

INVITED ARTICLE

## Persistence of Practice in Law's Parwana and Palm Leaf Empire

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### Abstract

The essays in this forum demonstrate how attending to the intricacies of documentary practice provides a way to see legal practices over the long haul. Different materials—for instance, paper and palm leaves—manifested different ways of understanding and doing law. But change from one way of doing law to another is sticky; old practices persist alongside new ones. Appreciating this helps us see past apparent ruptures in ways of living brought about by states and empires as they come and go. By looking closely at the routines and physical materials through which law works, we can look past simple binaries: European vs. indigenous; pre-colonial vs. colonial; resistance vs. accommodation; oral vs. literate; manuscript vs. print; paper vs. palm leaf.

It takes days to turn a palm leaf into a writing surface, but the process is simple enough. First, cut the leaves of a Palmyra or Talipot tree, separate the leaf segments, then roll these together and boil them in a copper caldron. When finished, spread them out in the sun for three days. Once dry, polish each leaf. To do this, you will need to cut a section from an Areca nut tree's trunk, smooth it carefully, and secure it horizontally on a stand at just above head height. Now, take each leaf—which might be nearly two meters long—and tie a stone to one end as a counterweight. Holding the other end of the leaf, pull it back and forth across the trunk to polish it. Finally, cut your leaves to the size you want. Your prepared leaf—in Sinhala, a *puskola*—is ready for writing.<sup>1</sup>

This process requires little specialist equipment. The base material is abundant: compared to the sheep skins made into parchment or linen rags made

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<sup>1</sup> Champa N. K. Alahakoon, "The Division of Labour in the Production of Sri Lankan Palm Leaf Manuscripts," *Journal of the Royal Asiatic Society of Sri Lanka* new series 57 (2012): 217–19; Andreas Nell, "Ceylon (Sinhalese) Olas or Book Manuscripts on Early Medicines and How They Were Made," *Annals of Medical History* 10 (1928): 294.

into paper in Europe, palm leaves grow in almost infinite supply around the Indian Ocean.<sup>2</sup> It's hard to imagine a material better suited for recording people's claims about their property or status. And that's just what they did, across Sri Lanka, South Asia, and beyond, where a palm-based legal culture flourished for centuries. Because they might be needed to resolve disputes, families protected their *olas*, as palm documents were known, in boxes and bags.<sup>3</sup> The terms found in many *olas* kept by property holders might also be recorded on further palm leaves which were bound into record books stored for reference in village temples. In the Kingdom of Kandy, in Sri Lanka's center, the *maha lēkam*—the chief secretary—maintained palm registers of the king's land grants. More humble registers (*hī-lēkam-miṭiya*) noted land holdings at the village level along with the labor services (*rājakāriya*) due to the king for those lands.<sup>4</sup> Linguistic usage elsewhere shows how bundling, binding, and registering palm leaves was widespread, from Kerala to Burma.<sup>5</sup>

Given how pervasive and deeply rooted such practices were, it's little wonder that people continued to make and manage *olas* for legal work long after Europeans came on the scene. And little wonder that those same Europeans tried to curtail their use. The languages and scripts found in thousands, perhaps millions, of palm leaf records were inscrutable to them. Making, using, and keeping *olas* required habits they did not possess. After all, you do not ink an *ola*, you carve it.

Though some palm leaf scribes write at a table, most hold the leaf in the left hand, using the left thumb to keep the tip of the *panhinda*—a long metal stylus—in place on the *ola*'s surface while using the right hand to rotate the *panhinda*

<sup>2</sup> Parchment quality and quantity declined in fifteenth- and sixteenth-century Britain as paper imports rose. A native paper industry grew in the seventeenth and eighteenth centuries. As it did, the rags required for paper manufacture had to be imported. Richard L. Hills, *Papermaking in Britain, 1488–1988, A Short History* (London: Athlone Press, 1988), chapters 1, 2, and 4. For a description of the many steps in parchment processing, see John Houghton, *A Collection for the Improvement of Husbandry and Trade* (London, 1727–28), 1:326–30.

<sup>3</sup> Alahakoon, "Palm Leaf Manuscripts," 224 and 226.

