice and custom. Yet, while metropolitan elites were often sticklers for English legal procedures and norms, they proved flexible on matters of legal subjecthood, based on their commitment to substantive justice and the idea of acceptable local difference.

During his tenure on the EIC legal staff, Thomas Woodford stuck to the hard line that the jurisprudence of the charter courts had to be confined to English metropolitan law and practice. However, he also insisted that by explicit provision in the charter the jurisdiction of the courts included all the inhabitants of the three cities. In 1729, for instance, the Directors, probably at Woodford's instruction, wrote to Madras that though disputes among those who were not the “King's subjects” should not normally be pursued in the Mayor's Court, they could not be stopped once started and such suits would have to be “decided by English laws” alone.⁵⁰ Five years later, when the EIC executive at Madras wrote to London asking whether Hindus needed or were allowed to follow English testamentary procedure in order to collect from an estate, company lawyers continued to insist on the formalities and legal requirements of metropolitan practice. EIC solicitor William Wall asked Dudley Ryder, William Murray, and John Browne to give their opinion on the matter. They wrote back to Madras that “in order to preserve an Uniformity of proceeding in the Mayor's Court with the English laws,” all Gentoos [Hindus] would have to prove a will or take out letters of administration in order to collect from estates, just like any Englishman wishing to ratify property transfers after a

⁵⁰ BL IOR E/3/105: Letter to Madras, 2 February 1731 - para 112.

death.⁵¹

Wall also wrote to India in 1737, “in adversary and competitive suits the judges of the court acting in that capacity under the charter must conform their judgment to the laws of England.”⁵² As seen in the previous two chapters, the courts in India never wavered in allowing suits from all parties, but systematically ignored the second part of Woodford's advice and had no qualms about applying a plural jurisprudence. When the Mayors' Courts, quarter sessions, or the Privy Council then applied and adapted English laws and imperial legal practices to all residents, they allowed non-European and non-Christian inhabitants entry into the world of English law, by extension conferring upon them a kind of *de facto* subjecthood. The EIC legal staff's ornery insistence on English legal norms and substantive justice could therefore serve to expand rather than contract opportunities for residents of the settlements.

Similarly, the Company's legal advisers tackled the ongoing problem of oath-taking in the charter courts by privileging the availability of substantive English justice against the letter of the law. In 1726 Woodford and Hungerford had written in their book of instructions that the oaths of all litigants, regardless of religion, had to be accepted as valid for the purposes of law. Yet, within the first year of the new courts, a criminal jury at Madras failed to convict an Englishman on the testimony of a Hindu witness. The

⁵¹ Opinion of 18 February 1743. Original opinion lost but a copy was preserved at Madras and is printed in RFSG *Despatches from England*, vols. 45-7, p. 141.

⁵² BL IOR H/427 f. 27. He also enclosed Company counsel John Browne's opinion which was then sent to Madras: BL IOR E/1/204; 3 February 1738, p.126. In 1734 the Company's legal staff wrote that a case involving an inhabitant of the Mughal territories in the Mayor's Court was completely above board as “...he came voluntarily and of his own accord into an English court, where he compelled his debtor to come in also” and thus must expect English and not Mughal law. RFSG *Despatches from England*, v. 32-37, p.103 (para. 36 - 29 January 1734).

Directors and the executive at Madras asked Woodford and Hungerford to again clarify their views on the legality of oaths not taken on the Gospels.

Woodford submitted only a brief note stating his belief that such oaths were admissible. His colleague John Hungerford presented a much longer disquisition on the subject. He noted that in the time of Henry VIII one could assault a Turk in London with impunity as the Turk could not prosecute, being an infidel and ineligible for justice.⁵³ Hungerford believed that this historical exclusion from “the protection or benefit of the law” could no longer be defended as the “savage temper of the laws” had lessened in intervening decades, as a result of constant Infidel-English interaction and commerce.⁵⁴

Hungerford's expansive opinion prevailed amongst the EIC legal staff until events in India forced an addendum. The Mayors' Courts in the three settlements routinely set the kind and nature of oath required of non-Christian witnesses and litigants - i.e. the objects, places, animals, or people litigants swore upon. This issue could prove highly disruptive to the fragile social order of these cities and in response to some of these problems, John Browne gave his opinion to the Company that the courts in India had no legal power by the charter to compel the taking of any oath not in accordance with the laws of England - that is, any non-gospel oath.⁵⁵ When the EIC executive at Madras shot back a confused letter asking for additional guidance, the Company's legal staff

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⁵³ He perhaps took this particular example from the case of *EIC v. Sandys* (1684) 10 State Trials 406-408 which he would have been well aware of as the Company's standing counsel.

⁵⁴ E/1/202; Miscellaneous letters from the London EIC: 6 January 1729, pp.389-90. Hungerford's full opinion was included in the correspondence to Madras and later sent to the other cities.

⁵⁵ This opinion is lost but is referenced in BL IOR H/427, p. 39 which reproduces a letter from Madras of December 1741.

approached John Browne, Dudley Ryder, and John Strange for another opinion. These lawyers carefully hedged their assessment, explicitly declining to offer an “opinion upon the point of law,” but noting that “in point of practice,”

“this is a question of great difficulty and importance considering on one side the laws of England which are the foundation of this government and charter and which take no notice of the oaths of heathens and on the other the necessity of using such sort of evidence as the nature of a trading settlement inhabited chiefly by heathens will admit of.”⁵⁶

They concluded that it would be “safest” to continue admitting non-Gospel oaths as had been customary but without compelling litigants to take any brand of oath “infamous” to local custom.

The depth of commitment by the EIC’s London lawyers to the formalities of English law comes as little surprise, but it is difficult to puzzle out exactly why the legal authorities mentioned above would couple such a narrow focus on English jurisprudence and procedure with an equal insistence that litigants not be turned away from court based on their religion or origin. The lawyers’ narrow concerns about the limits of the charter and English law uneasily coexisted with their fears of arbitrary government, the obligation of government to provide basic justice, and a reliance on broad notions of equity. The Mayor’s Courts were, of course, founded on the model of the Court of Chancery, an equity court where, at the end of the day, so-called natural justice could trump a decision required by the dictates of common law and established custom.⁵⁷ Thus

⁵⁶ BL IOR H/427, p. 40.

⁵⁷ On the prevalence of “natural justice” arguments in eighteenth-century English jurisprudence see David Lieberman, *The Province of Legislation Determined* (Cambridge University Press, 1988) especially the chapter “Equity, Principle, and Precedent.”

in response to a case in 1735, John Browne wrote to Bombay that the Mayor's Court there had erred terribly in not allowing a litigant from another part of South Asia to proceed with his suit. Though his original opinion has been lost, the summary sent by the Company stated that “natural justice” could not be denied litigants just because they lived outside the normal jurisdiction of the courts.⁵⁸ Likewise, in a letter to Calcutta in 1743, the Directors and/or their legal advisers chastised the Mayor's Court there for distributing an estate only to English creditors, writing that “black merchants are entitled to the same justice for their legal claims.”⁵⁹

When faced with difficult questions about the nature of English law and the constitution of the nascent British Empire, these lawyers did their best to fit such new circumstances into their understandings of law, justice, and necessity. Most notably, when they confronted questions about the place of non-English and non-Christian litigants in the chartered courts, the lawyers chose to walk a tight-rope of fidelity to English legal norms, while also recognizing Indian demographic and economic realities. In fact, when considering the case of non-gospel oaths, the Company's lawyers and other metropolitan figures noted how English law had responded to Quakers who did not swear oaths.⁶⁰ This flexibility on the part of metropolitan legal elites reflected recognition that imperial legal decision-making had to make some concessions to the demands of policy. In the end, these decisions by the EIC's legal staff provided the basis for opening not just the Indian

⁵⁸ BL IOR E/3/106 letter to Bombay: 11 March 1736, para. 77.

⁵⁹ BL IOR E/3/108 letter to Calcutta: 4 February 1743, para. 90.

⁶⁰ See Ryder, Browne, and Strange's opinion on oaths in BL IOR H/427: Madras Legal Papers, p.41 (31 December 1741).

courts but all English judicial fora to a wider definition of legal subjecthood.

Beyond the Company's own legal staff, there were many potential sites of contact between the structures of metropolitan law and Indian litigants. The Privy Council of course served as the highest court of appeal from rulings made by the Indian courts, but other metropolitan legal venues also remained open to litigants from India. Indeed, while the Privy Council heard cases largely dealing with mercantile practice, Indian litigants brought some of the most difficult questions about the legal relationship between the Indian territories and metropole to London courts such as the court of Chancery, the Prerogative Court of Canterbury, and the courts of Admiralty. Although confined by subject matter, the jurisdiction of these courts remained potentially limitless in geography. The court of Chancery, for instance, could and did rule on disputes from the Americas and India if any of the money, contracts, or bonds involved were present or signed in England. Whereas appeals brought to the Privy Council were constrained by chartered limits and formed part of the routine din of colonial business, cases brought before these other metropolitan bodies had the ability to raise serious questions about the imperial constitution and complicate preexisting conceptions of British law.

An estate case brought to London by Cosalchund Capoor, a Bombay-Surat merchant, and his English friends, illustrates these metropolitan legal possibilities. In the 1710s, Cosalchund's father Capoor Surgasa, had demanded an old contract debt from the EIC factors in Bombay. Promised a settlement in the hundreds of pounds, he had been lured aboard a ship, where the factors knew his caste rules would prevent him from eating or drinking, and subsequently forced him to sign away his right to the money. Two

decades later, seething from this injustice and seeking his due, Cosalchund engaged his business acquaintance James Ramsden to sue the EIC factors (now living in England) directly in the Court of Chancery, alleging that coercion rendered the signature void. However, they faced an initial obstacle, since in order to sue, Ramsden and Cosalchund would have to be recognized as the legal executors of Surgasa's estate. In early 1738, Ramsden approached the Prerogative Court of Canterbury, an ecclesiastical court run by civil and canon law experts, for official letters of administration and in May of that year, the court granted both he and Cosalchund rights to the estate.⁶¹

After news of this success, the Company's lawyers asked a prominent doctor of civil law to give his opinion on whether an “infidel” could indeed utilize the Canterbury court to gain administration of an estate.⁶² When the civil law expert roundly backed the validity of a non-Christian's right to administration, the Company then turned to one of its frequent legal advisers, common lawyer and later master in Chancery John Browning, for another opinion. Browning disagreed with the civil lawyer and wrote that he had doubts whether such a legal process could be initiated by an infidel, but helpfully if somewhat dispiritingly added that only the Crown could challenge illegally granted administrations.⁶³

Although the reasons why the Canterbury court granted administration remain murky, its justices may have been influenced by the practice of accepting non-Christian

⁶¹ BNA PROB 6/114: Register of Administrations granted, May 1738.

⁶² Opinion given by Dr. Andrews 22 July 1738. Unfortunately, only a clipped summary of the opinion survives see BL IOR H/38 p.25 [pagination unclear].

⁶³ Browning's opinion 9 August 1738. Again only a summary available at H/38 p. 25.

wills and administrations in the Mayors' Courts of India. When, as a result of the prior victory in the Canterbury court, Cosalchund's case came before the Court of Chancery, Lord Chancellor Hardwicke allowed him and Ramsden to add three additional Hindu merchants as complainants and extend the list of respondents to the entire EIC council of Bombay.⁶⁴ Though the case never came to a conclusion in court, it is clear that litigants like Cosalchund could use metropolitan courts to their advantage, thereby forcing metropolitan legal elites to think expansively about access to English legal mechanisms and the religious restrictions inherent in English legal subjecthood.

Cosalchund's victory remained largely private and unreported. By contrast, one of the savviest litigants in all the EIC territories, Omichund of Calcutta, managed to get all the principal judges in England to agree on the place of non-Christians in English legal process. One of the most famous (or infamous) characters in the history of 18th century Bengal, Omichund, had even been present at court when the Calcutta grand jury delivered its lecture about the responsibilities and privileges inherent in the “British Constitution.”⁶⁵ He subsequently became one of the more frequent litigators in the charter courts of Calcutta, using that rhetoric of British privilege to bridge the gap between local legal practice in India and the wider world of British law. In the 1730s he embarked on a series of lawsuits in England that eventually led to a landmark ruling in his favor.

In the fall of 1736, Omichund, along with well-to-do merchants Jaddo Seth and

⁶⁴ The chancery bills in the case are at BNA C/11/2267/26. The lawyers for the Bombay council, including Thomas Woodford, attempted to delay the proceedings but never argued that the respondents were not entitled to relief by their infidel status. Lord Chancellor Hardwicke's order for the expansion of the case is at BNA C33/371 p.77.

⁶⁵ BL IOR P/155/72: Calcutta court of Oyer and Terminer records, 22 October 1728.

Ramkissen Seth, filed suit in the Mayor's Court against Hugh Barker, a highly-placed EIC employee and former chief of one of the EIC's out-factories in Bengal, claiming debts in excess of 100,000 rupees (~£14,000). Barker immediately counter sued and a brief legal battle in Calcutta erupted. Facing near certain defeat in the Mayor's Court, Barker fled the country on a French ship and died en route to Europe. Friends in England gained administration of Barker's estate on behalf of his children. Meanwhile, in Calcutta, the Mayor's Court had decided in favor of Omichund and the other merchants and began dividing up what effects Barker had left behind. Barker had been careful to hide a great deal of his fortune out of the reach of the Calcutta court, however, leaving little for Omichund and other creditors. In mid-1737, Omichund and the two Seths wrote to John Fullerton, a former Calcutta EIC merchant then residing in London, enclosing the papers in their case against Barker as well as £2,000. They asked Fullerton to pursue their case against Barker's heirs in England, to which Fullerton responded that "it will be a tedious, troublesome and expensive suit but [I] have employed experienced lawyers."⁶⁶ In his next letter Fullerton wrote that he had employed Philip Carteret Webb, "a very active man and eminent in his profession," who had gotten opinions on the case from five prominent counsel in London.⁶⁷ Webb sued Barker's executor Joseph Bell and his heir Hugh Barker Jr. in the Court of Chancery sometime in spring 1738. Bell and his lawyers raised what would be the central issue in the case when they responded to Webb's bill in November,

⁶⁶ BL IOR Eur. Ms. D 602: Fullerton letterbook, f. 58: Letter to Jaddo Seth and Ramkissen Seth 21 December 1737.

⁶⁷ BL IOR Eur. Ms. D 602: Fullerton letterbook, f.61v: Letter to same 1 February 1738. Unfortunately the enclosed opinions of the five lawyers and the written state of the case are now untraceable.

claiming that Omichund and the other complainants were aliens, having been born outside “this realm or any of the dominions or places subject or belonging to the Crown thereof.” They further argued that most Indian were “heathen[s] and idolator[s]” and thus “not amenable here to justice.”⁶⁸

Rather than summarily deciding on the merits of the case, the Chancery master ordered commissioners to travel to Calcutta to depose witnesses there.⁶⁹ These commissioners interviewed several witnesses as well as Omichund himself, using a list of interrogatories prepared before hand. Several of these interrogatories touched on what deponents knew about the jurisdiction of the English courts of Calcutta. Others delved into the nature of religious belief and oath-taking practice, including: “Of what religion are you? Do you or do you not believe in the supreme being that made the heavens and the earth?” If someone of said religion lied under oath, would he “be subject to any punishment and what in this life or the next from any and what being?”⁷⁰ When the commissioners delivered these questions to Omichund in February 1742, he responded in twenty four pages written in a difficult Devanagari script, which Thomas Cooke, one of the Mayor's Court judges, rendered into English for the Chancery court.⁷¹ In his answers, Omichund carefully attacked the basis of Bell and Barker's objections. First as to his religion, he wisely answered:

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⁶⁸ BNA C11/1054/22: Answer of Joseph Bell to Omichund's bill, 7 November 1738.

⁶⁹ BNA C12/1194/13: List of interrogatories in the case (27 in all) 4 March 1741. Bell and Barker objected but were rebuffed by Lord Chancellor Hardwicke without argument; see *Ramkissenseat v. Barker et al.* 26 Eng. Rep. 34.

⁷⁰ BNA C12/1194/13: parts of question 26

⁷¹ Omichund's answers and other court documents were deposited in the library of the Society of Antiquaries of London by Philip Carteret Webb at the end of the case. Now SAL MS/207.

“...this defendant admits that he is to his religion[sic] a Gentoo but denys that he is an idolater this defendant in his opinion believing in and worshiping the only true god who made the world and who as this defendant verily believes will reward the good and will punish the wicked men and this defendant doth deny that he is or ever was an alien enemy.”⁷²

In addition to this sympathetic exposition on his personal monotheism, Omichund took further pains to refute his alien-ness and affirm his British allegiance - perhaps drawing on his experience of many years with the Calcutta courts:

“...he [Omichund] now doth actually live and reside and for 33 years last past hath lived and resided within the town of Calcutta within the dominions of his majesty the King of Great Britain there and that he now is and for many years hath been a subject to his said Majesty and his laws as the same are dispensed there.”⁷³

Though much of this answer undoubtedly reflected strategic calculation, Omichund could point to unambiguous evidence that he was subject to English law – he had sued or been sued multiple times in the Mayor's court at Calcutta, and had additionally faced formal accusations of murder and theft in the criminal sessions there. Since the Mayors' Courts and grand juries had repeatedly and publicly advanced a broad definition of subjecthood and allegiance, based on residence and amenability to law, Omichund would have unquestionably been well aware of such arguments.

In October 1742, Philip Carteret Webb wrote to the EIC Secretary asking that two crates containing papers and answers to the interrogatories in the case be delivered to him from the latest ship come in from India.⁷⁴ Within a few months, Bell and Barker objected

⁷² SAL MS/207, p.16 (f33v). Though the English in India and England never made the distinction, Omichund was a devout Sikh. See 1 Indian Decisions (O.S.) 209 for posthumous testimony on his religiously inflected testamentary practice.

⁷³ SAL MS/207, pp.15-6.

⁷⁴ BL IOR D/147: Correspondence Committee minutes, f.65 (13 October 1742).

through their lawyers to having the answers from the questions entered in the Chancery proceedings. They continued their objection that non-Christians like Omichund could not take valid oaths, making their answers inadmissible. Lord Chancellor Hardwicke, the chief Chancery judge, sensing that this was a question of great import and difficulty consulted the chief justices of all of the major English law courts: the King's Bench, Common Pleas, and the Court of Exchequer.⁷⁵ In November 1743 the judges all convened to hear arguments from the counsel for the two sides - William Murray and Dudley Ryder (respectively, the Solicitor and Attorney general) represented Omichund.

From the start both sides ignored Omichund's protestations about being a British subject. The counsel for Barker called Omichund an alien infidel and “an Indian, a merchant, and the subject of the Grand Mogul.”⁷⁶ Dudley Ryder for Omichund strategically admitted that Calcutta was “a foreign jurisdiction,” so as to prove a larger point that his only recourse to justice against Barker was in London.⁷⁷ Answering the possible objection that English courts in India had allowed infidel oaths, counsel for Barker insisted that the practice of the Calcutta Mayor's Court was irrelevant, as it was akin to an English pie-powder court - that is, it varied the laws of England within very prescribed limits by Royal permission.⁷⁸ However, very little of the argument in the case

⁷⁵ These were: Chief Justice of King's Bench Sir William Lee, Chief Justice of Common Pleas Sir John Willes, and Chief Baron of the Exchequer Sir Thomas Parker. For printed reports of the case see *Omychund [sic] v. Barker* 26 Eng. Rep. 24; *Omichund v. Barker* 125 Eng. Rep. 1310; *Omichund v. Barker* 22 Eng. Rep. 339.

⁷⁶ This is Chief Justice Willes' recounting from 26 Eng. Rep. 31.

⁷⁷ See 26 Eng. Rep. 19.

⁷⁸ 26 Eng. Rep. 27. Piepowder courts (literally dusty feet) were erected during market days in certain English towns to summarily dispense justice between itinerant merchants and others with no connection to the community or time to spend waiting for recompense.

revolved around Omichund's formal subjecthood or the reach of British sovereignty in India. Rather, both the judges and counsel focused on the nature of English law and its ability to accommodate new classes of litigants.

The judges and Omichund's lawyers had to struggle to overcome Edward Coke's landmark pronouncement in a case a century earlier that Christians would always be in a state of perpetual state of war with infidels, marking people like Omichund as invariably outside the realm of English subjecthood or law.⁷⁹ Counsel for the East India Company had even cited this very precedent in the 1680s when defending their monopoly of trade, arguing that only the King could approve of his subjects trading with enemy infidels.⁸⁰ Barker's counsel went to lengths to persuade the judges of Omichund's heathen-ness, citing Coke, assorted precedents, and biblical passages. On the other side, William Murray compared Hindus to Catholics in their religious practices, declaring that Hindus believed in only one God though worshipping several other subordinate gods “as the papists who worship saints.”⁸¹ For his part, Dudley Ryder used the reasoning of common justice and brought up the absurdity of having anyone ineligible to seek justice based solely on their religion, noting “...we should have commerce and correspondence with all mankind; trade requires it, policy requires it.”⁸² The judges in the case proved quite receptive to this particular line of argument.

Sir Thomas Parker, the Chief Baron of the Exchequer, produced an exhaustive

⁷⁹ Calvin's Case (1608) 77 Eng. Rep. 377.

⁸⁰ See the argument of the Solicitor General for the Company in *EIC v. Sandys* (1684) 10 State Trials 406-409. Hungerford had used this same reasoning in his opinion of 1729 cited above.

⁸¹ 26 Eng. Rep. 23. Again, Omichund's Sikh heritage seems not to have been understood.

⁸² 26 Eng. Rep. 20.

treatise on the case, including long citations in Latin and precedent by the bucketful.⁸³ He declared the perpetual enemy claim to be groundless, and after embarking on a brief exegesis of the Pauline epistles, opined

“though there be a difference between our religion and theirs, that does not oblige us to be enemies to their persons, they are the creatures of God and of the same kind as we are.”⁸⁴

The chief justice of the common law court of Common Pleas took a slightly different tack, declaring that Coke's idea that infidels had no recourse in English law was not just “contrary to common sense and common humanity,” but also an “impolitic notion” which would destroy such a rich commerce as the East India Company conducted.⁸⁵ He added, with a dash of protestant, enlightenment condescension, that only in darker, more “Popish” times did people believe infidel aliens ineligible to sue.⁸⁶ Sir William Lee, the Chief Justice of King's Bench, went even further, maintaining that though English law in the past had forbade infidel oaths, oathtaking was so “universally established” that it fell under the category of natural law which “could never vary.” Accordingly, English law, based as it was on natural law, should have no problem accepting non-Christians into legal process.⁸⁷

All of the judges also attacked the problem of non-Christian oathtaking through analogy. Most wrote at length on the role of Jews in English law and how they often

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⁸³ Found in MS at Staffordshire and Stoke on Trent Archives, William Salt library 49/109/44 Baron Parker's opinion 23 February 1744. This opinion was printed nearly verbatim as 22 Eng. Rep. 339-50.

⁸⁴ Parker MS, pp. 12-3.

⁸⁵ Sir John Willes in 125 Eng. Rep. 1312.

⁸⁶ Ibid. 1316-17.

⁸⁷ See 22 Eng. Rep. 31 and also an excellent discussion of this aspect of the case in Lieberman, *The Province of Legislation Determined*, pp. 89-94.

served as witnesses or litigants in contemporary cases though in previous eras they faced prohibitions on such action. The judges also included a dizzying array of references to Roman oathtaking customs and continental law, especially the work of Pufendorf and Grotius. For his part, Parker studied the role of Muslims in Spanish law, determining that they were able to take valid oaths as set forth in particular statutes.⁸⁸

Again, Calcutta's place as an English settlement and Omichund's asserted subject status either gained no traction with the judges or was generally ignored. Willes referred to the original proceedings as being “in a foreign heathen country, at Calcutta,” while Lee called the original dispute “a transaction wholly in the country of the Mogul.”⁸⁹ Nonetheless, the judges used the same natural justice reasoning as the Company's lawyers sometimes did. William Lee wrote in his notes on the case that “person[s] guided only by the law of nature - person[s] knowing nothing of revelation” could provide testimony to English courts based on whatever oath was considered “sufficient sanction” in their place of residence.⁹⁰ In their final judgment, the judges allowed non-Christian testimony, admitting that non-Christians could have a place, albeit limited, in the British polity and its legal mechanisms.

In different circumstances than in Omichund's case, British authorities and London legal figures went even further, demonstrating willingness to argue for territoriality and amenability alone as determinants of subjecthood and belonging. In

⁸⁸ Parker MS, p. 9. Lee also appears to have studied up on the nature of Eastern religions, Beinecke Library, William Lee Papers, box 16 folder 1: “Omichund v. Bell” note sheet.

⁸⁹ Willes: 125 Eng. Rep. 1316-7; Lee: 26 Eng. Rep. 32.

⁹⁰ Beinecke Library, William Lee Papers, box 16 folder 1: “Omichund v. Bell” note sheet. This notation was perhaps copied verbatim from some other text.

early 1743, lawyers and diplomats in London and Paris buzzed with news of the latest sensational trial at the Paris *Parlement*. A pamphlet published in London containing translations of the court proceedings claimed that the trial resolved one of the great questions of the “law of nations” namely, “To what nation two children belong that were born at Fort St. George [Madras] in the East Indies.”⁹¹

The case has a history too long, confusing, and sordid to relate here in full, but some details are necessary to get a sense for the dispute. John Roach, the father of the two children in question, served as an Irish Catholic factor in the EIC's service at Madras throughout the 1720s and early 1730s. At times he held the office of sheriff and justice of the peace there. He did not however have a reputation for probity in his dealings with women. In 1729 he became embroiled in a confusing set of allegations surrounding his alleged kidnapping of a Portuguese minor. Over the next several years he (arguably) fathered the two children at issue with Mary Anne Raworth, the daughter of another English merchant. She left with the children for Europe upon her discovery that Roach's previous Portuguese wife was not as dead as he had promised.⁹² When Roach died, around 1739, he left his fortune to his daughters, who were then in France. The trial in Paris originated as a battle in the English court of Chancery over who could be the

⁹¹ *Proceedings in a cause lately depending before the Parliament of Paris* (London, 1743), p.1. The British Library copy of this text was formerly owned by Baron Parker, whose opinion is cited prominently in Omichund's case above.

⁹² This Portuguese woman of uncertain name became the bane of Roach's existence over the next decade. There were repeated suggestions in the case that she was the real mother of the children. Roach repeatedly tried to get her imprisoned in a Goan monastery - she instead followed him to London before being paid off to return to India where she remarried and became somewhat respectable (on this last point see letters between Roach and John Savage in Madras BNA C108/95 especially 26 September 1738). In his personal correspondence he calls her a “common strumpet” and relates that on her way to England she “being got drunk she lit the ship on fire + lay with the Captain and Officers all the voyage.”

children's guardian. The party with control over the children lost in Chancery, kept them in France, and tried to marry the oldest (14-15 years old) to his son. Roach's friends demanded they be returned to England and enlisted Secretaries of State, the English ambassador in Paris and several London lawyers to argue for the children being English subjects.

One lawyer in the case, a Mr. Hewer, went to Paris in 1740 to meet with various nobles, cardinals, and advocates, to argue that the children “...were always British Subjects, being born at Fort St. George an English Factory and settlement in India.”⁹³ Two years later, a British envoy in Paris wrote to then Secretary of State Newcastle that though the British ambassador had officially requested the children be turned over, the French refused on the grounds that “these children were born in the Mogul's country and therefore not subjects of England.”⁹⁴ To refute this argument, in the trial itself, the lawyer for Roach's friends, asserted that “the natives of the country who remain there [Madras] are under the English dominion; they are become natives in regard to England.”⁹⁵ In addition, the pamphlet of the proceedings published in London included the opinion of a prominent civil lawyer, that any arguments against English sovereignty at Madras were laughable and that the presence of “Indians” at the European cities in India did not “hinder” their being under the proprietorship and sovereignty of the crowns of England,

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⁹³ BNA C111/96: Hewer [in Paris] to Thomas Hall [in London] 18 October 1740.

⁹⁴ BNA SP 78/227B: State Papers France, letter from Anthony Thompson to Newcastle 24 July 1742, f.324.

⁹⁵ *Proceedings in a cause*, p. 35.

France, the Netherlands, etc.⁹⁶ The *Parlement* half-dodged these arguments while ordering the children to stay put in France, claiming that the exact spot of the children's birth was uncertain and that Roach, having voluntarily brought them to France during his lifetime, surely meant them to remain.⁹⁷ Regardless, it seems to have been much easier and more advantageous for metropolitan figures to admit two Christian (albeit Catholic) children stolen away to France into rhetorical British subjecthood than it was to admit Omichund into the same.

In both the Omichund and Roach cases, litigants asserted their positive interest in being amenable to English laws and English courts. For strategic reasons they did not embrace their Indian status to evade or argue against the processes of English law, as was common in the legal culture of Bombay, Madras, and Calcutta themselves. However, in one particular realm of law - admiralty and prize - litigants from these settlements presented metropolitan courts and political elites with decidedly contradictory views of themselves, their subjecthood, and their relationship to English legal-military power.

In the late days of the war of Austrian Succession, two warships of the British navy, cruising off southeastern India, captured a small ship named the *Nuestra Senorha de Nazareth* carrying the daughter-in-law of famed French general Joseph Dupleix.⁹⁸

They brought the ship to Madras, where the officers made an inventory of the ship's

⁹⁶ *Proceedings in a cause*, p. 75. The pamphlet reproduces the opinion without giving the name of the lawyer.

⁹⁷ BNA SP 78/227B, the envoy in London reports that the advocat general in the case declared that as the English had welcomed so many French subjects (read protestant exiles), surely France could welcome some questionably English ones. ff.327-8

⁹⁸ Details on the capture can be found in HSP Lee Papers Box 3, folder 17 and BNA HCA 32/136. The *Nazareth's* voyage originated at Sadras (south of Madras) and was intended for Pulicat and then an unspecified port in Bengal.

cargo. Since there was no licit prize court established at Madras (or in any of the EIC settlements in India), the local authorities simply impounded the cargo and sent all the papers in the case to the High Court of Admiralty in London.⁹⁹

This kind of seizure was a somewhat regular occurrence in the late 1740s, as a squadron of the Royal Navy patrolled the Indian Ocean assisting operations against the French, frequently claiming prizes. The crew of one ship in the squadron, the HMS *Medway Prize*, had at least three prize cases pending in the court of admiralty by 1750.¹⁰⁰ Soon after the *Nazareth's* capture, a group of Calcutta residents including wealthy Armenian merchants and a Portuguese priest bombarded Mayor's Court attorney James Meredith and Mayor J. Z. Holwell with letters and affidavits purporting to show that 10,000 rupees in cash (~£1,500) captured from the ship belonged to the estate of a recently deceased Armenian merchant.¹⁰¹ Calcutta merchants, especially those in its Armenian community, were unfortunately all too familiar with having their goods seized on the high seas. In 1745, the Royal Navy had captured the *Chandernagore*, another purportedly French ship, in the Bay of Bengal and seized its cargo. Armenian merchants and Mughal officials alike had been invested in the ship, causing nearly five years of

⁹⁹ For mention of this point and a good discussion of maritime legal regimes in the Indian Ocean see Lauren Benton. "Oceans of Law: The Legal Geography of the Seventeenth-Century Seas." Paper presented at Seascapes, Littoral Cultures, and Trans-Oceanic Exchanges, Library of Congress, Washington D.C., February 12-15, 2003.

<<http://www.historycooperative.org/proceedings/seascapes/benton.html>>

¹⁰⁰ See HSP Lee Papers Box 2 folder 4 for mention of two additional prizes, the *Santa Catharina* and *St. Antonio e Alma*. Sebouh Aslanian is working on what promises to be an excellent book on the *Santa Catharina* case.

¹⁰¹ BNA HCA 32/136 includes several bundles of these translated letters and affidavits, some sworn in person before Holwell.

tension and legal battles over the condemnation of the vessel.¹⁰²

When the Admiralty Court finally heard the case of the *Nazareth* in 1751, arguments over its cargo hinged on two issues: of what country was the ship; and to whom did the cargo owners owe allegiance? The Armenian merchants and other cargo owners argued that the ship was Portuguese rather than French, and thus not a lawful prize of war. The lawyers and agents for the captors argued that not only was the ship French but, according to their lawyer, "The claimers live at Calcutta and therefore are Englishmen and can't trade with the enemy."¹⁰³ Faced with pretty solid evidence that the ship and its cargo had little to do with the French, the Admiralty judge declared the ship to be Portuguese and an unlawful prize. As for the 10,000 rupees, he declared them part of the estate of Coja Minas, "late of Calcutta in the East Indies Armenian Merchant deceased and a subject of the Sophy of Persia," and ordered them turned over to his executors.¹⁰⁴ Although the admiralty courts during the war of Austrian Succession did sometimes use the maxim that residence equaled subjecthood, in this case the judge was clearly unwilling to append the label of "Englishmen" to these litigants.¹⁰⁵

Around the same time as the British navy seized the *Nazareth*, a small ship called the *Julfa* sailed into the harbor at Calicut in southwestern India, flying, depending on whose account one credits, either Mughal or English colors. A Portuguese vessel in the

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¹⁰² Materials on the *Chandernagore* can be found in BL L/MAR/C/324, BNA HCA 32/103, HSP Lee Papers Box 3, p. 241, and Aslanian, "Trade Diaspora." In the case of the *Chandernagore*, the EIC and lawyer Philip Carteret Webb were extremely active in lobbying and bringing suit on behalf of the Calcutta and Bengal merchants - there is no direct evidence that this was the case with the *Nazareth*.

¹⁰³ This argument was advanced by Dr. [J.] Paul who was an occasional advocate for the EIC see HSP Lee Papers box 3, folder 17, p.325.

¹⁰⁴ See decision of Robert Chapman, 24 June 1751. First two pages in BNA HCA 32/136.

¹⁰⁵ See the case of the *Le Providentia* (captured 1748) in HSP Lee Papers Box 3, folder 7, p. 227.

harbor seized the *Julfa*, claiming that it was a Muslim ship sailing without the Portuguese navigational pass nominally required of all vessels in the Indian Ocean, and carried her to Goa. The owner of the ship was an exceptionally unlucky Calcutta Armenian merchant named Marut Marcar. In May 1749, Marcar wrote a series of petitions to the EIC directors in London asking for their help in gaining restitution for his seized cargo. He claimed that he held a valid pass from the EIC at the time of his capture and that the “Portuguese esteem[] an English pass invalid for the Indian seas.”¹⁰⁶ The Directors, seeing a need to curtail this kind of Portuguese presumption, immediately fired off a series of petitions to the Crown Secretaries of State. They also ordered their solicitor Nathaniel Cole to investigate the passes and draw up more ironclad language for the future.¹⁰⁷

In their first petition, written only a week after receiving Marcar's communication, the Company spoke of the diverse peoples of Bombay, Madras, and Calcutta who lived “...under your petitioners protection and subject to your Majesty's laws.”¹⁰⁸ The Directors went on to ask that the English envoy to Portugal be directed to secure the rights of “your majesty's subjects and of such others who reside under your

¹⁰⁶ First petition received by the Company 3 May 1749 (not found) but cited in a letter from Marcar, BL IOR E/1/36, Miscellaneous letters to the Company: 28 August 1751, f. 88. When Marcar lived in Madras in 1757 he appears in the Mayor's Court where it is said he can speak English but not write it - raising the usual caveat that petitions and other legal documents were often written by scribes, clerks, or professional petition writers. BL IOR P/329/71 Madras Mayor's Court Proceedings 17 May 1757.

¹⁰⁷ BL IOR E/1/207, Miscellaneous London EIC letters, p. 233 (16 August 1749): a letter from EIC Secretary Mole to Nathaniel Cole.

