The Marital Patchwork of Colonial South Asia: Forum Shopping from Britain to Baroda

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The British Empire created channels for imperially intended movement.[1] Commodities, bodies, and ideas flowed along axes structured by imperial law and technology. Unintended motion also occurred along these same planes. With every legal structure meant to promote one type of behavior came litigants devising strategies to achieve the opposite. Collusion, bribery, forgery, and perjury were favorite ways to manipulate imperial

1. My terms of access to the notebooks of the Parsi Chief Matrimonial Court, held at the Bombay High Court in Mumbai, prevent me from naming the parties to PCMC proceedings. Roman numeral references to PCMC notebooks describe separately paginated (or unpaginated) sections within each volume. BHC stands for Bombay High Court (Mumbai, India); BLR for the *Bombay Law Reporter*; HCA for the Highland Council Archives (Inverness, Scotland); ILR Bom for *Indian Law Reports Bombay Series*; IPC for the Indian Penal Code; and PCMC for the Parsi Chief Matrimonial Court of Bombay (Mumbai). When speaking of postcolonial Bombay, I have used the name "Mumbai" in references to the city after its official 1995 name change.

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law.[2] The more permissible strategy of forum shopping was another. Forum shopping is the attempt to push one's case into a jurisdiction promising an optimal result when there is ambiguity over the controlling jurisdiction.[3] It reveals the perception among litigants that bottom-up—and sideways—mechanics exist within legal systems. Unlike work on resistance to state law through extralegal means, I here examine the ways parties tried to work strategically within the confines of the legal system to reconfigure their marital situations.[4] Rather than documenting the success of these maneuvers, however, I note their more common failure. The colonial courts usually saw through unconvincing attempts to forum shop. The fact that litigants continued to try reflects the ingenuity, arguably, of the "legal lottery" mechanism at work in British imperial law. Colonial law, and therefore colonial rule, reinforced its hold on subjects by dangling before them the possibility of individual relief through rule-of-law proceduralism.

In her pioneering work on legal pluralism and imperial law, Lauren Benton coins the phrase "jurisdictional jockeying." The phrase applies to both ends of the colonial encounter. Colonial authorities competed among themselves to gain jurisdiction over colonial disputes. At the same time, litigants (often colonized) used these institutional ambiguities

2. On collusion, see note 88 (below). On bribery, see Norman Cranstoun Macleod, "A Box of Mangoes," HRA/D63/A8(a), 1-2 in Macleod of Cadboll Papers (1831–1983), Highland Council Archives. On forgery, see commentary and cases on the Indian Penal Code, ss. 463–477A, in Ratanlal Ranchhoddas and Dhirajlal Keshavlal Thakore, *The Indian Penal Code* (Bombay: Bombay Law Reporter Office, 1926), 403–23. On perjury, see F. C. O. Beaman, "Eheu Fugaces," *Bombay Law Journal* 3 (1925): 208–9; M. K. Gandhi, *The Law and the Lawyers* (Ahmedabad, India: Navajivan, 2004), 122; and Wendie Schneider, "'Enfeebling the Arm of Justice': Perjury and Colonial Administration under the East India Company," in *Modern Histories of Crime and Punishment*, ed. Markus Dirk Dubber and Lindsay Farmer (Palo Alto, Calif.: Stanford University Press, 2007), 299–327.

3. On forum shopping in contemporary binational divorce cases, see "Divorce: Money in Misery," *The Economist*, February 5, 2009.The same concept exists in commercial contracts between international merchants through choice-of-law clauses. For example, see Stefan Voigt, "Are International Merchants Stupid? Their Choice of Law Sheds Doubt on the Legal Origin Theory," *Journal of Empirical Legal Studies* 5 (1) (2008): 1–20. Many thanks to Stewart Macaulay for drawing this comparison to my attention.

4. On the rejection of state law through the use of private violence, see Sumit Guha, "Wrongs and Rights in Maratha Country: Antiquity, Custom and Power in Eighteenth-Century India," in *Changing Concepts of Rights and Justice in South Asia*, ed. Michael R. Anderson and Sumit Guha (Delhi: Oxford University Press, 2000), 23–26; and Radha Kumar, "Sex and Punishment among Mill-Workers in Early Twentieth-Century Bombay," in Anderson and Guha, eds., *Changing Concepts*, 194–95.

to further their own interests.[5] If the story seems like a celebratory one that restores agency to colonial subjects, it is so only to a limited extent. Benton's larger point is that the delicate filigree of individual litigants' jurisdictional manipulations only reinforced the authority of the colonial state. The unintended long-term consequences of these disputes, pursued by colonial subjects with the aim of exploiting imperial fragmentation, was to give judicial bodies authority over wide swathes of colonial life.[6]

I also depict microscopic acts of agency reinforcing macroscopic state authority. The acts of agency described here were usually mere *attempts*. The term "jockeying" implies a certain amount of skill. To emphasize the often clumsy nature of these moves, I prefer to speak of jurisdictional *jostling*. Like the other two articles in this forum, this piece examines legal strategy and agency through the lens of legal pluralism, gender, and personal law. I show how discrepancies in the family law of colonial Bombay, imperial England, the independent South Asian princely state of Baroda, and the sovereign royal state of Persia created a flow of hopeful litigants toward what was perceived to be the jurisdiction of least resistance. Parties tried to forum shop in order to counteract spousal abandonment, to get a no-fault divorce, and to enter into polygamous unions. Some of these strategies were lawyers' ideas executed by elite litigants. Others probably emerged out of the informal social knowledge of parties who could not afford to pay for legal advice. Shedding light on a phenomenon that Benton alludes to but does not explore in depth, I map attempts to travel the "wrong way" along imperial legal circuits, and to depart from these circuits entirely.[7]

One might expect successful forum shopping to be visible among the two populations featured in this article: Britons and Parsis. Both groups were renowned for their privileged place in the British imperial world. The Parsis, or followers of the Zoroastrian religion in India, were Persian migrants to India who adopted British legalism with special

5. Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002), 3, 13, 29.

6. Benton, *Law and Colonial Cultures*, 148–49.

7. See Benton, *Law and Colonial Cultures*, 128, 137. Studies of forum shopping generally lie outside the British imperial context. For a sample, see C. E. von Benda-Beckmann, "Forum Shopping and Shopping Forums: Dispute Settlement in a Minangkabau Village in West Sumatra, Indonesia," in her *The Broken Stairways to Consensus: Village Justice and State Courts in Minangkabau* (Dordrecht: ICG Printing, 1984), 37–64; Hendrik Hartog, *Man and Wife in America: A History* (Cambridge, Mass.: Harvard University Press, 2000); and Lawrence M. Friedman, "A Dead Language: Divorce Law and Practice before No-Fault," *Virginia Law Review* 86 (2000): 1497–1536.

vigor, both as legal professionals and as litigants.[8] Both they and the British had diasporic networks linking multiple territories globally. Elite members of both groups had the financial resources to hire good lawyers, and to travel. However, the three cases examined here suggest that wealth and privilege did not ensure effective forum shopping. Success in forum shopping did not require money as much as a willingness to move to one's ideal jurisdiction *and stay there.* Whether litigants tried to use forum shopping as a sword (i.e., to create a cause of action against a spouse) or as a shield (i.e., to protect oneself, having left British India, against a spouse's claim), the colonial courts were not easily fooled.

Why then did litigants continue to try forum shopping? Colonial subjects (and their lawyers) realized that the courts sometimes limited the ambit of their own authority. The existence of this legal lottery suggests a pressure-valve role for the courts along the lines of what E. P. Thompson proposed for England.[9] This foundational and ingenious feature of colonial law may explain its relative success with colonized populations that recognized the system's structural bias against them, but that nonetheless continued to use colonial law with the hope that legal "luck" would produce optimal results in their own particular cases.[10]

Legal Pluralism and Colonial India

Three case studies are here featured in which litigants attempted to move between territorial units, but jurisdictional jostling also ran along another plane in colonial South Asia. Under the personal law system, marriage and inheritance matters fell within the body of religious law that pertained to the parties—Hindu law for Hindus, Islamic law for Muslims, and so

8. See Mitra Sharafi, *Colonial Parsis and Law: A Cultural History (Government Research Fellowship Lectures 2009–2010)* (Mumbai: K. R. Cama Oriental Institute, forthcoming 2010).

9. "It is true that in history the law can be seen to mediate and to legitimize existent class relations. Its forms and procedures may crystallize those relations and mask ulterior justice. But this mediation, through the forms of law, is something quite distinct from the exercise of unmediated force. The forms and rhetoric of law acquire a distinct identity which may, on occasion, inhibit power and afford some protection to the powerless" (E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York: Pantheon, 1975), 261; see also 264).

10. See Jörg Fisch, "Law as a Means and as an End: Some Remarks on the Function of European and Non-European Law in the Process of European Expansion," in *European Expansion and Law: The Encounter of European and Indigenous Law in 19th- and 20th-Century Africa and Asia*, ed. W. J. Mommsen and J. A. De Moor (Oxford: Berg, 1992), 15–38.

on.[11] Conversion allowed individuals to maneuver across bodies of religious law, making available the options of polygamy and divorce to new Muslims, for example, and of divorce to new Christians.[12] Although the legal pluralism created by these religious jurisdictions is beyond the scope of this study, it is the subject of the other two articles in this forum.[13] Attempts to move between religious blocks of law occurred alongside strategies to shift between territorial ones.