<sup>4</sup> C. Brooke Elliott, *The Real Ceylon* (Colombo: H. W. Cave & Co., 1938), 21; E. R. Leach, *Pul Eliya: A Village in Ceylon: A Study of Land Tenure and Kinship* (Cambridge: Cambridge University Press, 1971), 18; Ralph Pieris, *Sinhalese Social Organization: The Kandyan Period* (Colombo: Ceylon University Press, 1956), 14, 60, and 119–23; Éric P. Meyer, "Lekam miti: les registres du royaume de Kandy (Sri Lanka)," in *Encyclopédie des Historiographies: Afriques, Amériques, Asies*, eds. Nathalie Kouamé, Éric Meyer, and Anne Vigiuer (Paris: Presses de l'Inalco, 2020), 999–1001; Colvin R. de Silva, *Ceylon Under the British Occupation* (Colombo: Colombo Apothecaries' Co., Ltd., 1953), 1:295. Ramesh Somasunderam, "British Infiltration of Ceylon (Sri Lanka) in the Nineteenth Century: A Study of the D'Oyly Papers between 1805 and 1818," PhD diss. (University of Western Australia, 2008), 79–80. Many individual *olas* thus noted that their terms had also been recorded in the *hī-lēkam-miṭiya*: Archibald Campbell Lawrie, *A Gazetteer of the Central Province of Ceylon* (Colombo: George Skeen, 1896–1898), 2:756, 906, 920, and 931.

<sup>5</sup> Consider the Malayalam word, *kuṭṭikanakola*: a palm leaf register of deeds. H. H. Wilson, *A Glossary of Judicial and Revenue Terms...of British India* (London: Wm. H. Allen and Co., 1855), 306, and *passim*, for other examples in multiple languages of registration practices. The Burmese expression *cā aup* refers to a book or "covered bundle" or palm leaves: Dietrich Christian Lammerts, "Buddhism and Written Law: Dhammasattha Manuscripts and Texts in Premodern Burma," PhD diss. (Cornell University, 2010), 212; Santhosh Abraham, "Colonial Law in Early British Malabar: Transparent Colonial State and Formality of Practices," *South Asia Research* 31 (2011): 255.

to form letters and words. Rather than pass the stylus over the leaf, the left hand moves the leaf under the stylus as it cuts words into it. The carvings left behind are hard to see, so the last step is to smear lampblack, charcoal powder, or ink suspended in a resin oil on the leaf. When the excess is wiped away, the darkened text appears on the leaf's surface; the oil also protects it from insects.<sup>6</sup> This is intricate, highly skilled work, and unforgiving of errors. Given the effort required to obtain such dexterity, we can easily imagine the pride with which scribes signed their names on the *olas* they wrote.<sup>7</sup>

These were skills that Portuguese, Dutch, French, and British interlopers did not possess. They were skills they had probably not even imagined before they saw them for the first time. A few Europeans would ultimately speak and write the languages they encountered, with pen and ink on imported rag paper, but they did not wield the *panhinda*.<sup>8</sup> For them, this remained an impenetrable legal technology. This explains why they would try to replace palm with paper and stylus with quill. But palm leaves persisted. So did many other practices by which people around the Indian Ocean had for centuries put their claims toward one another in material form. This persistence of practice reminds us of two things: that law's operation is more than a matter of norms stated in words, it is a matter of material forms; and that useful, deeply engrained habits do not change just because new people with new habits appear.

### From Palm Leaf to Paper Empire?

Pre-colonial, colonial, post-colonial: “from...to...” narratives are hard to avoid when writing about empires. Beneath so many acts of destruction that punctuate such narratives, it is hard sometimes to see what might have endured, exerting a drag on the pretensions of both South Asian and European empires. The writing practices by which people do law provide one place where we can see this drag at work.<sup>9</sup>

Historians have spent so much energy addressing the claims of registration and enumeration in European empires that we have sometimes mistaken

<sup>6</sup> Sirancee Gunawardana, *Palm Leaf Manuscripts of Sri Lanka* (Ratmalana, 1997), 33–39; C. E. Godakumbura, *Catalogue of Ceylonese Manuscripts* (Copenhagen: The Royal Library, 1980), il. Elliott, *Real Ceylon*, 21–22; Pieris, *Sinhalese Social Organization*, 119–20; Alahakoon, “Palm Leaf Manuscripts,” 221.

<sup>7</sup> Lawrie, *Gazatteer of...Ceylon*, 1:49, 63, 70, 85, 87, 99, 102, 108, 113, and *passim*; James Cordiner, *A Description of Ceylon*, 2 vols. (London, 1807), 1:259. W. A. de Silva, *Catalogue of Palm Leaf Manuscripts in the Library of the Colombo Museum* (Colombo: State Print Corp., 1938, reprint 1983), 1:xxv.

<sup>8</sup> One exception might have been John D'Oyly, the central figure in the British subjugation of Kandy after 1815. Sujit Sivasunderam, “Materialities in the Making of World Histories: South Asia and the South Pacific,” in *Oxford Handbook of History and Material Culture*, eds. Ivan Gaskell and Sarah Anne Carter (Oxford: Oxford University Press, 2020), 518. D'Oyly read and sent *olas*, though it is not clear whether he or a scribe wrote them. H. W. Codrington, ed. *Diary of Mr. John D'Oyly* (Colombo: Colombo Apothecaries' Co., Ltd., 1917), 34, 35, 68, 75, 99, 183, and *passim*.