¹⁰⁸ BL IOR E/1/207, Miscellaneous London EIC letters, pp. 219-21 (10 May 1749). This is a letter to a Secretary of State [Bedford?] and also appears in BNA SP 89/47.

protection.”¹⁰⁹ Marcar, now living in Lisbon, prodded the Company over the next two years to take a tougher stance on his case. As a result, the Directors' began using stronger language in their letters to Crown officers. In 1750 they wrote a letter to the Duke of Bedford that contained echoes of Omichund's deposition. It stated that Marcar had “...resided at Calcutta one of the East India Company's settlements in the East Indies for upwards of 27 years and [is] thereby a subject of His Majesty.”¹¹⁰ When the Portuguese crown officially ruled against Marcar in 1751, they did so on the grounds that Marcar was Armenian by birth, Mughal by domicile, and in no way a “vassal” of the British Crown.¹¹¹ After this, the Directors decided to push to have the King take Marcar under his official protection “as one of your Majesty's subjects residing at an English settlement in the East Indies.”¹¹² In the end, all of this was to no avail. Overwhelmed by mounting debts and recognizing his slim chances of reversing the Portuguese judgment, Marcar signed over to the EIC any claims to his vessel in exchange for passage back to India.¹¹³

These admiralty cases provide a host of arguments and viewpoints on the legal subjecthood of people living in the EIC settlements in India. They display a muddled and confused picture of legal belonging and sovereignty. No lawyer or judge in London ever

¹⁰⁹ Idem

¹¹⁰ BL IOR E/1/207, Miscellaneous London EIC letters, p. 309 (9 May 1750). Other merchants in India used this reasoning frequently when strategically useful. See the 1755 case from Calcutta wherein several *dadni* brokers asserted that they were “under the protection of the Hon. English Flag” and thus immune from the local Mughal governor. BL IOR P/1/28: Calcutta Public Proceedings, p. 323 (28 July 1755).

¹¹¹ BNA SP 89/49: State Papers Portugal, f.55v - undated copy of Portuguese court decision enclosed in letter from British envoy in Lisbon to Lord Holderness. Translation from the Portuguese my own.

¹¹² BL IOR E/1/207: Miscellaneous London EIC letters, p. 405 (1 May 1751).

¹¹³ BL IOR D/21: Correspondence Committee minutes, ff. 25-6 (5 February 1762). Nathaniel Cole prepared this assignment on the orders of the Committee of Correspondence.

fully understood the very real differences in politics, constitution and practical sovereignty between Madras, Bombay, and Calcutta. It is indeed mystifying how someone like William Lee, the Chief Justice of the court of King's Bench, could proclaim Calcutta outside the dominions of England, as he did in Omichund's case, and shortly thereafter decide a complicated case in the Privy Council based on English court proceedings in that very same city.¹¹⁴ His notes from that 1747 Calcutta appeal are concerned almost entirely with parsing the minutiae of local mercantile customs in India - including the common rates of discount amongst various Asian currencies - rather than with any grand questions about the alien-ness of the settlements or their amenability to English law.¹¹⁵

Metropolitan lawyers and the learned judges sitting at Westminster did not ask Omichund, Cosalchund, or other Indian litigants to expand the definition of English subjecthood. Rather, these litigants each had their own motives for bringing their cases before English courts and judges. They or their advisers chose the legal argument and rhetoric they saw as most fitting for the situation, forcing metropolitan institutions to

¹¹⁴ See unpaginated case notes in Beinecke Library, William Lee Papers, Box 16, folder 6, marked "Maritime 1741-45" (his notes on the case begin with the notation 25 October 1742 and heading "Capt. James Irwin's Respondentia Bond"). This appeal, *Irwin v. Saunders*, began in the Calcutta Mayor's Court in 1743 and reached a decree in the Privy Council on 29 May 1747 see BNA PC2/100 pp.231, 245-6. He also was involved in other appeals from Calcutta, notably *John Rennald v. Wadham Brooke* out of Calcutta in 1748. See William Lee Papers Box 22A for the brief in this case with Lee's marginal notation.

¹¹⁵ In fact it seems reasonable to believe that many in the entire Privy Council appeals process operated with only the most general ideas about the differences between the various parts of the expanding British Empire. For example, in 1769, a prominent Connecticut legal figure remembered that one lawyer in a matter before the Council placed Philadelphia in either the East or West Indies, perhaps on the coast of Sumatra, see Smith, *Colonial Appeals*, p. 473 n.19 quotes William Samuel Johnson on this incident from his diaries in the Connecticut Historical Society. Also cited in Macpherson, *Anonymous*, p. 175

respond. At the same time, their language of English rights and subjecthood was not just empty posturing. Litigants, Mayor's Court aldermen, members of parliament, and wigged judges had all witnessed the power inherent in these claims. Yet, the devolved and compartmentalized constitution of imperial law, as well as real indecisiveness on the part of legal elites, meant that by the 1750s there was still no firm consensus on the most pressing of these claims to subjecthood and legal belonging.



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Chapter 7: “They Would Rather Die than Deviate the Least:” Opposition, Authority, and Constitutional Change

The previous chapters have all emphasized the degree to which Indian litigants used the English courts for their own ends and cooperated with their operation. However, the courts' broad approach to justice and authority both attracted litigants of all kinds and created serious discontentment amongst irate defendants, local EIC executives, legal elites back in London, and at least a few local notables. Complaints against the court ran the gamut from those (mostly EIC governors) who found the Mayors' Courts too independent and powerful, to local caste leaders who saw English courts as usurping their supposed traditional authority. In addition to complaints and petitions purportedly from the inhabitants themselves, the murky territorial status of Madras and Calcutta and the polyglot composition of all three cities guaranteed that local rulers would sometimes object to particular proceedings or claim jurisdiction over a dispute. This had always been a concern for the Company, and the directors in London constantly reminded all three presidents and councils not to “embroil the affairs” of the Company on account of the charter. Yet, there was little the EIC executive could do to compel the Mayors' Courts to bow to outside pressure. As a result, Company executives in India came to resent the straightjacket of English law, seemingly embodied in the charter courts, which constrained their ability to maintain order, resolve disputes among the non-English populations of their cities, and govern without interference.

In their opposition to the chartered order, these figures, and even some aldermen themselves, transformed the debate around the charter from one centering on jurisdiction into one of jurisprudence. Even though the courts never intended to act as zealots of

substantive English law, their opponents responded to the courts' claims to authority by reframing the debate in terms of cultural difference and the inappropriateness of English law. Discontent with the chartered courts eventually led an increasing number of Englishmen and Indians to argue that English laws and liberties were themselves incompatible with the cultural, religious, and political constitutions of the settlements.

Opposition

In the background of all of these debates was a sense amongst many in the EIC's settlements, especially the Company, that the charter courts encouraged litigiousness by circumventing customary arbitration mechanisms. The EIC establishment certainly felt that the charter encouraged unnecessary litigiousness amongst the non-British population and that the many suits filed from that segment of the population were “so very beneficial” to the court attorneys while ruining their clients.¹ Some disgruntled Indian litigants shared these sentiments. In one case out of Bombay, for example, two Indian litigants got into an argument about whether to go to the Mayor's Court, in which one used the phrase “I know that you love to go to law” as an epithet.² Likewise, in 1730s Bombay, the Parsi merchant Rupji Dhanji submitted one of his account disputes to an arbitrator and offered a settlement to his opponent rather than going to the Mayor's Court,

¹ BNA C108/95: Letter from John Roach at Madras to Edward Harrison in London 8 July 1732 (“foul letters to Europe”). It is certainly true that the Mayors' Courts heard “a great many small cases,” cf. BL IOR P/341/6: Bombay Public Proceedings, pp.161-3(23 August 1728) and reproduced in Forrest, *Selections from the letters despatches and other state papers: Home Series*, v.2, pp. 44-46. However, at the same time the aldermen reserved the right to levy fines on “frivolous” suits no matter how small. In some cases, as in one dispute between Calcutta Armenian merchants in 1740, the Mayors' Courts actually fined attorneys for encouraging “vexatious and litigious suits” forcing them to pay a portion of court costs themselves. Cf. BL IOR P/154/141: Calcutta Mayor's Court Minutes, 18 January 1741 Coja Soliman v. Coja Abdulla.

² BL IOR P/416/119: Bombay Mayor's Court Proceedings, p. 23 (8 January 1744).

a tribunal he declared to be “no wise suiting a merchant.”³ In an even more contentious 1744 Calcutta case, one Sikh merchant refused to come to court at all, declaring that he was only willing to except justice from arbitrators “that are merchants and proper judges of mercantile affairs” and not from any formal English law court.⁴

These tensions between customary modes of adjudication and the charter courts have been particularly well documented in Madras.⁵ Close ties among the EIC executive, leading *dubashes*, and the economic life of the city meant that the independent aldermen had many opportunities to intervene in power struggles involving patronage and broader networks of power. In addition, while the EIC executive, Choultry arbitrators, and caste heads continued to function in parallel with the Mayor's Court, their decisions could always be challenged in the Mayor's Court if a litigant were willing, for purposes of gain, embarrassment, or status.

Madras residents of many kinds protested the Mayor's Court's aggressive quest for authority. When the aldermen demanded that the Capuchin friars at Madras deposit all their estate business (on behalf of Catholic residents) with the court, the “Portuguese and other Christians” in the city complained bitterly that it had been their “privilege time out of mind” to go to the Catholic Church for registration and resolution of estate matters.⁶

³ BL IOR P/416/119: Bombay Mayor's Court Proceedings, p. 53.

⁴ See Deepchund's letter entered in BL IOR P/1/17: Calcutta Public Proceedings, pp. 372-3 (1 December 1744).

⁵ Especially in Brimnes, “*Beyond Colonial Law.*” On status and the use of law see also Mines, “Courts of Law and Styles of Self in Eighteenth-Century Madras,” and Price, *Kingship and political practice in colonial India.*

⁶ For the court ordering the Capuchins to give up estate matters see BL IOR P/328/65: Madras Mayor's Court Minutes, 17 October 1727. For the petition against this see BL IOR E/3/104: London letters to Madras, f.207v-208 (para. 100 - 21 February 1729). For a 1709 Catholic petition asking for this original

Likewise, in 1732, local elites from several communities, including the right and left hand castes, carpenters, and shepherds, asked the EIC executive to mandate that all matters relating to “rules of their castes and the laws of the churches” be heard by their own customary bodies instead of the charter courts.⁷ In their complaint, the petitioners set out that each community at Madras had traditionally exercised the right to arbitrate civil disputes and execute corporal punishment amongst its constituents - structures of authority which the charter courts had allegedly usurped. In his petition on behalf of Chettiar merchants, Thambu Chetti, the well-connected chief broker of Madras, asked that the EIC and the courts “send back [litigants] to us that their causes may be decided according to custom.”⁸

Yet this first round of petitioning failed to effect any change. When the charter courts failed to budge in their jurisdiction and practice around the case of Ramachandra, detailed previously, assorted members of the Madras Indian mercantile elite took to the streets in protest. The EIC executive subsequently reported back to London that when the aldermen had imprisoned Ramachandra for refusing to take a special oath, a “great crowd of people” surged into the Company's fort and demanded his release.⁹ Though the crowd succeeded in getting the EIC executive to circumvent the court and free Ramachandra, the general practice of the court remained unchanged.

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privilege see Love, *Vestiges*, v. 2, p.49.

⁷ BL IOR E/3/105: Letters to England from Madras, (para. 66 - 10 November 1732) also see RFSG *Consultations*, v. 62, pp. 25-8 (10 February 1732).

⁸ *Ibid.*, p. 27 (10 February 1732).

⁹ RFSG *Despatches to England*, v.12, pp. 44-5 (para. 116 - 29 January 1737).

That same year, the so-called “Whole Body of Inhabitants of Madras, Braminys, Guzarats, Right and Left hand Gentues and Moors” wrote a several thousand word petition to the EIC council laying out all their grievances against the English courts.¹⁰ These combined petitions, later forwarded to London, revolved around the fact that many in the city felt “obliged to refer their disputes to the determination of the said Mayor's Court.”¹¹ The writers of the unsigned petition claimed that the residents of Madras had many practices and customs “contrary and different from the Laws of England” and as such they as “Heads of the Cast” properly had the sole power to determine all caste and communal disputes.¹² The writers also proposed that the Company officially recognize the current extant system of arbitration and caste tribunals, staffed by non-English caste elites and merchants, as binding with appeal lying to the EIC executive alone. In other words, the 1736 petitions suggested that any formal process of law, especially proceedings in a royal court predicated on English law, had no place in the customary hierarchy of authority in Madras.

On their face, these petitions and complaints seem to indicate a general dissatisfaction with the new English legal order amongst the non-British population. However, their context and original intent are less clear. Though individual signatories are not well documented, it is likely that caste heads themselves wrote the petitions in an

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¹⁰ Brimnes, “Beyond Colonial Law,” pp. 519-21 has an excellent discussion of this petition and the work of these caste tribunals.

¹¹ Though the original copies have been lost the petitions were retained in England and sent to Madras in 1755 (where they are now in TNSA Military Sundries v.55) and have been helpfully printed in full in RFSG *Despatches from England*, v.58, pp. 155-8.

¹² Ibid., p.156.

attempt to preserve their authority and good connections with the EIC executive, rather than out of any sense that English law itself was anathema. Thambu Chetti, for instance, was a frequent litigant in the Mayor's Court when trying to recover debts and undoubtedly contributed to the court's clout amongst local merchants. In addition, many Madras contemporaries believed that the EIC executive ginned up the petitions themselves, forcing their clients to sign it in an attempt to restore their authority vis a vis the charter courts. Thus, alderman Charles Peers reported to his father that:

"There is a report in town and I am pretty well convinced there is good grounds for it, that another paper is to be got from the casts which is to be worded in such manner as to complain against the charter, so that it may be altered, and not have any regard to the Black inhabitants."¹³

This kind of coercion on the part of the executive was not without precedent. In the past Madras residents had commented on the harsh means by which the EIC governor and council along with their *dubashes* could force local elites and merchants to sign similar documents absolving the Company and its cronies from blame.¹⁴ The aldermen themselves wrote as a group to England that they had ordered several such petitions burnt by the hangman at the quarter sessions as scandalous and treasonous libel. They also reported that all the signatories of the first petition had come to court and confessed that they had only signed under duress.¹⁵ Though local Indian elites undoubtedly found English legal structures strange and problematic, their opposition to the chartered order

¹³ BL IOR H/793: Letters of Charles Peers: 1 October 1733, p. 69.

¹⁴ John Roach wrote to Edward Harrison in London of this in the Macrae/Ankana case. See BNA C108/95: Letter of 6 February 1730. On a petition in support of Macrae: "...which the lord chancellor Ancona procured by threatening those that refused to sign it which they have done to a man even the burzar fellows"

¹⁵ BL IOR P/326/69: Madras Mayor's Court Proceedings, pp.191-2 (31 January 1734).

likely came as a product of coercion and as part of a bid by both these elites and the EIC executive to restore old networks of authority which could not be thwarted by pesky English rules, aldermen, and the prospect of appeal to England.

There were similar, if less visible, protests in Bombay and Calcutta against the application of English legal authority as well. At the 1728 Calcutta quarter sessions, for instance, Omichund brought charges of robbery and murder against a man named Bisnoram. When asked to swear to the truth of his allegations, Omichund and another witness refused to take any English-imposed religious oath. They subsequently gathered “a great many merchants,” including Bissnodass Seth, to march to the EIC executive and demand that they be exempted from English forms of proceeding.¹⁶ The Company executive implored both the inhabitants and the jury to be more patient, but the jury released all the prisoners at the sessions anyway for lack of sworn evidence against them. A few years later, a salt merchant named Gorbux refused to comply with a Mayor's Court verdict against him and had his men resist the sheriff's officers sent to arrest him. At his eventual trial for murder, Gorbux inveighed against the alien court, claiming he didn't “understand the methods” of English justice and the Mayor's Court and had therefore protected himself against its strange edicts. The jury, unsympathetic to this argument, found him guilty and the justices sentenced him to death.¹⁷

At Bombay it was similarly common for disgruntled litigants and residents to

¹⁶ BL IOR P/155/72: Calcutta Oyer and Terminer records, pp. 5-7 (22 October 1728).

¹⁷ Gorbux was not completely unfamiliar with the court however as he challenged seven members of the English and Bengali jury pools before the court, eventually settling on six from each group. Cf. BL IOR P/155/15: Calcutta MC Proceedings, 27 January 1733 and 7 April 1733. The relevant Criminal proceedings are in BL IOR P/155/73: Calcutta Court of Oyer and Terminer records, 18 April 1733.

complain about the charter courts, largely to the EIC executive. In 1744 for instance, the Bhandari inhabitants of Bombay wrote to the local executive council that the Mayor's Court had ordered “several houses and effects belonging to their cast” sold to pay a judgment against some Bhandari palm tappers. The executive, after discussing the matter decided that since the Bhandaris were “advantageous to the revenues,” it would try “to prevent [them] from leaving the island” by arranging a financial deal at the Company's expense which would allow them to keep their property.¹⁸ Likewise, when local men at arms went to evict a Muslim man's goods from his own house at the behest of his estranged wife, he bellowed at them:

"there is justice at Bombay and I will complain to the court and they will order my wife [and goods] to be returned to me and if the court will not do me justice I must complain to the Governor."¹⁹

Even the Parsi magnate Nowrojee, who used the Mayor's Court frequently, could lash out when on the losing end of a decision. After losing a commercial suit in both the Mayor's Court and court of appeals, he tried to get the Mayor's Court to make another decree and when they refused, promised to pursue his case with EIC executive and the justices of the peace.²⁰ Still other Bombay residents complained about being left out of the patronage networks of the new English courts. In 1751 an anonymous (likely Luso-Indian) resident sent a vitriolic petition to the EIC directors in London alleging that the charter courts, though “designed to cure” corruption and influence, had turned out “to be the greatest

¹⁸ BL IOR P/341/14: Bombay Public Consultations, pp.129-30 (30 March 1744).

¹⁹ BL IOR P/416/105: Bombay Mayor's Court Proceedings, p. 58 (3 March 1731).

²⁰ BL IOR P/417/1: Bombay Mayor's Court Proceedings, p.771 (24 December 1747).

poison” with judges unwilling to decide cases without large gifts.²¹

Some litigants in the EIC's settlements looked outside the Company for redress. In 1734, for example, two Arab merchants refused private arbitration in a debt matter and took their dispute to the Madras Mayor's Court. Like any savvy merchant, the loser appealed to another forum, in this case, asking a local nawab to intervene on the grounds that his case should not have been adjudicated by an English court. As a result, the *nawab* threatened to levy the amount decreed from the Company itself. When the aldermen would not budge, the EIC council blamed the imbroglio on the Mayor's Court and its insistence on English legal process over customary informal arbitration.²² Likewise, in 1753, the *poligar* [landlord and administrator] of a nearby coastal town wrote directly to the Mayor of Madras to complain about a case then being heard in the charter court. Apparently the *poligar* had ordered a shipwrecked boat salvaged and sold to the highest bidder in his territories. The original owner of the boat had discovered this sale and sued the high bidder in the Mayor's Court. In his letter, the *poligar* expressed confusion at why the aldermen would ignore the clear customary rights of salvage on the south Indian coast and asked the aldermen to dismiss the suit. In addition, he also suggested that the original Hindu owner of the boat, had he lived elsewhere but Madras, would not have been so crass as to contravene custom and bring the matter to court. The aldermen ignored the

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²¹ The petition was written in Portuguese and translated in London see BL IOR E/1/36: Miscellaneous Letters to London, p.131g (3 December 1751). When asked about the allegations in 1753 the communal leaders of Bombay rather suspiciously claimed it was false and the result of internecine disputes over office holding. BL IOR P/341/19: Bombay Public Proceedings, pp. 361-2 (13 November 1753).

²² RFSG *Despatches to England*, v. 6-9, p. 115 (para. 22 - 22 January 1733).

poligar's plea and ordered the vessel returned to its original owner.²³

Litigants and residents at Calcutta, where the *nawab's* court at Murshidabad loomed large, frequently used their connections to appeal to as many sources of authority as possible. In 1744, for instance, the Calcutta EIC became embroiled in a costly and multi-year dispute with the *nawab* of Bengal over a case in the Mayor's Court. That year, Humfreys Cole, a massively indebted Company employee, sued Deepchund, a creditor and wealthy saltpeter merchant from Patna, in the Mayor's Court. A few months prior, several of Cole's other creditors had gone to the *nawab* and paid him to commence a cavalry blockade of the EIC factory in Patna to prevent Cole from leaving. The Company executive told Deepchund that they had done all they could to encourage a speedy resolution to the Cole affair, but could not compel payment. They blamed their impotence on the fact that Cole had filed suit against Deepchund in the Calcutta Mayor's Court as soon as he fled from Patna.

With the case tied up in endless replications, rejoinders, answers, and attachments, the governor and council could not effectively force the matter. Furious and expressing disbelief at such a system of rule, Deepchund wrote a taunting letter to the council. "I was not before acquainted," he observed contemptuously, "that the governor and council were not the head [of Calcutta] but the Mayor's Court is the head," and announced his intention to leave Calcutta and go to the *nawab's* court for redress against both Cole and the Company.²⁴ The case, which eventually went all the way to the Privy Council, cost the

²³ BL IOR P/328/82: Madras Mayor's Court Proceedings, pp.65-7 (September 1753)

²⁴ BL IOR P/1/17; Calcutta Public Proceedings, p. 423 (17 December 1744).

Company untold sums in lost commerce as a result of the *nawab's* blockades, payoffs at Murshidabad to settle the dispute, and legal fees on appeal to England. The inability of the local EIC to quickly please local political powers in legal matters further complicated an already fragile relationship and only served to increase dissatisfaction in Bengal with the Company's power.²⁵

To a lesser extent litigants at Bombay also shopped around for outside levers of power in their quest for better outcomes. After two Bombay merchants had mouldered in prison more than five years because of unpaid debts, they managed to attract the attention of the powerful Maratha leader Baji Rao on the mainland. In 1746 he wrote to the EIC executive at Bombay demanding their freedom. However, the governor put him off on the grounds that it “would be directly contrary to our laws” to free prisoners without a release from their creditors.²⁶

Most importantly, inhabitants of Bombay objected in the strongest terms when English legal interference in religious or caste matters exceeded their level of comfort. In Zanoky's child custody dispute discussed in the previous chapter, several communal leaders applied directly to the EIC governor to ask that all disputes relating to caste and religious matters be kept out of the Mayor's Court. After the aldermen reached their decision in that case, the heads of the Taylor [sic] caste as well as other caste leaders went

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²⁵ The local Mughal government, at the request of Calcutta merchants, also complained vociferously to the Company about the seizure of local ships by the Royal Navy during the War of Austrian Succession. For these complaints see especially BL IOR H/804: Miscellany, pp. 62-9 (May-June 1749) as well as BNA CO/77/19: State Papers Relating to the East Indies, p. 71 (Letter to Sec. of State Newcastle reflecting on the events of the war, 8 July 1753); BNA C111/96: Thomas Hall correspondence, Letter from Mr. Powney at Calcutta 24 February 1749.

²⁶ BL IOR P/341/15: Bombay Public Proceedings, pp. 249-254 (24 June 1746).

to the EIC governor to complain and ask him to check the power of the court. Though their words are not recorded in the official records, Governor Robert Cowan reported that one asked if “a Court of Inquisition was erected at Bombay as well as at Goa?”²⁷

Everyone in Bombay would have known how damning an accusation this was. One of the reasons for the growth and commercial preeminence of Bombay after its transfer from Portugal was the freedom it provided for non-Christian merchants who could otherwise be subject to periodic harassment from the Goan inquisition.²⁸ This rhetorical invocation of the inquisition suggests the fear many inhabitants undoubtedly felt about the institution of foreign law and authority, as well as their willingness to fight unwanted impositions on their daily lives. It is important to remember, though, that not all of these protests from the populace posited English law and authority as the enemy. In Bombay especially, the Hindu and Parsi merchants who controlled the economic life of the city used the language of the royal charter itself to combat what they saw as the overreaching power of the Mayor's Court.

Given the enormous sums which the Company entrusted to brokers in the Bombay-Surat trade for acquiring goods, it is perhaps no surprise that these merchants constantly jockeyed for position against each other.²⁹ In the mid-1740's, however, this never-ending commercial battle between merchant houses spilled over into the charter

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²⁷ BL IOR P/341/7: Bombay Public Proceedings, p. 90 (10 July 1730).

²⁸ On Bombay merchants fears about the inquisition see. Ames, “The Role of Religion in the Transfer and Rise of Bombay.”

²⁹ For the role of these brokers in fomenting political change in Surat see Ashin Das Gupta, *Indian Merchants and the Decline of Surat*; Lakshmi Subramanian, *Indigenous Capital and Imperial Expansion: Bombay, Surat and the West Coast*; Michelguglielmo Torri, “Mughal Nobles, Indian Merchants and the Beginning of British Conquest in Western India: The Case of Surat 1756-1759.”

courts and nearly tore the social and commercial fabric of Bombay asunder.

In early March 1746, the agents of John Horne, a former Governor of Bombay filed suit against Bombay-Surat broker Nagar Lalji for a large debt long outstanding. Utterly bankrupt, the Mayor's Court had confined Lalji to the town jail three years earlier.³⁰ Suspecting that Lalji had hidden assets in the name of his son Dharamdas, the plaintiffs successfully petitioned the court to seize the son's books and accounts. When Dharamdas objected to this imposition, the Mayor's Court told him that he could avoid giving up his books if he swore an oath of the aldermen's choosing to the effect that he neither carried on any business nor held any assets relating to his father. Dharamdas offered to take such an oath but only on the Bhagavad Gita.³¹ According to the Mayor's Court, while under this oath, Dharamdas prevaricated and gave contradictory testimony before finally confessing that he had indeed carried on his father's business for two years after his imprisonment.³² This admission of duplicity enraged the aldermen as well as the plaintiffs. On April 9th the court announced that, as “the Jentoos pay little regard to the customary oath administered to them by their law book (called Gheeta) as hath lately appeared...” all future oaths by Hindus in court would have to be sworn on the head of a

³⁰ In 1742 the Bombay EIC had considered Lalji one of the most credit worthy *bania* merchants - see above chapter four. Also see BL IOR P/417/1 Bombay MC proceedings, pp.100-1, 137-9 (Bill filed 5 March 1746). For a later detailed account of the case drawn from court records see “An Age of Progress in Bombay 1740-1762” *Bombay Quarterly Review* v. 9 (Jan. 1857), especially pp. 176-184.

³¹ The use of the Bhagavad Gita in oath-taking and commercial bonds is attested to by the contemporary copy collected by EIC employee James Fraser and now at the Bodleian Library, Oxford University (MS Fraser 41). This compact edition, in the form of a portable inches-wide scroll, was likely intended for use in such ceremonies. The list of all the MSS Fraser donated to the Bodleian can be found in Fraser, *A catalogue of manuscripts*. Fraser was clearly well regarded by the Gujarati merchant community as they specifically asked him to give his opinion on Hindu legal custom in the cow oath case detailed below.

³² Letter from the Mayor's Court to the Governor and Council laying out the events of the case dated 31 May 1746. Cf. BL IOR P/341/15: Bombay Public Proceedings, pp. 233-7 (3 June 1746).

cow, this being the “only effectual method to come at truth.” The court then ordered its clerk to purchase a cow and calf for such purpose.³³

The Mayors' Courts and criminal quarter sessions in India had long accepted or demanded a wide variety of oaths from litigants and witnesses. The Mayor's Court in Bombay had customarily employed the so-called “book oath” on the Gita but the criminal courts had also sometimes used the cow oath.³⁴ In this case, Dharamdas agreed to take the cow oath at a nearby pagoda in order to satisfy the court of the extent of his involvement in his father's affairs. However, the night before he was to swear, several other Hindu merchants convinced him to refuse. Following suit, on the 16th of April, all six of the Hindu witnesses called in the case refused to take the new oath. The Mayor's Court ordered all of them, including the wealthy and influential Company broker Ambaidas Takidas, imprisoned for contempt.³⁵ This demonstration of court power did not sit well with the merchant community. A week later, 43 Hindu merchants, writing as “The Jentoo Cast in General” signed a petition to the Governor and Council listing their objections to the Mayor's Court's new imposition.

This 2,000 word petition expressed the brokers' objections to the cow oath and the proceedings in Lalji's case on several grounds. Unlike the petitioners in Madras, they

³³ BL IOR P/417/1: Bombay MC Proceedings, p. 173 (9 April 1746).

³⁴ See for example earlier proceedings in which one Narrun, a prosecutor in a murder case, swore on the head of a cow : BL IOR P/416/100: Bombay Court of Judicature Records, f.5r (21 February 1726). In 1742, Govindjee Purvoo [Prabhu] wrote in a letter to the Court of Directors that he had been made to falsely swear on the head of a cow in court in Bombay many years earlier. BL IOR E/1/32: Miscellaneous letter to the London EIC, p. 22a-r. On the seriousness of oaths and other oath-taking principles current on the west coast of India see J.J. Modi, “Oaths amongst the ancient Iranians and the Saogand-nameh,” *Journal of the Anthropological Society of Bombay* 12.2 (1921), pp. 213-4 wherein he presents a translation of a MS instruction manual on Parsi oaths dated c. 1650.

³⁵ BL IOR P/417/1: Bombay Mayor's Court Proceedings, p. 178 (16 April 1746).

did not object to the Mayor's Court as an institution but rather attacked the legality of its actions with reference to the Charter and customary practice in Bombay. They began their petition, most likely with the help of an English lawyer or Prabhu clerk, by objecting to the confiscation of Dharamdas' books without the sheriff issuing any "regular precept." They additionally claimed that throughout the entire affair the Mayor's Court had denied Dharamdas access to an attorney and that, when he did manage to hire one, the court "contrary to the intention of His Majesty's Charter" threatened to forbid him from court.³⁶ They also claimed that Dharamdas had tried to answer Horne's bill and put in one of his own, but the court had refused him, even though such "method for obtaining justice" was by "the court's charter" available to "all under the jurisdiction thereof."³⁷ Further, in a subsequent petition, signed by an even greater number of merchants resident at both Surat and Bombay, the brokers asserted that when six of them had been imprisoned by the Court for contempt, they had tried to plead a particular (unspecified) parliamentary statute only to be told by the mayor that the "Laws of England" had no place in the dispute.³⁸ This plea for due process and the universal jurisdiction of the court signaled a strategic acceptance of the value and authority of the Mayor's Court on the part of the Bombay merchants in a way which the Madras petitions did not.

While supporting their rights under the charter, the collected brokers did insist that the Mayor's Court by its very foundation and purpose was obligated to support and

³⁶ Maharashtra State Archives: Bombay Public Proceedings for 1746, this letter copied in on p. 432 at the end of the volume.

³⁷ Idem.

³⁸ BL IOR P/341/15: Bombay Public Proceedings, p. 513: undated petition from "The Jentue merchants of Bombay as representatives of their several casts."

protect local and religious customs. In both petitions the merchants insisted that persons of high caste and credit as themselves could not take the cow oath, as it would effectively bankrupt and ruin them as others of their caste would declare them outcasts, preventing them from conducting trade or business as before. In addition, the brokers appealed to basic principles of justice, arguing that they could now be sued at will in the Mayor's Court without any means to defend themselves thanks to their refusal to take the cow oath. They further asserted that the practice of the cow oath at the quarter sessions was an “innovation” and necessitated elaborate cleansing rituals in the event one wasn't actually thrown out of one's caste immediately upon taking the oath.

The petitioners also set themselves up as the “proper conservators” of their religious customs, in opposition to the Mayor's Court, which claimed the authority to decide which religious oaths were more binding than others. They pointed to the example of alderman-judge Dr. John Neilson, who browbeat every Hindu witness in the dispute with the assertion that he “knew their laws and religion as well as themselves” and that he would not be “bamboozled” by their assertions that the book oath was just as binding as and less perilous than the cow oath.³⁹ They also substantiated their fears about losing caste by pointing to the case of Moncka Banian, a merchant who had recently acquiesced to the court and sworn the cow oath. When his caste promptly expelled him as a result, Moncka sued in the Mayor's Court to be readmitted. Dr. Neilson and two other judges

³⁹ BL IOR P/341/15: Bombay Public Proceedings, p. 514.

ordered the caste heads to readmit Moncka on penalty of a fine.⁴⁰ In a fit of agitation over this meddling in caste matters and the imposition of the cow oath in general, the petitioning merchants declared the Court's actions

“...so highly arbitrary illegal unwarranted and unprecedented that your petitioners have the justest grounds to suspect that their religion will be overturned and unhinged and their rights and properties invaded and encroached upon nay swallowed up their credit and commerce impaired nay ruined and destroyed in general a total dissolution threatened of every thing in the world they can call dear.”⁴¹

The petitioners then appealed to the Company's sense of vanity and self-interest, claiming that no other government, “Christian, Mahometan, or Jentue,” forced the cow oath upon them. This assertion was backed up by an attached letter from fifteen prominent Surat merchants written to the EIC executive, assuring them that taking the cow oath would result in a merchant being outcast immediately and that “such an oath is never taken by any at Surat, Guzerat/Ahmdebad/Deccan or Indostan.”⁴² Both petitions closed with a threat. If the authority of the merchants and caste leaders were not respected, they would be forced to “withdraw their stocks and concerns to other places where they may hope for protection” and a to void all their contracts with the Company.⁴³

From the beginning of the affair, the EIC executive supported their friends amongst the mercantile establishment and hoped to maintain the prosperity of the island by opposing the Mayor's Court's decision. The EIC council wrote in their proceedings

⁴⁰ Ibid., pp.514-5.

⁴¹ BL IOR P/341/15: Bombay Public Proceedings, pp.515-6.

⁴² See the letter of the Surat merchants copied in the Bombay Public Proceedings for 1746 at the MSA, at the end of the volume, p. 438.

⁴³ BL IOR P/341/15: Bombay Public Proceedings, p. 510.

that the imposition of the cow oath would end up “driving” many of the most prominent merchants away from the city. As a result, they wrote to the Court asking them to drop their oath plan given the dire consequences to the city's well-being. They also reminded the court that religious oaths were delicate issues and asked them to think of the example of “the Quakers in England [who] are indulged by the legislative power in that respect.”⁴⁴ The Mayor's Court responded angrily to the EIC's request, incensed most of all that the merchants had sent their petition to the governor and not to the Court itself. The aldermen, convinced of their own authority and knowledge of local custom, retorted that they required “...neither the report of the inhabitants nor any certificates to convince them of the legality or illegality of [the cow oath].”⁴⁵

This crisis of authority spilled out into the criminal quarter sessions as well. Near the height of the affair, in mid-May 1746, the quarter sessions met for the second time that year. As was usual, the grand jury empaneled at the sessions contained many of the aldermen.⁴⁶ The mayor, Anthony Upton, served as the foreman of the jury along with four of his fellow Mayor's Court judges. Within minutes of the opening of the court, chaos descended when the long-time Shenvi court interpreter, in solidarity with the protesting merchants, refused to swear on the cow's head. The court adjourned until 6 pm when it reconvened with “some of the Heads of the Casts of Jentoos” present. These caste leaders testified that swearing on the Bhagavad Gita was of equivalent gravity to swearing upon

⁴⁴ For this letter to the Mayor's Court see *ibid.*, p. 184 (28 April 1746).

⁴⁵ This letter of 31 May 1746 is recorded in BL IOR P/341/15: Bombay Public Proceedings, p. 237 (3 June 1746).

⁴⁶ All citations follow from extracts of the Bombay Quarter Sessions records [no longer extant in the original] copied into BL IOR H/432: Bombay Legal Miscellany, pp. 57-78.

the head of a cow. The justices of the peace, all members of the EIC executive, judged this sufficient to continue the proceedings and asked the interpreter and all Hindu witnesses in the case at hand to choose between the book and cow oaths. All took the book oath. The justices then adjourned the court until 10 am the next day.

However, thanks to the ongoing dispute, the justices could not effectively take up any case again until mid-July. Before the court could convene again, the members of the grand jury sent a letter, signed by their mayor-foreman Upton, to the justices saying they would not be willing to hear any evidence until Hindu witnesses swore on a cow's head. Further, when they arrived in court, the jurors delivered back the indictment and all court papers un-endorsed. This back-and-forth struggle for authority between the jury and the EIC executive continued until October.⁴⁷ In the end, the pressure of the EIC executive, the impending loss of fortune with the departure of the brokers, and possibly the personal ties between aldermen and Indian merchants, led the Mayor's Court to back down. In October, the aldermen announced that the issue had been so "divisive" and damaging that they had been convinced by many prominent and credit-worthy Hindu merchants that the court should accept the book oath instead of that on a cow.⁴⁸ The merchants involved in the case did not triumph against English law and the charter *per se*, but against the Mayor's Court's capricious and arrogant abrogation of religious and customary authority to themselves.