11. Note, however, the legal fictions resorted to with regard to smaller religious communities: see note 30 and accompanying text (below). A secular legal regime existed for intercommunity marriages under the Special Marriages Act 1872, but it was rarely used because it required significant inheritance- and religion-related sacrifices; see S. Krishnamurthi Aiyar, *Law and Practice Relating to Marriages in India and Burma* (Lahore: University Book Agency Law Publishers, 1937), 41–58; M. P. Jain, *Outlines of Indian Legal History* (Nagpur, India: Wadhwa, 1990), 630–31; and Nandini Chatterjee, *Christian Personal Law in India: The Modern Origins of Yet Another Tradition* (Cambridge Centre of South Asian Studies, Occasional Paper No. 4, 2004) (Cambridge: Cambridge Centre of South Asian Studies, 2004).

12. Polygamy was prohibited to Parsis with the passage of the Parsi Marriage and Divorce Act of 1865, and to Indian Jews with the ruling in *Rachel Benjamin v. Benjamin Solomon Benjamin*, I.L.R. 50 Bom. 369 (1926); see Joan Roland, *Jews in British India: Identity in a Colonial Era* (Hanover, N.H.: University Press of New England for Brandeis University Press, 1989), 294 at note 37. Polygamy was prohibited to Hindus under classical Hindu law, although long traditions of polygyny existed in many Hindu communities, with polyandry existing among matrilineal communities like the Nayars of the southwesterly Malabar Coast, and in certain Himalayan societies. Divorce was prohibited under Hindu law. A Hindu's conversion to Christianity allowed his or her marriage to be dissolved if the unconverted spouse so wished, although the courts did not necessarily make this easy. See Chandra Mallampalli, *Christians and Public Life in Colonial South India, 1863–1937: Contending with Marginality* (London: Routledge, 2004), 75–80. On the Native Converts Marriage Dissolution Act of 1866, see Aiyar, *Law and Practice Relating to Marriages*, 229–40. A Christian husband's conversion to another religion and subsequent remarriage gave his first wife grounds for divorce (Indian Divorce Act 1869, s.10 in Henry Rattigan, *The Law of Divorce Applicable to Christians in India (The Indian Divorce Act 1869)* [Lahore: University Book Agency, 1936], 93). For cases on attempted dissolutions of marriage through conversion, see Jain, *Outlines*, 611. For cases of Parsi husbands leaving their wives and converting to Islam in order to marry Muslim women, see B. B. Patel and R. B. Paymaster, *Parsi Prakash: Being a Record of Important Events in the Growth of the Parsi Community in Western India* (Bombay: Bombay Parsi Panchayat, 1878–1942) (in Gujarati), vol. 3, 840 (PCMC Suit No.2 of 1883); and PCMC Notebook 1893–1903, I: 214 (PCMC Suit No. 5 of 1895). See also *Palkhiwalla v. Palkhiwalla*, 39 B.L.R. 1143 (1937). For allegations that a Parsi wife proposed joint conversion to Christianity so that she and her Muslim lover could marry each other, see PCMC 1924-8, III: 99 (Suit No.1 of 1927).

13. In this issue, see Rohit De, "The Two Husbands of Vera Tiscenko: Apostasy, Conversion, and Divorce in Late Colonial India," 1011–1041; and Chandra Mallampalli, "Escaping the Grip of Personal Law in Colonial India: Claiming or Rejecting

Hendrik Hartog and Lawrence Friedman have created a portrait of the U.S. marital mosaic under fault-based divorce regimes circa 1900.[14] If a person wanted an easy divorce, he or she could have gone to Indiana or to Nevada.[15] Six weeks' residence in the latter was enough to establish the individual's domicile, and the right to apply for a Nevada divorce.[16] If a wife could prove that her husband had been cruel to her, she would want to be in California, where a narrative of cruelty was the most commonly successful line of argument.[17] If, by contrast, a party seeking divorce could prove adultery, he or she would want to file for divorce in New York. Businesses specializing in the staging of situations made to look adulterous arose in that state, where couples who could not prove fault colluded to seek divorce.[18]

South Asia was an even more varied legal terrain in the early twentieth century. British rule extended to only 61 percent of the Indian subcontinent's area, the remaining 39 percent falling under the independent jurisdictions of the princely states.[19] Some 700 Indian princes operated their own legal systems (with varying degrees of autonomy) in everything from the tiny ornamental city-states dotting the Arabian Sea coastline of Gujarat, to the vast southern kingdom of Hyderabad, a territory three times the size of Ireland.[20] The courts of Britain were another legal alternative to which a significant imperial traffic had access.[21] British officials

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'Hindu-ness,'" 1043–1065. On the legal consequences of conversion, see Chatterjee, *Christian Personal Law*; and Mallampalli, *Christians and Public Life*, 1–84.

14. See note 7 (above).

15. Hartog, *Man and Wife*, 264–66, 277–78; Friedman, "Dead Language," 1505.

16. Hartog, *Man and Wife*, 277.

17. Friedman, "Dead Language," 1518–22.

18. Ibid., 1512–17. The adultery-based route was recommended particularly because, at least during the nineteenth century, New York courts generally denied comity (recognition of other states' laws) with regard to the divorce law of states like Indiana and Nevada. See Hartog, *Man and Wife*, 272–77. In the British context, see references to the similar "hotel-bill class of action": "Adam vs Eve. Mr. Justice Wool's Views on Marriage and Divorce," *Kaiser-i-Hind* (October 29, 1933): 33.

19. Alexander Wood Renton and George Granville Phillimore, *Colonial Laws and Courts* (London: Sweet and Maxwell, 1907), 43–44.

20. Ibid. For a case of attempted forum shopping by a Parsi husband seeking to avoid British Indian law on the basis of domicile in Hyderabad, see *Panthaky v. Panthaky*, 43 B.L.R. 569 (1941). For earlier marital cases involving Parsi circulation between Hyderabad and British India, see PCMC 1893–1903, I: 37–61 (Suit No. 5 of 1893); and II: 52–55, 79 (Suit No.1 of 1899).

21. Within Britain, some litigants had the choice of not only English law but also potentially of Scottish law. The law of Scotland was historically based upon continental droit civil, rather than being a common-law system. See T. B. Smith, *Studies Critical and Comparative* (Edinburgh: W. Green & Son, 1962), particularly 28–61 and 72–88.

circulated between India and Britain with surprising frequency once the development of steam travel and the opening of the Suez Canal in 1869 reduced travel time significantly.[22] South Asians also moved between Britain and India in surprising numbers—in the early days as sailors (*lascars*), servants or nannies (*ayahs*) accompanying British families making the sea voyage, or alternatively as visiting royalty. Later on, they came as students, aspiring civil servants, and tourists.[23] There were also pockets of South Asia controlled by other European powers and their law—the French in Pondicherry on the southeast Coromandel Coast, the Portuguese along the west coast at Goa and, at the coastal fringe of Gujarat, the tiny territories of Daman and Diu. Furthermore, even in British jurisdictions, the aftertaste of previous European colonization remained—in particular, in the law of Ceylon, a territory under Portuguese and then Dutch rule.[24] It was a general British policy to retain the legal system in place at the time of accession to British rule—or at least,

22. See Daniel E. Headrick, *The Tools of Empire: Technology and European Imperialism in the Nineteenth Century* (Oxford: Oxford University Press, 1981), 17–42, 129–39 (particularly at 130), and 142–56 (particularly at 155). British judges working in India typically spent three to four months of every year or two in Britain. The Bombay barrister J. D. Inverarity spent several months of every year hunting on his estate in the Scottish Highlands, with stopovers in East Africa for safaris en route; see K. M. Munshi, *Bombay High Court: Half a Century of Reminiscences* (Bombay: Bharatiya Vidya Bhavan, 1963), 6; D. J. Ferreira, "Reminiscences," in *The Bombay Incorporated Law Society Centenary, 1894–1994* (Bombay: Bombay Incorporated Law Society, 1995), 260; and Framroze Noaroji Bunshah, "The Late Mr J. D. Inverarity," *Bombay Law Journal* 2 (1924): 324. His judge cousin, Norman Macleod, traveled to Britain seventeen times over thirty-six years, averaging one trip every 2.1 years. Macleod stayed in Britain for two to four months each time; see Norman Macleod, "Voyages to India and Back," HRA/D63/A8(a), in Macleod of Cadboll Papers (HCA).

23. See Rozina Visram *Asians in Britain: 400 Years of History* (London: Pluto, 2002); and Sumita Mukherjee, *Nationalism, Education and Migrant Identities: The England-Returned* (London: Routledge, 2010). On Indian law students in London, see Mitra Sharafi, "A New History of Colonial Lawyering: Likhovski and Legal Identities in the British Empire," *Law and Social Inquiry* 32 (2007): 1082–83.