<sup>9</sup> Nandini Chatterjee, *Negotiating Mughal Law: A Family of Landlords Across Three Indian Empires* (Cambridge: Cambridge University Press, 2020).

ambitions for accomplishments. Palm leaf practices help us see the difference. If it is a truism that legislation typically expresses a state's desires that are only rarely realized, then we might consider the possibility that the same must be true of registration and other documentary practices through which law operates. We might go further, to consider how document production and use is as much a result of community and individual needs as a result of anything that states might want. At the very least, those needs blunted state ambitions; this explains how palm leaves persisted so long after paper's seeming triumph. In much the same way that what once seemed to be the erasure of manuscript practices by a print "revolution" in Europe, new legal technologies brought to South Asia added to rather than simply replace the technologies there before.<sup>10</sup>

The Dutch certainly tried to replace palm leaf registers with their paper ones; they even burned *olas* to prevent their incorporation into the colonial archive.<sup>11</sup> But in the seventeenth and eighteenth centuries, Sinhalese secretaries in Galle continued to record transactions on *olas*. The information in them was then sucked into Dutch registry offices. In the mid-eighteenth century, two ordinances took this containment of native knowledge further, requiring *ola*-holders to turn in their palm leaf documents so they might be replaced by paper *giftebrieven*. As Dries Lyna and Luc Bulten suggest, the violence done as *olas* were struck through was symbolic. But it was also intensely physical as Dutch clerks scored their names into *olas* when they registered them. Palm leaf knowledge became trapped in paper registers and thereby transformed; *olas* incised with local land claims had new claims—the claims of the imperial state—incised upon them.<sup>12</sup>

But palm leaf practice did not disappear. This is powerfully indicated by Jan Brande's watercolor sketch of Sinhalese petitioners waiting outside the *Landraad* with *olas* in hand. It is indicated, too, by their continued storage in Dutch archives as well as island homes.<sup>13</sup> Sometimes, an *ola* might be so

<sup>10</sup> The thesis of a print "revolution" was most powerfully asserted by Elizabeth L. Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early-Modern Europe* (Cambridge: Cambridge University Press, 1979). This has been the target of criticism. On the persistence of manuscript knowledge in English law and the "tyranny of the press" on the modern historical imagination, see John Baker, "Why the History of English Law Has Not Been Finished," *Cambridge Law Journal* 59 (2000): 82. As D. F. McKenzie noted, "a phrase like 'the impact of print'—however carefully qualified—cannot help but imply a major displacement of writing as a form of record": "Speech—Manuscript—Print," in *Making Meaning: "Printers of the Mind" and Other Essays*, eds. Peter D. McDonald and Michael F. Suarez, S.J. (Amherst: University of Massachusetts Press, 2002), 238.

<sup>11</sup> Alicia Schrikker and Byapti Sur, "An Empire in Disguise: The Appropriation of Pre-Existing Modes of Governance in Dutch South Asia, 1650–1800," *Law and History Review* 41, no. 3 (2023): 443.

<sup>12</sup> Dries Lyna and Luc Bulten, "Material Pluralism and Symbolic Violence: Palm Leaf Deeds and Paper Land Grants in Colonial Sri Lanka, 1680–1795," *Law and History Review* 41, no. 3 (2023): 453–477.

<sup>13</sup> Brande's sketchbooks are in the Rijksmuseum, Amsterdam, NG-1985-7-1-9 and 10. My thanks to Bente de Leede for pointing out the *olas* in these images. For *ola* use and retention in the colonial archive during the eighteenth century, see *Catalogue of the Archives of the Dutch Central Government of Coastal Ceylon, 1640–1796* (Colombo: Ceylon Government Press, 1943), 196 and 268–70.

important that it was attached by a wax seal next to its Dutch translation in the *thombo*.<sup>14</sup> For all that the Dutch contained *ola* use, judicial process, and the colonial state's archive continued to depend on them.

*Thombos* registered lands and people. In this way, the imperial state sought to monitor morality and structure people's plans. But the individual palm leaves on which the *thombos* were built continued to contain power themselves, as Nadeera Rupesinghe and Bente de Leede show. The *olas* by which people proved their baptism or schooling also provided means by which they might claim the worldly as well as spiritual benefits of church membership. Thus, palm leaves continued life as claims-making tools, used by islanders to draw authority out of the state's archive to do work on their own behalf.<sup>15</sup> Registration was at best partial, failing to contain—in both senses of the word—all indigenous claims asserted using indigenous legal materials, while also leaving openings for individual exploitation of state power using those same materials.