⁴⁷ In the meantime, the three Hindu defendants in the case took advantage of the situation to send a petition to the justices demanding that they be released on bail.

⁴⁸ BL IOR P/341/15: Bombay Public Proceedings, p. 407 (7 October 1746).

Despotism and Difference

The Bombay cow case gives only a small taste of the importance of a contented mercantile population to the EIC's very existence in India. When the English, whether aldermen or EIC executives angered powerful local merchants, these traders could pull up stakes at a moments notice, or induce local potentates to attack EIC warehouses and harass the Company. In addition, inhabitants and potentates alike viewed the Company as the ultimate English authority in India. As such, local rulers, merchants, and others could demand the EIC itself pay for any damages inflicted on them by the royal courts. The EIC executive obviously sought to minimize these conflicts as much as possible.⁴⁹ However, while they had been able to act unilaterally to please merchants or rulers prior to the charter, the new courts often stood in the way of such pragmatic and swift action. As a result, the EIC governors and their councils constantly sought to limit the power and independence of the charter courts.

The local Company executives were especially conscious of the need to maintain an aura of authority and power vis a vis their Indian subjects, an authority directly challenged by the English courts. Over its years in India, the Company had secured substantial rights over its subjects from local rulers. These agreements required the residents of the EIC's settlements - especially Madras and Calcutta - to “pay due allegiance to the English” (i.e. the Company) and obey them in all matters.⁵⁰ At the same

⁴⁹ At one point the Madras council even proposed exempting all substantial merchants from English courts of law so as to encourage them to settle at Fort St. David. See RFSG *Despatches to England*, v.12, p. 166 (para. 33 - 11 September 1740).

⁵⁰ Though these treaties, agreements, and grants varied across the settlements, see for example the grant of

time, these grants also made the EIC itself responsible for the actions of its subjects. For example, in a 1739 treaty with the Maratha government, the Bombay EIC executive promised to force any Maratha merchant resident at Bombay to pay his debts to creditors in Maratha territories as long as the Marathas did likewise for "any person belonging to the English [i.e, the Company's] Jurisdiction."⁵¹ The Bombay executive made this thinking clear in a 1741 diplomatic dispute in which they decided that the actions of local Maratha officials in imprisoning Bombay residents "tended to deprive us of the authority we ought to maintain over our people."⁵²

In addition, Parliament had given the Company almost absolute power to control the British inhabitants of its settlements. By virtue of various parliamentary enactments the EIC had a monopoly on all trade from Britain to points east of the Cape of Good Hope. In order to police this monopoly parliament had also granted the Company the right to deport all English subjects residing or trading in the East Indies without EIC permission.⁵³ These grants provided the EIC executive in each settlement tools to exercise significant coercive power over its subjects outside the confines of regular English legal procedure. As one Madras aldermen summarized, "Governors, especially in

San Thome (bordering Madras) to the Company from *nawab* Muhammed Ali Khan in 1749 from which the quoted language is drawn. Copy of the grant in the John White Collection of Orientalia and Chess, Cleveland Public Library (wq091.92 m892c). These grants were of course common. Earlier in 1749 the Portuguese bishop at San Thome had secured rights to execute justice there and collect taxes in very similar language - cf. Achilles Meersman, *The Franciscans in Tamilnad*, p. 36.

⁵¹ Article 8 of the treaty of 12 and 20 July 1739 printed in Aitchison, *A Collection Of Treaties, Engagements and Sanads*, vol. 6, part 1, p.11.

⁵² For a complete account of this dispute see the *Bombay Gazetteer*, v.26, part 1 pp. 245-6. (12 June 1741)

⁵³ See originally 9+10 William III c.41 (1699), 7 George I c. 21 (1721), 9 George I c.26 (1723), and the confirmation of these privileges in 3 George II c.14 (1730).

this part of the world ... assume a power beyond that of their own sovereigns."⁵⁴

Accordingly, in the charter period these governors became increasingly incensed by the ability of their "subjects," whether English aldermen or Indian merchants to subvert their authority.

Returning to the Bombay case of Zankoy and her son sheds some light on how these EIC executives saw their authority and place in the governmental order. When the Mayor's Court ordered that the nominally Catholic Zankoy's Hindu son be returned to her, Robert Cowan, the Governor of Bombay, read their actions as a blatant threat to his authority and the very constitution of the EIC's settlements. Cowan, like other EIC governors ruled for the benefit of himself and his clients, as well as the Company. Among other things, he personally traded illicitly with the Portuguese at Goa and ran his own fleet of ships in and out of Bombay harbor with little regard for formal rules.⁵⁵ In order to maintain this position at the top of the Bombay hierarchy he obviously needed to present himself as a powerful leader. To do so he had to use his authority to keep local elites happy, commerce flowing and civil disturbance low. Cowan complained to a friend shortly after the case that the Mayor's Court insisted

"...much on the Royal Authority by which they act and expect punctual obedience to their precepts and injunctions from all who are within the jurisdiction of the court as are all in the company's service or under their protection residing at any of their settlements."⁵⁶

⁵⁴ BL IOR H/793: Letters of Charles Peers, 1 October 1733.

⁵⁵ For more on Cowan's trading activities see Holden Furber, *Bombay Presidency in the Mid-Nineteenth Century*, (London: Asia publishing house, 1965), pp. 26-9 and Om Prakash, "English Private Trade in the Western Indian Ocean, 1720-1740," *Journal of the Economic and Social History of the Orient*, 50, 2-3 (2007), pp. 215-234.

⁵⁶ Cowan's original letters are in the Northern Ireland Record Office and on microfilm in the BL. For this letter see BL IOR POS 11608, pp.132-3 (9 October 1730 - letter to Daniel Innes).

Further, in a letter to London, the executive under Cowan declared that the new courts were a nuisance as inhabitants took “advantage of the Royal Charter” to avoid their obligations to the Company, and warned that if the courts continued in their power, “...your Honors authority will be far less and your estates and properties in greater danger than before the said charter.”⁵⁷

Cowan made this danger clear when briefing the Bombay council on the Mayor's Court's actions in Zanoky's case. He told them that the court was a menace and threatened to drive away merchants given its meddling with the “free exercise of their [the inhabitants] several religions,” which the Company had guaranteed in order for trade to prosper.⁵⁸ To the governor, the Mayor's Court represented the upending of a necessary local constitution predicated on a pyramid of dispute-resolution for a, with the EIC executive at its tip. Given this, Cowan declared that only the EIC executive itself should be able to take final cognizance of internecine disputes and religious matters arising in Bombay.

One member of his Council, Thomas Rammell, disagreed with him and supported the Mayor's Court, in the process transforming the argument from one about authority into one about jurisprudence. Rammell publicly voiced his opposition to Cowan and the rest of the Council, announcing that he had perused the Charter himself and that it did indeed give the Mayor's Court extensive powers and jurisdiction over all residents of the city. Further, he claimed that the executive was making law out of whole cloth by

⁵⁷ BL IOR E/4/460: Letters to England from Bombay, 25 July 1729.

⁵⁸ BL IOR P/341/7: Bombay Public Proceedings, pp.75-8 (26 June 1730).

demanding that they alone should have final say over all manner of religious disputes.

This move, he declared, might very well be repugnant “to the statutes of England.”⁵⁹

Rammell's stand for English law did not change the outcome of the case, as Cowan immediately dismissed him from the Council for his insolence. However, his equation of Mayor's Court authority with substantive English law proved longer lasting.

Disputes like Zanoky's case helped bolster the arguments of those amongst the EIC executive who wanted to be rid of the Mayors' Courts and the shackles of English law. Under Governor Macrae at Madras, for instance, the Council reserved the right to impose corporal punishment and large fines on any residents who wronged them.⁶⁰ Given this traditional power, it is understandable that some in the EIC administration might protest the chartered courts authority. Amidst a slew of litigation in 1730 the governor of Madras warned the court of directors that if the Mayor's Court were allowed to continue in its ways, the “sovereignty in your settlement” would suffer.⁶¹ Likewise, EIC favorite John Roach wrote privately to Edward Harrison, a Company director in London, that many of the inhabitants of Madras were beginning to look on the Mayor's Court as independent of the Company “...which may in time prove a check to the authority that is necessary to the support of government in these parts and an interruption to the progress

⁵⁹ BL IOR P/341/7: Bombay Public Proceedings, pp.100-101 (17 July 1730).

⁶⁰ BL IOR H/74: Papers on Gov. Macrae, pp.135-7 for residents of Madras paying 1000 pagodas in lieu of corporal punishment.

⁶¹ BNA C108/95 no. 48. Letter from Gov. Macrae to court of directors 12 February 1730. The EIC executive resisted the new order in other ways. In 1727, for instance, they decreed that the Mayor's Court was too expensive and complicated for most of the Indian inhabitants and reintroduced a court of petty cases (under 10 pounds) at the Choultry. The English justices of the peace met every week thereafter to decide small disciplinary matters and determine what to do with the prisoners there on their own. See *RFSG Consultations*, v.57, p. 115 (11 September 1727). BL IOR E/4/3: Letters to London, para. 117 (12 October 1729).

of the company's affairs."⁶²

The Madras executive shared this line of thinking and wrote in their 1735 letter to London that the Mayor's Court's intransigence and assertion of independent legal authority discredited them "...greatly amongst the natives who are constantly in expectation of seeing new rulers."⁶³ This letter was partially inspired by cases involving debts owed by several Company brokers and *dubashes*, including Sunka Rama and Thambi Chetti. The executive complained that being forced to sue in the Mayor's Court for matters relating to Company clients greatly diminished its clout and "had not the Company told them...that all these things must go through the courts of judicature they should have taken different measures."⁶⁴ As a result, they brazenly stated their preferred method of government, writing that the authority of the Company in its settlements should properly be "absolute and uncontrollable."⁶⁵

This absolute power was of course difficult to reconcile with all the facets of English laws and liberty introduced by the charter. Accordingly, the EIC executives bemoaned those lawyers and aldermen who seemed to be "little dictionaries of acts of Parliament," always arguing for some sort of liberty or privilege.⁶⁶ Some of the Company's shareholders and directors in London seemed to sympathize with these attitudes. As Robert Adams, a sometime director and influential figure in London EIC politics, wrote to a friend in Madras: "Am sorry to hear a general complaint of all the

⁶² BNA C108/95 foul letters to Europe no. 2 (red cover) 8 July 1732.

⁶³ RFSG *Despatches to England*, v.10-11, p. 65 (para. 72 - 22 January 1735)

⁶⁴ BL IOR E/3/104: Letters to London from Madras, para. 52 (31 January 1734).

⁶⁵ *Idem*

⁶⁶ Account of the proceedings in H/793: Charles Peers Letters, p. 162 (11 December 1733).

Mayor's Courts in India and have often wished the charter was taken away,” adding also that if some way couldn't be found to “suppress” them, their meddling would “ruin the settlements.”⁶⁷

In slightly different ways than at Madras, Calcutta's EIC officials explicitly positioned themselves against English legal authority using arguments about the “necessary” form of government in the city. In early 1753, the English Zamindar and former Mayor of Calcutta, John Zephaniah Holwell, ordered a man named Mohun imprisoned as the result of a case heard in the Cutcherry. When the Cutcherry peons went to seize Mohun, they ran into difficulty, as he had cleverly convinced his friend and business partner John Wood to run to the town hall in order to file a suit for a debt (real or imagined) against him in the Mayor's Court.

As a result, the aldermen claimed their prerogative as a royal court to block the Cutcherry proceedings in preference to those in the Mayor's Court. Needless to say, Holwell was furious at this turn of events. He wrote to the EIC executive that court's actions constituted “snatching a prisoner from the judicial power delegated by the Emperor of Indostan (over his own subjects) to our Honourable Masters [the EIC].”⁶⁸ Howell further argued that Wood's actions in going to the English court were in contempt of “me and my office[as Zamindar]” and even “higher contempt for your Hons.”⁶⁹ To Holwell, who had personally adjudicated several cases when an alderman, the Company had not only the right but the obligation as a Mughal grantee to execute customary local

⁶⁷ BL IOR H/37: Robert Adams letter book, f. 238v (Letter to Richard Benyon 28 November 1735).

⁶⁸ BL IOR P/1/26: Calcutta Public Proceedings, pp.144-5 (30 April 1753).

⁶⁹ Idem

summary justice outside the bounds of English law.⁷⁰ The Company and the Zamindar also of course had motives to decrease the business of the charter courts for revenue reasons. In 1730, for instance, the sitting Zamindar wrote to the council that the introduction of the charter courts had removed a substantial amount of business from the Cutcherry and as a result its revenues had been cut in half.⁷¹

Given these strong feelings against the charter courts, it should come as no surprise that the EIC executives in the settlements did whatever they could to reestablish their own authority. For instance, governors took advantage of the Company's parliamentary privileges to revoke permission for particularly troublesome aldermen and litigants to reside in India, thereby forcing them to leave the country.⁷² In one instance, two Englishmen attempted to accuse members of the Calcutta Council of wrongdoing, only to be summarily imprisoned and sent home before they could pursue their complaint. In the same case, a *banian* named Ramsantose tried to present a Calcutta EIC official to a justice of the peace on charges of "a notorious abuse of power and infringement of his Majesty's Charter." For this insolent attempt at using English law, the council had him whipped forty times in public.⁷³

Perhaps the most direct assault against the charter courts came via the tinkering of

⁷⁰ For a sample of these cases see BL IOR P/154/46: Calcutta Mayor's Court Minutes, 7 April 1747 and BL IOR P/154/47: Calcutta Mayor's Court Minutes, 9 February 1748.

⁷¹ BL IOR P/1/8: Calcutta Public Proceedings, pp.72-3 (4 May 1730). These pages provide a table of revenues showing that in 1727 (before the charter's arrival) the Company earned 14,000 rupees (~£2,000) from Cutcherry fees but that in 1729 the amount had dropped to just over 7,000 rupees.

⁷² For legal opinions on contested deportations from Madras see BL IOR L/L/7/22: Legal Advisors' papers, 13 December 1746.

⁷³ See BL IOR E/1/37: Miscellaneous Letters to the London EIC, p. 19 (29 January 1752) for this account of these incidents.

the executive with the selection of new aldermen. During the Ramchandra crisis, the Madras aldermen elected a free merchant named Manning Lethulier to their number hoping that he would support them against the council. The council promptly nullified the election on the grounds that he did not have permission to be in India. Later, in Bombay especially, there is evidence that the executive directly intervened in elections. One contemporary observer who had not been an aldermen himself remarked that "[Governor William] Wake's removal from Bombay of such members of the Mayor's Court as were in any respect against his measures and getting elected in their places such as entirely depended on him gave him an absolute sway there."⁷⁴ There seems to be perhaps some truth in this allegation, as the aldermen on the Bombay court in the late 1730s made a more than usual number of decrees in favor of Wake's cronies, though by the mid-1740s the Bombay aldermen had obviously returned to their refractory ways.

The members of the EIC councils, as justices of the peace, also used their power to steer criminal justice in a direction of its choosing. When a Calcutta jury found the salt merchant Gorbux guilty of murder, several local elites, including the Mughal *faujdar* at Hugli, complained about the impending hanging.⁷⁵ Unlike in civil matters, the Calcutta council could smooth over the situation relatively easily and used their power to promptly grant Gorbux clemency. The council later wrote to London that the imbroglio had made

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⁷⁴ BL IOR E/4/461: Letters from Bombay to London, pp. 95-112 (Letter from James Frazer [Fraser] 22 November 1747).

⁷⁵ BL IOR E/4/3: Letters to London, para. 95 (9 December 1730). The council at Calcutta had noted local opposition to the death penalty earlier see *ibid.* para 160. As a result, the justices decided to cease hanging Muslims and instead sentenced them to be whipped every week until they died - a practice common amongst Zamindars in the area. See *ibid.*, para 135 (25 February 1732).

them “... wish the Company would find some legal order to confine the laws of their charter to Europeans only.”⁷⁶ In Madras, as well, headmen of the right and left hand castes appealed to the EIC executive there to end the strict application of English robbery statutes which mandated death for the guilty. The council replied that they would use their position as justices to be as lenient as possible.⁷⁷ Though it is difficult to trace the success of these measures, it seems that at least in Calcutta the justices steered criminal disputes more and more to the Cutcherry instead of the quarter sessions, as there were no similar complaints from the populace about the application of English criminal law until the 1760s.

While discontent over the English chartered courts had its origins in disputes over authority and local government, the rhetoric of opposition quickly transformed into a wholesale indictment of the applicability of any English laws, government, or ideas to India. Some opponents of the courts merely proposed replacing English laws with sets of local religious and customary laws. Others went as far as to argue that the very nature of the Indian constitution made it necessary for the EIC executive itself along with local elites to have simple summary jurisdiction over all residents. This argument, which largely originated in India, eventually led to the creation of a new legal order in the EIC settlements predicated on the notion that English laws and courts should have only limited power and jurisdiction.

Some in the EIC took a pragmatic approach, attempting to work around the limits

⁷⁶ BL IOR E/4/3: Letters from Calcutta: 13 July 1733, para 18.

⁷⁷ RFSG *Despatches to England*, v.6-9, p. 65 (para. 31- 6 February 1730).

of English law and keep Indian disputes out of English courts. They complained primarily about the absurdity of applying strict chancery practice, English statutes, and notions of liberty and government to the population of the settlements. In this vein, the EIC councils complained that “the Laws of England” had “made no provision” for the alien circumstances of the Indian settlements. The Madras council stated that “The determination of causes in the country is very quick and generally equitable,” and that the “too strict pursuing [of] the methods laid down by the charter for trying causes in which the blacks are concerned” had completely overturned the basic constitution of the place and produced much unhappiness.⁷⁸

The Governor of Madras, Richard Benyon, later recalled that after seeing the caste petitions of 1736 he was convinced that English procedure and courts were completely against the desire of the city's inhabitants. He asserted instead that “equity and reason were the same among all people” and that it would behoove the EIC to “form some proper courts among the natives for determining all differences between them” that encouraged arbitration and local elite participation.⁷⁹ The aldermen all objected to this plan and it was never set into motion; in retrospect even Benyon expressed skepticism about his own idea. Reflecting that having Indian judges adjudicating their own disputes would necessarily endow them with some amount of power which could have “very ugly effects” for the absolute government of the EIC.⁸⁰

⁷⁸ RFSG *Despatches to England*, v.10-11, pp. 30-31 (para. 52 - 31 January 1734).

⁷⁹ BL IOR E/1/38: Miscellaneous Letters to the London EIC, p.84e (9 December 1754).

⁸⁰ Ibid., p.84r.

Others argued for the complete alien-ness of Bombay, Madras, and Calcutta, and the necessity of absolute government. These EIC officials and other Europeans advanced the notion that the civilizational state of Indian peoples rendered them unable and unwilling to abide or benefit from English law in the broadest sense. As seen in the previous chapter, the territorial and subject status of the EIC's Indian settlements was far from a fixed matter. Many Englishmen and EIC employees in India and England held the opinion that “natives” of India whether they be Hindu, Muslim, Parsi, or even local Catholics were not part of the same English legal and civilizational strata. When writing about the duties of aldermen, one Calcutta Englishman declared that he thought it necessary to uphold an English civic government, “...for the good of my Country or rather I may say for the good of the few trading into these parts,” strongly suggesting his rather limited conception of Englishness.⁸¹ Likewise, EIC military officials asked London to pass a rule that no “black man” in the Company's service be allowed to have authority or execute corporal punishment on any European.⁸² Other Englishmen in India also proved hostile to the leveling quality of the chartered courts. When EIC employee John Vezian stood trial at the Madras quarter sessions for murdering his *dubash*, he successfully won his acquittal by challenging the evidence of a Hindu witness. After being arrested and trying to pin the crime on another *dubash*, Vezian announced to his guard that he would “confound them all in his trial.” Indeed, in front of the jury, he cited

⁸¹ Letter of Thomas Burrows in BL IOR E/1/35: Miscellaneous Letters to the London EIC, p. 149 (23 December 1748).

⁸² The language here suggests that this had at least happened in some prior instances and a greater solidification of cultural/racial difference as a result. See BL IOR E/1/28: Miscellaneous Letters to the London EIC, p. 99 (30 January 1739).

the fact that “infidels” could not provide good evidence against Christians, turning the trial away from the question of his own guilt. The English jury appears to have been sympathetic to this Christian-exceptionalism since they subsequently acquitted him on all charges.⁸³ Clearly many in the EIC doubted the trustworthiness and intentions of their non-British neighbors.

This skepticism about the character of non-British witness and the veracity of their testimony seems to have become more commonplace by the 1740s. Some, like Governor William Wake want so far as to suggest that the laws of England, predicated on European character, had no place applying to “natives”:

"I have often exclaimed at their [natives] having the benefit of our courts abroad for according to their morals, they can inoffensively as they imagine receive a benefit by them when we cannot, and I believe I might add that the Laws of a Country, if they are of any long establishment; are most suitable to the Genius of the people of it."⁸⁴

Similarly, there were near constant complaints in both India and England about the volume of litigation flowing out of India, and the apparent litigiousness and pettiness of Indians. The future Calcutta Zamindar J.Z. Holwell expressed these common English sentiments when he called the “natives” of the city “as litigious and malicious a race as

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⁸³ The proceedings relating to Vezian's arrest and trial are contained in BL IOR G/18/35: Fort St. David Factory Records, pp. 45-6, 57-63, 81-94 (October -December 1727), and RFSG *Despatches to England*, v.6-9, p. 31 (para. 32 - 20 January 1728). Repeating a similar performance a decade later Vezian appeared in a Massachusetts court to argue that African sailors were not capable of giving evidence against him. See the transcripts of his speech reprinted in “Journal of a Privateersman,” *Atlantic Monthly* 8.48 (October 1861), pp. 418-419.

⁸⁴ BL IOR D/102 Correspondence Committee Memoranda: note from William Wake, 21 June 1744.

any whatever.”⁸⁵ An English resident of Madras similarly proclaimed his distrust of the Indian residents of the city, writing to a friend that Indians were “as fit to be governed by Beasts, as to hold the sovereignty.”⁸⁶

In this reading of Indian racial and civilizational difference, English law created outright hazards as its advantages could be used by those who did not deserve or understand them. By the end of the first decades of the charter courts it was increasingly common to see EIC officials assert a radical difference between the legal capabilities of Englishmen and local peoples. In Madras, the Council declared that as Englishmen they lived in a “...distant a colony and among people whose religion, laws, and customs are so *infinitely* different from our own.”⁸⁷ Robert Cowan at Bombay also warned his Council that any attempt of English government or law to adjudicate disputes amongst Hindus based on European notions of justice was doomed to failure: “...the gentues in general are so tenacious of their religious rites and ceremonies and so bigoted to the particular caste or sect they are born and brought up in that they would rather die than deviate the least.”⁸⁸

Likewise, in the later 1740s, Captain Thomas Fenwicke, a Company military officer stationed in Calcutta, wrote a series of letters to the Directors recommending a better system of government for EIC India, which portrayed English law as fundamentally unsuitable to the constitution of the Indian settlements. He claimed that

⁸⁵ Holwell's report on the Zamindar's office in BL IOR Eur. Ms. Orme 12, pp. 165-6.

⁸⁶ BNA C108/95: Letter from Randall Fowke at Madras to John Roach, 25 January 1737.

⁸⁷ RFSG, *Consultations*, v.65, p.157 (26 November 1735). Emphasis mine.

⁸⁸ BL IOR P/341/7; Bombay Public Proceedings, p. 91 (10 July 1730).

English laws did not fit the Company's style of government or Indian cultural norms, adding that "I honor the laws of my country as strict as any man; but I think they have travailed into a wrong latitude."⁸⁹ Others in India employed a similar language of geographic-cum-civilizational difference, characteristic of Montesquieu and other contemporary writers on law and culture who believed that climate, religion, and inherent race determined what laws could apply to whom.⁹⁰ An EIC official in Bengal warned a friend using this language, noting that "our rigid northern notion of justice will make us at last the dupes and fools to the more pliant politicks of these southern climates."⁹¹

As early as 1735, the Madras executive brought many of these strands of thought together in a clear indictment of the charter and English law in India. In a characteristically bitter missive to London, they claimed that the attempt to apply English law in India was near pointless "...the customs, manners and constitution of the people, the nature of your trade and the clashing of the powers of the country government being all obstacles to a strict observance of any laws that can be devised."⁹² In other words, the milieu of the EIC settlements was so brutal and foreign, that not only would English law not suffice, but any strict rule of law itself would be pointless - the Company would have to rule alone. This argument nicely connects the mid-18th century EIC state with the

⁸⁹ BL IOR Eur. Ms. Orme India VI, p.1540. He also wrote in references to the charter: "I have seen such times very tolerable, and the justices learned in no other than the company's laws, the only reason that I remember for the then directors taking up a charter was that they were plagued about dead men's trifling estate," p.1540.

⁹⁰ Cf. for example Montesquieu's 1748 *On the Spirit of Laws*.

⁹¹ BL IOR Eur. Ms. Orme 293, p.59. Undated letter John Caillaud to Orme. Quoted in Gurney, "Debts of the Nabob of Arcot," p.34 and more completely in S.C. Hill, *Yusuf Khan: the rebel commandant* (London: Longmans, 1914), pp. 45-46. Hill suggests that the letter dates from 1755.

⁹² RFSG *Despatches to England*, v. 10-11, p. 65 (para. 74 - 22 January 1735). Emphasis mine.

proudly “despotic” power of the Company in the 17th century, while foreshadowing governor-general of Bengal Warren Hastings' arguments fifty years later that only the “invariable exercise of arbitrary power” could succeed in governing India.⁹³

Metropolitan change: The Charter of 1753

The Company's legal staff and Directors in London stood on the receiving end of the many petitions, complaints, and missives from India asking for a new legal constitution. As seen throughout this dissertation, the Company's emphasis on due process and the sanctity of English law could benefit non-English litigants who wanted their day in court. However, from their initial letter accompanying the charter in 1727, the Directors made it clear that they believed that the English legal order was meant for the “government and benefit of Europeans.”⁹⁴ The Directors with their legal staff communicated further in subsequent years to clarify this basic assertion. In one particularity telling instance they wrote to Madras that they believed that all could benefit from simple justice predicated on “the unalterable nature and reason of things,” but that the Laws of England, “were never calculated for the native Indians.”⁹⁵

Despite these stated positions, the Company's legal advisers initially showed little

⁹³ Stern, “Ideologies,” p. 10. Stern sees “despotic” here in the Hobbesian sense. Hastings quotation in Mukherjee, “Justice, War, and the Imperium: India and Britain in Edmund Burke's Prosecutorial Speeches in the Impeachment Trial of Warren Hastings,” p. 605. Mukherjee's larger piece shows the Hobbesian basis for many of Hastings' arguments. For a history of colonial expedience and colonial law more broadly see Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2003). Also for a good discussion of the history of the rule of law and colonialism in British India see David Gilmartin and Jon Ocko, “State, Sovereignty, and the People: A Comparison of the 'Rule of Law' in China and India,” *Journal of Asian Studies*, 68.1 (February 2009), pp. 55-100.

⁹⁴ Included in letters to all three settlements. See for example BL IOR E/3/103: Letters to Calcutta from London, ff. 255-57, (17 February 1727- especially para. 21).

⁹⁵ BL IOR E/3/106: Letters to Madras from London, p.392 (para. 37 - 31 January 1735).

patience for the many petitions and complaints bemoaning the wide application of English law in India. They nixed nearly every suggestion that the Company or its employees could alter English justice, overturn the charter, or change the constitution given them by the Crown. Their opposition was likely not based on any deep-seated belief that the charter of 1726 and English legal practice were perfect for India, but rather on their desire not to unsettle the established legal order. Besides, EIC officials and counsel knew that to admit defeat by tearing up the charter and going to the Crown hat-in-hand for a new constitution would be costly and inevitably bring unwanted scrutiny upon the Company. Perhaps most of all, given the specter of charter seizures during the Stuarts' reign, dissolving a chartered legal order without the consent of the grantees, in this case the mayors and aldermen of the three cities, was politically dangerous and arguably illegal.

Some disgruntled company insiders, in both India and England, felt that this stubborn insistence on English law was the product of overly fastidious lawyers who did not understand the realities of Indian life. William Phipps, a former Bombay governor, expressed this view in 1731, complaining to his successor about how seriously Company lawyers took the charter and the sanctity of its provisions. He griped that every time there was anything remotely “irregular” about proceedings in the Indian courts, the Company's solicitor would reference the charter and “...alarm the Directors with the forfeiture thereof and incurring a praemunire.”⁹⁶ Praemunire, or the near treasonous usurpation of

⁹⁶ BL IOR POS 11614 (letter 37): Letter from William Phipps (London) to Robert Cowan (Bombay) 13 February 1731. The statute of Praemunire originated in conflicts between the English Crown and the

jurisdiction from the Crown, was a dire threat indeed, but one which does seem to fit the legal personality of some of the Company's legal staff.⁹⁷

Woodford and later lawyers were certainly concerned with the perceived despotism and extra-legal conduct of EIC executives in the settlements. In a 1731 letter to Madras, Woodford and the Directors wrote to the executive to protest the practice of punishing alderman judges as a result of their judicial rulings.⁹⁸ They also strongly admonished the EIC governors that summary whippings were not in keeping with the laws of England, and exhibiting “an appearance of cruelty and tyrannical government.”⁹⁹ On one occasion the EIC executive in Bombay found one of its subordinates guilty of graft without recourse to any of the charter courts. Upon hearing news of this episode, the Directors consulted one of their lawyers (most likely Woodford or perhaps Browne), who replied that he was tired of defending the Company in metropolitan courts from charges of “arbitrary and illegal” proceedings in the East Indies.¹⁰⁰ He added that the only legal and acceptable way for the Company to seize money or effects from the inhabitants of the settlements was through the agency of the royally chartered courts.¹⁰¹

The Company's opposition to legal change softened, however, in light of the

Papacy and made it illegal for anyone to resolve a dispute properly cognizable by the Crown and its courts in another venue. By the 18th century usage seems to have moved from papal politics to any attempt at subverting Royal authority.

⁹⁷ See especially Woodford's 1727 threat to the nascent courts that deviation from the King's charter could constitute a praemunire: BL IOR E/3/103: Letter to Calcutta: 17 February 1727, ff. 255-7 para. 13 “...for the very intimations of Kings are commands and if not obeyed or their grants not thankfully accepted and made use of as they ought may bring you as well as us into a praemunire.”

⁹⁸ BL IOR E/3/105; Letters to Madras from London: 12 February 1731, para. 100.

⁹⁹ BL IOR E/3/104: Letters from London to Madras, p. 328v (para. 107 - 23 January 1730).

¹⁰⁰ BL IOR H/432 anonymous notes on the case of Thomas Waters, f25 (unpaginated)

¹⁰¹ BL IOR H/432 anonymous notes on the case of Thomas Waters, f25 (unpaginated). This note echoes the charges made by Thomas Waters in his bill against the Company (BL IOR H/74 pp. 107-124).

vicissitudes of war and growing pressure from India for an end to the universalist English legal order. During the war of Austrian Succession, in fall 1746, French forces under Joseph Dupleix successfully captured Madras after a brief siege. Many of the EIC employees, merchants, and loyal residents of the city decamped to the trading factory of Fort St. David further to the south, while other Luso-Indians and *dubashes* remained in the city to work with the French. Within a matter of months, the EIC administration at Fort St. David wrote to London asking what they should do about erecting a forum for civil justice like the Mayor's Court. The Company's solicitor Nathaniel Cole wrote to the EIC secretary in early 1748 that the "constitution" of Madras was local and that as a consequence the EIC had no "...authority to erect any court or to exercise any jurisdiction civil or criminal at your place [Ft. St. David]."¹⁰²

The 1748 treaty of Aix-la-Chapelle ending the war returned all possessions in the East and West Indies to the status-quo-ante, but it took some time for the EIC to fully take repossession of the city. Once they had reestablished control, the EIC executive queried the Company about whether the Mayor's Court should be reestablished and what method of meting out criminal justice they should institute. The Committee of Correspondence in London took the matter seriously and in June 1751 ordered Cole to examine it.¹⁰³ He subsequently turned to William Murray, Dudley Ryder, and Charles Yorke for their opinion on the future of justice in the city.¹⁰⁴ Cole and the counsel agreed

¹⁰² BL IOR E/1/35: Miscellaneous letters to the EIC, p.33 (15 March 1748).

¹⁰³ BL IOR D/21 Committee of Correspondence Memoranda, 25 June 1751, f.14.

¹⁰⁴ The Company made Charles Yorke its standing counsel in July 1751 - see E/1/207 Miscellaneous letters from the EIC 3 July 1751.

that the old charter had lapsed and in August the directors sent out a letter to Madras telling them the news and ordering a stop to any attempts to revive the Mayor's Court, elect aldermen, or otherwise reconstitute chartered authority.¹⁰⁵

Cole's queries to the three counsel also raised the possibility of securing a replacement charter. Since it looked like the Company needed a new charter in order for any courts to exist at Madras, what would the consequences be of trying to establish a new legal order for all of the EIC's settlements? What would happen, Cole asked, if “notwithstanding any orders or recommendations from the Company” the Mayors' Courts at Calcutta and Bombay, whose charters had not lapsed, decided to refuse the new charter or even delay in accepting it? Cole preferred that the courts at all three settlements “be on the same footing and under the same regulations.”¹⁰⁶ Yorke, with rather ingenious reasoning, told the Company that the new charter could be drawn up in a conditional fashion, whereby surrender of the old order would be required in Bombay and Calcutta. At the same time he told Cole that the aldermen of Calcutta and Bombay need not consciously surrender the old charter. Rather, if they acted at all in accordance with the new charter instead of the old, this would count as tacit, and legal, acceptance of the new charter.¹⁰⁷ Murray agreed with this reasoning, while Ryder was more cautious, agreeing tentatively but asking to see a draft of the charter when it was ready.¹⁰⁸

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¹⁰⁵ BL IOR E/3/111: Letter to Fort St. David, 23 August 1751, (para. 95) p.170. This letter lays the responsibility for the decision solely on Murray, Ryder, and Yorke.

¹⁰⁶ See BL IOR L/L/7/36: Legal Advisors' papers, 7 August 1751. Cole's questions stated in opinion by Charles Yorke.

¹⁰⁷ BL IOR L/L/7/36: Legal Advisors' papers, 7 August 1751.

¹⁰⁸ William Murray's opinion: BL IOR L/L/7/37: Legal Advisors' papers, 17 August 1751. Murray also insinuated that he had perhaps suggested the idea to Yorke in the first place. Dudley Ryder's opinion:

With the main legal obstacle to revising the charter remedied, Cole presented the case for a new legal constitution to the entire Court of Directors in December 1751. By January the Directors gave the Committee of Correspondence the go-ahead to pursue a new constitution with “alterations from the former charter as they shall think proper.”¹⁰⁹ The Committee met with Cole and “gave [him] several verbal directions and instructions for forming a new charter.”¹¹⁰ For most of 1752, Cole worked on the document, perhaps with chancery lawyer John Browning, occasionally being called in by the Committee for additional verbal instructions. In December, Cole and the deputy chairman of the EIC brought a draft of the document to the Attorney General (Ryder), Solicitor General (Murray), Charles Yorke, and John Browning.¹¹¹ Unfortunately neither the draft nor the comments of Murray, Browning, Ryder, or any of the EIC directors who added their advice, survive - though Company counsel Charles Yorke's notes are extant.

Yorke began his brief comments by reiterating that the courts in Bombay and Calcutta should be given no notice that they had to surrender their old charters. He added later that not even the Crown could force a lawfully made corporate body to accept a new charter “derogating from or altering their ancient privileges.”¹¹² These arguments were more than familiar to the Company and its supporters, who had hung their hat on chartered privilege on many occasions.