24. See, for example, *Le Mesurier v. Layard*, 3 New Law Reports 227 (1900); L. J. M. Cooray, *The Reception in Ceylon of the English Trust* (Colombo: Lake House Printers and Publishers, 1971), 1–3. On doubly colonized jurisdictions generally, see Kenneth Reid and Reinhard Zimmerman, "The Development of Legal Doctrine in a Mixed System," in their edited volume, *A History of Private Law in Scotland*, vol. 1, *Introduction and Property* (Oxford: Oxford University Press, 2000), 4–8; William Tetley, "Mixed Jurisdictions: Common Law vs. Civil Law (Codified and Uncodified)," *Louisiana Law Review* 60 (Spring 2000): 677–728; Reinhard Zimmermann and Daniel Visser, "Introduction: South African Law as a Mixed Legal System," 1–30, and Eduard Fagan, "Roman-Dutch Law in its South African Historical Context," 33–64, both in *Southern Cross: Civil Law and Common Law in South Africa*, ed. Reinhard Zimmermann and Daniel Visser (Oxford: Oxford University Press, 1996).

to do so nominally. This approach left a residue of Romano-Dutch law, making available a further set of doctrines.[25] Finally, there were neighboring uncolonized states like the royal kingdoms of Persia, to the west, and Siam and China, to the east.[26] Diasporic trading communities like the Parsis had longstanding connections to these territories, and at times attempted to shift their legal disputes into those jurisdictions for the sake of a better outcome.[27]

Aside from these territorial jurisdictions, there were the religious ones already noted. In 1772, Warren Hastings promised Hindu law for Hindus and Islamic law for Muslims in "all suits regarding marriage, caste and other religious usages and institutions."[28] Queen Victoria renewed the pledge after the largest rebellion against British rule—the Indian "Mutiny" (or general rebellion) of 1857.[29] Oddly, the initial promise was binary, reading the South Asian population as either Hindu or Muslim. No acknowledgment was made of the religious traditions of Sikhs, Jains, Buddhists, Zoroastrians, Indian Jews, or non-Anglican Indian Christians

25. Many of these civilian doctrines were misunderstood by common-law officials. See, for example, Cooray, *Reception in Ceylon*, 22–24.

26. For a case involving customary law and Siam, see *Ma Wun Di v. Ma Kin*, 35 Indian Appeals (1907–8), 41–47. See also Ernest Young, *The Kingdom of the Yellow Robe being sketches of the domestic and religious rites and ceremonies of the Siamese* (Westminster: A. Constable & Co., 1970), 98–99, 218–34; and J. G. D. Campbell, *Siam in the Twentieth Century, Being the Experiences and Impressions of a British Official* (London: E. Arnold, 1902), 181–84.

27. On Parsi links to China, see note 111 (below); and R. B. Paymaster, *Early History of the Parsees in India from Their Landing in Sanjan to 1700 AD* (Bombay: Zarthoshti Dharam Sambandh Kelavni Apnari ane Dnyan Felavnari Mandli, 1954), xiii. This article's third case study, the Bombay-Yazd bigamy case, illustrates a successful attempt to take advantage of Persian law, which permitted polygamy for Zoroastrians, rather than the law of British India, which did not.

28. "A Plan for the Administration of Justice, extracted from the Proceedings of the Committee of Circuit, 15th August, 1772," in *Readings in the Constitutional History of India, 1757–1947*, ed. S. V. Desika Char (Delhi: Oxford University Press, 1983), 106 (Article XXIII).

29. "We disclaim . . . the right and the desire to impose our convictions on any of our subjects. We declare it to be our royal will and pleasure that none be in any ways favored, none molested or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure ("Proclamation of 1858," in *Readings*, Char, 299). The move seems to have been a strategic one. As Victoria told Lady Canning, "I think that the greatest care ought to be taken not to interfere with their religion, as once a cry of that kind is raised among a fanatical people—very strictly attached to their religion—there is no knowing what it may lead to and where it may end" (quoted in Christopher Hibbert, *The Great Mutiny India 1857* [London: Allen Tate, 1978], 167).

like the Syrian or Armenian Christians. In subsequent centuries, judges had to construct legal fictions, construing communities like Sikhs and Jains as Hindu subsects in order to extend to them the promise of legal pluralism.[30]

Finally, there was customary law. In the late eighteenth and early nineteenth centuries, the first wave of colonial legal Orientalism took place in the form of the translation of Hindu and Islamic legal treatises.[31] The British form of legal pluralism did not farm out the determination of what constituted Hindu and Islamic law to the religious communities themselves, but it gave the job to the colonial courts. They relied initially on Hindu and Islamic law experts, and later, on translated written sources alone.[32] Within a century, though, British legal officials realized that this hypertextual approach ignored customary practice. The customary law experiment began in the northwestern areas of British India, particularly Punjab, with flashes of recognition elsewhere (like the Malabar Coast of southwest India).[33] Proving custom in court was no easy task, but this

30. See Jain, *Outlines*, 601–2. For an instance of the Hindu legal fiction applied to Jains, see *Chotay Lall v. Chunnoo Lall*, 6 Indian Appeals 15 (1878); *Amava v. Mahadgauda*, I.L. R. 22 Bom. 416 (1898); and generally, Werner Menski, "Jaina Law as an Unofficial Legal System," in *Studies in Jaina History and Culture: Disputes and Dialogues*, ed. Peter Fluegel (London: Routledge, 2006), 419–37. On the fiction's application to Sikhs, see *Rani Bhagwan Kaur v. Jogendra Chandra Bose*, 30 I.A. 249 (1903).

31. See David Ibbetson, "Sir William Jones as Comparative Lawyer," in *Sir William Jones, 1746–1794: A Commemoration*, ed. Alexander Murray (Oxford: Oxford University Press on behalf of University College Oxford, 1998), 17–42; Bernard Cohn, "Law and the Colonial State in India," in his *Colonialism and its Forms of Knowledge* (Princeton, N.J.: Princeton University Press, 1996), 57–75; and Jain, *Outlines*, 585–90.

32. Under the Ottoman Empire's *millet* system, by contrast, local courts operated by ethno-religious communities themselves handled cases specific to those communities. See Kemal H. Karpat, "*Millets* and Nationality: The Roots of the Incongruity of Nation and State in the Post-Ottoman Era," 141–43, Halil Inalcik, "Ottoman Archival Materials on *Millets*," 437, both in *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*, vol. 1, *The Central Lands*, ed. Benjamin Braude and Bernard Lewis (New York: Holmes and Meier, 1982); and Karen Barkey, "Aspects of Legal Pluralism in the Ottoman Empire: A Relational Field of Religious Differentiation," paper presented at "New Perspectives on Legal Pluralism" Symposium, Newberry Library, Chicago (April 23, 2010) (on file with author).

33. On Punjab, see David Gilmartin, *Empire and Islam: Punjab and the Making of Pakistan* (London: I. B. Tauris, 1988), 13–18; C. A. Boulnois and W. H. Rattigan, *Notes on Customary Law as Administered in the Courts of Punjab* (London: W. Clowes and Sons, 1878); C. L. Tupper, *Punjab Customary Law* (Simla, 1881); T. P. Ellis, *Notes on Punjab Custom* (Lahore: Civil and Military Gazette Press, 1921); Kaikhosru J. Rustomji, *A Treatise on Customary Law in the Punjab* (Lahore: University Book Agency, 1936); and W. H. Rattigan, *A Digest of Civil Law for the Punjab. Chiefly based on the Customary Law* (Lahore: Law Publishers, 1938). On the Malabar coast, see G. Arunima, *There Comes Papa: Colonialism and the Transformation of Matriliny in Kerala, Malabar, c. 1850–1940* (Delhi: Orient Longman, 2003), 144.

did not stop litigants from requesting an exit from standard religious or territorial laws on the basis of contrary customary practice.[34]

All this—the personal law system of religious law, custom, neighboring and princely jurisdictions, the many legal links to England and Scotland, and the legal systems of other European colonizers who had ceded territory to the British—created an opulent feast of legal options for potential litigants. The possibility of migration between territorial, religious, and customary blocks of law was an invitation for jurisdictional opportunism. This article confines itself to the first of these types of conceptual travel: strategies of migration across territorial jurisdictions. My first case study examines an attempt to bring an abandonment suit filed by an English wife against her Parsi husband from the courts of England to the Bombay High Court in order to access—ironically—a remnant of English ecclesiastical law that was no longer enforceable in England but in full bloom in India. The second case study documents an attempt by a Parsi couple to push their case from British India into the neighboring princely state of Baroda because no-fault divorce was available in the latter, unlike in British territory. My final case study reveals a maneuver through which a Zoroastrian man moved between British India and Persia in order to pursue the polygamy permitted to Zoroastrians in Persia, and forbidden to them in India since 1865.

Three Case Studies

The Restitution of Conjugal Rights: England versus Bombay Presidency

The standard history of colonial miscegenation between Europeans and South Asians posits a golden age of intercultural openness and social freedom, followed by the onset of high colonial racism with the arrival in India of missionaries and European women in larger numbers.[35] Following a

34. To be recognized by law, a custom had to be proven to be (1) ancient, (2) invariable, and (3) not repugnant to the general law (*Nugender Narain v. Rughoonath Narain Dey*, Sutherland's Weekly Reporter 20 [1864] and *Raghavendra v. Balkrishna Raghavendra*, 4 Bombay Appeals Cases 113). See Jain, *Outlines*, 615. For examples of failed attempts to prove custom, see the cases of *Rahimatbai v. Hirbai* (1875), and *Bachebi v. Makhan Lal* (1880), in this issue, Mallampalli, "Escaping the Grip," 1058–1059, 1061–1062; and *Joao Mariano Lopes v. Francisco Lopes*, 5 Bombay High Court Reports 172 (1867–8).