Unrealized Dutch ambitions to end *ola* use helps to explain their persistence long after the British brought new colonial ambitions to the island in the nineteenth century. To ensure that fees were paid, they required that stamps appear on all documents. Their insistence that stamps be put on *olas* as well as on paper suggests how materials and practices persist even as states multiply new practices.<sup>16</sup> It also suggests how new practices were layered on top of rather than replacing old ones. Palm leaves lived on in day-to-day administrative work: for instance, in the reports of police *vidahns*.<sup>17</sup> And they still had probative value before British courts and registries, even in the king's courts in Westminster Hall.<sup>18</sup> This helps explain why, when carrying knives was outlawed, one exception concerned the special blade used in *ola* writing.<sup>19</sup> W. M. G.

<sup>14</sup> Sri Lankan National Archives [hereafter SLNA], 1/6441, f. 169. My thanks to Luc Bulten for this reference and for discussion.

<sup>15</sup> “[R]egistration...is often more valuable, or at least as useful to individual citizens, as to the state.” Simon Szreter and Keith Breckenridge, “Recognition and Registration: The Infrastructure of Personhood in World History,” in *Registration and Recognition: Documenting the Person in World History*, eds. Simon Szreter and Keith Breckenridge (Oxford: Oxford University Press, 2012), 7.

<sup>16</sup> Numerous regulations repeated these stamp requirements for “paper, olah, or other material.” The National Archives (UK) [hereafter TNA], CO54/18, f. 254v. See Regulation 1 of 1806, Regulation 11 of 1821, Regulation 4 of 1827, and Regulation 2 of 1830, in William Skeen, *A Collection of Legislative Acts of the Ceylon Government* (Colombo, 1833), 1:81, 115, 336, and 361. There is an extensive survival of *olas* from the British period in the records of Collectors, Sitting Magistrates, and others, preserved as evidence of landholding and other claims registered in their offices or made in the course of litigation. See, for instance, SLNA, 6/494-500, containing *olas* among magisterial correspondence from across the island; or SLNA, 7/2208, 2228, and 2229, containing *olas* used in court proceedings at Galle.

<sup>17</sup> Regulation 6 of 1806, repealed in 1840: Skeen, *Legislative Acts*, 1:84.

<sup>18</sup> New York Public Library, MssCol 1578: Johnston Papers, letter of Casie Chitty, Modliar, to Sir Alexander Johnston, November 10, 1814. Lawrie notes many instances of *olas* accepted for their evidentiary value by Judicial Commissioners and District Courts in Kandy and elsewhere: *Gazatteer of... Ceylon*, 1:9, 41, 109, 115, 218, 478, and *passim*. For a case in which an *ola* agreement made in Bombay was ultimately adjudicated in King's Bench, see *Rex v. Stevens*, TNA, KB29/463 (1802). The original *ola* in dispute is in TNA, KB32/28.

<sup>19</sup> Regulation 5 of 1816, in Skeen, *Legislative Acts*, 1:189.

Colebrooke, one of the Commissioners of Inquiry who visited Ceylon to investigate administrative practices there, had good reason in 1832 to recommend that, “The natives should in all instances be allowed to send their petitions or *olahs* direct to the Governor, to the courts, or the public offices.”<sup>20</sup>

Palm leaves persisted, though sometimes discouraged: witness the 1824 regulation “to prevent frauds” that charged double fees for attesting deeds on palm leaves instead of paper.<sup>21</sup> Fraud was the constant fear racking the colonial imagination. Hardly surprising: the British had no serious acquaintance with the material practices involved in *ola* production.<sup>22</sup> They did not understand the legal technology in front of them. Nonetheless, they also did what they could in their limited understanding to maintain palm leaf integrity, at least to support fee collection, by banishing those convicted of forging stamped *olas*.<sup>23</sup> If Britons feared fraud in the use of practices they did not understand, then islanders returned the favor. As one administrator admitted in 1851, “Kandyans place an implicit confidence in these *olas*, which they certainly do not afford to any of our records.”<sup>24</sup>

By this time, European paper, still an expensive import, was gradually supplanting palm leaf.<sup>25</sup> But paper had always been in South Asia. After all, paper was an Islamic and Persianate practice before it was a European one. Farhat Hasan reminds us that “the Mughal empire was a vast paper regime.”<sup>26</sup> So was the Maratha empire. But the practices around paperwork in Europe and India differed in crucial ways. Even after Europeans brought paper into their own archives alongside parchment, they continued to use the quills of geese, ravens, or other birds rather than the reed pens of Mughal and Maratha scribes. Different writing implements required different kinds of paper: even the finest European paper was rough compared to its South Asian counterpart, which was soft and well-sized to accommodate reed work.<sup>27</sup> Clerical advice manuals demonstrate how command of these implements and materials was also entwined with longstanding writerly rituals and reflected the scribe’s moral and spiritual obligations as well as his worldly ones as he performed his art in one empire or another.<sup>28</sup>

<sup>20</sup> G. C. Mendis, ed., *The Colebrooke-Cameron Papers: Documents on British Colonial Policy in Ceylon* (Oxford: Oxford University Press, 1956), 1:107.