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BL IOR L/L/7/38: Legal Advisors' papers, 19 August 1751.

¹⁰⁹ BL IOR D/21: Committee of Correspondence Memoranda, 28 January 1752, f24v.

¹¹⁰ Idem. These instructions, if they were ever written down, are untraceable.

¹¹¹ Ibid., 6 December 1752, f48v-49. The draft of the charter is referred to as being “settled by Mr. Browning” in an index listing for the chairman of the EIC's own marked up copy in the hopelessly fragmentary BL IOR H/38: Legal Notebook, f.16v (3rd section).

¹¹² BL IOR H/411: Charles Yorke's comments on draft charter 12 November 1752, f.31. All citations this paragraph from this one page of notes.

The EIC's legal counsel had no doubt that this subterfuge was necessary as the new charter would undermine the authority and jurisdiction of the old Mayors' Courts. Instead of having aldermen elected by their peers, the new draft called for the EIC executive alone to choose them. Though Yorke grudgingly accepted this provision, noting that it would better from the point of view of the Company, he was also clearly concerned that the prevailing constitution of government and law in the EIC settlements was too conducive to oppression and abuse of power. Further, the fact that in the new charter the Governors and Councils in the Indian settlements were still constituted as the local courts of appeal troubled him. He suggested in his notes that *per saltum* (immediate - first instance) recourse to the Privy Council be mandated in cases where the Company or EIC executive were interested parties.¹¹³ The Company opposed this provision, however, and it did not appear in the final charter. Instead, the final draft provided for much weakened Mayors' Courts at the mercy of the EIC executives. In addition, the final version of the charter of 1753, like the 1726 charter before it, gave metropolitan courts and legal institutions very little formal role in the oversight and governance of the Indian settlements, besides that trickle of appeals which made it to the Privy Council.

The charter did however preserve concerns of metropolitan elites about the constitutional relationship between England and its colonies. Yorke succeeded in striking some provisions in the charter he thought too repugnant to the laws of England. At the same time as the Privy Council and royal governors were busy striking down American laws and customs seen as diverging too greatly from the main stem of English law, Yorke

¹¹³ BL IOR H/411: Charles Yorke's comments on draft charter 12 November 1752, f.31.

worked carefully to ensure that the East Indies would be governed along similar lines.

Cole and/or Browning had apparently added a clause in their draft charter whereby each settlement would be ordered to keep a general register of conveyances, with preference given in court to those registered over those not. The Company and the charter courts had tried to institute this rule several times unsuccessfully in preceding years. Yorke objected to the provision on the grounds that the Crown could not authorize such a law without parliamentary sanction. Likewise, in the wake of constant debates over non-Christian oath-taking, the draft included language attempting to extend legislation making solemn affirmations equivalent to oaths, intended for Quakers, to all manner of people in the East Indies. In keeping with contemporary constitutional reasoning, Yorke wrote that this provision could not be added, as "...the charter of the Crown unaided by Parliament cannot extend the statute law to any of the plantations or English settlements." He added that common law rules about perjury - rules which seemed to exclude non-Christians - would have to suffice for India. Murray and Ryder similarly approved of allowing evidence of non-Christians by affirmation, but agreed that they could not be punished for perjury without a parliamentary statute so authorizing.¹¹⁴

Lord Chancellor Hardwicke apparently also made his objections known to this deviation from the imperial constitution. Cole wrote to Charles Yorke during the final phases of charter preparation to say that the part of the charter relating to oaths and punishment had been stricken - noting that Yorke's father, the Lord Chancellor, would

¹¹⁴ Murray and Ryder gave their final approval on 7 December 1752 see BNA PC 2/103: Privy Council Register, p.248.

have found it “obnoxious.” In addition Cole, perhaps fearing Hardwicke's disapproval, asked Yorke to not “trouble” his father about the charter and to merely mention it in passing conversation.¹¹⁵ With the approval of all the law officers, Cole rushed the Charter to the royal offices along with payments from the Company. After several frantic notes from various Crown secretaries asking for another 500 or 1,000 pounds to make things go faster, Secretary of State Newcastle approved the charter and the King signed it just after New Year's Day 1753.¹¹⁶

Yorke had successfully raised constitutional objections to several provisions in the proposed charter on rather minute constitutional grounds. Surprisingly, however, he remained mute on the most radical difference between the old and new charters. Likewise, none of the the EIC's legal advisers appear to have taken the opportunity to suggest any remedies to the constitutional problems inherent in the Indian settlements. As evidenced by their opinions and rulings in the years leading to the new charter, it's clear that the Company's lawyers and other metropolitan legal elites believed in allowing broad access to English legal process. However, the result of the new charter, which they approved, was the erection of strict limits on legal subjecthood and litigants' access to English law in India.

This feat was accomplished by the inclusion of a new clause in the final charter which explicitly prohibited the charter courts from hearing any disputes between “natives

¹¹⁵ BL Add. Ms. 35,633: Nathaniel Cole to Charles Yorke 11 December 1752, f173.

¹¹⁶ This correspondence between Cole and various Crown functionaries can be found in BL IOR H/411, f.28-30.

of India.”¹¹⁷ The new charter left these residents to solve their disputes “among themselves.” No evidence exists that any of the EIC's legal advisers proposed the policy. Rather, this silent constitutional coup came as a direct result of years of lobbying and complaint from India.¹¹⁸ At the same time, there is nothing to suggest that anyone in England challenged the new charter on this point; it was, after all completed behind closed doors with the assent of the chief Whig politicians and legal officers.

Although it is not entirely surprising that the EIC's lawyers might think that jettisoning an entire class of often troublesome litigants might bring the Indian courts more in line with their vision of an anglicized and procedurally sound legal system, this exclusionary decision was not a foregone conclusion by any means. The decade surrounding the new charter featured great expansions of legal subjecthood throughout the empire. In 1740, Parliament passed a bill providing naturalization avenues for foreign-born Protestants and Jews residing in the American colonies, leading at least several thousand colonial residents to gain full English legal rights and responsibilities in the empire.¹¹⁹ Further, in 1753, the sitting government pressed Dudley Ryder and other law officers of the Crown into service to promote the passage of the Jewish Naturalization Act, which provided an opportunity for Jews living in Britain to become full subjects.¹²⁰ Philip Carteret Webb, the noted imperial lawyer, lent his support by

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¹¹⁷ See Shaw, *Charters*, p. 258, 270.

¹¹⁸ For explicit mention of this rationale see paragraph 136 of the letter to Calcutta from London dated 31 January 1755 printed in James Long, *Selections*, p. 83.

¹¹⁹ 13 George II c.7 (1740). The names of 7,072 to avail themselves of the statute are recorded in London. See M.S. Giuseppi ed. *Naturalizations of Foreign Protestants in the American and West Indian Colonies* (Manchester: Sherratt & Hughes), 1921, p. xii.

¹²⁰ See Dana Rabin, “The Jew Bill of 1753: Masculinity, Virility, and the Nation” *Eighteenth-Century*

writing a long pamphlet arguing on behalf of the law and stating his view that even without Parliamentary intervention, all Jews born in Britain were full subjects of the Crown and entitled to all the advantages of English law.¹²¹ Others in the metropole went so far as to suggest that the Indian settlements should be brought more into the mainstream of the empire as a whole. One pamphleteer, for example, proposed erecting in India “a Council and Assembly, chosen by the People, as in America,” incorporating new British immigrants with the extant population of “black merchants” and “artizans.”¹²² Nevertheless, the exclusionary provisions of the new charter also fit into the growing trend both in the colonies and metropole against these expansive and territorial notions of English law and subjecthood.

Though the Jewish naturalization bill passed in Parliament, a massive popular reaction caused its repeal only a year later. One propagandist succinctly stated the opposition of the angry mobs to the bill, namely, that “our state can have no natural-born subjects but Christian.”¹²³ Likewise, not even the judges' decision in Omichund's case could convince many members of the British public that oaths by non-Christians, Indian or not, should be admissible in court. In 1764 an anonymous reader wrote to the *Gazetteer and London Daily Advertiser* to ask if non-Christians were allowed to swear oaths in court, the editor responded by citing Omichund's case before noting that it was

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Studies 39.2 (Winter 2006), pp. 157-171. Also Dudley Ryder *Diary*, p.28.

¹²¹ Philip Carteret Webb, “*The question, whether a Jew, born within the British dominions...*” London, 1753. See especially p. 47.

¹²² *Letters relating to the East India Company. Containing, I. A letter to Sir J- L-, on dividing annuities from the trading stock, ...* London, MDCCLIV. [1754], pp. 24-5.

¹²³ William Romaine, “*An answer to a pamphlet...*” London, 1753, p.10. Cited in *Rabin Jew Bill*, p. 167.

still “an open issue.”¹²⁴ Even more strikingly, in the American colonies, both colonial elites and the Crown had given their support to a host of draconian laws and principles establishing racially-based slavery. In these colonies, Anglo-American settlers solved the problem of how to apply English law to enslaved Africans by arguing that their very nature and “savage difference” required a radically different set of laws placing them firmly outside the body politic.¹²⁵

Though few in India at the time would have argued that the differences between Indian “natives” and Europeans were so extreme as those asserted in the Americas, we've clearly seen that some Englishmen and Indians believed that “difference” in its many guises necessitated different laws and courts for these groups. In fact, the Company cited the petitions purportedly written by members of the various castes in 1736 Madras as the most important motivation in creating the exclusionary clause in the new charter. As a result of these assertions of difference, corroborated by numerous Englishmen and other residents of their settlements, the EIC created a new legal order after 1753 which marked the beginning of a serious divergence between the legal regimes of EIC India and the rest of the British world. After 1753, the legal and civilizational and difference-making category of “native of India,” though hotly contested in India itself, would shape all subsequent popular, parliamentary, and legal debates over India, law, and empire.

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¹²⁴ *Gazetteer and London Daily Advertiser*, Wednesday, March 14, 1764; Issue 10919.

¹²⁵ See Christopher Tomlins' excellent “Transplants and Timing: Passages in the Creation of an Anglo-American Law of Slavery,” *Theoretical Inquiries in Law* 10.2 (2009), p.402 for his use of “savage difference” in discussing South Carolina slave codes.

Chapter 8: Expansion and Constitutional Change 1753-1773

Over the decades of the 1750s and 60s, the EIC gained territorial rights both by force of arms and treaty to vast areas around Calcutta (the whole of Bengal), Madras, and elsewhere. Needless to say, all of these areas fell well outside of the territorial limits of Madras, Bombay, and Calcutta as specified in the royal charters of 1726 and 1753. As a result, Company officials, residents of these new EIC territories, and officers of the charter courts all struggled to make sense of a new world of legal possibilities. The history of the East India Company in this era of expansion has been well explored, with hundreds of thousands of pages written just on the Company's takeover of the Mughal province of Bengal after 1765. The story of law in the EIC's territories in this literature is often one of despotism and confusion. According to this narrative, the absence of law and accountability in India produced a new constitution in 1773, giving legal authority to trained English common law judges to mitigate the Company's absolute rule. While aspects of this narrative are certainly accurate, it nonetheless elides the well-established nature of English legal institutions in India prior to the late 1750s, as well as the complex and sometimes contradictory process by which the legal changes of 1773 came about.

Instead of forging a legal culture and constitution out of whole cloth, the rapid changes in the political and military circumstances of the Company after the 1750s only accentuated already-extant debates about the nature of law and government in India. Foremost amongst these prior debates were those involving the charter courts and their new constitution after 1753. While the charter of 1753 altered the legal regime in EIC India, this chapter shows that it did not substantively change the procedure or

jurisprudence of the charter courts. By the 1760s the Company took on the responsibility of administering ostensibly Mughal courts and judicial fora throughout Bengal. This charter examines how the EIC and its employees approached this task, arguing that the example of the Calcutta Cutcherry loomed large in their conception of how customary legal systems in India should function. It also suggests that unlike in the period of the first charter, the Company's experience in Bengal dictated the terms of debate about the future of law in EIC India.

The New Charter

The charter of 1753 arrived in India with similar fanfare to that which greeted its predecessor twenty-six years earlier. At the ceremonies surrounding the charter's arrival, the mayors and EIC executives made no mention of its exclusionary provisions. Rather, litigants, aldermen, and local elites were left to interpret the charter and insist upon, ignore, or protest the new constitution. As soon as the new courts opened their doors, litigants of all kinds came for a hearing just as they had in the old. In addition, after 1753, as before, the aldermen-judges of the Mayors' Courts continued to be merchants and not metropolitan lawyers. The chancery practice of the courts remained in place and the criminal quarter sessions met as they had since 1727. Though the new charter established an exclusionary jurisdictional regime on paper, the officers of the new courts did not take their instructions at face value. Instead, officials engaged in a series of debates over their authority and jurisdiction, as well as the very nature of justice in the EIC's Indian settlements and the imperial constitution broadly.

When the charter arrived in Bombay in September 1753, the Governor ordered a

round of gun volleys fired and a tent erected to fete the inauguration of the new court.¹ The Mayor's Court then dutifully reconvened with no further fanfare and, more importantly, almost without any change in its practice. Indeed, after the new court opened, Hindu and Muslim litigants continued to use the court as before, filing at least eight suits against each other before the end of the year without any complaint from the aldermen.² In 1754 the Mayor's Court even ordered public announcements that "all manner of persons of what casts soever" would be liable to a fine if they had the property of deceased residents in their possession without letters of administration or a proven will from the charter court.³ In addition, the court heard a case in 1757 over a contested Hindu widow's allowance, which involved elites from the Shenvi, Prabhu, and Goldsmith communities - no one in the case, whether alderman or litigant made even the slightest mention of the new charter.⁴

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¹ BL IOR P/341/19: Bombay Public Proceedings, p.284 (6 September 1753).

² BL IOR P/417/8: Bombay Mayor's Court Proceedings,

³ BL IOR P/417/9: Bombay Mayor's Court Proceedings, p. 46 (22 February 1754). Within a month, four non-British litigants brought deceased relatives estates before the court.

⁴ BL IOR P/417/13: Bombay Mayor's Court Proceedings, pp. 214-38 (August-September 1757). There is no mention of the exclusion in the rules promulgated as late as 1763

Bombay	1755 (22)	1766 (80)
Both parties non-British	64% (45%)	75% (37%)
British Complainant, non-British Respondent	18% (13%)	12% (12%)
non-British Complainant, British Respondent	4% (4%)	na
Only British	14%	12%

Table 3: Litigants at the Bombay Mayor's Court 1755 and 1766⁵

Table Three, calculated from the Mayor's Court records for 1755 and 1766, clearly shows that non-British litigants' use of the court in internecine and other disputes continued to dominate the Bombay docket after 1753. The exclusionary provision of the new charter seems to have had essentially no effect on the legal practice and culture of the island.

This is not to suggest that the EIC and the chartered courts wholly ignored categories of difference in Bombay. In a 1754 liquor contract, for example, the Company used variable terms (without definition) to specify prices for “natives,” “Indian Inhabitants,” “European Soldiers and Sailors,” and “English Inhabitants.”⁶ Bombay aldermen also continued to apply a polyglot jurisprudence in cases before them. In 1756, for instance, they invalidated a will written by a Muslim merchant on the grounds that it

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⁵ The data for 1766 in this table are inherently skewed as I was only able to take a 1/10th sample of the eighty cases that year. The number in the parentheses indicates the percentage of non-Christian litigants fitting in a given category if “non-British” were taken to mean non-Christian. There were many litigants with Luso-Indian and Armenian names in my sample who were likely Christians but probably not of British descent.

⁶ BL IOR P/341/19: Bombay Public Proceedings, pp. 205-8 (13 August 1754).

was "contrary to the moor law."⁷ Aldermen retained their commitment to broad definitions of subjecthood and civic participation. In 1766 they used language reminiscent of ancient rights and liberties to declare, contrary to the EIC executive, a particular section of land on the island as "property in common to every free inhabitant of this place."⁸ This continuity of judicial practice reflected the dearth of judicial alternatives, since Bombay's chartered courts remained the primary venues for government-enforceable justice. This experience set Bombay apart from Madras and Calcutta and ensured that it would maintain its extant legal culture until the end of the century.

Upon the charter's arrival in Madras, the newly appointed aldermen gathered the "principal inhabitants" at one of the Company's warehouses to "...give notice to all manner of persons, that this Mayor's Court of Madraspatnam is now open and will hereafter be open to all that shall apply thereto for justice in all civil matters."⁹ There had been no court since 1746 because of the French occupation, but the memory of the Mayor's Court nonetheless remained alive. One of the aldermen of the former Madras court reappeared and asked that he be recognized as an alderman on the new court in seniority to all those appointed anew. The Court and the EIC executive refused him, declaring that the old court and its constitution were extinct. Yet, despite having a new charter, the aldermen of the new courts looked to their own knowledge of local legal culture in setting up the new court, rather than to the letter of their mandate.

⁷ BL IOR P/417/12: Bombay Mayor's Court Proceedings, p. 90 (1 November 1756).

⁸ BL IOR P/417/22: Bombay Mayor's Court Proceedings, p.234 (26 July 1766).

⁹ BL IOR P/329/69: Madras Mayor's Court Minutes, 24 August 1753.

The text of the new charter forbade “natives of India” from suing each other in the Mayors' Courts. However, it was up to the aldermen to interpret this mandate in the day-to-day practice of the courts. In Madras, as in Bombay, the clientèle of the new court in its first few months of operation remained largely non-British.¹⁰ With this litigation forcing their hand, the aldermen sat down amongst themselves to decide exactly how they should understand their limited jurisdiction.

The Madras aldermen soon arrived at an interpretive conclusion that directly challenged the intent of the charter. Writing to the Directors in London, they declared that excluding the non-Christian residents of the city from English justice would be a detriment to all merchants, both “European” and others. They added that having disputes resolved by castes and other informal tribunals would undoubtedly cause many “frauds” and problems and that “men of the best of characters” within Madras wanted to return to a universal jurisdiction for the Mayor's Court.¹¹ In addition, the court sought to establish whether or not “Indian natives” of the Company's settlements in the Madras hinterlands were also subject to the exclusionary clause. In a later letter, the aldermen further complained to London that the new charter's provision letting non-Christians take simple affirmations instead of oaths binding under English law was an unacceptable and foolish concession to pluralism.¹² In essence, the aldermen wanted to read the charter in light of

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¹⁰ Eight Britons appeared as complainants in the 1753 court whereas thirteen Armenians, Hindus, and Muslims filed suit in the same period. However only one Hindu or Muslim litigant filed suit against another from those groups P/329/67: Madras Mayor's Court Proceedings, 1753.

¹¹ A full transcript of this January 1755 letter can be found in BL IOR P/240/13: Madras Public Proceedings, pp. 15-16.

¹² BL IOR P/329/69: Madras Mayor's Court Minutes, p.333 (16 November 1755).

legal expectations and practices which had emerged over the previous decades.

The EIC executive at Madras, obviously frustrated by this judicial intransigence, themselves wrote to London, disingenuously claiming that the aldermen went so far as to include “all born in India” under the heading of “natives of India,” lumping many Englishmen in the settlement with their Hindu and Muslim neighbors.¹³ The EIC and its lawyers in London took this syntactical problem seriously and wrote to clarify that the charter was meant to exclude “Mahometans and Pagans” specifically by virtue of their cultural/religious difference, not those Christians who happened to be born in Asia.¹⁴ The Company also reminded the Madras council that this exclusion had been conceived directly in response to the earlier troubles at Madras and the subsequent petitions from community leaders.¹⁵

On receiving this news from London, the aldermen informed the Madras executive that the court's objection to the charter was not so much over the definition of “Indian natives.” Instead, they believed that “no persons whatever living under the Company's protection should be denied the liberty of applying to public justice.”¹⁶ This conception of universal legal subjecthood came straight out of earlier debates and indicates the degree to which the charter of 1753 conflicted with a widely held view that English law and government could apply to “Indian natives.”

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¹³ Letter of 9 March 1754 (para. 28) reprinted in Henry Dodwell ed., *Calendar of the Madras Despatches 1744-55* (Madras, 1920), p. 217.

¹⁴ Idem. Nathaniel Cole, the Company's standing counsel, apparently spent a good deal of time trying to figure out how to respond to these objections. See his letter in BL IOR E/1/38 Miscellaneous Letters to the London EIC, p. 68b (8 November 1754).

¹⁵ BL IOR E/4/861: Letters from London to Madras, p. 417 (para. 104 - 31 January 1755).

¹⁶ Recorded later in BL IOR P/329/69: Madras Mayor's Court Minutes, p.219 (11 August 1755).

The aldermen did not win this particular battle, as the Company indicated the charter could not be changed again. Yet, like their predecessors of the 1730s, they continued to assert their legal privileges as a royally chartered entity and the “King's Court of Record.” Even though the charter gave the EIC executive extensive power to appoint aldermen, the aldermen themselves chafed at this rule and on at least one occasion rejected two young newly-arrived employees as members on the basis that they knew nothing of the city and were not “principal inhabitants.” Needless to say, the EIC executive insisted that the aldermen had no choice in the matter as the executive reigned supreme.¹⁷ In yet another dispute with the executive, the mayor testily asserted that it was his duty and that of all aldermen to see that the “...laws which are conveyed to this distant settlement by his Majesty's gracious charter, may be duly administered to the society under whose protection he lives.”¹⁸ Again, in early 1755, the aldermen and executive exchanged heated words over who had the power to appoint and control the sheriff of Madras. The Mayor's Court cited their “ancient privileges” as a chartered corporation, as well as passages from Edward Coke's *Institutes*, a seminal common law text, to support their shrieval power and by extension the ability to put their decrees into effect by force of arms.¹⁹ Clearly many Englishmen, even those hand-picked by the Company, continued to believe in the suitability of English government, law, and liberties for Madras.

Likewise, the Quarter Sessions, justices of the peace, and juries continued to

¹⁷ This debate at BL IOR P/329/71: Madras Mayor's Court Minutes, 24 November 1757.

¹⁸ For this dispute see *ibid.*, 28 June 1757.

¹⁹ BL IOR P/329/69: Madras Mayor's Court Minutes, pp. 20-5 (24 January 1755).

apply English law universally in criminal cases, regardless of the background of the parties. The proceedings of the Madras quarter sessions show a constant stream of non-British defendants and accusers, including a 1763 case in which a jury of six Hindus and six Englishmen convicted a woman for killing her child based on her neighbor's testimony.²⁰ As Ravi Ahuja has documented, the justices also used their power to regulate labor in the city and discipline workers much as justices did in the Americas.²¹

Madras residents of all kinds also continued to seek justice in the English charter courts in spite of the charter. As Table Four demonstrates, non-British litigants continued to be players in a majority of suits in the Madras court throughout its history, and at least in the early years of the new constitution, they managed to work around the charter's exclusionary provisions. Indeed, two years after the arrival of the charter, one in three civil cases did not involve anyone of British descent. As late as 1760, a Hindu litigant brought suit against a recalcitrant Hindu resident in the court. The aldermen noted that hearing the case might violate the strict provisions of the charter, but that they would admit it nonetheless on the grounds that parts of the dispute at issue dated from before the new charter's arrival.²²

²⁰ Tamil Nadu State Archives, Chennai: Madras Mayor's Court Records, Quarter Sessions vol. 1 (14 January 1761- 9 October 1765). Prof. Ravi Ahuja has kindly lent me his research notes from this volume, which was unavailable at the TNSA when I visited.

²¹ Ravi Ahuja, "The Origins of Colonial Labour Policy in Late Colonial Madras," *International Review of Social History* 44 (1999), pp. 159-195. See also the more detailed study in his published dissertation *Die Erzeugung kolonialer Staatlichkeit und das Problem der Arbeit: Eine Studie zur Sozialgeschichte der Stadt Madras und ihres Hinterlands zwischen 1750 und 1800*, Beitrage zur Suedasienforschung, v. 183 (Stuttgart, 1999).

²² BL IOR P/329/72 Madras Mayor's Court Minutes, 6 May 1760.

Madras	1755 (63) ²³	1766 (220) ²⁴
Both parties non-British	33% (6%)	na
British Complainant, non-British Respondent	21% (17%)	45% (31%)
non-British Complainant, British Respondent	17% (12%)	50% (14%)
Only British	29%	5%

*Table 4: Litigants at the Madras Mayor's Court 1755 and 1766*²⁵

Despite reliance on these loopholes, by the 1760s, suits *between* non-British litigants had largely disappeared from court. In 1766 for instance, the aldermen refused to hear a case between a Chettiar merchant and another Hindu resident.²⁶ This is not to say of course that the non-British population of the city stopped using the English courts. Instead they turned to jurisdictional subterfuges. Contemporary observers, including aldermen, noted that many Hindu merchants in the city simply transferred their debts to Englishmen who could then sue on their behalf in the Mayor's Court.²⁷

Thus, there seems to have been no large-scale departure of the populace from

²³ BL IOR P/329/69: Madras Mayor's Court Proceedings, 1755.

²⁴ BL IOR P/329/78: Madras Mayor's Court Proceedings, 1766.

²⁵ The data for 1766 in this table are inherently skewed as I was only able to take a 1/10th sample of the 220 cases that year. The number in the parentheses indicates the percentage of non-Christian litigants fitting in a given category if "non-British" were taken to mean non-Christian. There were many litigants with Luso-Indian and Armenian names in my sample who were likely Christians but probably not of British descent.

²⁶ BL IOR P/329/79: Madras Mayor's Court Minutes, 7 October 1766

²⁷ See the contemporary correspondence on this matter in BL IOR E/4/862: Letters from London to Madras, pp. 273-5 (13 March 1761). Niels Brimnes' detailed research of later Mayor's Court records bears out this observation - see especially his "Beyond Colonial Law," pp. 531-2. Transferring debts and using "friendly creditors" to avoid adverse consequences has a long history throughout the Anglo-American legal world. For more see Balleisen, *Navigating Failure*, especially p. 179.

English judicial fora in Madras even after the arrival of the new charter. Though the Choultry court at Madras continued to function throughout this period with limited interruptions it is not clear what role it played. If anything it seems to have lost prominence as a dispute resolution forum.²⁸ Niels Brimnes has studied the later period of the Mayor's Court in some detail and shows convincingly that the Mayor's Court continued to serve as an important site of status-building and contestation within the Hindu community at Madras.²⁹ Indeed, there are numerous instances from this post-1753 period of non-British merchants and elites taking advantage of English legal institutions. Several Chettiar litigants even successfully pursued cases against an EIC favorite all the way to the Privy Council in the late 1760s.³⁰ In addition, Hindu residents continued to file wills in the Mayor's Court during this period and many elites saw the need to work with other English legal forms for personal gain.³¹ Local elites also continued to serve as intermediaries and expert witnesses in the Mayor's Court. Along with Kanakappa

²⁸ See Love, *Vestiges*, v.3, pp.132-4, p. 479 for proceedings in the Choultry in the 1770s.

²⁹ Brimnes, "Beyond Colonial Law."

³⁰ In 1765 Christian Van Teylingen, the chief of the Dutch factory at Negapatnam, assisted the EIC against orders and was forced to flee to Madras for protection. He could not however flee from his creditors. Three of them, Medah Veradah Ragullou Chitty, Modelly Travangadam Chitty, and Chacolonga Chitty sued him in the Mayor's Court and when van Teylingen escaped to England they successfully defended their interests at the Privy Council. For correspondence and attorneys' bills in the case see BNA C111/229. For the minutes of the council see BNA PC 2/113, pp. 266-7 (4+5 August 1768); PC 2/114, pp. 298-99, 409 (2 April 1770 + 9 June 1770). Van Teylingen eventually became a naturalized British subject by act of Parliament (7 George III c.3). For a good summary of his travails see A.K.A. Hodenpijl, "De Gouverneurs van Koromandel: Christiaan van Teylingen (1761-1765) en Pieter Haksteen (1765-1771)," *Bijdragen voor Vaderlandsche Geschiedenis en Oudheidkunde*, 5th series, v.10 (1923), pp. 134-157, 257-77. Many warm thanks to Adriana Sandler for her expert help with this piece.

³¹ The *nawab* of Arcot (Mohammed Ali Khan Walajah) is a prime example of a local political elite who saw the utility of English legal forms. In 1766 he produced a valid English power of attorney to his agent John Call in order to make enforceable contracts and to "settle law suits" in English courts in India and beyond. See Gurney, "The Debts of the Nabob of Arcot," p. 60 (Gurney cites documents here from the *nawab*'s own archives). Though not filed in the Mayor's Court, the *nawab* also wrote a formal will which was distributed to creditors upon his death - see the transcript in Gurney, Appendix 3.

Mudaliar, the powerful *dubash* and Mayor's Court translator, other *dubashes* appear to have enjoyed wide leeway in determining cases involving Hindus for the aldermen.³²

In addition, because the aldermen chose to interpret the exclusionary provisions of the charter as narrowly as possible, those living or born in newly acquired EIC territories outside of the 10-mile bounds of Madras could bring suit against each other in the court. One later Company attorney even reminisced that he had once been asked by a Hindu couple in Madras where they should give birth to their child so that "...the issue might enjoy the privileges of a British born subject," he noted that he "should of course have advised this ambitious husband to take his wife beyond the boundary of Madraspatnam."³³ Clearly then, access to the broader world of English law and subjecthood continued after the charter both in fact and in aspiration amongst certain segments of the non-English population of Madras.

Though Madras saw debate over the new charter and had been at the heart of complaints against the old chartered order, after 1753 Calcutta became the epicenter for heated argument about the nature of English law in India. When the new charter arrived in Calcutta, the governor ordered that notice of its arrival be posted around the city in multiple languages, but refused to let the aldermen of the old Mayor's Court see it until they had convened as a new court. The aldermen complied and met under the new

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³² One contemporary noted that in cases amongst "the Black People" the EIC governor "deputes his dubash to examine into the matter." The same observer declared that Aya Tumba Venkatachellum, the personal *dubash* of EIC Governor Joseph DuPre, was rumored to have lived "...in all the freedom and excess of Europeans" and that many Hindu residents considered it a "hardship" to "submit to him as a judge." BL IOR Eur. Ms. E379/2: Diary of George Paterson, p. 259.

³³ This is attorney general Popham's recollection from 1783 in BL IOR H/427: Madras legal papers, f.151.

constitution twenty days later.³⁴ While the Madras aldermen seemed to agree in the early days of the new charter that all should have access to the English courts, the Calcutta aldermen engaged in a series of debates on the matter which would continue for several years.

After allowing suits between Hindu residents in the first week of the new court's operation, the Calcutta aldermen decided that they needed to discuss "that part of his Majesty's charter relating to the Indian Natives."³⁵ Though the arguments raised during this debate do not survive, the minutes of the court record that:

"The court do understand the charter to mean only Mogulls and Gentoos to be Indian Natives who are excluded complaining to this court one against the other."³⁶

Though at first appearing to give greater weight to the charter's exclusionary provisions than their counterparts in Bombay and Madras, the Calcutta aldermen proved nonetheless forceful in their protests against the new order. In a 1754 letter to London they outlined a typically expansive vision of British subjecthood and the applicability of English law. The aldermen first noted that due to the new charter "Indian natives" would no longer come into court, driving them instead to the "country government" for justice. Forcing inhabitants to look to other political powers for justice and authority, they argued, would necessarily undermine any English sovereignty in Calcutta. Such abrogation of

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³⁴ BL IOR P/1/26: Calcutta Public Proceedings, p. 455 (1 October 1753).

³⁵ E.g. a litigant named Monnuboy sued a Calcutta resident named Pernoramdeb and the aldermen instructed the sheriff to proceed with the case as usual. BL IOR P/155/27, 16 October 1753.

³⁶ BL IOR P/155/27: Calcutta Mayor's Court Proceedings, 19 October 1753. Only one alderman, a veteran of the old court, objected to this definition, though unfortunately the nature of his dissent is not recorded. The dissenter was Holland Goddard, a former mayor, and an alderman since 1745.

sovereignty would “...overthrow your Majesty's most gracious intentions of transmitting the benefit of the Laws of England to his most distant subjects residing under your protection here abroad.” The aldermen also undermined the exclusionary binary between European and “native” by declaring it their belief that all those “...who reside and enjoy their trade and property under the protection of the English flag be they of any nation whatever” could be considered British subjects.³⁷ One alderman, the merchant David Rannie, found even this statement too mild, for, in their protest, the aldermen had implicitly accepted that the charter as written excluded Muslim and Hindu residents of the city. In May 1754, he asked that the court revisit their October definition of who was excluded by the charter. In so doing, he posed the following argumentative question to his fellow judges:

“...whether every person born in Calcutta or under any English flag be he of any cast or religion whatever is not to be esteemed an English subject and relieveable in this court and also whether all persons of whatever cast or religion whatsoever that are now and have been housekeepers for five years in Calcutta are not entitled to the same liberty.”³⁸

Holland Goddard, the sole alderman to object to the October definition, joined Rannie in arguing for this powerfully inclusive statement.³⁹ However, the remainder of the aldermen refused to go as far and rejected the motion. While willing to agree to a strong letter of complaint, they were not ready to risk their careers and fortunes by unilaterally rejecting the charter's plain meaning in order to sustain broader access to British justice.

³⁷ Letter copied into BL IOR P/155/28: Calcutta Mayor's Court Minutes, 1 March 1754. The aldermen also asserted that one of the reasons Calcutta had flourished was the attraction and protection of English laws, without which it would “...be greatly depopulated and reduced to a fishing town.”

³⁸ Ibid., 17 May 1754.

³⁹ This vote appears in BL IOR P/155/28: Calcutta Mayor's Court Minutes, 21 May 1754.

These disputes over the jurisdiction and power of Calcutta's charter courts vis a vis the Company only intensified in the following years. The key locus of most of these conflicts was the operation of the Cutcherry under J.Z. Holwell. He had fought with the courts over jurisdiction prior to the new charter and he continued to do so in the new regime. When the new royally chartered small claims court posted bulletins around Calcutta in 1753 declaring itself open to all, Holwell protested to the EIC executive.⁴⁰ He complained that allowing the common people of the city access to this new court would reduce the Cutcherry revenues and cut into his jurisdiction. In response, the members of the new court, some of them members of the EIC executive, insisted that the very purpose of a royally chartered small claims court was the “...annulling and extirpating of an eastern institution where property is decided by the power and voice of a single person” i.e., the Cutcherry.⁴¹ To these Company elites, it was clear that “eastern institutions” had no place in the government of an English settlement. Yet Holwell remained steadfast in his opposition to all those who encroached on his jurisdiction and embraced the broad applicability of English law and subjecthood.⁴²

These tensions came to a head in 1755 as the result of savvy forum shopping on the part of a Bengali woman known as Sarah Shadow. The debates surrounding Shadow's case show just how contested and fluid conceptions of English law, jurisdiction, and

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⁴⁰ Amongst its other provisions, the charter of 1753 established a small claims court to hear all disputes under 50 rupees.

⁴¹ Ibid., ff.328-9.

⁴² See the dispute between Holwell and the aldermen over a warrant in the months surrounding the arrival of the charter: BL IOR P/1/26: Calcutta Public Proceedings, 14+15 August, 2 November 1753. Also BL IOR P/155/27: Calcutta Mayor's Court Minutes, 20 November 1753.

cultural difference were in EIC Calcutta in the wake of the new charter's arrival.⁴³

According to court documents Shadow was born into the Cowra caste somewhere in Bengal and later sold as a slave to the EIC governor of Calcutta, and then sold again to another Englishman. She had several children by this Englishman and in turn one of these children, a daughter named Phoebe, had a daughter with a Luso-Indian man named Peres. Sarah Shadow and Phoebe had been engaged in a long running dispute over the guardianship of this child as a result of Phoebe's recent marriage to a Frenchman. When Shadow's French son-in-law brought the dispute to the Cutcherry, she immediately went to the Mayor's Court to seek redress and head him off. When each court refused to cede jurisdiction to the other, a furious legal controversy ensued.