35. See Kenneth Ballhatchet, *Race, Sex and Class under the Raj: Imperial Attitudes and Policies and their Critics, 1793–1905* (New York: St. Martin's, 1980), 144; Percival Spear, *The Nabobs: A Study of the Social Life of the English in Eighteenth-Century India* (Delhi: Oxford University Press, 1998), 126–42; Reginald Maher, *These Are the Anglo-Indians* (Calcutta: Swallow, 1962), 2; and Sudipta Sen, "Colonial Aversions and Domestic

pattern that reproduced itself globally in the first few centuries of "trade colonialism," British men in India took Indian women as their wives and mistresses during the early period when British India was under the rule of the East India Company.[36] This combination seems to have been common and socially tolerated among Britons up until the late eighteenth century. From the early nineteenth century on, as the standard story goes, things changed.[37] The new emphasis upon racial difference inherent in the "civilizing mission" stigmatized British men who took Indian mates, and the practice became taboo. In its wake, the mixed-race population that resulted from earlier couplings—the Eurasians or Anglo-Indians—turned inward, becoming its own independent, largely endogamous community.[38]

In fact, a new era of intermixing began as Indian men started coming to Britain in larger numbers, most often as students, in the late nineteenth and

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Desires: Blood, Race, Sex and the Decline of Intimacy in early British India," in *Sexual Sites, Seminal Attitudes: Sexualities, Masculinities, and Culture in South Asia*, ed. Sanjay Srivastava (Delhi: Sage, 2004), 63–64.

36. See Durba Ghosh, *Sex and the Family in Colonial India: The Making of Empire* (Cambridge: Cambridge University Press, 2006). On intermixing elsewhere in European trade empires, see Joseph C. Miller, *Way of Death: Merchant Capitalism and the Angolan Slave Trade, 1730–1830* (Madison: University of Wisconsin Press, 1988), 245–83 (on the mixed Luso-African population of intermediary slave traders in Angola); Doug Cox, *Ranching: Now, Then, and Way Back When* (Penticton, Canada: Skookum, 2004), 95 (on Anglo-indigenous ranching populations in western Canada); and, on Euro-indigenous intermediary fur traders in Canada, Jennifer Brown and Theresa Schenck, "Métis, Mestizo and Mixed-Blood," in *A Companion to American Indian History*, ed. Philip J. Deloria and Neal Salisbury (Oxford: Blackwell, 2002), 335; and Marcel Giraud, *Le Métis Canadien* (Paris: Institut d'Ethnologie, 1945).

37. However, Durba Ghosh argues that the seeds of high colonial racism were present from the mid-eighteenth century on (Ghosh, *Sex and the Family*, 9–10).

38. The exception was mixed race Anglo-Indian women who occasionally married British men, although such couples faced increasing racism as the colonial period progressed. See Sen, "Colonial Aversions," 65–66; and *The Lost World of the Raj: Home from Home* and *Pomp and Power* (BBC documentary, 2007). On the history of the Anglo-Indian population, see Laura Bear, *Lines of the Nation: Indian Railway Workers, Bureaucracy, and the Intimate Historical Self* (New York: Columbia University Press, 2007), 135–225; Sen, "Colonial Aversions," 68–72; Lionel Caplan, *Children of Colonialism: Anglo-Indians in a Postcolonial World* (Oxford: Berg, 2001); Christopher Hawes, *Poor Relations: The Making of a Eurasian Community in British India, 1773–1833* (Surrey: Curzon, 1996); Evelyn Abel, *The Anglo-Indian Community: Survival in India* (Delhi: Chanakya, 1988); Noel P. Gist and Roy Dean Wright, *Marginality and Identity: Anglo-Indians as a Racially Mixed Minority in India* (Leiden: E. J. Brill, 1973), 7–20; Anthony Frank, *Britain's Betrayal in India: The Story of the Anglo-Indian Community* (Bombay: Allied, 1969); Herbert Alick Stark, *Hostages to India or the Life Story of the Anglo-Indian Race* (Calcutta: Star Printing Works, 1936); Maher; and Cedric Dover, *Cimmerii? Or Eurasians and Their Future* (Calcutta: Modern Art Press, 1929).

early twentieth centuries.[39] This time, it was not European men and South Asian women who were coupling up in India, but European women and South Asian men, and in Britain.[40] My first forum shopping case study, the case of *Eleanora Wadia v. Nusserwanjee Pestonjee Ardesir Wadia* (1913), exemplifies this second underacknowledged wave of imperial mixing.[41]

Wadia v. Wadia was a case about a failed English-Parsi marriage. Eleanora or "Poppy" Hammond met Nusserwanji Pestonji Ardesir Wadia while she was a twenty-four-year-old actress at the Gaiety Theatre in London. By her account, he posed as a Bombay Parsi "of independent means," and even claimed his parents were eager for him to marry an Englishwoman.[42] He insisted that he had been reluctant to marry her. He had repeatedly warned her that his parents would not approve of his marrying a non-Parsi, and he claimed never to have posed as wealthy.[43] They married in Kensington on August 4, 1911, then sailed for Bombay by a circuitous route via Ceylon and Madras. Upon arrival, Eleanora stated that her husband began to behave coldly to her under the negative influence of his family. He asserted that she turned them against her with her uncontrollable temper, foul language, and insulting behavior.[44] He further argued that he abandoned her because of her violent behavior, which included throwing crockery and hairbrushes at him.[45] Eleanora had verbally abused her husband with racial slurs like "low born nigger," and had frequently insulted his family.[46] Nusserwanji claimed that his wife

39. See note 23.

40. See, for instance, *Chetti (Venugopal) v. Chetti (Venugopal)*, Law Reports 27 Probate 67 (1909). For a case of intermarriage between a nonstudent Parsi man and a British woman living in London, see PCMC Notebook 1913–20, I:44–45 (Suit No. 5 of 1913). For a similar relationship in which the couple was not married, see PCMC Notebook 1928–9, I:13–19 (Suit No. 2 of 1928).

41. For a rare and insightful examination of this form of intermarriage, see Gail Savage, "More than One Mrs. Mir Anwaruddin: Islamic Divorce and Christian Marriage in Early Twentieth-Century London," *Journal of British Studies* 47 (2008): 348–74. Studies of race in the late imperial context have also touched upon intermixing between non-European soldiers and European women during the world wars, albeit briefly. See Philippa Levine, *Prostitution, Race and Politics: Policing Venereal Disease in the British Empire* (New York: Routledge, 2003), 154–55; and Visram, *Asians in Britain*, 129–35.

42. "Petition for restitution of conjugal rights, filed 28 June 1912," *N. P. A. Wadia v. Eleanora N. P. A. Wadia (Suit No.690 of 1912)*, 3 verso (BHC).

43. "Written Statement on behalf of the Respondent, filed 18 October 1912," *Wadia v. Wadia*, 1 verso (BHC).

44. "Written Statement," *Wadia v. Wadia*, 2 verso (BHC).

45. Ibid., 6 recto (BHC).

46. She allegedly also called him "a damn low scum," "dirty impudent vermin," and "scum of the earth." ("Written Statement," *Wadia v. Wadia*, 6 recto [BHC]). On the use

had conducted illicit relationships with other men both before and after their marriage.[47] He told the court she had a disturbing psychiatric history, having spent a period in a private insane asylum.[48] She was also incontinent, a fact of which he had been unaware before their marriage.[49] The couple returned to London in 1912 and Nusserwanji deserted Eleanora on the platform of Victoria railway station. Eleanora sued her husband for abandoning her, asking the court (in theory) to make him return to her. She won in the court of first instance, but on appeal, her husband won on the basis of jurisdiction.

British observers interpreted the abandonment of Mrs. Wadia as a warning to naive young British women tempted to marry Indian men in Britain.[50] The Wadia case and its type arose when Western women fell for Indian men residing in Europe, then moved to South Asia with their new husbands.[51] The London actress's case confirmed that the law

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of the term "nigger" to describe Indians in British satirical cartoons from 1853 on, see Partha Mitter, *Art and Nationalism in Colonial India, 1850–1922* (Cambridge: Cambridge University Press, 1994), 145. See also George Francklin Atkinson, *Curry and Rice on Forty Plates, or The Ingredients of Social Life at "Our Station" in India* (London: Thacker and Co., 1911).

47. Mrs. Wadia allegedly received and cashed cheques from other men under the name "Eleanora Stanley" after her marriage, refusing to give her husband an explanation ("Written Statement," *Wadia v. Wadia*, 3 verso-4 recto [BHC]). She led Mr. Wadia to believe that before her marriage she was a "chaste woman," when in fact she had lived with a man named Gosschalk, became pregnant by him, and had an illegal abortion. Gosschalk ultimately left her "on account of her vile temper and frequent assaults upon him." She also told Gosschalk that she had had relationships prior to theirs ("Written Statement," *Wadia v. Wadia*, 5 verso [BHC]).