<sup>21</sup> Regulation 20 of 1824: Skeen, *Legislative Acts*, 1:318. This was repealed a decade later by Ordinance 7 of 1834.

<sup>22</sup> Leach, *Pul Eliya*, 19. Lawrie, *Gazatteer of...Ceylon*, 9.

<sup>23</sup> SLNA, 25.1/19.

<sup>24</sup> Pieris, *Sinhalese Social Organization*, 120.

<sup>25</sup> Godakumbura, *Ceylonese Manuscripts*, liii–lv.

<sup>26</sup> Farhat Hasan, *Paper, Performance, and the State: Social Change and Political Culture in Mughal India* (Cambridge: Cambridge University Press, 2021), 3.

<sup>27</sup> Caroline Fowler, *The Art of Paper: From the Holy Land to the Americas* (New Haven: Yale University Press, 2019), 126. Jonathan M. Bloom, *Paper Before Print: The History and Impact of Paper in the Islamic World* (New Haven: Yale University Press, 2001), especially 7, 45, 68–69, and 73.

<sup>28</sup> Rajeev Kinra, *Writing Self, Writing Empire: Chandar Bhan Brahman and the Cultural World of the Indo-Persian State Secretary* (Oakland: University of California Press, 2015), chapter 2. Prachi Deshpande, “The Writerly Self: Literacy, Discipline, and Codes of Conduct in Early Modern Western India,” *Indian Economic and Social History Review* 53 (2016), especially, 453–54 and 469–60.

Given such longstanding Indian paper practices, it is perhaps no surprise that Tipu Sultan of Mysore, in a region where palm leaf had always been important in record keeping, preferred paper in the late eighteenth century.<sup>29</sup> By the mid-nineteenth century, more humble scribes felt the same. Jayaram Chetty, head accountant in the North Arcot cutcherry during the 1850s, criticized the narrowness of the palm leaves used in the south, and admired paper's wider formats because they allowed for better account keeping. He praised paper's "neatness, compactness, uniformity, method, and facility for reference," in part because it could be "formed into a regular volume." Even if many native clerks did not yet possess paper and ink skills, he argued, their sons and nephews soon would.<sup>30</sup>

Jayaram reminds us how skills cultivated over generations require generations to recede after alternative practices first come into view, even when those alternative practices have official endorsement. Persistent legal technologies as states and empires come and go demonstrate the stickiness of practice: of the personal interests and cultural commitments expressed through certain ways of putting legal claims in material form. A writing practice is all the stickier when it is deeply entwined with oral and other communal practices: for instance, for bearing witness to land grants and for invoking divine authority to defend those grants. *Olas* show how such practices remained robust. In 1789, when Medagammedde Konara Arachchilage granted his land in Uduwela to his nephew, a string of witnesses declared, "I also know," as they attested to the transaction "in the presence of many more persons." Medagammedde then gave the *ola*, made "out of the leaves which have been prepared for writing the *Nimi Jataka Bana* book," to his nephew. "May property increase. May there be want of disease," he prayed in the company of his neighbors and at the end of his *ola*.<sup>31</sup> Technically sophisticated, prayerful, drawing in the community, and widely understood by its members: a practice of this kind proved hardier in the face of invasive paper regimes than we have sometimes appreciated.

### **Pattas, Parwanas, and Notebooks**

Everywhere we look we can see the persistence of local practices. Interlopers did not always try to erase them. Instead, they co-opted them into their own projects for power and possession, though with halting and partial success. New regimes could only build themselves on local knowledge and practice. Even as they pressed document-making and document-keeping novelties, their reliance on what already existed gave those who knew the older practices

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*Idem*, "The Marathi *Kaulnāmā*: Property, Sovereignty, and Documentation in a Persianate Form," *Journal of the Economic and Social History of the Orient* 64 (2021): 583–614.

<sup>29</sup> Dominic Vendell, "A True Copy? Documents and the Production of Legality in the Bombay Inam Commission," *Law and History Review* 41, no. 3 (2023): 563.

<sup>30</sup> Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial South Asia* (Chicago: University of Chicago Press, 2012), 75–6; *Papers Relating to the Revision of the Village Accounts of the Madras Presidency* (Madras: L. C. Graves, 1855), 9, 31, and 34.

<sup>31</sup> Lawrie, *Gazatteer of...Ceylon*, 2:866.

opportunities to pursue their own purposes, and allowed them to direct those newer practices to their own ends.