Shadow brought her case to the Mayor's Court with great theatricality and presence, proclaiming that the power of the Cutcherry had left her in a “trembling condition” and that she had dutifully sought help from seasoned attorney William Dumbleton to bring a complaint before the aldermen.⁴⁴ Based on her petition, the aldermen ordered the Cutcherry to return all the property it had seized from Shadow's granddaughter and summarily gave Shadow guardianship over the child. In addition, the court disbarred one of its own attorneys for daring to help the Cutcherry in the case.⁴⁵

Though more cautious in their conceptions of British subjecthood, the aldermen nonetheless declared that “...the word natives used in the charter may be construed to

⁴³ The significance of Shadow's case was not lost on the parties to the dispute itself. J.Z. Holwell himself published much of his correspondence on the matter which reached a large audience in his 1764 *India Tracts*, pp. 175-252.

⁴⁴ BL IOR P/155/29: Calcutta Mayor's Court Minutes, 16 May 1755

⁴⁵ BL IOR P/155/29: Calcutta Mayor's Court Minutes, 16 May 1755. This attorney was Jonathan Hillier.

mean Bengallers and proper subjects of the Mogul only” and as such they had jurisdiction over Sarah Shadow and her dispute.⁴⁶ A disgruntled Holwell responded, not to the aldermen, but to the EIC executive. He wrote that the Cutcherry was “independent” of the Mayor's Court jurisdiction, that he disagreed with their interpretation of the “natives” clause in the charter, that the aldermen were bent at completely “abolishing the judicial part” of the Cutcherry, and that he would not relinquish jurisdiction except by the command of the Company.⁴⁷

Displeased by this turn of events, the aldermen called Holwell before them to answer in person. They asked the former mayor “by what laws” he was held accountable in his judicial capacity at the Cutcherry. Holwell responded stridently that he was only accountable to the Company itself and drew all his authority from them. The aldermen, obviously flustered, recessed for fifteen minutes before coming back to court to ask him whether he thought he could try cases between “British Subjects” at the Cutcherry. Holwell answered that he had never taken cognizance of any case against “proper British Subjects” in his time as zamindar and that he did not consider Shadow a British subject even though she had been married to an Englishman and lived in Calcutta.⁴⁸ The aldermen dismissed him from court for being “evasive” and difficult, writing to the EIC executive that contrary to his reasoning they believed that “His Majesty's most gracious

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⁴⁶ Quoted by Holwell in BL IOR P/1/28: Calcutta Public Proceedings, p.211 (19 May 1755).

⁴⁷ Idem. Two former Mayor's Court aldermen then serving on the executive council disagreed with Holwell but nonetheless the majority declared that they as the EIC executive had the authority to interpret the charter and decide what the Cutcherry could or could not do. See BL IOR P/155/29: Calcutta Mayor's Court Minutes, 22 May 1755. For the dissenters see BL IOR P/1/28: Calcutta Public Proceedings, pp. 214-15.

⁴⁸ These debates in BL IOR P/155/29: Calcutta Mayor's Court Minutes, 23 May 1755.

charter” gave them exclusive judicial power at Calcutta. Further, they argued that the Cutcherry was not mentioned anywhere in the charter, English law, or instructions from London, and as such was not a court of record and had no legal foundation.⁴⁹

While the EIC executive put off acting, Holwell wrote them with a list of pointed questions and assertions bolstering the jurisdictional claims of the Cutcherry, clothing the institution in the common law garb of longstanding, uncontroverted usage. He asserted that the judicial power of the Cutcherry had been well established over decades and was “known” as well as “customary.”⁵⁰ He also noted that it had been “constant practice” in Calcutta for the zamindar to punish “black Portuguese” for criminal offenses.⁵¹ In addition he declared that Sarah Shadow was not a “concerned subject of his Brittanick Majesty” as the Mayor's Court asserted, but rather a “Fringe” aka a “black” Portuguese Catholic.⁵² He explained this reasoning further, declaring that Fringees were:

“...a people who sprung originally from Hindoos or Musalmen and who by the Law of Nations cannot by their conversion to Christianity be exempted from their allegiance to the Mogull their *natural* lord more than a British subject is freed from his allegiance to the King of England by embracing the Mahometan faith - and consequently this race of people are comprehended in the Royal Charter under the word natives.”⁵³

To Holwell then, Shadow, and other non-white people born in India were *naturally* unsuited and ineligible for British subjecthood or British laws by virtue of their inherent

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⁴⁹ BL IOR P/155/29: Calcutta Mayor's Court Minutes, 26 May 1755.

⁵⁰ BL IOR P/1/28: Calcutta Public Proceedings, pp. 255-6. He claimed that though no detailed Cutcherry court records had been kept before his time, that he could show etlack [*itlaq*] receipts proving that hundreds of cases involving Europeans, Englishmen, and Luso-Indians had come before the Cutcherry in previous years.

⁵¹ Ibid., p.258.

⁵² Ibid., p. 251.

⁵³ Ibid., pp. 251-2 - emphasis mine.

“race.” He continued by appealing to the executive's concerns about public policy, noting that should he lose his “summary power of hearing and punishing” members of “this race of people” in the Cutcherry, they would become uncontrollable and threaten the lives and property of all inhabitants of the city.⁵⁴

Though these racial conceptions of law and subjecthood would later come to dominate discourse about Indian colonial law, at the time and throughout the period discussed here they were still open to challenge. In fact, Holwell wrote his screed above partly as a result of realizing how badly he had lost the struggle over Sarah Shadow. Several days before his missive, the Mayor's Court had flexed its muscle in the form of the sheriff and his men-at-arms, who imprisoned Shadow's son-in-law for contempt, and gave her full guardianship over her granddaughter.⁵⁵

Yet, the controversy surrounding these cases, and the precarious position of the aldermen vis a vis their EIC superiors under the new charter, began to plant doubts in the minds of some on the court as to the appropriateness of broad English legal jurisdiction. Less than a month after Shadow's case, a *dadni* merchant named Ramseat [Ram Seth] came to the Mayor's Court in order to ask for letters of administration to the estate of deceased man named Ramkissore Gose. When a relative of Gose appeared to contest the administration, the aldermen faced the question of whether to allow the case to go forward or not. The majority of the aldermen, true to the inclusive history of the court, voted to go ahead and grant administration to one of the parties according to English

⁵⁴ BL IOR P/1/28: Calcutta Public Proceedings, p. 259.

⁵⁵ See BL IOR P/155/29: Calcutta Mayor's Court Minutes, 6+13 June 1755.

practice. However, at least four aldermen dissented in some fashion from the decision. Two dissented simply on the grounds that neither of the parties were “subjects of England.” Company employee Bartholomew Plaisted offered a more detailed objection.⁵⁶ Plaisted observed that the new charter explicitly gave Hindu residents of Calcutta the right to have their inheritance disputes determined by their own laws alone. By issuing English letters of administration and decreeing an English division of property to female descendants as well as male, he argued that the court would be infringing on Hindu customs and principles. He further noted that in light of the growing power of the Zamindar, the male relatives in the case could sue “...in a place even under his Majestys flag commonly called the cutcherry...” for redress.⁵⁷

In that same summer, Holwell imprisoned two Muslim lascars on charges of murder and piracy and asked the EIC executive for permission to determine their guilt in the Cutcherry. The executive, worried about Mughal intervention, wrote to their agent at the *nawab's* capital in Murshidabad to get a sense of whether it would be prudent to try the lascars by the “Laws of England.”⁵⁸ The agent wrote back that he thought such action would be dangerous and likely to draw the *nawab's* wrath.⁵⁹ Holwell agreed with these sentiments, stating that if the lascars were tried by “our own laws” then they would likely be sentenced to death, a punishment which would plunge the Company's settlements into

⁵⁶ BL IOR P/155/29 24 July 1755

⁵⁷ Idem

⁵⁸ BL IOR P/1/28: Calcutta Public Proceedings, p. 322 (25 August 1755). “Lascar” was a general term used for non-white seafarers and laborers in the Indian Ocean, for more see Janet Ewald, “Crossers of the Sea: Slaves, Freedmen, and Other Migrants in the Northwestern Indian Ocean, c. 1750-1914,” *American Historical Review* 105.1 (February 2000), pp. 69-91.

⁵⁹ BL IOR P/1/28: Calcutta Public Proceedings, p. 391 (8 September 1755).

“dangers and difficulties” with the country government.⁶⁰ Political considerations, in other words, necessitated a clear separation of jurisdiction.

In the wake of these cases, the EIC executive opened up several rounds of debate on the place of English law in Calcutta. Again, there was no easy consensus. Referring to the Shadow case, one member maintained that he thought the Cutcherry could take cognizance of any affairs whatsoever, so long as the Zamindar understood that his decrees could be appealed to the Mayor's Court or the executive. He also added that all Christians (Armenians, Fringeers, Portuguese, etc.) should be able to bring their suits to the Mayor's Court as they had “the same right to the benefit of his Majesty's charter as British subjects themselves.”⁶¹ This same member insisted that the Muslim prisoners be tried by the Laws of England, since there was no legal provision to do otherwise.⁶² Another member of the council, a former zamindar himself, thought that the Cutcherry had always tried cases between or involving Christians and as such should be allowed to continue, yet believed that in the case of the lascars, English laws should apply.⁶³ Still another thought that in the Shadow case the Company had no power to endow the Cutcherry with judicial power over and against the royal charter and that in the case of the lascars they should merely delay any hangings until the *nawab* was duly informed.⁶⁴

The EIC governor, Roger Drake, provided perhaps the clearest rationale for his

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⁶⁰ Ibid., p. 472 (30 October 1755).

⁶¹ Opinion of Eyre seconded by Mackett. BL IOR P/1/28: Calcutta Public Proceedings, p. 417 (25 September 1755).

⁶² Eyre's opinion in *ibid.*, p. 472 (30 October 1755).

⁶³ William Frankland's opinion on Shadow *ibid.*, p. 417, on the lascars see *ibid.*, p. 472 (30 October 1755).

⁶⁴ Mr. Beecher's opinion *idem.*

beliefs. He, along with another member, declared that the “office of Zamindar” was “unknown to the Laws of England and in some instances repugnant thereto.” Instead, he argued that the Cutcherry drew its judicial authority from the Mughal Empire, which had permitted the Company through various grants to decide disputes “relative to the natives” residing in its territories. Those grants from the Emperor, he reasoned,

“...would only allow that punishments should be inflicted on his subjects according to the Eastern Customs of his empire which is ruled by the Mahometan law though many places are filled by Gentoos (exercising the same laws) from which it appears Gentoos and Musselman are properly subjects of the Mogul and that itinerants whether Europeans Armenians or others cannot be so deemed.”⁶⁵

Drake additionally asserted that as governor he could not condone any course of action which would result in the deaths of Mughal subjects.⁶⁶ Through these statements, Drake claimed that all Muslims and Hindus living in Calcutta were in fact Mughal subjects, and so not subject to English law and government. Instead they answered to the law of the Mughal Empire as executed by its delegated agents - the East India Company. Drake's arguments, however, left room for some jurisdictional ambiguity. In his discussion of the Shadow case, he maintained that the Cutcherry could not infringe on the ability of all inhabitants to bring criminal complaints before the justices of the peace, declaring that all in Calcutta “...enjoy the benefit of the English Laws while they reside or have protection under the British Flag.”⁶⁷ This confusing juxtaposition and seeming contradiction suggests just how fraught and unsettled the question of the applicability of English law was at even the highest circles of EIC government in 1755. In addition, both the Shadow

⁶⁵ BL IOR P/1/28: Calcutta Public Proceedings, pp. 418-19 (25 September 1755)

⁶⁶ Ibid., p. 473 (30 October 1755).

⁶⁷ BL IOR P/1/28: Calcutta Public Proceedings, p. 473 (30 October 1755).

and lascar cases show the contingent nature of these debates about subjecthood and legal belonging. Too often, scholars of colonial law assume that “the British” or the “Company” established clear legal doctrines out of some sense of proper policy. However, as seen here, neither the EIC executive nor the Mayor's Court confronted legal policy in the abstract. Rather, individual cases and jurisdictional disputes forced officials and judges to make decisions on the spot, resulting in frequent sharp disagreements.

These Calcutta debates also highlight the balancing act the EIC executive had to perform vis a vis the Mughal government, English law, and their own authority. Although the Company councils at Madras and Bombay had to worry about their judicial decisions causing disgruntled merchants to vacate the settlements, the Company in Calcutta faced more direct and more serious dangers. The local *nawabs* of Bengal had long sparred with the Company over trade, debts, and the interference of the Company in local affairs. As seen in the executive's reaction to the possible execution of the lascars, the English in Calcutta knew that their geopolitical position remained tenuous. In other words, the prospect of violence should the Mayor's Court or quarter sessions step on the *nawab's* toes by asserting a broad legal sovereignty and subjecthood was very real. Indeed the narrative of Anglo-Indian history has long hung on one such instance of violence.

The growing political and economic power of the Company, its apparent jurisdiction over Mughal subjects, the privileged private trade of English merchants in Bengal, and the EIC's political machinations at the Murshidabad court all proved causal factors for the capture of Calcutta in 1756. Most historians of British India highlight the fall of Calcutta and the EIC's subsequent military victories in Bengal as the crucial

turning point in the Company's history, that is, from a trading company to an Asiatic sovereign ruling over vast territories.⁶⁸ To most of these scholars, all later debates over law, subjecthood, and empire in India stem from 1756-7. As we have repeatedly seen, however, such debates and conceptions began well prior and had deep roots in the extant legal cultures of the EIC's settlements.

A New Era?

After Siraj-ud-Daulah became *nawab* of Bengal in spring 1756 he demanded that the Company cease all work on new fortifications and retract their jurisdiction and protection over a Hindu broker living in Calcutta. When the EIC executive refused, tensions quickly escalated and within weeks he ordered his forces to capture the EIC factory at Kasimbuzar. The Company responded with a few desultory raids and in mid-June Siraj-ud-Daulah attacked Calcutta with 30,000 troops, easily taking the city. As the highest ranking employee still in the city, none other than J.Z. Holwell raised the white flag and offered an official surrender. The events of the following several months, including the so-called “Black Hole of Calcutta,” the recapture of Calcutta by Crown and Company troops, their later victory at the battle of Plassey, and the Company's conspiracy with Mir Jafar against the *nawab* certainly disturbed the status quo in Bengal, but their effects on the legal culture of the city were more gradual and less radical than have been

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⁶⁸ This is a large literature. Among others see Marshall, *Bengal--the British Bridgehead: Eastern India, 1740-1828*; idem, “The British in Asia: Trade to Dominion”; idem, *The Making and Unmaking of Empires*; Marshall and Mukherjee, “Early British Imperialism in India;” Seema Alavi, *The Eighteenth Century in India*, Sudipta Sen, *Empire of Free Trade*.

commonly understood.⁶⁹

When the Calcutta Mayor's Court returned to business after the city's recapture it did so with little fanfare or changed sense of purpose.⁷⁰ The 1756 assault on Calcutta had resulted in the deaths or departure of several aldermen, leaving only three to resume their positions in early 1757. This circumstance enabled the EIC executive, per the charter, to appoint a brand new complement of members. This swing towards newer, more Company-beholden aldermen seems to have dramatically reduced rancor between the Calcutta executive and Mayor's Court aldermen in subsequent years. In addition, many Englishmen present during Siraj-ud-Daulah's invasion harbored deep resentments against the Indian merchants, brokers, and inhabitants of the city, who they believed had betrayed their allegiances and failed in their civic duties by fleeing the city or cooperating with the *nawab*.⁷¹ Among the most embittered was J.Z. Holwell, who had survived imprisonment by the *nawab's* forces and subsequently published a wildly popular account of his sufferings, sparing no kindness for “natives,” including “that rapacious harpy,” the Hindu.⁷²

⁶⁹ The narrative of these events is well traced elsewhere. See Brijen Gupta's concise treatment of the lead-up to invasion in his *Sirajuddaullah and the East India Company, 1756-1757*, (Leiden: Brill, 1966), pp. 39-40, 48-59. Also see S.C. Hill's magisterial two volume collection of documents on the invasion and its aftermath: *Bengal in 1756-7*.

⁷⁰ One of the attorneys had smuggled a copy of the charter out of the city before its fall so the court could be reestablished in a timely fashion. See S.C. Hill, *Bengal in 1756-7*, v.2, p. 192.

⁷¹ Reflecting some of this sentiment, a group of aldermen, merchants, and others asked the Company in late 1757 if they could form an all-British “Patriot Band” or citizen militia to rally to the defense of the city when needed. See their petition of 15 December 1757 printed in H.J. Rainey, *A Historical and Topographical sketch of Calcutta*, (Calcutta, 1876), p. 55. See Willem G.J. Kuiters, *The British in Bengal, 1756-1773 : a society in transition seen through the biography of a rebel : William Bolts*, (Paris: Les Indes Savantes, 2002) for more on British life in this period.

⁷² J.Z. Holwell, *A genuine narrative of the deplorable deaths of the English gentlemen, and others, who were suffocated in the Black-Hole...*, (London, 1758), see p.51 for this reference.

These events left their mark on the makeup of litigants before the Mayor's Court. As Table Five indicates, the number of cases in the Mayor's Court increased markedly in the years after 1750s, reflecting Calcutta's economic and demographic expansion.

Calcutta	1755 (134) ⁷³	1766 (430) ⁷⁴
Both parties non-British	14% (2%)	14% (<1%)
British Complainant, non-British Respondent	22% (20%)	19% (10%)
non-British Complainant, British Respondent	20% (13%)	33% (25%)
Only British	43%	34%

Table 5: Litigants at the Calcutta Mayor's Court 1755 and 1766⁷⁵

At the same time however, suits between non-British residents rarely appeared after the mid-1750s. Instead, suits between British residents as well as those between British merchants and various *banians* proliferated. As shown above, nearly a third of cases in the Mayor's Court featured a non-British complainant suing a British inhabitant, suggesting the continued relevance of the court in the multicultural mercantile life of the settlement. In fact, five of the twenty Calcutta appealed to the Privy Council in this period included Hindu or Muslim litigants, and one included no European litigants at

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⁷³ BL IOR P/155/29: Calcutta Mayor's Court Minutes, 1755.

⁷⁴ BL IOR P/155/39: Calcutta Mayor's Court Minutes, 1766.

⁷⁵ The data for 1766 in this table are inherently skewed as I was only able to take a 1/10th sample of the 430 cases that year. The number in the parentheses indicates the percentage of non-Christian litigants fitting in a given category if "non-British" were taken to mean non-Christian. There were many litigants with Luso-Indian and Armenian names in my sample who were likely Christians but probably not of British descent.

all.⁷⁶ Litigants in Calcutta, like those in Madras, also seem to have taken up the practice of transferring debts to Europeans so that they could sue non-British debtors at the Mayor's Court, though these cases do not appear to have been as prevalent as at Madras. This was perhaps due to the EIC executive's stern approach to the practice. In 1754 for example, the governor threatened to expel any inhabitant from Calcutta, whether, European, Armenian, or Luso-Indian, who accepted the assignment of a debt for the purpose of allowing a "Native" to "prosecute the same in His Majestys Courts of Record."⁷⁷

In most respects, the post-1753 court nonetheless resembled that of the earlier era. Respondentia and mercantile debt cases worth hundreds or thousands of pounds sterling continued to make up the core of the Mayor's Court's business. Attorneys and aldermen remained largely untrained in formal English law and the court's decrees remained simple and terse. In addition, the procedural format of the new court was identical to that of its predecessor. The EIC executive continued to sit as a court of appeals from the Mayor's Court, taking anywhere from two months to several years to render final judgment. The Calcutta court also remained the leader in sending cases to the Privy Council.⁷⁸

Yet, amidst all this continuity, the aldermen of the court, now appointed by the

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⁷⁶ That one non-European appeal originated from a 1769 mayor's Court suit between the Armenian merchant Mirza Petruse and one Hadjee Kerim see BNA PC 2/119: Privy Council Minutes, p. 198 (11 November 1775) and PC 2/120, pp. 330, 427 (14 February + 10 April 1777). An additional two appeals involved only Armenian litigants.

⁷⁷ Rainey, *Historical and Topographical Sketch*, p.37 (reprinting from the 1754 Calcutta Public Proceedings).

⁷⁸ Of the 31 appeals heard from EIC India at the Privy Council originating in India from September 1753 to the end of 1773, 20 originated in the Calcutta Mayor's Court.

EIC executive, became more and more reluctant to assert their authority against the Company. Whereas few had complained before 1753 that the aldermen served as lapdogs for the executive, pamphleteers and disgruntled litigants began circulating these charges widely by the 1760s. William Bolts, a former alderman himself, was one of the most cantankerous of these critics, especially after he was expelled from India by the Company in 1768.⁷⁹ In his later account of the state of Calcutta justice in the 1760s, he claimed that the EIC executive constantly interfered in the business of the Mayor's Court.⁸⁰ Litigants who were “under the known displeasure” of the executive, Bolts alleged, could expect to have the aldermen dismiss their bills without regular process. In addition, he related a 1767 case in which the EIC governor wrote privately to the Mayor to have a case against the governor himself thrown out of court.⁸¹ Appointment by the EIC, however, did not completely dissolve institutional conflict. Even after 1757, the EIC council sitting as a court of appeals did overturn judgments of the Mayor's Court, while some aldermen retained an independent spirit regardless of their dependence on the Company.⁸²

The growing post-invasion skepticism in India towards a unitary imperial constitution and the universal application of a system of English law, moreover, did not

⁷⁹ Originally from Heidelberg, Bolts has proved a fascinating figure for contemporaries and modern writers. See Kuiters, *The British in Bengal, 1756-1773*, Holden Furber, “In the Footsteps of a German Nabob,” *Indian Archives* 12 (Jan.-Dec. 1958), pp. 7-18., and the dated N.L. Hallward, *William Bolts, a Dutch adventurer under John Company*, (London, 1920). For a 14 pp. autobiographical unpublished narrative signed by Bolts see Cleveland Public Library, John White Collection of Orientalia and Chess, (Wq091.92 B639s).

⁸⁰ See Bolts, *Considerations on India Affairs*, appendices 24-28 for contemporary correspondence complaining of the court's partiality. These proved to be important sources for contemporary Company critics and later historians.

⁸¹ See *ibid.*, pp. 91-3 for these examples.

⁸² At least two of the cases reaching the Privy Council from Calcutta involved Mayor's Court verdicts overturned by the EIC council.

reflect a broad consensus. Even before Siraj-ud-Daulah invaded in 1756, some in India had urged the Crown and Company to take decisive action to establish Calcutta as a British settlement without caveat. Around 1753, Caroline Scott, an officer in the Royal army, assigned as an engineer to the Company in Calcutta, suggested that Bengal be made a “province of England” under Crown rule.⁸³ As a veteran of the Scottish campaigns of the 1740s and a first hand witness to the expanding British Empire, he proposed that the British Crown seize Bengal, in the process “giving liberty and happiness to a people under the heaviest oppressions and miseries.” Like their counterparts in the Americas, many of the English residents of Calcutta, spoke openly of their commitment to English law and government vis a vis Company and Mughal institutions. In the 1750s, for example, a free merchant complained to the Company that Holwell as Zamindar had raised taxes on his property. As a concerned “British subject” the merchant wished to know the English legal basis for such a tax, lest by paying he establish a dangerous and despotic governmental “precedent.”⁸⁴

Even after Plassey, English grand jurors and justices sitting at the quarterly sessions in Calcutta likewise asserted the supremacy of English law and government. As in other parts of the British world, these men took seriously their obligation to maintain order and punish transgressions against the public peace and by extension, the corporate

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⁸³ Letter of Lt. Col. Caroline Frederick Scott in BL IOR Eur. Ms. Orme India VI, p. 1489. For more on Scott, his service in Scotland, and opposition to Company rule see P.R. Cadell, "Caroline Frederick Scott," *Army Quarterly* lxxvii no.2 (1954), pp.233-39.

⁸⁴ Petition from John Durand in BL IOR P/1/28: Calcutta Public Proceedings, f.321-2 (8 December 1755).

body of the King himself.⁸⁵ Thus, in complaining about the sorry state of Calcutta's road and sewer system, the jurors declared their hazardous condition "contrary to the peace of his Majestys liege subjects his crown and dignity." Lecturing an assortment of condemned Hindu and Muslim prisoners at the 1762 quarter sessions, the EIC president declared that their crimes "...disturb the peace of the inhabitants, [and] endanger the lives and property of the King's Subjects."⁸⁶ When the justices met at the quarter sessions they did not speak of plural laws or local custom but of the need for local criminals to "repent their sins" and face their just punishments as prescribed by "our laws," i.e. the Laws of England.

Indeed at the spring and summer 1762 quarter sessions in Calcutta, the justices proceeded just as they would have in England, despite the fact that the accused were largely Hindus and Muslims. In March 1762 an English grand jury issued a typical indictment against Selabut Cawn, a Muslim soldier living in Calcutta, for killing his wife through a series of blows. When Cawn asked for a jury of his peers he was given one containing 6 Englishmen and 6 Muslims. After hearing a parade of witnesses on both sides, the mixed jury found Cawn guilty and the justices sentenced him to death by hanging. In another instance at the sessions, a resident even presented a local zamindary officer for unlawful search and seizure without a valid warrant by English law. In other

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⁸⁵ For more see Laura Edwards' excellent discussion of this concept of the "King's peace" and the "People's Peace" in early American law in her *People and their Peace*, Chap. 4. For the place of the corporate body of the King and public peace in English law she cites William Blackstone's "Of Public Wrongs" - volume four of his *Commentaries on the Laws of England*, [4 vols.] (Oxford, 1765-9).

⁸⁶ University of Minnesota, Ames Library of South Asia, MS B94: Calcutta Quarter Sessions Records, 10 March 1762.

trials, the justices and jury took cognizance of disputes clearly outside of the old geographical confines of Calcutta. As late as 1762, then, Muslims or Hindus initiated cases involving only Muslims or only Hindus at the English criminal court for trial under English laws. However, as in the early years of the first charter, some Indian residents of the city resisted these English legal norms.

At the 1762 sessions, a Calcutta grand jury indicted a man named Bellow for cutting off his wife's nose. Bellow pled not guilty to the charge, even though he admitted that he committed the assault. His objection instead involved his assigned punishment. For his disfiguring assault the justices decided that he was subject to death by hanging according to the laws of England. Though his remarks do not appear in the minutes of the court, a contemporary in India later reported (with undoubted embellishment) that Bellow

“...urged that he had done nothing to offend the laws and customs in which he had been educated—that the woman was his property, and that by such customs he had a right to set a mark upon her for her infamy—that he had never heard of the laws by which they tried him, but desired to put one question to the Bench—Did they believe that if he had known the punishment to be death, he would ever have committed what they now called a crime?”⁸⁷

The justices of the peace dismissed Bellow's argument without comment, though the president later publicly singled out his crime as “heinous” and deserving of harsh punishment. Even a decade after the new charter, then, arguments based on Indians' cultural and religious unsuitability to English law fell on deaf ears.

As a result of Bellow's declaration the justices attempted to forestall any similar complaint at the next sessions by declaring the universal applicability of English law to

⁸⁷ Harry Verelst recounts these events in his *A view of the rise, progress, and present state of the English government in Bengal* (London, 1772), pp. 26-7.

the populace. In this pronouncement, the justices of the peace, led by the EIC president Henry Vansittart, declared first that they believed “a free and impartial administration of the Laws of England to the inhabitants in general of whatever cast or profession” would be of the greatest benefit to the city. They then added that all of the other residents of EIC India had “enjoyed” these laws since the arrival of the 1726 charter but that in Calcutta “the country government” had prevented the free application of English law in prior decades. In the aftermath of Plassey, however, the EIC executive proclaimed

“it is the intention of the court to put the Laws of England in force against all offences that may be committed in the town of Calcutta and the districts thereof.”⁸⁸

Henceforth, there could be no excuse for ignorance of the harsh penalties of English law for even the smallest crimes. At the same time, the EIC allowed that in the case of crimes committed by “natives” prior to the proclamation, and as a result of the “force of evil customs” and lack of understanding, defendants could still be tried at the Cutcherry according to “the usual laws of the country.”⁸⁹ The justices then had the proclamation read out loud and posted in Persian and Bengali throughout the city. It is not a stretch to say then that to these JPs and others in the EIC administration, Calcutta, and indeed all of

⁸⁸ Ames MS B94: Calcutta Quarter Sessions Records, 3 June 1762. This proclamation was noted by Elijah Impey in parliament in February 1788 but no one in the EIC was able to produce a copy at the time - likely because the volume which is now Ames MS B94 had already gone missing - on this point see Firminger, *Fifth Report*, p. 98 n8. The Ames MS volume is the official copy of the Calcutta records sent to London every year - its first page bears the notation “Recd per the Drake 18th August 1763.” It was acquired by Ames from the Markree Castle Library in Ireland and was one of the eight EIC “minute books” bought at auction in 1954. The others of these books in the Ames collection appear to be letterbooks of Henry Vansittart. See *Catalogue of Sale by Auction of Valuable Books, Manuscripts...including the Property of Commander E.F.P. Cooper R.N. Markree Castle Co. Sligo... Tuesday 2nd February, 1954*, (Dublin: Town & Country Estates Ireland, 1954), p.24, lot 333, described also on page 1 as “Autograph Letters of Robert, Lord Clive, dated 1765-1768 with 8 Minute Books relating to the East India Company.”

⁸⁹ Ames MS B94: Calcutta Quarter Sessions Records, 3 June 1762.

EIC India could be considered part of the unitary empire of English law.

The justices overestimated the importance of the “country government” as a scape goat for the problems inherent in such a bald imposition of substantive English criminal law. Many local inhabitants found this application of English criminal law distressing, especially in its harsh punishments and formal disregard for social status. In England, the vast array of capital crimes usually did not result in executions, as a result of prosecutorial discretion and frequent bestowals of pardons, greased by local patronage networks. But in Calcutta, Indians saw only the imposition of a very bloody foreign justice.

A February 1765 case at the Calcutta quarter sessions exemplifies the resulting tensions, born of Indian perceptions of injustice. At those sessions, an English grand jury indicted Rada Churn Metre, the grandson of the notorious zamindar Govind Ram Mitra, for forgery. The charge stemmed from an ongoing case in the Mayor's Court over an Armenian merchant's will, which Radachurn had allegedly altered.⁹⁰ Like so many English statutory felonies of the era, forgery was punishable by death. At his trial, Metre did not ask for a mixed jury and instead twelve Englishmen of Calcutta served as jurors. The proceedings in the case were quite lively, with the justices, jurymen, and Radachurn himself all questioning the many witnesses. After a full day of evidence about types of

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⁹⁰ The full proceedings in the case were copied and sent to London - for one copy see BNA PRO 30/8/99: Chatham Papers, section 3. These proceedings were also printed for use by the House of Commons in 1788. See *Papers by the Consultations of the Governor and Council of Bengal, of the 11th of March 1765, so far as concerns an Application to them for a Pardon for Radachurn Metre, convicted of Forgery at the Quarter Sessions held at Fort William in Bengal* [orig. 1788] reprinted in *House of Commons Sessional Papers of the Eighteenth Century 1715-1800*, Sheila Lambert ed. (1975), v.63, pp. 309-324.

paper, handwriting, and commercial practice, the jury withdrew and found Metre guilty as charged. Metre made no statement in his own defense either before or after his conviction.

Rather, about ten days later, over 100 of the most important of the city's brokers, *banians*, and merchants, including Seths, Basaks, and Mullicks sent a petition to the EIC executive at Calcutta, produced by a professional petition writer, asking for clemency on Metre's behalf. Tellingly however, the collected merchants did not pursue the standard strategy of appeals for mercy in England – a mixture of deferential contrition and references to longstanding personal bonds. Instead, they argued that condemning Radachurn to death for forgery was absurd and inappropriate. “According to the Laws of our Country,” the petitioners claimed, “his crime is never punished with death.” Moreover, they asserted that Metre was “ignorant” of English law and its penalties as no one had ever informed him of them. In a pointed reference to cultural and religious difference, they asserted that since Metre had “been brought up in the Religion + Opinion of Hindoos.” Accordingly, he “could form no other notions of things but from their maxims and customs” and therefore could not be held accountable to English law.⁹¹ The petitioners seem to have understood that final authority in this instance stemmed from England as they concluded by asking the Company to “intercede with his Majesty the King of Great Britain” to obtain a pardon. In one indication of the petitioner's familiarity with English concerns - they addressed their plea as from the “native inhabitants” and

⁹¹ For this 11 March 1765 petition see BNA PRO 30/8/99: Chatham Papers, section 3, ff.403-4. Also see a slightly longer form of the petition copied from the proceedings in Calcutta and reprinted in Long, *Selections*, pp. 431-2.

merchants “whose estates interests or habitations are in any part of Bengal, Bihar, and Orissa within the jurisdiction of the English.” This assertion of fealty, strategic as it was, also indicated the stakes of the case, since many of the signers hailed from well beyond Calcutta, in what would soon be the EIC's new Indian territories. In essence, the petition suggests the relevance of English legal policy within Calcutta for the ever-changing political and legal landscape of Bengal broadly.

It would be a mistake, however, to take Metre's case as typical of criminal justice in Calcutta. For example, in the six years between the proclamation in 1762 and November 1768, the Calcutta sessions heard just 45 cases involving 62 defendants (14 of whom were Englishmen).⁹² Clearly, despite the rhetoric of the universality of English criminal law, most criminal justice at Calcutta occurred elsewhere, likely at the long-established Cutcherry.⁹³

Just as before the 1753 charter or the proclamation of 1762, the Cutcherry at Calcutta continued to serve as a popular venue in any number of criminal and civil criminal matters. As a result of the disputes around the new charter in the 1750s, the EIC executive had asked the justices of the peace to assist at the Cutcherry in all major criminal disputes formerly heard by the zamindar alone.⁹⁴ Once again, the English

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⁹² In the 1780s the EIC compiled a list of all criminal cases heard in the Calcutta Quarter Sessions from immediately after the 1762 proclamation to November 1768. A full list of these is printed in Walter Firminger, *Historical Introduction to the Bengal portion of the Fifth Report*, (Calcutta, 1962), pp. 103-5. The records mentioned are no longer extant.

⁹³ There was also a “caste cutcherry” extant in Calcutta though its working are unclear. For testimony about this tribunal from 1775 see George Forrest, *Selections from the letters, despatches and other state papers preserved in the Foreign Department of the Government of India 1772-1785* [3 vols.] (Calcutta:Government Press, 1890), vol. 2, pp. 320,370-3.

⁹⁴ As such, other Englishmen besides the appointed Zamindar served as judges in the Cutcherry. See BL

zamindar and his assistants claimed to base their judgment on their own discretion and whatever “customs and usage of the country” they thought applicable.⁹⁵ Fortunately the records of the Cutcherry court for 1766 are extant and provide a rare window on its workings.

During the course of 1766 the Calcutta Mayor's court heard around 430 cases and at the quarter sessions a mere seven criminal defendants reached trial. In comparison, the Cutcherry court in Calcutta heard around 670 total cases, of which scores involved what could be described as criminal matters, including at least a dozen murder cases. The clientele of the court in 1766 was overwhelmingly non-English and largely of very modest means. Cases involving debts or monetary matters ranged from 2 to 525 rupees (~£80).⁹⁶ In these cases the zamindar largely seems to have decreed payment to one side from the other, minus a percentage fee to the Cutcherry.⁹⁷ In keeping with the executive's desire for control over justice, litigants at the Cutcherry could appeal the zamindar's decision to the EIC council. These appeals appear in the records of the Company much as those from the Mayor's Court would - in formal style asking the EIC elites for relief from

IOR P/1/28: Calcutta Public Proceedings, p. 420 (25 September 1755). In addition, a few months after the executive ordered JPs to sit at the Cutcherry in major criminal cases, Holwell asked that he have additional assistance there in “common assaults” and the many small disputes before the court from the “labouring part of the settlement.” Ibid p. 513 (15 November 1755).

⁹⁵ See the *Seventh Report From The Committee Of Secrecy Appointed To Enquire Into The State Of The East India Company. Together with an Appendix referred to in the said Report* [orig. 1773] reprinted in Lambert v. 136. See p. 331 for testimony on the Cutcherry in this period.