48. "Written Statement," *Wadia v. Wadia*, 5 verso (BHC).

49. *Wadia v. Wadia*, I.L.R. 38 Bom. 130 (1914).

50. "On more than one occasion serious warnings have been issued to English girls who marry Indians coming to England for study or other reasons. They have been cautioned against accepting at their face value Indians of whom they know practically nothing direct; and against facing, without careful inquiry, the immense social disadvantages under which they must labor in India, or the dangers which arise from the entry of English girls into a social system which permits polygamy. While most residents in India can cite cases where mixed marriages have proved successful, it may be said as a general rule that they bring nothing but misery and distress, especially to the Englishwoman" ("Mixed Marriages in India. The Legal Position," *Times of London*, May 12, 1913, 5).

51. See the two Scottish divorce cases of *Helen Lendrum v. Sukumar Chakravarti*, Scots Law Times 67 (1929); *Agnes Isobel MacDougall v. Anand Shanker Rao Chitnavis*, Sessions Cases 392 (1937); and, for a fictional account, Rabindranath Tagore, "Atonement (*Prāyaścitta*)," in *Selected Short Stories of Rabindranath Tagore*, trans. Krishna Dutta and Mary Lago (London: Macmillan, 1991), 103–19. During World War I, extreme measures were taken to prevent Indian soldiers from meeting local women while staying in military hospitals in Britain. See Visram, *Asians in Britain*, 132–33.

would not protect such women when they found themselves deserted. Like Mr. Wadia, these men could be fickle or have disapproving families. Some Indian husbands expected their European wives to live under deplorable conditions back in India.[52] Others overstated the degree to which they had rejected their conservative religious backgrounds in the name of progressive reform movements like the Brahmo Samaj, only to lapse once the couple had married.[53] A few turned out to be impoverished polygamists—rather than the affluent bachelors they had pretended to be while in Britain. The truth usually came out upon the couple's return to India. Even a genuine Indian prince who seemed like a romantic catch would soon show his sexist nature once he had tricked a naive English girl into marrying him.[54] The "veneer of cosmopolitanism" that initially coated these unions with exotic allure soon wore thin.[55]

In the British press, Mrs. Wadia was the white female victim of a wily brown man.[56] In court, it was she who was the trickster. What makes *Wadia v. Wadia* a case study in forum shopping is where Mrs. Wadia sued, and why. The couple was married in London and resided there. Their trip to India had been just that—a visit, not a move. After the marriage broke down, both parties continued to live in London, apart. One would have expected Mrs. Wadia to initiate the suit in the London courts under English law. Under the rules of domicile, a suit relating to marriage had to be heard by a court in the jurisdiction in which the husband and wife had their fixed permanent home, and to which they had the intention of returning.[57] In the Wadia case, the couple was clearly domiciled in England, even if maintaining separate households. But Mrs. Wadia traveled to India and sued in Bombay. The reason reflects an effort to maneuver into a jurisdiction that would work to her advantage: only in colonial India was the dinosaur of English ecclesiastical law, the restitution of conjugal rights, taken seriously, and only there did she stand a chance of winning her case. Other options in the English courts would have been unappealing because of the low level at which support payments were

52. See *Lendrum v. Chakravarti*, 98; and *MacDougall v. Chitnavis*, 392.

53. See, for instance, *Lendrum v. Chakravarti*, 97–98. The Brahmo Samaj was a reformist movement amongst Hindus whose members purported to have renounced Hinduism in favor of a universalist creed that promoted equality on the basis of caste, race and sex.

54. *The Indian Charivari*, in Mitter, *Art and Nationalism*, 149.

55. *The Times* (May 12, 1913) cited in "Mixed Marriages in India. Perils of Unions with Persons of Other Races. 'Times' Warning," *Advocate of India*, May 30, 1913, 5.

56. For a similar depiction of a British wife in the mixed marriage suits of *Anwaruddin v. Anwaruddin* (1913–16), see Savage, "More than One Mrs. Mir Anwaruddin," 354, 357; see also 369–71.

57. A. S. Oppé, ed., *Wharton's Law Lexicon* (Delhi: Universal Law Publishing, 2003), 344–45.

capped by legislation (£2 per week), and by the waiting period of several years required in suits for judicial separation or divorce.[58]

The restitution of conjugal rights was a curious cause of action grounded in the idea that a court could order spouses to live together, upon pain of imprisonment or fine, where one had deserted the other without lawful cause. In an English legal context, the action was unsettling and strange. It violated English law's avoidance of specific performance as anything but a last resort (i.e., ordering direct action instead of the payment of damages), reflecting associations between specific performance and slavery.[59] In England, common-law courts absorbed the ecclesiastical courts' matrimonial jurisdiction in 1857.[60] In 1879, if an action for the restitution of conjugal rights was attempted in the English courts, it was only as a step on the way to a financial remedy.[61] By 1884, the penalty of imprisonment for errant spouses was abolished by legislation.[62] A turn-of-the-century edition of Blackstone's *Commentaries* noted that as a result, the English wife could leave her husband's house whenever she pleased.[63]

Things were different in British India.[64] English ecclesiastical law wormed its way into surprising places in imperial law—the restitution of

58. See Edward Manson, Julius Hirschfeld, R. W. Lee, R. G. Corbet, and James S. Henderson, "Judicial Separation," *Journal of the Society of Comparative Legislation* (new series) 6 (1) (1905): 151; Stephen Cretney, *Family Life in the Twentieth Century: A History* (Oxford: Oxford University Press, 2003), 200–201; and Oppé, *Wharton's Law Lexicon*, 341, 547. For a reference to the two-year waiting period normally required in judicial separation cases, see the Matrimonial Causes Act 1884, sec. 5.

59. See, generally, Oppé, *Wharton's Law Lexicon*, 945–46.

60. See J. H. Baker, *An Introduction to English Legal History* (London: Butterworths, 1990), 152.

61. "And I must further observe that so far are suits for restitution of conjugal rights from being in truth and in fact what theoretically they purport to be, proceedings for the purpose of insisting on the fulfillment of the obligation of married persons to live together, I have never known an instance in which it has appeared that the suit was instituted for any purpose than to enforce a money demand" (Sir James Hannen in *Marshall v. Marshall*, 5 P.D. 19 [1879] at 23; cited in *Wadia v. Wadia*, 136).

62. The Matrimonial Causes Act 1884 empowered the court to make financial orders instead (Cretney, *Family Life*, 145). Most such orders would presumably be issued on behalf of plaintiff wives against errant husbands.

63. Citing William Blackstone, *Commentaries on the Laws of England*, vol. 1, book i, ch.15; in James Bryce, *Studies in History and Jurisprudence* (Oxford: Clarendon, 1901), 823.

64. The restitution of conjugal rights still exists as a valid cause of action in Indian courts today. See Sylvia Vatuk, "Muslim Women in the Indian Family Courts: A Report from Chennai," in *Divorce and Remarriage among Muslims in India*, ed. Imtiaz Ahmad (Delhi: Manohar, 2003), 145–46, 155; and Flavia Agnes, "Hindu Conjugality: Transition from Sacrament to Contractual Obligations," in *Redefining Family Law in India: Essays in honor of B. Sivaramayya*, ed. B. Sivaramayya, Archana Parashar, and Amita Dhanda (Delhi: Routledge, 2008), 240–49.

conjugal rights was one.[65] In the highly publicized case of *Dadaji v. Rukhmabai* (1885-86), a young Hindu woman named Rukhmabai refused to live with her husband on the grounds that she had been married to him against her will at the age of eleven.[66] Rukhmabai lost her case and only avoided imprisonment because her estranged husband agreed to accept payment instead. Her case led to a public campaign to abolish imprisonment as a penalty in such cases. It failed.[67] In the decades that followed, a number of restitution of conjugal rights cases passed through the colonial courts.[68] The courts wavered on entertaining and enforcing the form of action.[69] An article in a 1907 Bombay law journal noted that the action was available to all communities in India.[70] Many of the cases coming before the Parsi Chief Matrimonial Court were suits for the restitution of conjugal rights upon pain of imprisonment; the action was enshrined in

65. Another was the Judicial Committee of the Privy Council, which was the final court of appeal not only for cases from the colonies but also for appeals from the English ecclesiastical courts. As a result, judges named to the JCPC were occasionally products of the ecclesiastical court system. Two such appointees, who came to rule on controversial non-Christian religious questions in colonial appeals, were a father-and-son duo, the Lords Phillimore. See *Oxford Dictionary of National Biography*, s.v. Sir Robert Joseph Phillimore (1810–85) and Walter George Frank Phillimore (first Baron Phillimore) (1845–1929).

66. *Dadaji v. Rukhmabai*, I.L.R. 9 Bom. 529 (1885); I.L.R. 10 Bom. 301 (1886). See Sudhir Chandra, *Enslaved Daughters: Colonialism, Law and Women's Rights* (Delhi: Oxford University Press, 1998), 73–110; Padma Anagol, *The Emergence of Feminism in India, 1850–1920* (Aldershot, UK: Ashgate, 2005), 187–99, 237; and Agnes, "Hindu Conjugality," 237–40.