Alicia Schrikker and Byapti Sur show how document production occurred in multi-lingual spaces using multiple kinds of material practice. This produced a “bureaucratic blending” that characterized the overlap of languages and practices used long before Europeans appeared.<sup>32</sup> In Bengal, this meant bringing Dutch and Bengali together; these languages entwined with Persian in Mughal-style seals on the *pattas* that signified individual property claims. By entering the terms of those *pattas* in registers, the *katcheri*’s polyglot staff intended to have complete knowledge of the lands from which the Verenigde Oostindische Compagnie (VOC) drew its rents. By these multiple usages, each document’s content was made legible to multiple audiences: in Bengali villages, in the *katcheri*, in Amsterdam. A similar co-optation of local into colonial practice occurred in Jaffna, where parallel Tamil and Dutch *thombos* recorded land ownership. Such registers were meant to give colonial regimes the survey of all they pretended to hold and to serve as the proof by which claims might be judged. But in both Bengal and Jaffna, indigenous knowledge found in *pattas* and *olas* sometimes trumped the colonial office record.<sup>33</sup> For all the ambition of the registering mind, colonial registers—even those built with the help of local knowledge—could never contain all that could or should be known.

Nandini Chatterjee and Leonard Hodges likewise demonstrate how *parwanas*—a Mughal sub-imperial order—might be put to new uses at the intersection of an Indian state and a European company. Frenchmen deployed Persian documents written by Hyderabad clerks using Mughal forms to impress European audiences with the local sources of authority they could access. The *parwana* marked an exchange relationship: the nizam in whose name it issued gained support for his regime by performing that authority, and a *Compagnie Française* governor gained privileges, rents, and titles by which he might expand his company’s—and his own—power and profits. The Frenchman might then use the *parwana* against British counter claimants. Everyone—leaders in Hyderabad and Arcot, leaders of French and British companies—might benefit as they maneuvered in the “lawfare” of “parwana politics.”<sup>34</sup>

If Europeans were weak enough that they had to rely on indigenous documentary forms to negotiate among cultures and polities, seven slim paper volumes of Persian prose a century later indicate how ambitions were not limited to states in their invasive European form. In Alwar, as Elizabeth Thelen shows, new regulations of the mid-nineteenth century combined East India Company bureaucratic practices with older Mughal ones to form a distinctively “Mughal

<sup>32</sup> On “heteroglossia” and “inter-graphia,” see Chatterjee, *Negotiating Mughal Law*, especially 162–70.

<sup>33</sup> Schrikker and Sur, “An Empire in Disguise,” 451.

<sup>34</sup> Leonard R. Hodges and Nandini Chatterjee, “The Power of *Parwanas*: Indo-Persian Grants and the Making of Empire in Eighteenth-Century Southern India,” *Law and History Review* 41, no. 3 (2023): 500. This tracks on Lauren Benton’s discussion of “Jurisdictional Jockeying” or “Jurisdictional Politics,” in *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002), chapter 1.



modernity.”<sup>35</sup> Like the regulations of European empires, those for Alwar emphasized the need for bilingualism: a language of governance (Persian) and the vernacular entwined in everyday office work. Like Dutch registration schemes, Alwar’s required the creation of copies by village *sarkārs*; these copies were then to be sent to central government record keepers.

The Alwar government guidebooks’ small size and clear organization suggest easy consultation; the fact that they are manuscript rather than printed volumes points to the small audience doing the work controlled by these regulations, and perhaps to a desire to protect such information. Like the dhow captain Abdulmajid Al-Failakawi’s notebooks, these booklets provided models: of good and bad governance, and of specific practices—paper sizes, record binding techniques, and the design of charts for storing information—that encouraged one and discouraged the other. For all their detail, these prescriptions failed in their reforming aims. Like their European colonial counterparts, Alwari state ambitions, pursued through documentary practices, outran the accomplishment.

So perhaps state archives are the wrong places to look if we seek the paper knowledge that best served the ends of those who made and used it. Fahad Bishara helpfully asks us to look past the state in any form to trace the non-professional circuits through which legal knowledge moved. As *nakhodas* sailed the Arabian Gulf and Indian Ocean, they operated within legal practices of their own making and maintaining. Al-Failakawi entered model contracts in his notebooks with the possibility of disputes only dimly in view over the ever-receding horizon. The webs of commerce through which his dhow moved were also webs of trust, embodied in agreements of the kind he recorded. If disputes arose, he was likely to find resolution through informal means or through resort to the courts of any number of states. Doing so required “cross-jurisdictional problem solving”; preparing his contracts in the forms of any one state would have made them all but useless.<sup>36</sup> If most of the other articles in this collection help us think about the persistence of particular practices across time, as one state or empire gave way to another, then Bishara helps us think about their prevalence across space: within, among, and outside those states and empires.