⁹⁶ BL IOR P/155/71: Proceedings of the Calcutta Zamindary Court, 1766. The 2 rupee case involved a drowned goat, the 525 a dispute over a charcoal contract. In one case a complainant brought in a contract for 3,000 rupees of salt but this is the clear outlier.

⁹⁷ However, in at least forty-three cases, the Zamindar sent both parties to arbitration.

a judgment, in this case from an ersatz Mughal court.⁹⁸

Aside from civil and debt disputes, complainants came to the Cutcherry for a bewildering variety of reasons, many of which we might deem as crimes against public order:

“Selling bad butter,” “for not doing his duty [when advanced money to work],” “accepting bribes,” “for entering a house at night,” “for making a seal in the name of Mssrs Johnson and William Bolts,” “for letting a prisoner escape,” “for attempting to make plaintiff a slave,” “for not giving plaintiff his wife,” “for stealing wine,” “for attempting to procure abortion,” and “for setting off fireworks in the middle of the night.”

Europeans appeared as complainants only rarely and when they came into court they largely did so to discipline servants and maintain the social order.⁹⁹ This was the case for a boy named Cossaul whose European employer brought him to the Cutcherry because he had asked for the “exorbitant wages” of 6 rupees a month. When the Company brought a young lascar to court for running away from an EIC ship, the zamindar ordered him to be whipped 100 times in front of all the other lascars as a sign of the Company's power and authority. In some instances Englishmen also dragged their enemies to the Cutcherry in order to side-step the strict requirements of the quarter sessions and Mayor's Court. Thus Robert Clive brought a Hindu merchant to the Cutcherry in 1766 on charges of conspiring with Siraj-ud-Daulah ten years earlier. Though this accusation involved an ancient crime and relied on scant evidence, the English Zamindar dutifully sentenced the

⁹⁸ See a petition of appeal from in the case of Uzudaram Bysack [Basak] from the Cutcherry (9 June 1773). Kolkata, Victoria Memorial Collection (MS D.132).

⁹⁹ On this controlled labor regime see Ahuja, *Colonial Labour Policy* as well as Douglas Hay and Paul Craven eds. *Masters, Servants, and Magistrates in Britain & the Empire, 1562-1955* (Chapel Hill: UNC Press, 2004).

accused to a year of hard labor on the roads.¹⁰⁰

Most criminal complainants, however, were those like a man named Radda - who brought his neighbor into court for defiling Radda's house with European guests. In this instance the zamindar ordered twenty lashes as punishment.¹⁰¹ Lashes with a rattan served as the most common corporal punishment, but the zamindar and his assistants also assigned more severe punishments in serious cases. Despite local pressure against the death penalty, the zamindar sent prisoners guilty of crimes such as murder or theft to be hanged at the place where they committed their crime. In addition, the judges frequently sentenced women accused of sexual transgressions or un-palatable violence to have their head shaved and then be paraded around town on a donkey.

Despite its strange punishments, nomenclature, and lack of formal procedure, the Cutcherry records reveal a tribunal not much different from any magistrate or JP's office in the British world. Disciplining servants, maintaining civic order, and punishing vagrants and malefactors were all part of an English justice of the peace's job.¹⁰² In a telling piece of English influence on the Cutcherry, many of the convicted women above received sentences that included confinement in "Bridewell," a special Calcutta workhouse named after the famous London prison and workhouse known for its population of "disorderly women."

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¹⁰⁰ BL IOR P/155/71: Proceedings of the Calcutta Zamindary Court, 23 September 1766.

¹⁰¹ The court also heard cases from Hindus and Muslims involving family matters including issues of child support, the complaints of women against their husbands, and inheritance. In one of these cases the zamindar went so far as to sentence a man to 8 public lashes for "neglecting" his wife.

¹⁰² For just some of the many institutions in England which handed out summary justice see Faramerz Dabhoiwala, "Summary Justice in Early Modern London," *English Historical Review* 121 (June 2006), pp.796-822.

In addition, it is hardly surprising to see the Cutcherry operating under the authority of several of the same figures who had formerly declared the supremacy of English law (in 1762). The courts at Madras had applied English criminal law strictly for decades, yet the Choultry there still proved popular. The Cutcherry itself had rather easily survived the introduction of the 1726 charter courts, despite an initial decline in business. By the 1750s and 60s it had become thoroughly entrenched in the legal culture of the city. Indeed, the Calcutta Cutcherry maintained its role as the most well known EIC-operated “country court,” and as such it served as a reference point for many of those who grappled with the problem of how to execute justice in the Company's ever-expanding territories.

Expansion

In their campaigns following the recapture of Calcutta in 1757, the EIC helped install a pliant new *nawab* in Bengal named Mir Jafar. As a reward for the EIC's assistance, Jafar signed a pact providing the Company with cash payments, zamindari rights to extensive territories beyond Calcutta, promises of limited disarmament, and trade concessions.¹⁰³ These privileges opened up a possibility for the Company to support its operations through Indian land revenues and tax collection. Yet, the vast revenues the Company expected from its 1757 acquisitions were constantly offset by the cost of maintaining its army, trading operation, and administrative structure. As a result, over the 1760s, the EIC moved to expand its revenue base by acquiring additional rights to land revenue throughout India. The Company began by securing grants for the administration

¹⁰³ For this 1757 “secret” treaty see Aitchison, *Treaties, Engagements, and Sanads*, v.1, pp. 181-3.

of several Mughal cities including what is now the port of Chittagong.¹⁰⁴ By 1765, after years of turnover and intrigue in Murshidabad, the Company finally approached the Mughal court in Delhi to seek the *diwani* for Bengal which would include control over all revenue and civil administration in the province. At an August 1765 meeting in Allahabad, Clive and Emperor Shah Alam II agreed to terms for such a grant. Under their agreement, a *nawab* would remain in Murshidabad, though stripped of nearly all his authority. Instead the Company would thenceforth be responsible for the entire administration of Bengal with a status like that of a Mughal governor. As a result, the EIC also became responsible for a complex system of civil and criminal justice well beyond the confines of Calcutta.¹⁰⁵

As has been well documented, the Company did not immediately spring forth to make Bengal into a replica of England. Rather, the EIC and its employees took what they knew from Calcutta and attempted to secure revenues at the lowest cost with the least potential for massive outcry. At the same time, they tried to institute what they viewed as a well ordered government, believing this had led to Calcutta's rise to regional prominence. In 1760 the EIC in Calcutta assigned Harry Verelst and two others to the supervision of Chittagong, exhorting them to install an "English government" there which would encourage settlement by its sound management.¹⁰⁶ Upon his arrival in the city, Verelst responded agreeably that he was sure the revenues would increase under the

¹⁰⁴ See A.M. Serajuddin, *The Revenue Administration of the East India Company in Chittagong 1761-1785*, (Chittagong: University of Chittagong, 1971).

¹⁰⁵ The *nawab* initially retained the de jure administration of criminal justice. See the text of the agreement in Aitchison, *Treaties, Engagements, and Sanads*, v. 1, p.229.

¹⁰⁶ Serajuddin, *The Revenue Administration of the East India Company in Chittagong*, p.15.

“lenity” of such government. To this end, Verelst and the others established a “Cutcherry court” in the city to hear any and all criminal and civil cases. As in Calcutta, EIC employees like Verelst supervised these proceedings and rendered judgment.¹⁰⁷ When meting out extreme bodily punishments, the Chittagong council would ask for formal approval from the *nawab's* court in Murshidabad, but otherwise the court operated relatively independently.¹⁰⁸

In the parts of Bengal under Company administration after 1765, the EIC was faced with a bewildering array of extant legal fora. As one Indian legal historian has argued, the only thing uniting the legal regimes of Bengal in this period was their diversity.¹⁰⁹ In some areas there might be, as Verelst stated in 1765, eight different civil and criminal tribunals, while in others the local Zamindar merely acted as judge and jury for every kind of dispute without much regard to his nominal superiors.¹¹⁰ In the years after 1765 the EIC sent employees called “residents” to assist in the management of revenue districts and towns throughout Bengal but with only the vague mandate to leave local systems of justice alone. These residents often took a dim view of the state of law in their districts. John Grose, a Company resident at Rangpur, wrote to his brother dismissively that the residents of his district had “no laws to regulate their conduct or

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¹⁰⁷ Serajuddin, *Revenue Administration* pp. 23-4, 52-3. Also see the MS records of the court in BL IOR Eur. Ms. F218/2: Harry Verelst papers (Court of Cutcherry at Islamabad [Chittagong] Jul-Dec 1761). The rhetoric of British “lenity” reforming Asiatic institutions was common in the period. See Travers, *Ideology*, p. 85 for a 1770 minute from Murshidabad on this point.

¹⁰⁸ Firminger, *Fifth Report*, p.125.

¹⁰⁹ Majumdar, *Justice and Police in Bengal 1765-1793*, p. 35.

¹¹⁰ See idem and Verelst, *A view of the rise, progress, and present state*, pp.219-20.

conscience their hearts.”¹¹¹ As complaints mounted in Calcutta and Murshidabad about cruelties and mismanagement in the administration of law and revenue collection, the Company at Calcutta commissioned supervisors to fan out throughout Bengal to reform administrative practices and gather information.¹¹²

In many respects the reforms proposed by the Company to these supervisors resemble those suggested by Holwell in his report on the Calcutta Cutcherry in 1751, then recently printed in London as part of a polemical tract.¹¹³ That is, the Company did not aim to overthrow indigenous forms of law and government but merely adapt them to fit their notions of good government. The supervisors were also instructed to investigate the fee structure of the inland courts, which nearly everyone in the Company believed highly corrupt, similar to how Holwell conceived of Metre's perquisites in the Calcutta Cutcherry.¹¹⁴ To curb such perceived abuses, the Company instructed the new supervisors to keep written proceedings of all “Cutcheries” and send them to Murshidabad for review. They also established a new supreme court at the Bengali capital where local legal experts would rule on appeals. Though the EIC council at Calcutta insisted that the substantive proceedings of all extant “country courts” continue as before, they also made sure that they had final say over all sentences and judgments as they did over the

¹¹¹ BL IOR Eur. Ms. E284/58; John Grose letterbooks. Letter of June/July 1770 to Nash Grose. For additional letters about Grose's administration of justice see Walter Firminger, *The Letter copy books of the resident of the durbar at Murshidabad 1769-1770* (Calcutta: Bengal secretariat press, 1919), p. 33 (26 June 1770).

¹¹² On this system of supervisors established by Harry Verelst in 1769 see Misra, *Judicial Administration*, pp. 31-42.

¹¹³ See Chapter Four. Holwell had parts of this report printed in his *Important facts regarding the East-India Company's affairs in Bengal, from the year 1752 to 1760* (London, 1764), pp. 24-64.

¹¹⁴ John Grose at Ragpur claimed in 1770 that those with the “most weighty purse” had won every suit in the local courts prior to his arrival. BL IOR Eur. Ms. E284/58; Letter of June/July 1770 to Nash Grose.

Calcutta Cutcherry.¹¹⁵

In this supervisory system, Company residents consulted with the various local Islamic law officers during meetings of the *faujdari adalat* [criminal court], Cutcherry, and other courts in their districts. Some Company officials took an active role in this supervision of justice, while others allowed the status quo to continue or threw up their hands in frustration. Thus, the EIC resident at Mindapur wrote to his superiors in 1768 for permission to hang prisoners under his care, while another sought to abolish what he saw as barbaric mutilations inflicted on criminals.¹¹⁶ Perhaps the best window on how the Company imagined this system working comes from the instructions of the EIC resident at Murshidibad to residents throughout Bengal. The resident recommended that his fellow officials

"follow the method I pursue at the city [Murshidabad] - support the court for the decision of matters of property, but at the same time a check on their proceedings by sitting frequently yourself...promote arbitration as much as possible; it being the most equitable way of deciding disputes,"¹¹⁷

This system closely approximates that of Holwell's Calcutta Cutcherry, furnishing a supposedly Mughal tribunal wherein arbitration and "local justice" was the norm, but with the constant presence of an English magistrate to adjust decrees or control proceedings according to his own sense of public policy and justice. —

¹¹⁵ Numerous letters on the subject asking for confirmation of sentences can be found in Firminger, *Letter Copy Books*.

¹¹⁶ Majumdar, *Justice and Police*, pp.102-3 n14. The EIC council told him to hang the prisoners only after they had been tried in the appropriate local court.

¹¹⁷ Letter from Becher to Grose (10 April 1770). Reprinted in Firminger, *Letter copy books*, p.117. This same advice went out to all residents shortly afterwards, *ibid.*, p.137. For regulations issued by a resident to the courts in his district in 1771 see Misra, *Judicial Administration*, pp. 120-1. For more on this emphasis on arbitration and its discontents see Majumdar, *Justice and Police*, pp. 83-5 and Travers, *Ideology*, pp. 119-20.

The Cutcherry model of government and law and the EIC's concomitant turn towards a solidly bifurcated system of law had an impact well beyond Bengal. Though most scholars have focused on the changing nature of government and law in the EIC's Bengal territories, by the 1760s the Company had also acquired extensive new territories in southern India.¹¹⁸ In a series of military campaigns in the 1750s aimed at neutralizing the French threat to Madras, the Company entered into a web of alliances and treaties with local rulers giving them limited revenue rights over additional lands. Yet, the introduction of Company government obviously did not entail the introduction of substantive English law. Like the government of Madras in earlier decades, the Company could “control” the government of the interior without necessarily changing its laws. In fact the Company suggesting as much in pursuing these military alliances against the French. In letters to various local generals the EIC at Madras insisted that the French wished to “establish an Empire of their own” with “new Laws for the government of the country.” The Company on the other hand claimed that it had no such designs and would instead assist in upholding “the laws of the Indostan empire.”¹¹⁹ These assertions were of course obviously strategic, as many within the Company fully expected to take de facto control of the government of certain southern territories at the end of hostilities.¹²⁰

Although the Company largely executed this governance through client rulers and

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¹¹⁸ P.J. Marshall, in his *The Making and Unmaking of Empire*, however, gives this period in Madras much of the attention it deserves.

¹¹⁹ *Records of Fort St. George: Country Correspondence (Military Department) 1753-58* [6 vols.], (Madras: Madras Government Press, 1911-1915), vol. 5: Letter to Balazarow, p. 172 (18 September 1757) and letter to Balaventaraw, p. 184 (7 October 1757).

¹²⁰ As the sometime Governor of Madras wrote in 1755: “The country government must in reality come to an end, and the European take place.” Nicholas Morse to Benyon (20 September 1755) quoted in Gurney, “Debts of the Nabob of Arcot,” pp. 24-5.

elites throughout the Madras interior, it also obtained the revenue rights to a few territories near Madras more directly, along the lines of the Bengal model.¹²¹ Initially, the Company left the administration of justice in these new territories to local elites and structures, much as in Bengal, with little interference from EIC officials. This constitution changed slightly in 1769 when the Company appointed new councils for the cities within these regions to manage and supervise revenue and judicial administration along similar lines as Bengal.¹²² From scant evidence it seems that these councils took a role in punishing criminal offenses and adjudicating civil disputes, much like their counterparts in Bengal, and likely based either on the Cutcherry there or what they would have seen at the Choultry in Madras.

Within the bounds of Madras, the EIC executive also instituted a legal authority outside the chartered system of law establishing a “Board of Police” in 1770 to promote the “Order and Good Government” of the city as a whole.¹²³ The Council declared that such a body was necessary given the prior hodgepodge punishment of misdemeanors and the hardships faced by the “Indian inhabitants of this colony” in the face of the charter's

¹²¹ The 1763 Treaty of Paris ending the French and English wars in southern India also included a British-mandated provision requiring the French to recognize the Company's new client rulers in the south. See *The definitive treaty of peace and friendship, between His Britannick Majesty, the Most Christian King, and the King of Spain. Concluded at Paris, the 10th Day of February, 1763*, (London, 1763), article XI, pp. 16-17. In the 1760s the Company obtained land revenue grants from the Mughal empire for territories near Madras. See Aitchison, *Treaties, Engagements, and Firmans*, v.9, for the *firman* granted as part of the treaty of Allahabad in 1765 for certain rights in the Northern Circars (pp.20-1) and the 1766 treaty with Nizam Ali for further rights in these territories (p.25). The Company also had earlier grants to San Thome and other territories see above p. 347 n.50.

¹²² *The fifth report from the Select Committee on the Affairs of the East India Company*, [orig. 1812] (Madras, 1866), vol.2, pp. 15-16, 44.

¹²³ Ahuja, *Colonial Labour Policy*, pp. 176-8. Ahuja helpfully notes that “police” in this sense merely meant “government”

restrictions on the Mayor's Court's jurisdiction.¹²⁴ Among other things the Board proposed establishing caste tribunals to hear disputes subordinate to an arbitration-based “Cutcherry court.”¹²⁵ Though the Company in London ordered the Board disbanded in 1771, they suggested that the Madras council peruse the instructions sent out to Bengal the previous year. The Directors noted that the Madras EIC should use these instructions as a model in any attempts to reform whatever “Courts of Zamindary and Cutcherry” were already extant at Madras.¹²⁶ The many references here to putative “Cutcherry” courts suggest just how focused the Company was on the legal constitution of Bengal, gradually making Bengal the model for approaches to law in all the settlements. Even in Bombay, where the Company enjoyed much more limited territorial gains, the charter courts had no choice but to reckon with the changing direction of the legal constitution of the Company's settlements.¹²⁷

As seen throughout this dissertation, the legal culture of Bombay remained distinctive amongst the three cities. Unlike in Madras and Calcutta, the practice and clientele of the Bombay chartered courts remained virtually unchanged from the 1740s to 1760s. Neither the charter of 1753 nor subsequent political events in the rest of India appear to have changed the basic legal culture of the city. Yet, the constant circulation of

¹²⁴ See Love, *Vestiges*, v.3, pp. 12-14, 303-4 and Ahuja idem. The board also took cognizance of labor disputes and published labor regulations in English and Tamil.

¹²⁵ Brimnes, “Beyond Colonial Law,” p.521.

¹²⁶ Love, *Vestiges*, v.3, p.304.

¹²⁷ In the one instance where the Company did take over government functions in western India, they followed a system of dual government familiar in Bengal. This occurred in 1759 when the Company helped overthrow the governor of Surat - in return they acquired a share of the government there. The administration of justice fell outside their purview however. See Aitchison, *Treaties, Engagements, and Sanads*, v.7 part 2, pp. 364-66.

goods, people, and ideas throughout the EIC world ensured that this local legal culture would not remain unchallenged.

In February 1768 a merchant named Abdella Rasool brought a suit against a fellow Muslim in the Bombay Mayor's Court. The case was not particularly remarkable; the aldermen had adjudicated many like it before. But, on the day that Rasool brought his bill to court, a twenty-four year old Company writer named Daniel Crockatt happened to be sitting on the bench.¹²⁸ The Bombay executive had appointed Crockatt as an alderman just a month before and he was clearly determined to leave a mark on the court. When the aldermen present began to read Rasool's case, Crockatt objected that it did “not come properly under the cognizance” of the court, citing the charter of 1753.¹²⁹ The other aldermen, shocked by this turn of events, wrote to the executive stating that the majority were “perfectly satisfied with their present method of practice” and that Crockatt's objection threatened to cause a great miscarriage of justice on the island.

The executive took up the issue at their next meeting and concluded that it was improper for the aldermen themselves to object to proceedings and that it was the job of an Indian litigant to offer the objection.¹³⁰ The Mayor's Court accepted this reasoning but with a series of addenda. They maintained that the Mayor's Court had always accepted a plural jurisprudence and paid “due regard to the particular laws and customs of the casts.”

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¹²⁸ See BL IOR J/1/4 f. 163 for Crockatt's birthdate and service history.

¹²⁹ For the original case see BL IOR P/417/24: Bombay Mayor's Court Proceedings, 23 February 1768. For a more detailed letter from the court containing these objections see BL IOR P/341/31: Bombay Public Proceedings, 25 February 1768.

¹³⁰ BL IOR P/341/31: Bombay Public Proceedings, p. 168 (4 March 1768). To this effect they cited the definition of “privileged persons” in Jacob's legal dictionary, arguing that “Natives of India” were privileged in the sense that they could gain immunity from the court.

In addition, they wrote that “the natives themselves” objected to the exclusionary clause and did not wish to see it put into use. Most significantly, the aldermen wrote that excluding Indians from the chartered court would necessarily exclude them from all justice as:

“It is well known that no other body or establishment subsists here for that purpose except the Mayor's Court; for as the island is held of no country sovereign it is impossible to erect a Jemedary [Zamindari Cutcherry].”

As a result, the Court resolved to write to England to confirm their tradition of “extending the authority” of the court to all as under the “first charter.”¹³¹

In their arguments against Crockatt, the aldermen did not assert the supremacy of substantive English law nor did they write of the inherent inapplicability of English legal forms to Indians. They merely asserted that the long-standing legal culture of the city supported the English Mayor's Court as the central forum for the adjudication of disputes. In this vein, their mention of the Zamindari (Cutcherry) court is telling and indicates a knowledge of the different manner in which justice operated in the EIC's other territories. Crockatt and others in Bombay, perhaps those who had served in Bengal, seem to have favored the bifurcated system of courts established there and the aldermen clearly felt obliged to respond to their arguments. In doing so they made a fundamental argument about the unique nature of Bombay's constitution, one rarely seen in preceding years.

That is, unlike Madras, Calcutta, and other EIC territories, Bombay was not leased, granted, or dependent on an Indian political power, i.e. “held of no country sovereign.”

Rather it had been deeded to the British crown and then the Company. As such, the

¹³¹ BL IOR P/341/31: Bombay Mayor's Court Proceedings, pp. 227-331 (6 April 1755).

aldermen reasoned, regardless of how fitting a Cutcherry might be for adjudicating Indian disputes, English law and government reigned supreme on the island, making such an establishment “impossible.”¹³²

The significance of the Cutcherry and indeed of all the “country courts” under the Company flowed from the fact that their very constitution they gave the Company ultimate authority over dispute resolution. By the early 1770s in Bengal, the EIC had gained a foothold in controlling what punishments were inflicted locally, the type of cases heard in which court, and who could be deemed immune from prosecution.¹³³ This supervision and control over local courts also of course served the purpose of regularizing the EIC's administration, or in other words, its collection of revenue. To the Company's fiscal officials, the potential for lawsuits against Indian collectors, landlords, and political elites, posed a grave threat to a regular revenue stream. Consequently they deemed it essential for the Company to be able to intervene in legal process whenever expedient. As such, EIC officials attempted to use their control over the country courts to their advantage. For example, in 1773, William Makepeace Thackeray then acting as an EIC revenue official, wrote to a friend in the EIC administration of Dacca. Thackeray

¹³² This is not to argue that the EIC and chartered courts at Bombay prevented communal dispute resolution mechanisms from functioning. The *veredores* and others continued their work alongside the Mayor's Court and in the 1770s the Company empowered the Parsi dispute resolution tribunal to inflict minor corporal punishments for religious offenses. See Davar, *The History of the Parsi Punchayet of Bombay*, pp. 5,11-12.

¹³³ Some contemporaries also claimed that the executive, acting as justices of the peace sent “natives” from all over Bengal to the quarter sessions in Calcutta, no doubt to avoid the seeming lenience of interior courts - see *Seventh Report From The Committee Of Secrecy*, p.332. For more on this period in the legal history of Bengal see Radhika Singha, *A Despotism of Law*, pp. 4-20; Jèorg Fisch, *Cheap Lives and Dear Limbs*, pp. 2-4, 31-2; A.M. Khan, *The Transition in Bengal: A Study of Seyid Muhammad Reza Khan*, (London, 1969); Misra, *The Judicial Administration of the East India Company in Bengal 1765-1782*; Majumdar, *Justice and Police in Bengal*.

expressed concerns about two of his Muslim revenue collectors who had just been sued for a debt in the Company's Cutcherry in Dacca. He wanted to make sure he could extract the appropriate sums from the men himself before their assets were tied up in litigation. Accordingly he asked his friend to withdraw the summons from the Cutcherry court under his control.¹³⁴

While the EIC could perform damage control in cases brought to the courts in its *diwani* territories, it had historically less success controlling the Calcutta Mayor's Court. Thus it tried as hard as possible to prevent litigants from bringing revenue-related litigation to the charter court. When a Company employee named Lushington attempted to collect a debt from Rajah Kissenchund, a powerful Bengali landholder, he decided to bring suit in the Mayor's Court. The sheriff of the court promptly arrested Kissenchund, who then complained to the EIC executive. The Calcutta council was not pleased and called Lushington to its chambers, eventually voting to dismiss him from the Company's service. Lushington pleaded that the Mayor's Court had jurisdiction over such matters and that he "hoped it was not a crime to appeal for redress to the laws of Great-Britain."¹³⁵ The Council was not amused and declared that his action was "prejudicial to the revenue" and served to condemn "the authority of the government." Furthermore, the Council argued that if English law became a viable option for cases involving Indian landholders,

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¹³⁴ Letter from Richard Barwell to William Makepeace Thackeray - 29 November 1773. Reprinted in "The letters of Mr. Richard Barwell," (part VII) *Bengal Past & Present* 11 (1915), pp.273-4. Barwell did not cave to the pressure, writing that he needed to maintain the authority of his Cutcherry in the minds of the "natives," but he did offer to delay the official summons so that Thackeray could get the affairs of his district in order.

¹³⁵ BL IOR H/766: Miscellaneous papers, p.497.

these elites themselves would avoid paying the Company and instead entangle their affairs in the courts. To prevent this from happening the executive formally announced that all Company employees were forbidden to sue government officials of any kind in the Mayor's Court.¹³⁶

The chartered criminal courts with their English grand juries could also interfere with the Company's authority in their new territories. In 1769 the members of the Madras grand jury lambasted the executive there for their general despotism as well as the Company's policies in the interior that were contrary to the jurors financial interests. The executive had no patience for such dissent and imprisoned the jurors. They further declared, in language reminiscent of earlier Madras governors, that it was dangerous for “the ignorant natives,” to believe anyone to have authority besides the executive.¹³⁷

The grand jury of Madras also proved particularly active in expanding its own criminal jurisdiction, much to the chagrin of the Company and its local client *nawabs*.¹³⁸ For instance, Mohammed Ali Khan Walajah (the *nawab* of Arcot), complained in 1773 that he did not understand why various English institutions, especially its courts, sought to “establish an authority” over his people, when he himself did not claim or want any similar “authority over English subjects.”¹³⁹ Some of his ire derived from the constant attempts by some of his creditors to drag him into the Mayor's Court, but he was also

¹³⁶ BL IOR H/766: Miscellaneous papers, p. 495.

¹³⁷ Proceedings of 27 June 1769 quoted in Gurney, “Debts of the Nabob of Arcot,” p. 92.

¹³⁸ The Madras quarter sessions had exercised the right to take cognizance of criminal complaints from the Company's new territories outside of Madras proper as far back as the accession of San Thome in the 1740s.

¹³⁹ Excerpted in *Catalogue of valuable printed books, Americana, autograph letters and historical documents....which will be sold by auction by Messrs. Sotheby & Co...Day of sale: Nov. 28, 1966*, (London, 1966), lot 166.

likely responding to a recent instance wherein the grand jury at Madras had indicted one of his servants for a murder committed outside of Madras. On that occasion, the *nawab* asked the EIC at Madras not to try the accused by “English laws.”¹⁴⁰ The EIC executive also warned the quarter sessions about applying English law in the districts outside of Madras city, as this would

“...be the height of injustice, since the inhabitants of these new acquisitions would thereby become amenable to laws of which they have never heard and have not the least idea of, and by which crimes are punishable by a manner very different from what is practised by the constitution of the country.”¹⁴¹

This argument not only mimics those used in the 1720s and 1730s in Madras against the application of the chartered courts to Indians within the city itself, but also suggests the continuing hostility of the Company executive to the authority inherent in independent English courts.

This antipathy towards the charter courts also reflected the view of many within the Company in India that it was necessary, and indeed proper, to move Bengal firmly away from English law and government. Robert Travers has argued persuasively that Company officials, most famously Warren Hastings, sought to act as they imagined proper Mughal officials would. By upholding this “Mughal constitution” they hoped to restore the Mughal revenue and government apparatus, to the advantage of the Company and inhabitants of Bengal generally.¹⁴² Accordingly, in the summer of 1772, Hastings

¹⁴⁰ BL IOR H/427: Madras legal papers, pp. 62-3. The council wrote back that they would try and indulge him but were limited by the “laws and constitutions of the British nation.”

¹⁴¹ Ibid., pp. 64-5.

¹⁴² Travers, *Ideology*, especially chapters 2+3.

drew up a plan for a completely reformed system of justice in Bengal.¹⁴³ He proposed that in Bengal "The Mahometan and gentoo inhabitants shall be subject only to their own laws."¹⁴⁴ He admitted that because of the "intermixed" nature of Calcutta commercial life, the Mayor's Court there would have to take cognizance of disputes involving Indian litigants. However, he maintained that even in the charter court the "laws and customs" of these litigants should never be abrogated. Hastings also lamented that the Calcutta Cutcherry had faced so many English legal challenges and proposed that it be affirmed in its jurisdiction. Further, he argued that the very nature of civilization in Bengal made the country unsuited to "fixed" laws and therefore recommended that the English quarter sessions cease to have jurisdiction over non-Europeans.¹⁴⁵ Finally, he rebutted arguments claiming English liberties for Bengal, writing that the Company should only

"share with them [Indian "natives"] the privileges of our constitution, where they are capable of partaking of them consistently with their other rights and the general welfare of the state"¹⁴⁶

In addition, Hastings along with the Calcutta council, had earlier written that the inhabitants of Bengal were not "...subjects of Britain, but aliens and natives of Hindustan."¹⁴⁷ This philosophy of government, based on Company authority and "despotic" power, mirrored an enduring EIC position throughout the previous five decades. Yet, this new quest for Company authority went beyond just a desire for control.

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¹⁴³ This plan was approved by the Calcutta Council in August - for exhaustive discussions see Misra, *Judicial Administration*, pp. 168-77 and Travers, *Ideology*, pp. 104-5.

¹⁴⁴ Quoted here from Hastings' draft in BL IOR Eur. Ms. Orme OV.41, p.30.

¹⁴⁵ Ibid., p.32.

¹⁴⁶ Idem

¹⁴⁷ From a dispatch of 4 May 1770. Printed in Forrest, *Selections From The Letters, Despatches, And Other State Papers Preserved In The Foreign Department Of The Government Of India 1772-1785*, vol. 1, pp. 88-9.

Rather, in advancing arguments against English law and participatory government, Hastings and others believed they were installing the most suitable kind of government for Bengal. That is, the Mughal constitution and the inherent nature of Indians meant that any system of justice and administration on the subcontinent would have to be governed by principles and laws foreign to England. As with earlier Company efforts to assert a necessary difference between Asia and England, these moves towards Cutcherry justice and away from English norms prompted vigorous opposition.

Resistance

Company employees and free merchants had long felt that the EIC ruled with too despotic a power. In light of the treatment that individuals like Lushington faced for simply attempting to collect a debt, it is no wonder that this sentiment gained even more traction after the 1750s, as the Company expanded its geographic reach and more confidently moved away from English methods of law and government. As in the decades of the 1720s and 30s, after acquiring the *diwani*, the Company used the legal uncertainties created by the contested constitutional status of its settlements to remove problematic merchants and those who hindered the EIC's political aims. The increasing tempo of autocratic decision-making generated ever more stories of EIC oppression.

Circulating through word of mouth, letters, and public pamphlets, these narratives depicted the Company as embracing Asiatic government and villainous Indian clients, while routinely abusing basic English liberties. Such accounts had a significant impact on how people both in India and England conceptualized law and justice in the EIC's territories.

The dichotomy between the laws of England and the Asiatic government of the Company persisted wherever the Company went. In Madras and elsewhere, free merchants and others raised similar objections to their counterparts in Calcutta. One Englishman objected that the Board of Police established in Madras as an ersatz Cutcherry was “...an institution unknown to the Laws of England and derived from the Laws or Institutions of a Foreign Nation.”¹⁴⁸ Likewise, when a combined EIC and Crown force from Madras captured Manila in 1762, one Company official in charge of the city looked to his experience at Madras and formed a “Chottry [Choultry] court” in which “he declared himself absolute and confined who he pleased.”¹⁴⁹ Residents of the city and members of the regular army complained almost immediately about this and other despotic measures by the EIC, bringing closer scrutiny by the Crown.¹⁵⁰

Most of the complaints about the EIC, however, came from disgruntled merchants in Bengal. In the late 1760s and early 1770s the Company arrested or deported a number of free merchants and others throughout Bengal whom they claimed carried on trade in defiance of EIC policy. In 1766, the EIC executive imprisoned two Englishmen in Calcutta for violating several trade regulations, planning to hold them without trial in

¹⁴⁸ Proceedings of the Board of Police (18 April 1770) quoted in Love, *Vestiges*, v.3, p.14.

¹⁴⁹ The most convenient source for all British Manila documents is Nicholas Cushner, *Documents Illustrating the British Conquest of Manila 1762-1763*, Camden 4th Series, Vol. 8, (London: Royal Historical Society, 1971). For a document-laden narrative of the occupation and administration of Manila see K.C. Leebrick, "The English Expedition to Manila in 1762" Ph.D. Dissertation (Department of History, University of California, 1915). The account of the “Chottry” court above comes from a letter of Capt. John Backhouse to the Secretary of War quoted in Lebrick, p. 210.

¹⁵⁰ When confronted with these accusations, the EIC governor responded that he had taken pains to ensure that "All the inhabitants of Manila" would be considered as "His Britannick Majesty's subjects" and therefore free from impositions and abuses. See the agreements about Manila between the Company and Crown in BNA CO/77/20: State Papers Relating to the East Indies, especially ff. 161-2.

advance of deportation. The deported Englishmen complained bitterly, condemning the council for abandoning their duty to “God, King, and Country,” for embracing “despotic government,” and for failing to abide by “the Laws of England.”¹⁵¹ A year later, the Company imprisoned several merchants in a distant fort outside of Calcutta for similar offenses.¹⁵² One of these merchants wrote angrily to his captors that he doubted that “the constitution of Great Britain” allowed them to treat him as such. Yet, it seems that the Company, with the events of the previous year clear in their minds, was thinking of that very constitution. In a separate letter, the Calcutta EIC claimed that they had imprisoned the merchants outside of Calcutta because it had caused legal problems to confine such people “within the limits of the charter.”¹⁵³ However, even when the prisoners came to Calcutta to be deported, the chartered courts proved ineffective.¹⁵⁴

A few years later, the Company attempted to deport alderman William Bolts without trial, leading him to approach the grand jurors of Calcutta for assistance, to no avail. In his petition to the jury he asked that the EIC executive be brought up on charges of unlawful detention. In the familiar language of an aggrieved English subject, he

¹⁵¹ BL IOR H/199: Papers relating to expulsions from Bengal, pp. 3-17.

¹⁵² For more on the background of these merchant expulsions see Willem G.J. Kuiters, “Law and Empire: the Armenians contra Verelst, 1769-77,” *Journal of Imperial and Commonwealth History*, 28.2 (2000), pp. 1-22.

¹⁵³ The prisoners wrote to two attorneys of the Mayor's Court in order to gain freedom to no avail. One lawyer even wrote back saying that he feared helping lest he find himself imprisoned as well. All citations here from the manuscript bills of complaint in Nicol v. Verelst (1777) at the Norfolk Record Office, Walsingham Papers (WLS LV55-6) I thank Prof. Emily Kadens for her kindness in sending me photographs of these records.

¹⁵⁴ In 1770 when the EIC sought a Parliamentary statute to affirm their right to deport Englishmen without trial, a former Calcutta free merchant testified that such a power would be “contrary to justice and to the fundamental principles of this constitution” BL IOR A/2/8: Company Documents Relating to Parliament, f.242. The statute was passed nonetheless with minor alterations as 10 George III c. 49 (1770).

claimed the Council had acted “against the peace of our Lord the King his Crown and Dignity,” and also in contempt of the “Liberties of our Constitution” enshrined in the Magna Charta.¹⁵⁵ In the mind of those victimized by the Company, the EIC executive and even the beholden aldermen of the Mayor's Court had all been tainted by despotic power, especially in their refusal to apply the most basic English safeguards for personal liberty.