67. Chandra, *Enslaved Daughters*, 160–200. See also Antoinette Burton, "From Child Bride to 'Hindoo Lady': Rukhmabai and the Debate on Sexual Respectability in Imperial Britain," *American Historical Review* 103 (4) (1998): 1119–46.

68. Early colonial suits for the restitution of conjugal rights also existed. See Anagol, *Emergence of Feminism*, 185–86.

69. For cases in which the courts seemed generally receptive, see *Binda v. Kaunsilia*, I.L.R. 13 All. 126 (1890); *Bai Sari v. Sankla Hirachand*, I.L.R. 16 Bom. 714 (1892); *Fakirgauda v. Gangi*, I.L.R. 23 Bom. 307 (1898); *Surjyamoni Dasi v. Kali Kanta Das*, I.L.R. 28 Cal. 37 (1900); the ruling of the Ahmedabad court of first instance in *Bai Parwati, wife of Mansukh Jetha v. Ghanchi Mansukh Jetha*, I.L.R. 44 Bom. 972 (1920); and *Nina Dalal v. Merwanji Pherozeshah Dalal*, I.L.R. 54 Bom. 877 (1930). Contrast with cases where the courts were less enthusiastic: Bombay High Court ruling in *Bai Parwati; Lakshmi Ammal v. Venugopala Naidu*, 1934 A.I.R. Mad. 407; *Dhanjibhoy Bomanji v. Hirabai*, I.L.R. 25 Bom. 644 (1901); *Dular Koer v. Dwarkanath*, I.L.R. 34 Cal. 971 (1907); *Saravanai v. Poovayi*, I.L.R. 28 Mad. 436 (1905); *Babu Ram v. Musammat Kokla*, I.L.R. 46 All. 210 (1923); and *Bai Jivi v. Narsingh Lalbhai*, I.L.R. 61 Bom. 329 (1927).

70. "Limitation Applicable to Suits for Restitution of Conjugal Rights," B.L.R. (journal section), 8 (January 1907): 19–23.

the Parsi Marriage and Divorce Act 1865.[71] A textbook on Burmese law noted that it could also be used in Burma, and it appeared in cases between 1886 and 1929.[72] The unsettled nature of this area of colonial law was probably enough to make Mrs. Wadia and her lawyers feel that suing in Bombay was worth a try.

In the court of first instance, the Scottish judge Norman Macleod awarded the case to Mrs. Wadia. On appeal, she lost on the question of domicile.[73] Mr. Wadia had been living in England the whole time, and Mrs. Wadia did not normally reside in Bombay. According to her husband's lawyers, "she came to file this suit and nothing else."[74] The residence of the petitioner had to be "*bona fide* and not casual or as a traveler."[75] Mrs. Wadia's temporary stay in Bombay did not suffice.

Mrs. Wadia's failed attempt at jurisdictional tourism reflected two unsurprising things about Europeans like herself, and Parsis like her husband. First, one would expect many Europeans to have the means and ability to travel in order to pursue the best legal option. Mrs. Wadia had both. Second, despite Mr. Wadia's denial of any great personal wealth, the fact that he hired the star of the Bombay bar, J. D. Inverarity, the fierce Thomas Strangman, and top Indian barrister Motilal Setalvad, suggests otherwise.[76] One would expect affluent Parsis, with their access to top

71. Ten out of eighty-six complete cases (10.5 percent) included in the PCMC records were restitution of conjugal rights cases between 1893 and 1929. Unlike PCMC notebooks from later in the period 1891–1931, the earlier notebooks contain the judges' summing up to the delegates (essentially a jury of leading members of the Parsi community). For one judge's summing up on a restitution of conjugal rights case, including an overview of this general area of law in colonial India, see PCMC 1893–1903, I:31–35 (Suit No. 4 of 1893). For a lawyer's characterization of the same area of law (in the same suit and notebook), see II:39–42.

72. *Nga Nwe v. Mi Su Ma*, Selected Judgments and Rulings Lower Burma 391 (1886); *Nga Chin Dat v. Mi Kin Pu*, 2 Upper Burma Reports 1 (1907–9); and *Ma Thein Nwe v. Maung Kha*, I.L.R. 7 (Rang.) 451 (1929). All noted in O. H. Mootham, *Burmese Buddhist Law* (London: Humphrey Milford, Oxford University Press, 1939), 26.

73. As in the law of wills, domicile was a key sticking point in the colonial law of divorce. See comments by H. Monroe in Mohammad Shabbir and S. C. Manchanda, *Parsi Law in India* (Allabahad: Law Book Company, 1991), v; and *Lendrum v. Chakravarti*, 100–103. See also note 20 and text accompanying note 57 (above).

74. *Wadia v. Wadia*, 142.

75. Ibid., 149.

76. Potential clients would meet Inverarity at Aden during his return voyages from Scotland to India with the hope of securing his services before others could approach him in Bombay (D. J. Ferreira, "Reminiscences," in *The Bombay Incorporated Law Society Centenary, 1894–1994* [Bombay: Bombay Incorporated Law Society, 1995], 260). On Inverarity as the premier advocate in Bombay, see P. B. Vachha, *Famous Judges, Lawyers and Cases of Bombay: A Judicial History of Bombay during the British Period* (Bombay: N. M. Tripathi, 1962), 139–44; K. M. Munshi, *Bombay High Court: Half a*

legal advice and global network of coreligionists, to have an equal awareness of jurisdictional options. Mr. Wadia's claim to be detained in London for work probably represents as deliberate a jurisdictional move as his wife's voyage halfway around the world. *Wadia v Wadia* represents a failed attempt at elite forum shopping, at least from Mrs. Wadia's perspective. But jurisdictional jostling was also practiced by the less privileged—occasionally, with greater success. The remaining two case studies illustrate the ways working-class litigants moved across international boundaries to try to alter their legal status.

No-Fault Divorce: British India versus Baroda

The census reported the Parsi population of Bombay Presidency to be 80,980 in 1911. Another nearly 8,000 were based in Baroda, a small and fragmented princely state that lay dotted across British territory in over eight noncontiguous pieces.[77] Baroda was run by an unusually progressive royal family, the Gaekwads, that led modernization efforts in public health and administration.[78] It also sat squarely in the Parsi heartland of Gujarat, and included cities like Navsari, one of the priestly centers of a Zoroastrian diocese, or *panthak*, that was carved out of Gujarat around 1290 by agreement within the thirteenth-century Parsi community.[79]

Century of Reminiscences (Bombay: Bharatiya Vidya Bhavan, 1963), 6–7; and Thomas Strangman, *Indian Courts and Characters* (London: William Heinemann, 1931), 34–38. For extensive coverage of Inverarity's death, see also *Bombay Law Journal* I:7–8 (December 1923–January 1924), 361–69, and II:6 (November 1924), 322–27. On Strangman and Setalvad, see Strangman, *Indian Courts*, 21–22; and Motilal Setalvad, *My Life: Law and Other Things* (London: Sweet and Maxwell, 1971).

77. See "No.7: Distribution of Population according to Religion (Census of 1911)," in *Statistical Abstracts relating to British India from 1910-11 to 1919-20* (London: His Majesty's Stationary Office, 1922), http://www.dsal.uchicago.edu/statistics/1910_excel/index.html (accessed February 10, 2008). For Baroda Parsi figures in the 1930s, see Indra Datt, *Baroda: A Study—Constitutional and Political* (Lucknow: Srivastava, 1936), 17–19.

78. See *Imperial Gazetteer of India. New edition, published under the authority of His Majesty's Secretary of State for India in Council* (Oxford: Clarendon, 1907–9), 7:49 (on agricultural improvements), 69 (on public works), 72–76 (on education); and Manu Bhagavan, *Sovereign Spheres: Princes, Education and Empire in Colonial India* (Delhi: Oxford University Press, 2003), 5–6, 47–56. Baroda was one of the first South Asian jurisdictions to allow Cornelia Sorabji, one of India's earliest female lawyers, to plead in its district courts. See Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Oxford: Hart, 2006), 212.

79. On the *panthaks*, see H. D. K. Mirza, *Outlines of Parsi History* (Bombay: H. D. K. Mirza, 1987), 234–35; and R. B. Paymaster, *Early History of the Parsees in India from Their Landing in Sanjan to 1700* (Bombay: Zartoshti Dharam Sambandhi Kelavni Apnari Ane Dnyan Felavnari Mandli, 1954), 105–6.

Parsis living further south, in the city of Bombay, generally traced their roots to various ancestral towns in Gujarat, often within the princely state of Baroda. Many Bombay Parsis still had relatives there. As a result, Parsis moved back and forth between British and princely territory for holidays, special religious or community events, and during times of sickness, pregnancy, or family crisis.[80] Some also shifted back and forth for specifically jurisdictional reasons.[81]

Colonial Parsis were stereotyped as a rich and privileged elite. But there were poor Parsis, too. The records of the Parsi Chief Matrimonial Court in Mumbai reveal a docket full of largely working-class Parsis—people who saved up for many years to be able to bring their case to the court, and who eked out a living as servants, cooks, taxi drivers, carpenters, and railway ticket collectors.[82] These people also forum shopped. My second and third case studies feature working-class Zoroastrians whose travels may have been more tightly circumscribed than the Wadias', but who nonetheless moved between British India and the princely state of Baroda, and between British India and Persia, in attempting to reconfigure their legal situation.