### Paper Empire, Paper Tiger?

Does this mean that the paper empires of South Asia were nothing but paper tigers? Hardly. Even where individuals like Al-Failakawi did their legal planning outside of state confines, and even where empires fell short of their paper ambitions, the process by which new paper legalities became entangled with older forms continually reshaped the landscape in which the subjects of states

<sup>35</sup> Elizabeth M. Thelen, “A New Language of Rule: Alwar’s Administrative Experiment, c. 1838–58,” *Law and History Review* 41, no. 3 (2023): 523–542. On earlier manuals of practice, see Chatterjee, *Negotiating Mughal Law*, chapter 3.

<sup>36</sup> Fahad Ahmad Bishara, “The Sailing Scribes: Circulating Law in the Twentieth-Century Indian Ocean,” *Law and History Review* 41, no. 3 (2023): 596.

and empires made choices among the legal forms by which they might navigate their lives.

The Dutch may not have ended palm leaf life, but they bent it into new forms; this prompted new practices on the part of Ceylon's people. We see this in the personal and familial tactics of acquisition, retention, and use of empire's documents. In Jaffna, people knew they needed to hold onto their *sitos* to prove they had performed the work required of them; they made sure to keep the *olas* containing the judgments *dessaves* made to resolve their disputes. Jaffna's Tamils may have learned how to maneuver in and around the system maintained through *thombos*, but that they could do so reminds us of the crucial fact: they had to do so. The colonial state, for all its failed ambitions, impinged on them through its demands for labor and its provision of the ultimate instruments for claiming property.<sup>37</sup> Similarly, if baptism was a social resource that could only be deployed by invoking certain forms of proof, then people made sure to protect their state-issued proofs, whether on paper or palm leaf.<sup>38</sup>

For all the overlap in practices lasting generations as one state or empire gave way to another, at what point did bending old forms break them? Dominic Vendell points to one critical moment: the Bombay Inam Commission of the 1850s. In a manner much more systematic than the Dutch effort a century earlier to transform Ceylon's *olas* into registered, paper *giftebrieven*, the Inam Commission swept together heaps of paper from storage closets and shop floors, carted them off to their offices, and turned them into "authentic" accounts through the application of its own notions of legality. As the Commission faced questions it could not resolve about the legitimacy of documents used to claim immunity for taxes on their lands, it produced answers nonetheless. It created a seemingly rationalized paper record that bulldozed older documentary practices and built a new archive atop them.

Paper took its most ambitious form where there were no palm leaf precursors, no indigenous practices of any kind: in the making of passes designed to restrict personal mobility. The palm leaves, *pattas*, and *thombos* that we have considered so far were largely concerned with claims to land. Little wonder that European paper might never entirely overcome land claims made through palm leaf practices that had operated for centuries before the Dutch arrived. But there were few if any preexisting record technologies when it came to controlling bodies and their movement. A new technology made possible new work for a new kind of law concerned with people's movements. As Bhavani Raman shows, such technologies arrived from far away, brought by European empires into the Indian Ocean from the Atlantic. Enslaved and indigenous Others in the Caribbean and North America were required to carry tickets or passes in order to move about. Adoption of a similar practice in New South Wales in 1801 suggests how class difference became entangled with racial

<sup>37</sup> Schrikker and Sur, "An Empire in Disguise," 440–441, 445–446, and 448–449.

<sup>38</sup> Bente de Leede and Nadeera Rupesinghe, "Registering and Regulating Family Life: The School *Thombos* in Dutch Sri Lanka," *Law and History Review* 41, no. 3 (2023): 501–521.

difference as part of an effort, appearing in new forms over centuries, to control labor across an expanding empire.<sup>39</sup>

Registration was the key to this effort. Like the passes themselves, registering people held in various kinds of servitude or slavery had been done for centuries. Virginia's leaders registered bonded laborers from 1618.<sup>40</sup> In Ceylon, the first step in the effort to end slavery began with a drive to register enslaved people, who then received a certificate of that registration—what we might think of as a pass in another form.<sup>41</sup> An old practice in the Atlantic became a new one in the Indian Ocean as passes were increasingly produced as color-coded printed forms. As clerks filled in the blank spaces in those forms, information about pass holders was simultaneously put in registers, complete with cross-indexing and racialized descriptors.<sup>42</sup> Fingerprints, photographs, and tattoos only intensified the work of registration and the pretensions to command labor that the registers and passes contained.<sup>43</sup> The ambitions in law's paper empire may never have been fully achieved. But as Raman reminds us, even paper tigers can roar; their teeth left vicious scars on their victims.

### Law's Containers

These are all stories of containment told through the containers that did the work: *pattas*, *parwanas*, passes. When we examine these containers closely, we find that paper and palm leaf are not simply substrates on which words were written. They were different ways of doing law's work; they made different kinds of law.<sup>44</sup> We find that the contexts of texts are not only cultural or social. They are physical. Words' containers constrained what they could do and how they might do it.