Some English onlookers in Bengal thought these dangerously un-British abrogations of liberty and good government went hand in hand with the Company's willingness to adopt “Asiatic” courts and laws in its Indian settlements.¹⁵⁶ Richard Barwell, a young Company servant in Bengal wrote to his father in 1765 about violations of liberty he had observed. “In this clime,” Barwell observed, “such are the agreeable effects of the extraordinary exertion of power.”¹⁵⁷ In a similar letter the following year he described the Company's government in Bengal quite literally as “like that of a tyrant, who fearing the worst from his subjects” had to maintain power through force of arms.¹⁵⁸ In light of such “Tyrannick power” endemic to Asia, Barwell prayed that “some sparks of British spirit remain, and I hope ever will remain [] in every English settlement.”¹⁵⁹

Yet one should not mistake the implications of such critics' preference for the

¹⁵⁵ Hallward, *William Bolts*, reprints Bolts' plea to the grand jury as appendix A.

¹⁵⁶ For more on diverging strains of European thought on difference, law, and “oriental despotism” See R. Guha, *A Rule of Property for Bengal*, (Paris, 1982), especially Chapter 2 and Travers, Chapters 1+2 for extensive discussions of the ideological origins of these strains of thought.

¹⁵⁷ Letter from Richard Barwell to his father William - 15 September 1765. Reprinted in “The letters of Mr. Richard Barwell,” (part I) *Bengal Past & Present* 8 (1914), p. 194. Barwell wrote to a friend in 1767 to ask for a copy of John Locke's works and seems to have been familiar with the intellectual currents of the day. See “The letters of Mr. Richard Barwell,” (part III) *Bengal Past & Present* 9 (1914), p. 168.

¹⁵⁸ Letter from Richard Barwell to Ralph Leycester - 15 September 1766. Reprinted in “The letters of Mr. Richard Barwell,” (part II) *Bengal Past & Present* 9 (1914), p. 99.

¹⁵⁹ Letter from Richard Barwell to Ralph Leycester, 15 September 1766, “Barwell Letters” (part II) , p.94.

extension of the British Constitution to India, which did not necessarily translate into a call for a unified system of English law applicable to all residents. Rather, they also seemed to take a dim view of the inherent capacity of Indians to participate in English law and governance. During a sojourn at the EIC's administration in Dacca, Barwell wrote to a friend that he wished Europeans were allowed to hold land revenue grants as they could run estates better than “the natives,” whose “...education and ideas and prejudices inculcated by a long despotism” made them unreliable managers.¹⁶⁰ In other words, post-Plassey, critiques originating in India about the Company's despotism usually involved only a desire that Englishmen and their fellow Europeans could count on the benefit of English liberties in India; their adherents made little attempt to extend such privileges to the Hindus and Muslims in their midst.

Metropolitan Response

These appeals to English law and subjecthood against the “Asiatic” power of the Company were more often than not directed at lawyers and politicians back in London. Indeed, the nature of the Company's power over Calcutta and its residents had long been confused even by those who had lived in India for years. The situation was undoubtedly worse in London, where legal elites were even further removed from the realities of local politics. As such, these metropolitan lawyers barely understood the intricacies of the Company's new government in Bengal and the serious questions it raised about the imperial constitution. Instead they responded to legal crises and queries in India with the

¹⁶⁰ Letter from Richard Barwell to John Hawkesworth - 3 November 1773. Reprinted in “The letters of Mr. Richard Barwell,” (part VI) *Bengal Past & Present* 11 (1915), p. 70.

same broad legal reasoning, predicated on other imperial precedent, which had characterized their treatment of EIC India for decades.

The presence of royal troops at the recapture of Calcutta and disputes over the disposition of the spoils of war raised questions to the fore in London which had been debated for years, namely, whether the Company's settlements in India belonged to the EIC or the Crown.¹⁶¹ Accordingly, in 1757, several of the most prominent legal elites in London weighed in on what to do about competing Company and Crown claims on the recaptured city of Calcutta, newly acquired territories outside its bounds, and the plunder taken by the armed forces during the campaign. In a series of opinions on this matter, which were later copied and recopied all over the British world, the lawyers attempted to clarify the very constitution of the expanding empire.

In an August 1757 opinion, George Hay, Charles Yorke (the Solicitor General), and Charles Pratt (the Attorney General) wrote that all places recaptured in the war returned to their former state and thus Calcutta should be restored to the Company, but that all new territorial acquisitions conquered with the help of Crown troops were now “vested in His Majesty by right of conquest.”¹⁶² While this conclusion might seem fairly straightforward, Yorke and Pratt were later asked to comment on a Royal warrant granting plunder and new acquisitions to the Company. They offered their opinion that

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¹⁶¹ These debates have a long history – see Stern *Company State*. See also a copy of a 1692 opinion on the rights of the Company to its forts as copied sometime between 1743-56 in BL Lansdowne MS 846, f.250. In 1753 the Company wrote to Secretary of State Newcastle that they looked upon their possession of several Indian territories as by grant “not only to the Company but also to the English nation.” See BNA CO/77/19: State Papers relating to the East Indies, p.122 (25 September 1753). Also see Huw Bowen, “A Question of Sovereignty? The Bengal Land Revenue Issue 1765-7,” *Journal of Imperial and Commonwealth History* 16 (1987-88), pp. 157-76.

¹⁶² Opinion of Hay, Yorke, and Pratt dated 16 August 1757 in BL Add. Ms. 18,464, f.1.

“...the property of the soil” (i.e. basic land rights) in EIC territories belonged to the Company by “Indian grants,” but that these territories were nonetheless

“....subject only to your Majesty's Royal right of sovereignty over the settlements as English settlements and over the inhabitants as English subjects who carry with them your Majesty's laws wherever they form colonies and receive your Majesty's protection by virtue of your Royal charter.”¹⁶³

This statement seemed to offer affirmative confirmation that the inhabitants of Calcutta and other EIC territories were indeed subject to the Laws of England.

Perhaps unsurprisingly then, at the same time as the Company acquired new territories and new tributary relationships in India, the Company and its lawyers in the metropole continued to put their faith in English law and familiar models of government when introducing new legal regimes elsewhere. In 1760, at the behest of the Company and its advisers, the Crown approved a charter establishing a Mayor's Court for the EIC's settlement on Sumatra almost identical to that for the Indian cities of 1753.¹⁶⁴ It was so identical in fact that its text included the clause excepting all causes between “the Indian Natives” of the settlement, regardless of the fact that there were few if any Indian Natives

¹⁶³ This opinion as given by Charles Yorke and Charles Pratt on 24 December 1757 is ubiquitous in contemporary records. For just a few copies see BL IOR: A/2/7, pp. 99-108; L/L/7/60, BL Add. Ms. 18,464, ff. 5-7, BNA CO/77/19: State Papers Relating to the East Indies, ff.178-80; 30/8/99: Chatham Papers, ff. 236-8. It also became wildly popular in the Americas - being copied and recopied many times with the phrase “Indian grants” taking on a new meaning. See for example George Washington's MS copy of the opinion - taken down on the first leaf of his diary: Library of Congress, George Washington Papers: series 1b. Diary, January 1 - December 31, 1773, f. 2. For more see Bowen, “A Question of Sovereignty,” p. 162 and J.M. Sosin, “The Yorke-Camden Opinion and American Land Speculators,” *Pennsylvania Magazine of History and Biography*, 85 (1961), pp. 38-49. It appears to have been first printed in 1767 as part of a set of Parliamentary papers - for a facsimile see Lambert, v. 26, item 3054.

¹⁶⁴ See J. Ball, *Indonesian Legal History: British West Sumatra 1685-1825*, (Sydney, 1984) for more background. Also see PC 2/107: Privy Council Register, p. 491 (12 September 1760) and BNA PC 2/108: Privy Council Register, p. 71 (22 November 1760) for approval of the charter. For its text see BL IOR G/35/12: Sumatra Factory Records, ff. 127-138.

at Bencoolen.¹⁶⁵ In other words, the charter did not exempt suits between the many Chinese or Sumatran residents of the settlement. There was no move to exclude the racially other - simply a leftover provision from an earlier locally-specific charter. The Company even specified that the head of the factory was to read a statement aloud to the “heads of the Malays” and all others at the settlement saying that the new courts would establish justice “...according to the laws and statutes of England which are the most salutary and best calculated for the safety of the people and security of their lives, liberty, and property.”¹⁶⁶ In short, even in 1760, the Company in London still looked to English law and anglicization as the proper methods for governing in Asia.

The Company's legal staff in London also continued to operate from standard assumptions about the imperial constitution and the universal applicability of English law in cases from the charter courts themselves. In 1760, for example, the Mayor's Court in Madras wrote to London to ask whether “natives” could take out letters of administration for estates, or if these were even necessary to transfer property amongst Hindus/Muslims under the new charter. The Company's former standing counsel (now solicitor general) Charles Yorke did not hesitate to give as his opinion that the Mayor's Court “may and ought to” grant probate or letters of administration to those “native Indian[s]” appointed executors or otherwise “entitled to according to the Law of England.”¹⁶⁷ To Yorke, as to Woodford and Company lawyers before him, English law was to be followed according

¹⁶⁵ BL IOR G/35/12: Sumatra Factory Records, f. 136.

¹⁶⁶ BL IOR G/35/31: Sumatra Correspondence, 4 February 1761. If anything, the only major departure in Bencoolen from the legal regimes of the Indian courts was the Company's insistence that a trained lawyer “bred to the law in this country” be sent from London to be the first court register

¹⁶⁷ Opinion of Charles Yorke: BL IOR L/L/7/54: Legal Advisors Papers, 2 February 1761.

to metropolitan norms even when culturally different litigants were at court.

Even when reviewing complaints from the settlements, like those in Metre's case from Calcutta, legal elites in London did not budge on their commitment to the universal application of the law. When reviewing Radachurn Metre's case, the Company's counsel wrote to Calcutta to scold them for improperly recording under which forgery statute they had tried Metre, and then stated that there appeared "to be slender legal evidence" against him.¹⁶⁸ As a result they recommended Radachurn for a royal pardon, which the Crown granted in February 1765. There is of course a notable absence here in the treatment of the case in London. That is, the cultural and religious objections to English law raised by the petitioners in the case seem to have fallen on deaf ears. Rather, London legal elites were instead interested in the interpretation of the English statute, the evidential basis for conviction, and correcting a procedural malfunction in English law.

After the Company acquired *diwani* rights over Bengal in 1765, metropolitan elites in London still embraced broad notions of English legal practice and subjecthood. In 1768 for example the Directors wrote to Calcutta noting that inheritance and succession in the interior territories seemed chaotic and suggested that they institute inheritance laws there as near as possible to those of England, especially "the right of bequeathing by will."¹⁶⁹ Likewise, the Company's lawyers largely had little sympathy for

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¹⁶⁸ See BNA PRO 30/8/99: Chatham Papers (section 3), f.405+f.410 for documents from the Metre case including the Company's letter of 19 February 1766 (para. 101). For a printed version see *Papers by the Consultations of the Governor and Council of Bengal, of the 11th of March 1765, so far as concerns an Application to them for a Pardon for Radachurn Metre* (in Lambert v.63, pp. 309-324).

¹⁶⁹ Letter of 16 March 1768 quoted in Majumdar, *Justice and Police*, p. 67 and in the *Seventh Report From The Committee Of Secrecy*, p. 327.

the EIC's seemingly despotic control over Calcutta. The Company's solicitor wrote in an opinion of 1767 that it was absolutely unlawful for the Company or anyone else to tax the inhabitants of Calcutta without their consent.¹⁷⁰ In addition, in 1757 and again in 1769, former Company counsel Charles Yorke found the Calcutta executive's actions in expelling free merchants to be highly suspect and liable to get the Company's employees sued in London.¹⁷¹ In fact the Company's lawyers declined to contest William Bolts' appeal to the Privy Council relating to his removal as an alderman, agreeing that the removal had been unfounded. Yet, in prosecuting Bolts in the Exchequer for violating trade statutes, the Company's legal staffs were able to give him a taste of his own medicine.

Showing just how strategic arguments of subjecthood could be, Bolts attempted in that case to avoid the statute by asserting that he was a subject of a German state and not of Britain. The Company's solicitor and the Attorney General vehemently disagreed, arguing that as a Mayor's Court alderman Bolts had pledged allegiance to the laws of England. They further laid out a definition of legal subjecthood in the case, namely that those who "have the protection and benefit of the laws of England" must therefore be "amenable to them."¹⁷² This broad definition of what it meant to be an English subject, affirmed in Bolts' case by the Exchequer and House of Lords, was simple and wide-

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¹⁷⁰ BL IOR L/L/7/107: Legal Advisors' Papers,

¹⁷¹ See the opinions of Yorke and Browning in BL IOR H/411, (9 November 1757). For Yorke's 1769 opinion on the Bolts case see BL Add. Ms. 35,918, pp 156-61.

¹⁷² This argument comes from the printed brief presented by Charles Sayer of the Company and Edward Thurlow the Attorney General to the House of Lords in Bolts' appeal from the Exchequer: *William Bolts, Esq. appellant. Edward Thurlow, Esq. His Majesty's Attorney-General, at the relation of the East-India Company, respondent. The respondent's case* [London][1773]. For the printed report of the verdict in the case see EIC v. Bolts (1773) 1 Eng. Rep. 662.

reaching, as well as a direct corollary of earlier arguments for legal subjecthood advanced by various Indian residents of the EIC's territories.

This is not to suggest that metropolitan legal elites always found it easy to puzzle out the relationship between English law and India. Given the rapid state of political change in South Asia, one must remember just how far removed these London elites were from local dynamics. These officials plowed ahead, trying to understand Indian legal affairs, while dependent on metropolitan understandings of the imperial constitution and law. Indeed many disagreed and formed competing opinions. In the high profile case of Lord Clive's Jaghire, which called for these elites to opine about the relationship between the EIC's new territories and English law, one can see just how slippery and contested this imperial constitution was.

As part of their agreement to depose Siraj-ud-Daulah in 1757, Mir Jafar had guaranteed Robert Clive the personal rights to revenues collected in several districts outside of Calcutta. When a new faction amongst the EIC directors took power in 1763, one of their first actions was to suspend the payment of these revenues to Clive and instead appropriate them to the EIC treasury. Clive then sued the Company in the Court of Chancery in an attempt to win his annual tribute back.¹⁷³ The Chancery claimed to have jurisdiction, on the grounds that Bengal was like Ireland, a conquered country, and "member of and subject to the government of England."¹⁷⁴ Given the stakes in the case

¹⁷³ For the best narrative of these events see Bruce Lenman and Philip Lawson, "Robert Clive, the 'Black Jagir, and British Politics," *Historical Journal* 26.4 (Dec. 1983), pp. 801-29.

¹⁷⁴ Edward Thurlow quotes this as the Court's opinion in his reading of the case see his opinion in BL IOR H/766 p. 543, and also BL IOR L/L/7/74: Legal Advisors' Papers, 20 December 1763. No statement

the Company consulted a broad swath of London legal elites for their opinion on its merits. In these opinions, the lawyers offered diverging arguments on the place of Bengal and Indian legal practices in the imperial constitution.¹⁷⁵

One of the lawyers consulted, the barrister Stephen Comyn of Lincoln's Inn, proposed a method of proceeding in keeping with generic understandings of the imperial constitution. That is, he suggested that the Mayor's Court in Calcutta was the proper royal court to hear such Indian matters and failing that, the Privy Council.¹⁷⁶ Other legal elites weighing in on the case offered more complicated readings of the situation. Edward Thurlow, a future Lord Chancellor, argued in his opinion against chancery jurisdiction, believing that English laws and courts, including the Calcutta charter courts, could have nothing to do with the case, as it rested on a Mughal grant. However, he offered little other consolation to the Company. In a long screed he railed against the perfidy of Muslims and the inherent defects of the Indian people generally, calling them "...a people so savage that they cannot be leagued with them [EIC] in any certain peace under the laws of nations." As a result he found the idea of an "English subject" like Clive taking any grant from these savages repugnant, since his actions "...reduce[d] the English to the condition of Moorish subjects, terms impossible for freemen."¹⁷⁷ His position shows a

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from a chancery master using these exact words is forthcoming.

¹⁷⁵ The Company had some of these opinions abridged and printed in 1773. See *The opinions of Mr. James Eyre, Mr. Edmund Hoskins, Mr. E. Thurlow, and Mr. John Dunning, on the subject of Lord Clive's Jaghire....* (London, 1773). I quote throughout from the MS originals as indicated. Dunning (L/L/7/76), Eyre (L/L/7/77), and Fletcher's (L/L/7/78) MS opinions are not quoted here.

¹⁷⁶ Comyn's opinion: BL IOR L/L/7/74: Legal Advisors' Papers, 25 November 1763. In fact, according to Clive's lawyers, this was the course of action first recommended by the Company itself but which they dismissed in favor of the Chancery - see the Company's response in BL IOR H/197, p. 417.

¹⁷⁷ Thurlow's opinion: BL IOR H/766, p. 548.

kind of reversion to common 16th and 17th century European thought on non-Christians, that is, as aliens from the world of law.¹⁷⁸

Robert Jackson, a lawyer with an extensive colonial practice, and Charles Sayer, the Company's solicitor, took analogous tacks. Jackson found it absurd that Clive grounded his action in chancery "on a circumstantial article of the laws of Mogulistan."¹⁷⁹ Sayer wrote along similar lines - that Clive's demand related to

"...a rent issuing out of lands in Indostan and appeals to the laws and customs of that country of which our courts have no knowledge and if they had, have no power to enforce the observance of them."¹⁸⁰

He did however admit pragmatically that the imperial constitution was a fickle thing and that in the past Lord Chancellor Hardwicke had enlarged the jurisdiction of the Chancery in suits from the Americas and so might actually hear the case regardless.¹⁸¹ On the other hand, the Solicitor General, Charles Yorke disagreed with all of the other lawyers, insisting that the matter could indeed be determined in English courts including the Chancery, "according to the constitution of the Mogul Empire."¹⁸²

These contradictory and fragmented ideas about the legal constitution of empire reflect just how fluid metropolitan legal understandings of India could be. Some like

¹⁷⁸ In chapter two, for example, we see how the Company's counsel John Hungerford made clear in 1727 that he rejected these assumptions.

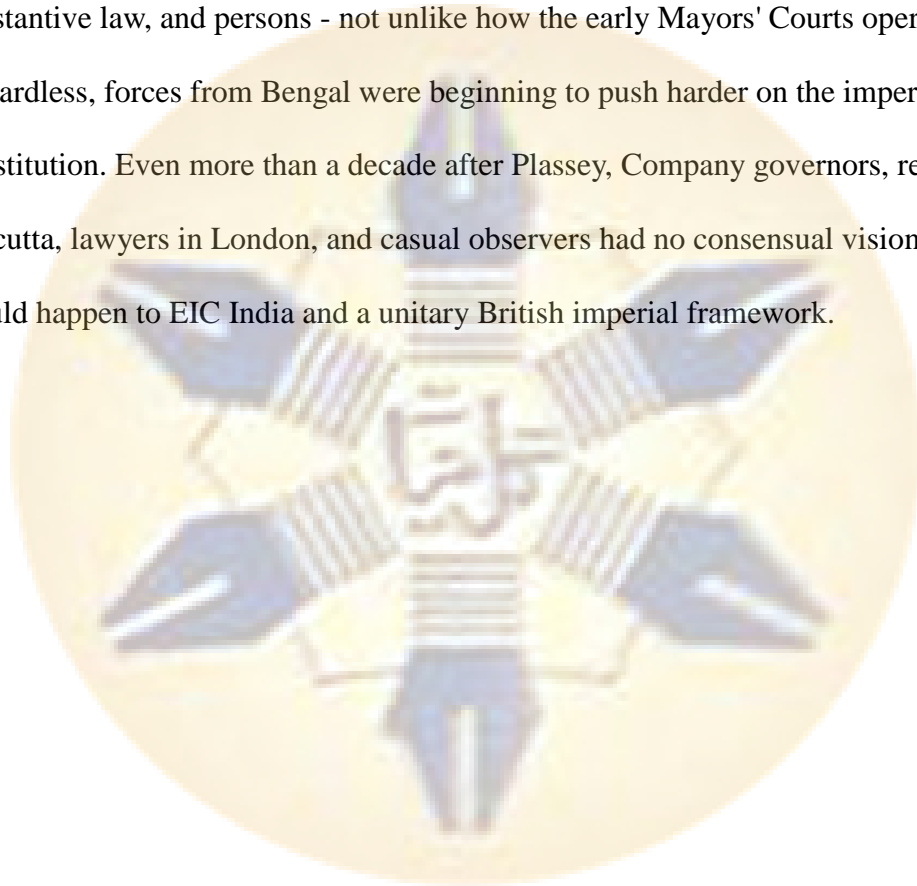
¹⁷⁹ Jackson, of Lincoln's Inn, was an attorney for the board of trade and land agent for Connecticut. For his opinion see BL IOR L/L/7/71: Legal Advisors' Papers, 21 November 1763.

¹⁸⁰ Sayer's Opinion: BL IOR L/L/7/73: Legal Advisors' Papers, 29 November 1763.

¹⁸¹ *Idem*

¹⁸² Charles Yorke's opinion was printed in 1764: *The opinion of the Honourable Charles Yorke, touching Lord Clive's Jaghire, taken by the Court of Directors, and read to the General Court of Proprietors, held at Merchant-Taylors Hall, on Wednesday the 2d of May 1764* (London, 1764). This opinion was then reprinted in 1773 during the Regulating Act debates. I quote here from the MS version in BL IOR L/L/7/75: Legal Advisors' Papers, 28 April 1764.

Thurlow thought the Company had no business dabbling in Asiatic institutions and should stick to English ways of law and government. Others like Yorke believed in English courts and judicial institutions whether in the colonies or at home, but believed them flexible enough in their jurisprudence to accommodate all manner of subjects, substantive law, and persons - not unlike how the early Mayors' Courts operated. Regardless, forces from Bengal were beginning to push harder on the imperial constitution. Even more than a decade after Plassey, Company governors, residents of Calcutta, lawyers in London, and casual observers had no consensual vision for what would happen to EIC India and a unitary British imperial framework.



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Epilogue: Metropolitan Debate and a New Legal Era, 1772-73

Metropolitan courts, legal elites, Indian litigants, and Company officials could all debate the legal ramifications of the Company's new acquisitions, but without any assurance that their opinions could effect substantive change in India. As argued throughout this dissertation, the devolved nature of the mid eighteenth-century imperial constitution meant that metropolitan institutions had relatively little direct control over the Company's settlements. By the 1760s, however, the tide had begun to turn in London towards more direct intervention in Indian affairs. Just as Parliament and the Crown were strengthening their control over the American colonies, they also reached out to India, not as some aberrant, strangely different, part of the empire, but as part and parcel of a British whole. This epilogue traces metropolitan intervention in the legal constitution of the Company's territories. It argues that these attempts at reform and anglicization were based on a range of free-floating notions about the nature of empire, as well as the suitability of English law and government to supposedly civilizationally different peoples. In the end Parliament and the Crown introduced a confused system of elite metropolitan legal practice to India, ignoring local legal culture in the process. I argue that like many metropolitan solutions to remote problems, these "reforms" only intensified preexisting debates about the legal constitution of the EIC's settlements and brought about a permanent bifurcation in British Indian law.

Parliament and the Crown had of course not ignored the Company in the years

prior to Plassey and the *diwani*. The Crown had granted the EIC several charters in the previous decades and Parliament had confirmed the Company's privileges on several occasions. Yet, few of these measures included provisions to tether the administration of government and law in the Company's settlements to metropolitan control. This laissez-faire attitude began to change with the EIC's increasing fiscal and military power in the 1750s. In 1754, for instance, Parliament inserted a provision into an act regulating courts martial in the EIC's territories.¹ Wedged at the end of the statute, this clause gave the court of King's Bench jurisdiction over all oppressions and crimes committed by the Company or its agents in India. This clause was an innovation, insofar as it provided black-letter statutory provision for the court of King's Bench to hear all cases in which EIC officials were accused of oppressing "his Majesty's Subjects beyond the Seas" or "any other Crime or Offence contrary to the Laws of that Part of Great Britain called England."² In essence, by this provision, the right of inhabitants of the EIC's territories in India to turn to London and common law for redress was now enshrined in statutory law.

This anglicizing and centralizing urge was not restricted to Parliament. When

¹ 27 George II c.9 (1754). See William Cobbett, *The Parliamentary History of England, from the earliest period to the year 1803* [36 vols.] (London: Hansard, 1806-1820), vol. 15 [1813], pp. 257-68 for debates. In order to protect its ever growing territories from the French, the Company created what would essentially be a standing army by the mid-1750s. In 1753 the Crown agreed to send Royal troops to help the Company and as a result the Company went to Parliament to push through a bill to put their troops and royal troops on the same legal footing vis a vis martial law and to "obviate all the doubts that had been raised to [the EIC's] former powers" established by royal charter BL IOR E/4/996 (1758) pp. 650-1. While the 1754 mutiny act received much contemporary attention it has been almost completely ignored by subsequent scholars. The Portuguese ambassador for one thought it an important enough struggle between the Crown, Company, and national liberties [*liberdades da nacao*] to report it back to Lisbon. Torre do Tombo, Lisbon: MNE box 688 (5 March 1754).

² See 27 George II c.9 article XIII (1754). This clause appeared again in 1 George III c.14 (1760) which extended the act to EIC settlements on Sumatra. It was again used to frame 10 George III c.47 article IV (1770) which stipulated that all such offenses happening in the East Indies would be considered as if they had happened in Middlesex.

George III ascended to the throne in 1760, for example, the Crown sent word to its colonies all around the globe. William Pitt wrote to the London EIC as he would to any other chartered colony, telling them to promulgate the announcement in their settlements.³ Accordingly, as dutiful subjects, the EIC sent out a copy of George III's printed speech alongside Pitt's letter and the formal proclamation "... used in his Majesty's plantations in America" to their settlements in India.⁴ Through this proclamation the Crown and Pitt's government clearly wanted to instill a sense of allegiance, subjecthood, and common bond, as well as the long reach of metropolitan government.

The long arm of London began to reach out to India in earnest after the Company acquired the *diwani*. Once the Company gained these revenue rights, some in the British government sought ways to tap into its seemingly vast financial resources. As a result, they and successive waves of ministerial factions launched a series of parliamentary inquiries into the East India Company, its rule in India, and its revenues.⁵ In 1767, under the argument that India was a "British" conquest, the Prime Minister William Pitt and

³ BL IOR E/1/42: Letters to the London EIC, p 139. Pitt wrote "...cause like proclamation to be forthwith proclaimed and published in the several governments, within your jurisdiction in the East Indies, with the solemnities and ceremonies, usual and accustomed on such an occasion." The form he sent along also included a blank for the Company to fill in the King's official title for the East Indies: "...of Great Britain, Ireland, France and also the supreme dominion and sovereign right of ____"

⁴ BL IOR E/4/996: Letters from London, p. 999 (November 1760).

⁵ The classic account of these debates is L.S. Sutherland, *The East India Company in Eighteenth-Century Politics*, (London: Oxford University Press, 1952). For more recent scholarship see Bowen, *Revenue and Reform*. Bowen discusses the 1767 hearings in detail in his "A Question of Sovereignty." See also Sudipta Sen, "Colonial Frontiers of the Georgian State: East India Company's rule in India," *Journal of Historical Sociology* 7.4 (Dec. 1994), pp. 368-92.

others began proceedings to investigate the Company's right to its Indian territories.⁶

After months of negotiation and wrangling, the Company reached a settlement with the government to hand over £400,000 a year from its revenues. These proceedings in parliament ended without any substantive decision about the constitutional relationship between EIC India and the British Crown.⁷ But throughout the early 1770s, stories of depredations, fabulous corruption, and maladministration continued to arrive from India. Over 1769-71, a massive famine in Bengal killed tens, if not hundreds of thousands, under the Company's watch. In addition, the EIC's shareholders grew nervous about whether the Company could make good its dividends in light of much-reduced revenues from India. The Company, worried both about the health of its Indian affairs and the prospect of unwanted government intervention, met in January 1772 to propose a plan of reform.

The terms of this debate over reform had already been well established.

Pamphleteers and politicians in London had argued against Company rule for years, often using the language of English law and empire, as in 1766, when opposition figures wrote:

“The government of so immense and distant a country requires to be under the immediate inspection of our government at home, and every part of that rich and populous empire ought to feel the protection of the British laws, which never can happen under the present system.”⁸

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⁶ See Bowen, “A Question of Sovereignty,” p. 165.

⁷ In 1769 the government again accepted continuation of payment from the Company in lieu of opening more proceedings. The Company that year also sent out several commissioners to investigate problems in India on its behalf in an attempt to appease Parliament. The commissioners’ ship sunk en route and they never took up their posts. Their commissions with notes by Company counsel can be found in BL IOR L/Uncatalogued Box 633/798 no. 7

⁸ *The East India examiner: reprinted from the original papers of that periodical publication* (London, 1766), p. 110.

Others like Alexander Dalrymple, an EIC veteran and insider, disagreed, defending the Company in India and arguing against the establishment of a universalist English government there. He asserted in 1769 that the Company governed in Bengal as part of an extant “regular system of civilization” with its own laws. More importantly, like Holwell and others, he believed that “the nature of the people over whom [the Company] have a jurisdiction” made the current despotic regime necessary. As such, he offered the threatening corollary that the Indians would greet any attempt at greater English legal intervention with “general alarm.”⁹ These rhetorical strains, pitting a philosophy of universal English law and government against that of cultural difference and despotism, served as the primary ideological underpinnings of the 1772-3 debates about India's future.

In the days leading up to their January meeting, many of the shareholders and directors of the Company were already quite upset about what they considered mismanagement and abuses by employees in India. Prior to the meeting, some of these EIC stakeholders formulated proposals for establishing a better system of law and government in the Company's territories. Copies of many of these these draft proposals survive in the records of the Company and feature copious marginal notes, struck passages, and a variety of half-revised provisions in confusing order.¹⁰ The authorship of many of these proposals is open to question, but they clearly show a diverse range of

⁹ Alexander Dalrymple, *A second letter concerning the proposed supervisorship...* (London, 1769), p.10.

¹⁰ Members of the Court of Directors appear to have printed up their own plans for private circulation to the larger body of shareholders. All quotations that follow are from the copies bound into BL IOR A/2/8. Sutherland's account in her *East India Company in Eighteenth-Century Politics* does not cite these but does have a wealth of detail on machinations behind the 1772 reforms, see pp. 240-68.

ideas about law, justice, and the imperial constitution even at the heart of the EIC. All of the proposals brought forward in early 1772 called for significant changes to the system of law in the Company's territories. Most of these took as their premise that the regime instituted by the charter of 1753 had failed. Some took the failure to be as a result of the charter's jurisdictional limitations, while others believed the problem lay in the very nature of the Mayors' Courts.

To remedy this situation, the Court of Directors proposed that the Mayor's Court at Calcutta be abolished and replaced with a "Supreme Court" to consist of four life-tenured justices.¹¹ These justices would preside over all civil cases and major criminal cases involving "British Subjects Europeans and Christians" anywhere in the EIC's territories, as well as "Natives" employed by the Company, and complaints by "Natives" against any of these subjects.¹² Though the punctuation leaves some doubt, it is clear from context that the drafters believed the category of "British Subjects" to include only Europeans and Christians. Therefore, like the charter of 1753, the plan prevented "Natives" not employed by the Company from bringing cases against one another in court. A later proposal from other members of the Court of Directors contained similar language, adding that the Directors would nominate these new Supreme Court judges subject to confirmation from the chief Westminster judges.¹³ This draft expanded on such

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¹¹ In the second draft of this proposal, the writer eliminated a provision allowing the chief justice a tie-breaking vote. See "East India Company Sketch of intended act 1772...intended to be read at court 28th January 1772" in BL IOR A/2/8 f.271.

¹² Idem. The EIC council remained JPs in this scheme but could only hear minor assaults. The Supreme Court would hear all cases of "life+limb."

¹³ "Regulations proposed by the Court of Directors to the General Court," *ibid.*, f. 308.

anglicization, including a provision explicitly allowing the justices to issue writs of Habeas Corpus. Nonetheless, despite these measures, the writers of the proposal included an important addendum on the subject of jurisdiction:

“But the Supreme Court shall not have power to interfere with alter or control the proceedings, judgments, or orders of the courts of justice in India called the Cutcherry courts nor hold any jurisdiction respecting the collection of or in an any wise concerning the duannee [*diwani*] revenues of Bengal.”¹⁴

Clearly some among the Directors wanted to avoid the possibility of trained English lawyers overturning the expedient decisions made in the Company's revenue and customary tribunals. Further, it also called for EIC employees at towns throughout Bengal (e.g. Patna and Kasimbuzar) to serve as justices of the peace, but forbade them from holding quarter sessions as in Calcutta - presumably to avoid the nuisance of formal English criminal law.¹⁵

Other proposed plans took an approach from the other side of the ideological spectrum. In at least three instances, writers designed reforms “without the supreme court proposed by the other regulations.”¹⁶ Instead, they suggested keeping a Mayor's Court but under a new constitution. In these drafts, the reformed Mayor's Court was to be the same as under the old charter of 1726, except that no alderman could be beholden to the Company in any capacity. Rather, aldermen were to be independent inhabitants elected by the “householders of the city.”¹⁷ The members of the court would also have the power to

¹⁴ BL IOR A/2/8, f. 305.

¹⁵ The revised version of this draft reversed that position and allowed quarter sessions at these cities. See “Point XXVII” in *ibid.*, f. 314.

¹⁶ *Ibid.*, f.427

¹⁷ *Ibid.*, f.404v. For this point on householders see the second draft (f.417v) and another (f.418v).

grant writs of Habeas Corpus and superintend certain criminal prosecutions involving alleged Company misdeeds. Though not explicitly stated, these proposals, by hearkening back to the charter of 1726, seem to call for a return to universal jurisdiction over all, regardless of religion or community.

The shape of EIC India's future of course did not remain entirely within the purview of the Company. While all of the internal EIC proposals called for a new charter of justice to supplant that of 1753, many also suggested that parliamentary sanction for such a charter was absolutely necessary in order to forestall any debate on the legal of the new constitution. As a result, on March 30th, 1772, the Director of the Company brought what became known as the “East India Judicature Bill” before Parliament. The bill, born from the many drafts above, proposed abandoning the Mayor's Court at Calcutta completely in favor of a supreme court with jurisdiction over “all Bengal.”¹⁸ Thousands of miles away in Calcutta, Warren Hastings fretted about what all of this political wrangling in London would produce. Writing to a friend, he outlined his fear that Parliament would overthrow his system of governance and instead “subject the Natives of Bengal to the Laws of England.”¹⁹ Although Hastings had reason to worry, Parliament stopped well short of such a move.

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¹⁸ Laurence Sullivan brought the bill on 30 March 1772. See Cobbett, *Parliamentary History*, v.17, p. 328. Peter Auber in his *An Analysis of the Constitution of the the East India Company* (London, 1826), pp. 230-2 gets his dates wrong but otherwise has a good discussion of the bill. The text of the bill, very similar to the revised draft in BL IOR A/2/8 f.271, was printed for use by the house as *A Bill For The better Regulation of the Affairs of the East India Company, and of their Servants in India, and for the due Administration of Justice in Bengal* (London, 1772). A facsimile is available in Lambert v.22, pp. 389-404.

¹⁹ Hastings to Sullivan (11 November 1772), quoted in Travers, *Ideology*, p. 123.

Parliament and Reform

Over the spring of 1772 a war of words erupted both in print and on the floor of Parliament about the fate of EIC government in India. Perhaps the most impassioned speech against the proposed bill introduced by the Company came from George Johnstone, the former governor of British West Florida and an active player in EIC politics. A year earlier he had written on his ideas for governing India. Quoting liberally from Rousseau and others on liberty and free government, he had proposed a middle path, proclaiming that he was “...far from thinking that liberty can be communicated to the subjects under our dominion in the East Indies at once,” suggesting that the government chart a course between despotism and liberty.²⁰ However, when Johnstone rose to speak in the Commons, he let loose with a much more radical critique of the Company's administration.