No-fault divorce is a surprisingly recent phenomenon in most common-law jurisdictions. It was not adopted in American and English law until the

80. The PCMC records reveal that, as in other South Asian communities, married women typically left the marital home to stay with natal relations during times of marital breakdown, pregnancy, and childbirth. Some women even did so every month during menstruation. See, for example, PCMC 1893–1903, I:5 (Suit No. 4 of 1893) (menstruation); and PCMC 24-9-1903 to 14-3-1913, II:34 (Suit No.1 of 1904) (marital breakdown).

81. In one judicial separation case, a Parsi wife from Bombay told the court that her husband had "threatened to take me to Navsari and out of court jurisdiction" (PCMC 1928–9, II:43 [Suit No. 3 of 1927]).

82. For the testimony of Parsi cooks, see PCMC 1903–13, I:26 (Suit No. 9 of 1903), and II:93 (Suit No. 6 of 1910). For a case in which the "other man" was a Parsi carpenter who worked in a mill, see PCMC 1893–1903, II:92 (Suit No.1 of 1900). For the testimony of a Parsi taxi driver, see PCMC 1924–8, III:123 (Suit No. 5 of 1927). For instances of Parsi servants either referred to or giving testimony, see PCMC 1893–1903, I:130 (Suit No. 4 of 1894), I:154 (Suit No.1 of 1895), I:234 (Suit No. 1 of 1897), II:143 (Suit No. 1 of 1901), III:55 (Suit No. 2 of 1903); PCMC 1920–23, I:24 (Suit No. 6 of 1919); as well as PCMC 1928–29, I:105 (Suit No. 10 of 1928); and II:87 (Suit No. 3 of 1927). For the testimony of a Parsi railway ticket collector, see PCMC 1928–29, I:75 (Suit No. 6 of 1928). For examples of Parsis who were unable to take their case to court when they would have liked because they could not afford the legal expenses, see PCMC 1893–1903, I:86 (Suit No. 2 of 1894), I:41 (Suit No. 5 of 1903), III:8 (Suit No. 2 of 1901); PCMC 1928–29, I:29 (Suit No. 4 of 1928), and I:55 (Suit No. 2 of 1927). For a Parsi plaintiff who was unable to pay his legal fees even when he filed suit, but whom the court allowed to pay by monthly installment of Rs 10, see PCMC 1903–13, I:31 (Suit No. 3 of 1903).

latter half of the twentieth century.[83] Even in English law today, a spouse must wait two years before he or she can obtain a divorce without showing that the other party was at fault. In the interim, only the fault-based regime is available.[84] In early twentieth-century British India, a spectrum of fault and no-fault divorce regimes existed. The parties' religious affiliations determined the set of rules that applied. For Christians, a fault-based regime applied, with sex-specific requirements. A Christian wife seeking divorce had to prove that her husband had committed adultery and that there had been some aggravating circumstance, like incest or cruelty. A husband simply had to prove that his wife had committed adultery.[85] In Anglo-Hindu law, there was no such thing as divorce. By contrast, under Anglo-Muhammadan law, the husband enjoyed the ultimate in no-fault divorce, namely the triple *talāq*, which allowed him to terminate the marriage for any or no reason by saying *talāq* ("I divorce thee") three times. Although it was possible for the husband's power of *talāq* to be delegated to his wife at the time of formation of the marriage contract, Muslim wives could generally only divorce their husbands in a much more limited number of circumstances.[86] For instance, she could obtain a judicial decree if she could prove that her husband was impotent or that he had falsely accused her of adultery.[87] As in any fault-based regime, "collusion and connivance" were constant concerns for the courts.[88]

83. No-fault divorce was not permitted under English law until the passage of the Divorce Reform Act 1971. In the United States, California pioneered no-fault divorce with the Family Law Act of 1969. By 1983, almost every state had adopted some form of the device. New York did so in 2010 (Stephanie Coontz, "Divorce, No-Fault Style," *New York Times* [June 17, 2010]: A25).

84. Under section 2 of the UK Matrimonial Causes Act of 1973, a married person may petition the court for a divorce if (i) his or her spouse (the respondent) has committed adultery and the petitioner finds it "intolerable" to live with him or her; (ii) the spouse has "behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent"; (iii) the respondent has deserted the petitioner for two years; (iv) the couple has lived apart for two years and the respondent agrees to a divorce; or (v) the couple has lived apart for five years.

85. Indian Divorce Act 1869, sec.10, in Rattigan, *Law of Divorce*, 93.

86. On delegated *talāq*, see Syed Ameer Ali, *Mahommedan Law Compiled from Authorities in the Original Arabic* (Calcutta: Thacker, Spink & Co., 1929), 2:495; and Mitra Sharafi, "The Semi-Autonomous Judge in Colonial India: Chivalric Imperialism Meets Anglo-Islamic Dower and Divorce Law," *Indian Economic and Social History Review* 46 (2009): 72–74.

87. Kashi Prasad Saksena, *Muslim Law as Administered in British India* (Allahabad: Rai Sahib Ram Dayal Agarwala, 1938), 327–28, 245–46.

88. Every couple appearing before the PCMC in divorce or judicial separation suits was asked if any of the "three Cs" were present, namely, "collusion, connivance or condonation." Connivance and collusion referred to a secret agreement made between spouses for fraudulent purposes, namely, to obtain a fault-based divorce when proper grounds were absent. One

Divorce law for Parsis was established in the Parsi Marriage and Divorce Act of 1865, a piece of legislation proposed and drafted mainly by members of the Parsi community in the form of the Parsi Law Commission.[89] The Act adopted a fault-based scheme for divorce that was similar to the regime in place in English law, and for Christians (both European and Indian) in British India. All three legal regimes adopted an asymmetrical set of fault requirements that made it easier for a man to obtain a divorce than for a woman. The Parsi Act permitted a Parsi husband to sue for divorce if his wife had committed adultery. A Parsi wife, by contrast, had to prove adultery (where the other woman was married) or fornication (where she was not) coupled with an aggravating circumstance like cruelty, bigamy, desertion for two years or more, rape, or an "unnatural offence."[90] If the other woman was a prostitute, the husband's infidelity would not count as adultery.[91] Commentators noted that the Parsi Act was an almost exact adoption of the English statute on divorce, itself the model for legislation in British India pertaining to divorce among Christians.[92]

By contrast, Parsis in Baroda had the option of no-fault divorce. Although Baroda's ruling family was famous for its progressive reforms, this provision of Parsi law was probably not a statement of self-conscious modernity: unlike Parsis in Bombay Presidency, Parsis in Baroda also had the choice of entering into polygynous marriages. The practice was prohibited to Bombay Presidency Parsis by the 1865 Act, a statute intended by its Parsi creators to reflect the "civilized" mind-set of their

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judge explained the difference to PCMC delegates in a suit involving adultery: "connivance refers to what occurred before the adultery and collusion to what occurred after" (PCMC Notebook 1893–1903, II:48 [Suit No. 5 of 1898]). Condonation occurred when a spouse returned to the spouse at fault, legally negating the latter's earlier improper acts. For a case where the delegates found the couple to have colluded, see PCMC 1893–1903, II:44 (Suit No. 5 of 1898).

89. See *The Parsee Marriage and Divorce Act 1865 (Act No XV of 1865): The Parsee Chattels Real Act (Act No. IX of 1837), The Parsee Succession Act (Act No. XXI of 1865) with an Appendix and Guzerattee Translation*, ed. Sorabjee Shapoorjee Bengalee (Bombay: Parsee Law Association, 1868).

90. See explanation to section 30 in Framjee A. Rana, *Parsi Law Embodying the Law of Marriage and Divorce and Inheritance and Succession Applicable to Parsis in British India* (Bombay: A. B. Dubash at the Jam-e Jamshed Printing Works, 1934), 46. The asymmetrical requirements regarding adultery between husband and wife were equalized in the amended 1936 version of the statute, the Parsi Marriage and Divorce Act 1936. See Aiyar, *Law and Practice Relating to Marriages*, 212–13; and C. N. Wadia and S.P. Katpitia, *The Parsi Marriage and Divorce Act (India Act III of 1936)* (Surat, India: J. G. Thakor, 1939).

91. Rana, *Parsi Law*, 45.

92. For the English legislation, see Matrimonial Causes Act 1857 (20 & 21 Vict. C. 85), sec. 27 (Rana, *Parsi Law*, 46). For the colonial law applicable to Christians, see the Indian Divorce Act 1869, sec. 10, in Rattigan, *Law of Divorce*, 93.

community.[93] No-fault divorce was an option that a Baroda wife who opposed her husband's second marriage could feel compelled to use. No-fault divorce, in other words, did not necessarily provide a happy exit from the sexual double standard of many marital schemes. The Parsi law of Baroda did not give the parties a more egalitarian set of options—just different ones.