We need to take these containers seriously as a necessary preliminary to the examination of the words they contain. As Maurice Merleau-Ponty put it seven decades ago:

The things of the world are not simply neutral objects which stand before us for our contemplation. Each of them symbolizes or recalls a particular way of behaving...Our relationship with things is not a distant one: each speaks to our body and to the way we live.<sup>45</sup>

<sup>39</sup> Bruce Kercher, "Perish or Prosper: The Law and Convict Transportation in the British Empire, 1700–1850," *Law and History Review* 21 (2003): 548–52 and 561–64.

<sup>40</sup> Susan Myra Kingsbury, ed., *The Records of the Virginia Company of London* (Washington: Library of Congress, 1933), 3:108 and 171.

<sup>41</sup> Nira Wickramasinghe notes a Caribbean connection in this practice: *Slave in a Palanquin: Colonial Servitude and Resistance in Sri Lanka* (New York: Columbia University Press, 2020), 46–48 and 105–15.

<sup>42</sup> Bhavani Raman, "Oceanic Mobility and the Empire of the Pass System," *Law and History Review* 41, no. 3 (2023): 584.

<sup>43</sup> Clare Anderson, *Legible Bodies: Race, Criminality, and Colonialism in South Asia* (New York: Berg, 2004), especially chapters 1, 2, 5, and 6.

<sup>44</sup> Megha Sharma Sehdev and Piyel Hildar, "The Folded Gaze: Looking at Legal Documents in South Asia," *South Asian Studies* 37 (2021): 137–49.

<sup>45</sup> Maurice Merleau-Ponty, *The World of Perception*, transl. Oliver Davis (London: Routledge, 2004), 63.

Given this, historians might do well to imitate archaeologists. Doing so, we would recognize how things work,

over the long term, accumulating biographies and capturing time, through joint participation in cultural practices, in ways that often escape the temporal limits and rhythms of individual human life and experience...Things act as dynamic attractors, operating in feedback circles that bind the different scales of time together.<sup>46</sup>

In other words, attending to material forms of documentary practice provides not only a way to get more deeply into the meanings of individual documents. It becomes a way to see practices, including legal ones, over the long haul. Indeed, we might think of legal technologies as examples of something that operates in what Fernand Braudel called “geographical time,” which “unfold[s] slowly and is slow to alter...[and] tells the story of man’s contact with the inanimate.”<sup>47</sup> Alteration in legal technologies is less a process of abrupt transformation than of sedimentation, as new practices layer atop old ones. Slow-changing containers make for slow-changing law. But change it did, as new kinds of containers were put to work alongside old ones. People held on to their palm leaves, and when they had to stake their land claims before others, momentarily pulled them out of the bags and boxes where they kept them safe. As they did, few probably noticed how the exigencies of paper’s empire were changing the very assumptions—the law—on which their claims rested. Then one day, finding their palm leaves gone, and going down to the colonial or post-colonial state’s registry office, they discovered what it meant that they were now subject to the logic of the surveyor and of individual possession that runs from the paper register’s pages. Until that moment, they may have been largely unaware as new writing technologies imposed themselves on the law they knew, and discovered only then how much that law had been changed.

Appreciating this helps us see past apparent ruptures in ways of living brought about by states and empires as they come and go. Attending to these containers, we can look past simple binaries: European vs. indigenous; pre-colonial vs. colonial; resistance vs. accommodation; oral vs. literate; manuscript vs. print; and paper vs. palm. In the material practices we have explored, we see ways of being which, throughout successive states and empires, were used simultaneously in acts of resistance and in acts of accommodation. Resistance and accommodation—seen in the material practices through which both must operate—no longer appear as binaries; rather, they constitute one another. Thinking with law’s material forms and everyday routines help us understand how and why “the” law—so often static in our

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<sup>46</sup> Lambros Malafouris, *How Things Shape the Mind: A Theory of Material Engagement* (Cambridge: Cambridge University Press, 2013), 246.

<sup>47</sup> Fernand Braudel, *On History*, trans. Sarah Matthews (Chicago: University of Chicago Press, 1980), 3. For discussion, see Paul D. Halliday, “Legal History: Taking the Long View,” in *The Oxford Handbook of Legal History Research*, eds. Chris Tomlins and Markus Dubber (Oxford: Oxford University Press, 2018), 323–41.

imaginations—was and is dynamic, though in ways that may be hard to apprehend without the kind of close examinations undertaken in this forum. New technologies come and go, so do the new kinds of law that they make. The persistence of law's material forms reminds us that there were always fields to sow, cattle to graze, trade to conduct, and everyday lives to live.

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