Johnstone complained foremost that the proposed bill did nothing to destroy the Company-state under Mughal authority, that “double engine of tyranny” in India.²¹ He also noted that the bill prevented Europeans from suing “natives” in English courts - a state of affairs he declared anathema to the basic principles of justice. Most importantly Johnstone spoke up on behalf of the broadest possible application of English law and government. Arguing that there was no reason not to exclude Muslims and Hindus from

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²⁰ George Johnstone, *Thoughts on our acquisitions in the East Indies; particularly respecting Bengal* (London, 1771), pp. 23, 27. In this same tract he proposed making the Mayors' Courts open to all disputes valued at more than £400 anywhere in the Company's territories, abolishing the country courts, and replacing them with Bengal-wide English boards of review for small criminal and civil matters (ibid., pp. 31-2, 43).

²¹ Johnstone's speech of 30 March 1772 in Cobbett, *Parliamentary History*, v.17, p. 376.

the list of those entitled to British legal subjecthood, he asked the assembled members of Parliament what would happen if the EIC governor imprisoned 1000 non-Christian inhabitants? Would they have no remedy to law? Drawing on the universalist language of the Enlightenment, Johnstone condemned this line of reasoning, noting that he opposed any oppression in the East Indies, not just of Christians but of all “human being[s].”²² He concluded his jeremiad by exhorting his fellow members of Parliament to effect a government in India like that in Philadelphia, with a local legislative assembly and justice flowing solely from the Crown.²³ To Johnstone then, the British Empire was properly a united entity featuring a system of English law, liberties, and governance, whether in West Florida, Pennsylvania, or Bengal.

Most MPs offered less bold opinions, offering procedural comment or vague sentiment on the bill. Some, like Edmund Burke, argued that there was a pressing need for some system of law for India, noting that “where no laws exist, men must be arbitrary.”²⁴ Yet in no case did these legislators offer helpful specifics. Rather, James Townsend noted that it would be impossible to decide whether to apply English law or any other system of laws to India without first conducting a detailed inquiry, using the analogy of a tailor trying to make a coat without measuring his client. To this, another member replied that something had to be done immediately, as the 15 million people of EIC India were then desperate and naked and would therefore welcome any coat no

²² Cobbett, *Parliamentary History*, v.17, p.377.

²³ Ibid., p.378.

²⁴ Speech of Edmund Burke (13 April 1772) in *ibid.*, p. 462.

matter the fit.²⁵

Perhaps unsurprisingly, the equivocating and divided parliament killed the bill in May without coming to any conclusions. Nonetheless, the debate went on unabated in the press, manifesting a clear sense in London that change was imminent. Throughout 1772-73 India experts came out of the woodwork, racing to publish polemical tracts reflecting their ideas about the future of law and government in India.²⁶ William Bolts, expelled from Calcutta four years earlier, published his *Considerations on India Affairs* in 1772, lambasting the Company for its corruption and authoritarianism, while at the same time supporting a system of Cutcherry-like courts for the majority of Bengal.²⁷ Harry Verelst, the main target of Bolts' assaults, fired back with a long tract in which he vehemently rejected any suggestion that the laws of England should apply in India.²⁸ In Verelst's view, English law was a great leveler, something exceedingly dangerous in a country wherein "a few strangers" governed a nation of millions. He also insisted that the introduction of English law and government to India would be "equally destructive" to Indians, given their essential nature. In light of Indian proclivities, he sensationally asserted, were English laws about rape enforced there, half the men of the country would face execution as a result.²⁹

²⁵ Speeches of Townsend and Whitworth (18 May 1772) in Cobbett, *Parliamentary History*, v.17, p. 466.

²⁶ I count at least forty tracts, books, or pamphlets on the issue of East India Company governance printed or reprinted in London over 1772-3. This does not even include the nine printed reports from the Parliamentary committees of inquiry published over these same years.

²⁷ William Bolts, *Considerations on India Affairs*.

²⁸ Harry Verelst, *A view of the rise, progress, and present state of the English government in Bengal*. A contemporary reviewer summed up Verelst's argument as showing "the impossibility of introducing English laws into Bengal" see *Monthly Review or Literary Journal* v. 48 (February 1773), p. 83.

²⁹ Cf. Verelst, pp. 140-1 for these arguments.

Nor were Verelst's sentiments unique. In a pamphlet from the same year, Alexander Dalrymple suggested that if Britain wanted to rule India, a despotic government would be necessary to control the country. After making a few cultural remarks about the "nature of a Gentoo" and inherent "Indian disposition," he argued that the charter courts, and indeed any system of law by its very nature interfered with the operation of good government in India. He then asked rhetorically if the reader would allow an English system of law with its impartiality and liberties in India even if this necessarily entailed mass societal unrest.³⁰ Finally he concluded along the lines of Verelst, arguing that in the future, justice in India should be predicated on "political Expediency" and not "the Laws of England."³¹

Similarly, in a public "Plan for the government of the provinces of Bengal" a further writer proposed that the "ordinary courts of the country [Bengal]" have sole cognizance over "disputes between natives."³² Along these lines, the writer of yet another 1772 pamphlet argued that "Indian subjects" should be governed by their "own established laws and customs" and not brought into the world of English law and liberty.³³ For, as the same author noted, "nothing of the Constitution of Great Britain or

³⁰ Alexander Dalrymple, *Considerations on a pamphlet, entitled "Thoughts on our acquisitions in the East-Indies, particularly respecting Bengal,"* (London:1772), p.47.

³¹ Ibid., p. 71.

³² John Dalrymple, *A plan for the government of the provinces of Bengal. Addressed to the directors of the East India Company.* (London, 1772), p.24. He also called for recognizing that there was no shame in using some of the legal principles of India, established "thousands of years before we had any," in order to rule there. To bolster his argument for an amalgam of Indian and English law, he declared that it was "...no new thing to see the same nation governed by two systems of laws," p. 25

³³ Eumenes [likely Allan Ramsay], *A plan for the government of Bengal, and for the protection of the other British settlements in the East Indies...*, (London, 1772), p.18. Ramsay did argue though in favor of Crown courts throughout Bengal - but Crown courts applying local law.

her Colonies can be transplanted to Bengal,” given the impossibility of local self government by its “natives.”³⁴ Still other commentators took a more convoluted approach, arguing that, in light of Indian history and culture, some sort of English-made law, but not English law itself, should be effected in India, since “to leave the natives to their own laws would be to consign them to anarchy and confusion.”³⁵

Such voices, however, did not monopolize the debate. An opposing group of pamphleteers spoke up more forcefully for a broad imperial constitution. For instance, the anonymous writer of a 1773 tract argued that it would be best if the Mayor's Court continued at Calcutta under its pre-1753 constitution, that is, open to all civil cases and matters relating to “the liberty or property of the subject, natives as well as Europeans.”³⁶ In addition the writer proposed that the Mayor's Court model be extended to other cities in Bengal in preference to that of the Mughal Cutcherry. Further, he advocated the erection of criminal assizes applying the laws of England throughout the Company's territories with mixed juries of Indians and Europeans to try all cases. By giving these English liberties to all regardless of cultural or religious origin, he argued, India, would become as easy to govern as the Isle of Man.³⁷ Even more forcefully, another pamphleteer argued that the EIC territories in India were and should be part of “the British State.”³⁸ Nor did this writer express hesitation on the matter of universal

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³⁴ Ramsay, *A plan for the government of Bengal*, p. 31.

³⁵ Alexander Dow, *The History of Hindostan...to which are prefixed...An enquiry into the state of Bengal...*, (London: 1772), p. cxliii.

³⁶ *The present state of the British interest in India: with a plan for establishing a regular system of government in that country* (London, 1773), pp. 142-4.

³⁷ *Ibid.*, pp. 154-5.

³⁸ *A letter to the Right Honourable Lord North; on the East-India Bill now depending in Parliament*,

subjecthood for those "fifteen millions of Indian people, now the subjects of his majesty."³⁹ Undoubtedly influenced by the polemical accounts of Bolts and others, the writer also insisted that any Englishman going to India "...goes thither now to the country of Englishmen and carries with him a right to the full protection of the laws of his kingdom."⁴⁰ He finished this appeal for English law and imperial rule in India by noting that Crown governance in the Americas offered a salutary example for those skeptics of such government for India.⁴¹ In short, even after decades of rule in India, there was deepseated disagreement, rather than consensus, in the metropole about the inapplicability of English laws and government to those in the Company's territories who were racially and culturally different.

The Company could not escape Parliament either, after the failure of their 1772 bill; the EIC still needed parliamentary approval for additional funding. As part of such a subsidy, they were forced to agree to accept new legal provisions for their settlements. In order to formulate these new regulations, members of Parliament held hearings over 1772-1773 to interview old India hands, Company employees, and disgruntled free merchants about the state of affairs in India. The committee dedicated one session of these proceedings to investigating the nature of justice and law in the Company's settlements. The evidence presented at this inquiry was later printed and has been used by many historians of Indian law as a primary source for details on justice in India during the

(London, 1772), p.10.

³⁹ *A letter to the Right Honourable Lord North*, p.27.

⁴⁰ *Ibid.*, p.18.

⁴¹ *Ibid.*, p.37.

chartered court era.⁴² While certainly valuable as a reference, most of the people interviewed, such as a dismissed Mayor's Court attorney, and a series of unhappy litigants, skewed the discussion towards an utter condemnation of the extant chartered court system. All witnesses seemed to agree that the Mayor's Court at Calcutta was filled with incompetent and partial judges who either exceeded their jurisdiction or ignored it completely.⁴³ The witnesses therefore convinced the committee that failures in justice had been due to partiality, and by extension, the aldermen's ignorance of formal English law. The committee accordingly resolved to install English legal elites in their place.⁴⁴ Yet, and this point deserves emphasis, MPs made no strong statements one way or another on the issue of Hindu or Muslim subjects and their access to English law. In their proposals for reform, this group of London legislators kept with a long tradition of colonial Anglicization, yet failed to address the fundamental constitutional questions at the heart of the legal crisis in Bengal.

Prime Minister North introduced legislation based on these conclusions into Parliament in early May 1773. The Company made a last ditch effort to pacify Parliament by asking the Crown to “introduce the privilege of Habeas Corpus to India,” but this gambit failed and the House of Commons began a fierce debate over the shape of a new

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⁴² *Seventh Report From The Committee Of Secrecy* (published 1773). For an example of the report's prominence in accounts of the Mayors' Courts see Jain, *Outlines*, pp. 61-7.

⁴³ Perhaps the only piece of truly revealing evidence to come out of the hearings was the testimony of the EIC's solicitor that he had only ever heard of two complaints against the Mayor's Court in all his time in the post. *Seventh Report From The Committee Of Secrecy*, p. 332.

⁴⁴ In a telling sign of their obsession with metropolitan training and norms the committee also digressed at the end of its report to opine that it found the rate of interest in India much too high and that it should be regulated along more English lines. See *ibid.*, p.335.

constitution for EIC India.⁴⁵ Lord North's initial bill aimed to reduce the Mayor's Court to a small claims venue and institute a new supreme court with trained Crown-appointed judges in its place. Some members of parliament like Sir William Meredith argued that establishing just a single English supreme court in Calcutta would be inadequate and that any attempt to install English law in India would be pointless considering its distance from metropolitan control.⁴⁶ No one seemed to heed his warning about the fundamental instability in the imperial constitution, instead continuing to debate the minutiae of what kind of legal elites they wanted for the new court. One MP, for example, supported by the EIC, proposed that the Company itself be empowered to appoint judges to the Supreme Court, but his fellow legislators roundly defeated the motion by a 103 to 18 vote.⁴⁷ The House did come to an agreement, though, that the new Indian legal system should be based on English common law and not civil law, a not unimportant development given the pluralism certain to be encountered in India.⁴⁸ In the end, the final law passed in June of that year (13 George III c.62), now known as Lord North's Regulating Act, included only a handful of exceptionally vague clauses directly addressing the system of law in India.⁴⁹

⁴⁵ See Auber, *An Analysis of the Constitution of the the East India Company*, p.232 for this May 10 meeting.

⁴⁶ See Meredith's speech of 10 May 1773: "Let us then suppose that had it been the fortune of Bengal to have conquered England and that the East Indians were plundering here as Englishmen are plundering there, I believe it would not have given us much consolation, that three East- Indian judges were to reside at Land's End in Cornwall, in order to administer justice and prevent oppression throughout the rest of the kingdom." Cobbett, *Parliamentary History*, v.17, pp. 857-8.

⁴⁷ Ibid., p.892.

⁴⁸ In a June 3rd vote (193 to 6) the legislators rejected a proposal for civil lawyers to be eligible for the post, though they agreed that Irish common lawyers would be acceptable. See *ibid.*, pp 895-6

⁴⁹ Despite the EIC's resistance to the royal appointment of judges, the bill passed on June 10th by a vote of

The Regulating Act's legal provisos, new as they were, only obliquely answered pressing questions about Indian subjecthood and the imperial constitution. The Act called for a four-person Supreme Court, staffed with Crown-appointed common law judges to be established in Calcutta. It almost completely ignored Bombay and Madras and explicitly stated that the charter courts there were to continue as before. As such, it parted from the long-held policy of the EIC, which aimed at creating a unified legal system across its Indian territories. However, establishing differing legal constitutions amongst the three cities was perhaps the least confusing of the Act's provisions. On the question of the new Supreme Court's jurisdiction, the statute took a conciliatory middle-ground approach, neither establishing the universal scope of English law nor walling it off completely from Indian natives. Rather, in a series of painfully worded headings (XIII-XVI) it laid out a labyrinthine plan more complicated than any previous charter. Figure 11 illustrates the confused jurisdiction of this new court:



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131-21 and was soon confirmed by the House of Lords.

I.	All criminal offenses within the limits of the “Town of Calcutta” and its subordinate factories.
II.	“Civil, Criminal, Admiralty, and Ecclesiastical” cases brought by:
	a. “All British subjects” in Calcutta and the Company's Bengal territories
	Against
	i. All other of “his Majesty's subjects” in Calcutta and the Company's Bengal territories.
	ii. Any person whosoever employed “directly or indirectly in the service of the [EIC] or any of his Majesty's Subjects.”
	iii. Any “inhabitant of India” residing in the Company's Bengal territories as long as the matter at issue is a civil case exceeding 500 rupees and the Indian respondent had agreed in a written contract to said jurisdiction.
	b. “His Majesty's Subjects” (undefined)
	Against
	i. Any person whosoever employed “directly or indirectly in the service of the [EIC] or any of his Majesty's Subjects.”
	ii. Any “inhabitant of India” residing in the Company's Bengal territories as long as the matter at issue is a civil case exceeding 500 rupees and the Indian respondent had agreed in a written contract to said jurisdiction.
	c. Any person whosoever
	Against
	i. Any person whosoever employed “directly or indirectly in the service of the [EIC] or any of his Majesty's Subjects”

Figure 11: Jurisdiction of the Supreme Court as established in 1773

Thus, the Act replaced the 1726 charter's universal legal subjecthood based on geography and “protection” with a nightmarish tangle of jurisdictional clauses dependent on status definitions about which no consensus existed. Parliament thereby succeeded

only in extending the exclusionary provisions of the 1753 charter, proving their cluelessness about local conditions, and putting a nail in the coffin of a unitary imperial legal constitution.

The actual Crown charter establishing the Supreme Court which followed in March 1774 seemingly transformed this confusion into a rigorous common law legal framework. The drafters of the court's charter included the common lawyer Elijah Impey, who was himself to be the first chief justice of the new court.⁵⁰ He took the structure of the Regulating Act and produced from it a detailed charter filled with mentions of common law writs of Mandamus, Certiorari, Proximo, and the like.⁵¹ Given the strictures of the act, Impey was able to do little about the jurisdiction of the court, though he did clarify in his charter that English law controlled all crimes committed within Calcutta.⁵² In addition, true to his belief in the supremacy of the common law, he began the charter with a declaration that the new Supreme Court justices were

“to have such jurisdiction and authority as our justices of our court of King's Bench have and may lawfully exercise, within that part of Great Britain called

⁵⁰ Impey was the first chief justice of the court; he was joined in India by Court of Common pleas justice Robert Chambers, as well as Stephen LeMaistre and John Hyde. On Impey see Pandey, *Introduction of English Law into India*. On Chambers and his time in India see Thomas Curley, *Sir Robert Chambers: Law, Letters, and Empire in the Age of Johnson* (Madison: University of Wisconsin Press, 1997).

⁵¹ In doing so he sought the comments and assistance of most of the major London legal elites - i.e. the Company's solicitor, the Attorney and Solicitor General, the Chief Justice of the Common Pleas, and the Lord Chancellor. For evidence of this see Impey's own admission in *Grand v. Francis* (1779) 1 Indian Decisions O.S. 1044 as well as his testimony before Parliament in 1788 quoted and summarized in James Stephen, *Nuncomar and Impey*, vol. 1, pp. 17-18. Besides Stephen, few have taken note of Impey's role in forging the charter. Impey also consulted Woodford and Hungerford's 1726 book of instructions as well as a copy of the charter of 1753 which the Company solicitor had annotated and marked up with “clauses...to be inserted in the new [charter].” BL IOR Uncataloged Box L/L 633 no. 792 containing the charter of 1753 with Thomas Nuthall's note as well as a February 1774 MS copy of the charter for the Supreme Court.

⁵² *Letters Patent, Establishing a Supreme Court of Judicature, at Fort-William, in Bengal...* (London, 1774), pp. 22-3.

England, by the common law thereof."⁵³

The fact that it was totally unclear how this “jurisdiction and authority” would work in Bengal given the charter's restrictions seems not to have troubled Impey at the time.

Rather, this statement represents the kind of aspirational imperial thinking muffled in the statute itself. To Impey, soon to be a judge in India, the EIC's settlements belonged in the sphere of English law and government. The history of the Calcutta Supreme Court has been extensively discussed by other scholars, but it is important to note how far the tide turned against the kind of formal English law implicit in Impey's plan.⁵⁴ Instead of having cases heard by a group of merchant aldermen, Calcutta residents of all kinds faced a Supreme Court concerned with precedent, statute law, and high legal principles. Where the Mayor's Court had been relatively unconcerned with strict English jurisprudence, the new judges instituted a legal regime predicated on English common law thinking as then current in London.

The new court quickly frustrated residents of Bengal by providing varying interpretations of the applicability of English statutes and common law norms in India. In

⁵³ *Letters Patent, Establishing a Supreme Court of Judicature*, p. 4. This association of the new court with the King's Bench was not lost on the judges or residents of Calcutta. By the late 18th-century the promenade in front of the Supreme Court had become known as “King's Bench walk.” See Hyde, *Parochial Annals*, p. 195.

⁵⁴ Among newer literature see Travers, *Ideology*, as well as Weiss-Muller, “An Empire of Subjects,” and Sen, “Imperial Subjects on Trial.” Also see Pandey, *Introduction of English Law* and Curley, *Sir Robert Chambers*. Hyde and Chambers both left behind copious notes and letters. These are particularly valuable for the study of the Supreme Court but are difficult to access. They are currently held in the Victoria Memorial Library, Kolkata: “The Judicial Notebooks of John Hyde and Sir Robert Chambers, 1774-98,” 72 vols., shelfmark R4703 (microfilm in National Library of India). A complete edition either print or electronic promises to be forthcoming. Excerpts can be found in Walter Firminger ed., “Selections from the Notebooks of Justice John Hyde,” *Bengal Past & Present* 3 (1909), pp. 27-64 and S.C. Nandy, “A second look at the notes of justice John Hyde,” *Bengal Past & Present* 97 (1978), pp. 24-35.

one case, the justices declared that only Christians could sit on juries, in another, that all wills had to be valid according to the Statute of Distributions, and in a third, that respondentia bonds could not be collected upon as before.⁵⁵ In another particularly heated case the justices awarded monetary damages to a Hindu man for an assault committed by an Englishman.⁵⁶ At the same time, the justices claimed jurisdiction over Hindu and Muslim rent-collectors, causing unrest amongst segments of the non-European populace.⁵⁷ These decisions, among others, enraged various constituencies and compelled them to petition Parliament to remove the Supreme Court.⁵⁸

While some of the impetus for this petitioning came from a desire to return to a local mercantile order, many Europeans seem to have been reacting mostly to the Supreme Court's insistence on a kind of rule of law and its detrimental effect on their

⁵⁵ For a note on the ineligibility of Hindu “matrons” as jurors in 1777 see *Rex v. Peggy* (19 December 1777) 1 Indian Decisions O.S. 1041. For commentary on the Statute of Distributions and Hindu wills see the court's split decision in *Ex parte Commula widow* (8 January 1776) 1 Indian Decisions O.S. 1. I have been unable to trace the particulars of what became known later as “the great Respondentia case.” For evidence of the proceedings see the testimony of Joseph Price before a Parliamentary Committee (26 March 1781) printed in *The Parliamentary Register or History of the Proceedings and Debates of the House of Commons*, v.2, pp. 516-7.

⁵⁶ *Mistree v. Creasy* (30 January 1779) 1 Indian Decisions O.S. 1024-5. Creasy later gathered a crowd of 300 “English, Scotch, and Irish inhabitants” to protest the lack of a jury trial in his case. See *ibid.*, 1025 (Note A).

⁵⁷ For a touchstone moment in 1779 which shows the eruption of many of these tensions see P.J. Marshall, “The Muharram Riot of 1779 and the Struggle for Status and Authority in Early Colonial Calcutta,” *Journal of the Asiatic Society of Bangladesh* 50 (2005), pp. 293-315.

⁵⁸ See the several petitions from Indian elites printed in for general circulation in London as *Appendix to the comment on the petition of the British inhabitants of Bengal, Bahar, and Orissa, to Parliament. Containing memorials and authentick papers* [London][1780?]. For the full text of petitions and complaints see the printed *Remarks on the petition of the British inhabitants of Bengal, Bahar, and Orissa, to Parliament. By the gentlemen of the Committee at Calcutta* [London][1780?]. Marshall, *Makings*, p.268 notes that the efforts of the opponents to the Supreme Court were complicated when non-british residents came out publicly on both sides of the matter. This also seems to echo the manipulation and use of purported “native” opinion in the 1730s at Madras.

customary racial privileges.⁵⁹ For example, the primary group of petitioners asked for a legal separation between Europeans and Indians, arguing that “different degrees of civilization require different degrees of refinement in the distribution of justice.”⁶⁰ As such, they begged Parliament to replace the Supreme Court with an “institution better calculated for our situation and circumstances.”⁶¹ It was obvious by 1779 then that these local “circumstances” hinged on racial and civilizational difference.

These protests, in conjunction with additional complaints from the Company about the Supreme Court, proved too much for Parliament. In 1781 they acquiesced to the growing consensus and passed new legislation which firmly separated English and “native” legal systems in India.⁶² Henceforth, all courts in EIC India would apply Hindu and Muslim “law” to Indian “natives” rather than the laws of England. A consensus had emerged that India and its “natives” had no place in the same constitution as Britain herself. Instead, these peoples were to be governed by a set of laws administered, interpreted, and codified by Britons - in essence, the birth of modern liberal imperialism.

⁵⁹ For example, one English resident reminisced that “...the Mayor's Court was in itself nearly equivalent to a jury, as it consisted of ten men chosen from the body of the people, who judged by Equity and established usage.” *Appendix to the comment on the petition of the British inhabitants of Bengal, Bahar, and Orissa*, p.7.

⁶⁰ Signed MS cover-letter enclosing the petitions sent from Bengal to Lord Weymouth, dated 3 April 1779. Cleveland Public Library, John White collection of Orientalia and Chess, (DS473.3 b.W37 1779). In a separate letter enclosing the “native” petitions these same Englishmen apologized for its lack of sophistication as said “natives” were “unable to make nice and legal distinctions and [] can speak only from their own feelings and perceptions.” *Ibid.*, letter of 24 April 1779.

⁶¹ *Ibid.*, letter of 3 April 1779. In their full petition, the residents argued that the English jurisprudence of the Supreme Court was completely inappropriate to local circumstances, as “no such laws could be known to or practiced by Natives.” *Petition of the “British Subjects” of Bengal*, printed in *Journals of the House of Commons*, v. 38, p.98 (4 December 1780).

⁶² 21 George III c.70 (1781). For a brief discussion of its provisions see Jain, *Outlines*, pp. 121-6.

Conclusion

Legal change in early British India did not unfold along a simple or unidirectional path, reaching always toward the enshrinement of demographic and cultural differences, and the fundamental separation of legal institutions on the basis of racial and religious characteristics. Instead, the legal history of initial British expansion on the subcontinent was tangled, fraught, and filled with contingency. On first glance this narrative seems to bear out Lauren Benton's argument that the colonial states of the nineteenth century writ large came about through a process of jurisdictional conflict and legal wrangling between colonial powers and local litigants. Following Benton, one might be inclined, on the basis of the savvy forum shopping of local elites cataloged in these pages, to conclude "Indian litigants made the [colonial] state."¹ And indeed, recognition of the role that Indian legal protagonists played in British imperial institute building serves as an important corrective to Ranajit Guha's claim that in British India, local economic networks and political authorities were not "involved in the imposition of the alien authority structure which provided the process for state formation."² However, in many ways this dissertation tells a messier story than do either Benton or Guha.

Benton sees the legal transition in India as part and parcel of a larger worldwide shift from broadly plural legal regimes, those with several nodes of independent legal authority, in the early modern era, to colonial states in the modern period who brought these plural legal traditions all under the umbrella-like authority of a centralized

¹ Benton, *Law and Colonial Cultures*, p. 129.

² Guha, *Dominance Without Hegemony*, p.64.

sovereign regime. Although this characterization might describe legal change in India broadly from 1600 to 1900, it does not reflect the incredibly contingent course of eighteenth-century law in EIC India examined in this dissertation. For example, the narrative of legal change presented throughout this study is impossible to separate from the particular context of the British imperial constitution and the nature of London legal practice.

The EIC settlements were part of an early eighteenth-century imperial constitution that gave local courts and officers wide leeway in their jurisprudence. Though metropolitan elites could complain about process and procedure in these remote courts, the nature of the constitution ensured that local law remained largely independent. In this devolved system, a grand jury in Williamsburg or Bombay could close taverns, fine governors, and enact novel legal policies, all without licit interference from other state actors.³ Likewise, tribunals like the Calcutta Mayor's Court could ignore common law rules about bonds or make up new customary norms of their own. While the Privy Council might object years down the line, the court could exercise its discretionary power in the meantime.

This is not to say the grand juries or civil courts of the British world acted completely without limits. All Englishmen, whether in Barbados or Bombay knew that they had the right to be tried by a jury. Likewise, the English legal system's obsession

³ In 1764, the first English grand jury to meet in newly conquered Quebec demanded to be consulted on all laws made in the province and laid out a plan for the complete overhaul of justice, infuriating the government. See their presentments and arguments which were the first English documents printed in Quebec: *At the First Court of Quarter Sessions of the Peace Held at Quebec in October 1764*, [Quebec, 1765].

with process carried over to the distant colonies. Written bills, court summonses, and sheriffs' writs all governed the legal worlds of the far flung British settlements. As such, the unwarranted actions of a court could result in public outcry as well as the potential for steep monetary damages. Yet, rarely did metropolitan elites, nascent imperial bureaucrats, or even Parliament itself, confront these issues. Rather, the supervision of law and government in the early modern British Empire rested on the residents of any given British settlement. Like Omichund, they could petition metropolitan courts for redress, or write to the King, or even spread calumnious pamphlets in the streets. That is, the early British imperial constitution depended on a web of widely adopted procedures, ideas, and governmental approaches rather than on centralized administrators or voluminous law codes.

By way of contrast, the legal regimes of Dutch and Portuguese India depended on top-down sets of laws and instructions codified by legal experts in both Asia and Europe. Thus, a Hindu resident of a Dutch settlement in 1730s south India likely faced a set of particular statutes calculated to his Hindu-ness.⁴ While a similar Hindu resident of Madras could argue that specific “Hindu” laws applied to him, he could also just as easily appeal both rhetorically and practically to a wide array of legal norms and institutions predicated on “English law.” That is, the devolved and fragmentary nature of English legal and governmental tradition, with its emphasis on local immemorial custom and

⁴ See the many local statutes passed by the Dutch East India Company at Batavia: J.A. Van der Chijs ed., *Nederlandsch-Indisch Plakaatboek* [17 vols.] (Hague, 1885-1900). For the local code of laws for Dutch settlements on the Coromandel coast see BL IOR Mackenzie Private MSS. 67, pp. 179-224. See also Rocher, “Jacob Mossel's Treatise on the Customary Laws of the Vellālar Chettiyars.”

individual procedural justice gave litigants incredible leeway to contest their lot. In other words, institutional and rhetorical traditions unique to the fluid British imperial context cannot be ignored in any story of colonial legal change.

More than anything though I hope this study conveys a sense of possibility and not inevitability. Looking backwards from the nineteenth century, it is all too easy to dismiss the rhetoric of English law and liberties and universal English legal subjecthood mentioned in this study. That is, for most of the history of the British Empire in India, there was no system of participatory government and no sense on the part of the ruling state that the British and Indian “races,” could exist together in a unified legal and governmental structure. If we can put this knowledge aside and examine mid-eighteenth century EIC India from a contemporary perspective, we see a system in which wealthy merchants and propertied elites regularly participated in English governance and law, while adapting strict English statutes and rules to particular local circumstances. This description would fit Philadelphia more or less well as it does Bombay.

However, as we know, the processes of legal and cultural Anglicization prevalent in the British Americas, did not take hold writ large in British India. In addition to the many demographic, political, and contingent causes for this difference cited throughout the dissertation, it is worth singling out some logistical problems inherent in India of creating broad unified political and legal cultures. Although printers in the British Americas had churned out copies of statutes, court decisions, political tracts, polemics against tyranny, and day-to-day gossip since the 1640s, the first pages to come off a

printing press in any of the Company settlements did not appear until 1761.⁵ Even then, it would not be until the 1770s that printing arrived in Bombay and Calcutta, and printing in local languages did not gain widespread prominence until the nineteenth century.⁶

Imagine instead a vibrant multilingual print culture in India overlapping with the charter of 1726. The Mayors' Courts, EIC executives, and local elites might have been able to circulate their interpretations of statutes, legal customs, and claims on English legal traditions in ways similar to the Americas. One imagines a set of law manuals and dictionaries printed in Portuguese, Gujarati or Tamil, allowing even greater access and claims upon the charter courts.⁷ Likewise, residents of the EIC's settlements like Bombay broker Coowar Lorass might have had recourse to locally printed copies of political works such as Thomas Hobbes' *Leviathan*, instead of having to purchase them from London or the estates of deceased Englishmen.⁸ Given these or other differences in

⁵ The first imprint in the EIC's settlements was done at Madras in 1761 on a press captured from Pondicherry. See G rald Duverdier, "L'apparition de l'imprimerie   Madras et sa disparition   Pondich ry," *Gutenberg-Jahrbuch* 50 (1976), pp. 351-363.

⁶ On printing in Calcutta which began in 1777 see Graham Shaw, *Printing in Calcutta to 1800* (London, 1981). For a list of all South Asian imprints before 1800 see Shaw, *South Asia and Burma Retrospective Bibliography* [SABREB] (London, 1987). For more on print culture in India, especially vernacular language printing see Anindita Ghosh, "An Uncertain 'Coming of the Book' Early Print Cultures in Colonial India" *Book History* 6 (2003), pp. 23-55. The first known imprints at both Madras and Calcutta were almanacs of the sort common throughout the British world. For an exploration of how printed almanacs tied together the British world (but without mention of India) see Matthew Shaw, "Keeping time in the age of Franklin: almanacs and the Atlantic World," *The Journal of Printing History* 2 (July 2007), pp. 17-39. The 1761 Madras almanac is held at the Bodleian Library. The 1777 Calcutta almanac is part of the collections of the School of Oriental and African Studies, London. For recent work on the Company's attitudes on writing and the circulation of ideas see Ogborn, *India Ink*.

⁷ See Roeber, *Palatines, Liberty, and Property* for an account of how German language law manuals and dictionaries flourished in early Pennsylvania to explain English law. Printing in Indian languages as early as the 1720s is not just wishful thinking, a wealthy Surat merchant hired an English printer in the 1670s to travel to India to produce Gujarati type. No imprints from this press survive. See A.K. Priolkar, *The Printing Press in India: Its Beginnings and Early Development* (Bombay, 1958), pp. 30-32.

⁸ Lorass bought a copy of a volume described as "Hobbes - state of nature" from the estate of a Dr. Oliphant in 1753. He also purchased Thomas Salmon's *Modern History or the Present State of all*

contingent circumstances, the legal culture of EIC India might have looked quite different by the nineteenth century than it did.

Though the number of such counterfactual scenarios is of course innumerable, we should not be so quick to put aside the real possibilities for a radically different history of British India. Given the state of affairs in the chartered cities of the 1740s, would it have been so impossible for the inhabitants of EIC India to eventually follow the lead of the Americas and established themselves as self-governed entities, predicated on traditional English ideas of law and liberty? Or, less radically, can we admit of the chance that the rhetorical and institutional opportunities provided by the early imperial constitution might have given rise to a different kind of exclusionary order in India, one predicated on a unitary set of governing principles but with restricted admittance to power and legal agency, like that in contemporary Ireland or England? That is, can we envisage an order that embraced English law as universal and controlling but that allowed only a select few into its privileges?⁹ This is of course an important caveat. In the Indian legal regimes of the 1740s or 1790s, those who could take advantage of any sort of legal “universalism” were largely elites with access to property, capital, or political power. But then again, how profoundly does this point distinguish eighteenth-century India from the

Nations (London, 1734). See BL IOR P/417/10: Bombay Mayor's Court Proceedings, pp. 122-26 (21 February 1753).

⁹ For an early experiment in this kind of local government by non-European grand juries in colonial Singapore see Y.K. Lee, “The grand jury in early Singapore (1819-1873),” *Journal of the Malaysian Branch, Royal Asiatic Society* 46.2 (1973), pp. 55-150. In fact during the 1780s, commentators on Indian affairs suggested that local colonial assemblies be erected in India much like in the West Indies with whites only. See an undated (c.1780s) proposal in BNA PRO 30/8/355: Chatham Papers, ff.114-122. Also see P.J. Marshall, “The Whites of British India, 1780-1830: A Failed Colonial Society?” in *Trade and Conquest: Studies on the Rise of British Dominance in India*, ed. P.J. Marshall (Aldershot 1993).

contemporaneous British Atlantic, or even the Hanoverian British Isles? The bottom rungs of society, whether in Madras, or Charleston, or Liverpool, all experienced the tradition of English “liberty” very differently from elites.¹⁰ Historians need to move away from a naturalization of a bifurcated system of law and government for India. We should instead see, with the legal protagonists of mid-eighteenth-century Bombay and Calcutta, what these possibilities might have been. As Elijah Impey proclaimed at his impeachment trial in 1788: a Hindu resident of a British territory, whether in London or Calcutta, had every right to complain when not tried according to English laws and legal procedure, as “there is nothing in the quality of an Hindoo that makes the law of the country wherein he was born more attached to him than to a Frenchman or Spaniard...”¹¹



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¹⁰ Ravi Ahuja ably explores the life of these working class residents in his “The Origins of Colonial Labour Policy in Late Colonial Madras.”

¹¹ Cobbett, *Parliamentary History*, v.26, pp.1356-8.

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Biography

Arthur Mitchell Fraas was born to Susan Catherine Mitchell and Arthur Gilbert Fraas on 7 December 1982 in Washington, D.C. He attended Bethesda Chevy-Chase High School and received a bachelor's degree in history *cum laude* from Boston College in 2004.

Fraas was also a member of Mansfield College at the University of Oxford during the 2002-3 academic year. He entered the graduate program in history at Duke University in 2004 and earned a master's degree in history from that school in 2006. Fraas has received funding from the North American Conference on British Studies as well as the Duke University Graduate School and is a Hurst legal history institute fellow for 2011. He lives in Durham, N.C.



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