In Parsi Matrimonial Suit No. 6 of 1910, a husband filed for divorce in Bombay on the grounds that his wife had committed adultery. Her alleged lover was the second defendant. The husband had been born in Bilimora, in Baroda, but had grown up in the home of his aunt and uncle in Bombay Presidency, where he received his schooling. Since then, he had lived in Bombay, only occasionally making visits back to Bilimora to see his parents.[94] His wife, by contrast, had no links to Baroda, having been born and raised in British India. The couple had been married in Bombay.[95] On the basis of the husband's weak ties to the princely state, however, the couple traveled to Navsari, a city in Baroda, and obtained a "mutual release," or no-fault divorce. Later, the couple probably realized that the Parsi Chief Matrimonial Court in Bombay would find the mutual release to be invalid in British India, where the coupled was domiciled, which is why the husband appeared before that court making a fault-based case of adultery against his wife. The case fizzled out when the couple came to an understanding outside of the courtroom. What makes the case important, however, is the testimony of one witness.

Dhunjisha Edulji Patel was a schoolmaster and part-time pleader, or low-ranking courtroom lawyer, from Navsari, a city with a sizeable Parsi population. In Suit No. 6, he explained to the court how no-fault divorce worked for Parsis in the princely state. Mutual releases were obtainable in a single day, and were common. Between 1885 and 1910, there had been ninety-three Parsi cases recorded by the Navsari Registrar's Office.[96] In earlier periods, the couple had required the consent of the Zoroastrian high priest and community, but by the early twentieth century, this condition had faded away.[97] For reasons unknown to Patel, no-fault divorce was available only to Parsis and to lower caste Hindus in Baroda.[98] Bombay was a place of less legal maneuverability, explaining why the Bombay couple in Suit No. 6 came to Patel for a mutual release despite its questionable status in British India.[99]

93. See Bengalee, *Parsee Marriage and Divorce Act*, 190.
94. PCMC 1903–13, II:94–95, 97 (Suit No. 6 of 1910).
95. Ibid., II:93.
96. Ibid., II:98–99.
97. Ibid., II:101.
98. Ibid., II:102.
99. Ibid., II:101.

Patel's testimony aligns with evidence in other matrimonial court suits. An overnight or even a day trip to the ancestral hometown was a common move, albeit of dubious legal status, among Bombay couples seeking to end their marriages as quickly and quietly as possible. In an 1894 case, a quarrel between a Bombay couple concluded with a reference to the Baroda option. The husband told the court, "She told me not to speak to her and she would give me a release."[100] In a 1901 case, a Bombay man who had left his wife to live with his Parsi mistress agreed to clean up his marital situation by ending his marriage. The acquaintance who convinced him "then got him released," presumably in Baroda, making arrangements without the husband even being present. "He agreed to accompany me but he did not come," the acquaintance told the court. The PCMC delegates then awarded the wife a divorce that was legally valid in Bombay Presidency.[101] In a case filed in 1902, an unconsummated marriage that took place in Bombay between two young Bombay residents (she was eleven) was alleged to have been dissolved through a mutual release obtained in Navsari. The husband, who had spent many years studying in London following his marriage, told the court, "While in London I received communication from her relatives in relation to mutual releases. I was given to understand that a release according to [Gaekwad] law would be good. A document was sent to me in London purporting to be a release. It was drawn up by a Navsari pleader. I executed it and returned it to Bombay." Years later, once back in India, he learned that his wife had remarried. He was also advised that the Baroda release was not valid in British India, which led him to file for divorce in the Bombay Parsi Chief Matrimonial Court.[102]

It is hard to know what to make of the Baroda strategy, invalid yet repeated as it was. Couples who thought that an easy divorce in a foreign jurisdiction would be upheld in Bombay were perhaps victims of wishful thinking with regard to comity, the principle of legal etiquette by which the courts of one jurisdiction accept legal acts deemed valid in another. Comity found its limit when the foreign jurisdiction's recognition was "repugnant to [the] policy or prejudicial to [the] interests" of the home jurisdiction.[103] The rules of domicile, furthermore, defined the controlling jurisdiction as that in which the couple lived permanently and to which they intended to return.[104] A weekend visit to Baroda would not have fooled any colonial

100. PCMC 1893–1903, I:99 (Suit No. 4 of 1894).
101. Ibid., III:14 (Suit No. 2 of 1901).
102. Ibid., III:20–21 (Suit No. 2 of 1902).
103. Oppé, *Wharton's Law Lexicon*, 215.
104. See text accompanying note 57 (above).

court, particularly on a subject as morally charged as marriage, and between territories as tightly interdigitated as British India and Baroda. It is hard to imagine any lawyer advising a Parsi couple to seek succor in the princely state. What is more likely is that these Parsis did not seek legal advice at all. Some may not have been able to afford to. The husband in the case in which Patel testified was a cook.[105] Another husband was a low-paid postal clerk.[106] But there were informal ways of getting free advice from respected members of the Parsi community who happened to be lawyers.[107] Maybe a Baroda release carried social weight in the Parsi community—enough weight to outweigh its dubious official status in British India. Perhaps a mutual release would satisfy one's family and friends, and perhaps that was enough. There is also the possibility that the Baroda release carried symbolic value. But had Bombay Parsis been going to Baroda in protest to make a point, one would surely find some expression of their disapproval of the fault-based regime back home. Not only was no such protest evident but it is also unlikely that Parsis would have imbued a legally invalid maneuver with social value.[108] The Parsi community endorsed and employed the conclusions of colonial law to a striking degree, reflecting an unusual identification with the colonial legal system.[109] In all likelihood, the Baroda strategy reflected a certain degree of willful blindness coupled with an optimistic willingness to bet that neither party would want to remarry (in British Indian law) in the

105. PCMC 1903–13, II: 4 (Suit No. 6 of 1910).

106. The man told the court he earned Rs 15 per month (PCMC 1893–1903, I:101 (Suit No. 4 of 1894]). This was equivalent to the monthly pay of a bachelor's personal manservant during roughly the same period. See Norman Macleod, "Reminiscences from 1894 to 1914," HRA/D63/A5, 38 (1900), in Macleod of Cadboll Papers (HCA).

107. The figure of Jehangir B. Boman Behram, a Parsi solicitor, emerges from the matrimonial court records as an informal mediator in marital disputes within the community. See, for instance, PCMC 1913–20, I:100, 107 (Suit No. 3 of 1914); 1928–29, II:137, 139, 150–51, 167, 170, 175 (Suit No. 3 of 1927). See generally *Who's Who in India and Ceylon* (Poona, India: Sun Publishing House, 1937), 314–15.

108. The foreword to the definitive treatise on the Parsi Marriage and Divorce Act 1865 contains veiled criticism of the fault-based divorce scheme, but in the most oblique of terms. See B. J. Wadia, "Foreword," in Rana, *Parsi Law*, (unnumbered).

109. For an example of a judgment quickly adopted as culturally authoritative in the Parsi community (the Parsi Panchayat case of 1908), see Mitra Sharafi, "Judging Conversion to Zoroastrianism: Behind the Scenes of the Parsi Panchayat Case (1908)," in *Parsis in India and the Diaspora*, ed. John R. Hinnells and Alan Williams (London: Routledge Curzon, 2007), 159–80. I take the prevalence of Parsi eminent domain suits against the colonial state to be another indication of Parsi confidence in the colonial legal system—especially because Parsi plaintiffs usually lost. See Mitra Sharafi, "Bella's Case: Parsi Identity and the Law in Colonial Rangoon, Bombay and London, 1887–1925" (PhD diss., Princeton University, 2006), 401–2.

future. This genre of forum shopping was the clearest failure of the three strategies examined here. The next case study was the most successful.

Polygamy: British India versus Persia

There were in fact two groups of Zoroastrians of Persian ancestry in colonial India: the Parsis and the Iranis. The Parsis arrived in India over many centuries, the first as early as the eighth century.[110] Under colonial rule, the Parsis started as intermediary traders, connecting British and Indian merchants. Parsis oversaw the shipping of opium to China until about 1865. These profits were then redirected into industrial enterprise and high finance.[111] Parsi entrepreneur J. N. Tata was hailed as the grandfather of Indian industrialization.[112] The Tata corporate group still dominates Indian business and manufacturing today.[113]

The Iranis migrated from Persia to India much later—between the eighteenth and the twentieth centuries, after over a millennium of progressive impoverishment and discrimination by Muslim rulers and a Muslim-majority society.[114] One might expect Iranis to have occupied a position of strength given that they were "closer" to Persia, the motherland, and thus had a greater claim to racial "authenticity" or purity.[115] On the contrary, though, the Iranis were characterized as the poor, unsophisticated

110. Dosabhai Framji Karaka, *History of the Parsis including Their Manners, Customs, Religion and Present Position* (London: Macmillan, 1884), 1:30.

111. On Parsi involvement in the euphemistically named "China trade," see Karaka, *History of the Parsis*, 2:245; "Papeti," *Deccan Herald and Daily Telegraph*, September 12, 1914, 4; Strangman, *Indian Courts*, 28; H. D. Darukhanawala, *Parsi Lustre on Indian Soil* (Bombay: Claridge, 1939), 508–10; and Madhavi Thampi and Shalini Saksena, *China and the Making of Bombay* (Mumbai: K. R. Cama Institute, 2010).

112. See F. R. Harris, *Jamsetji Nusserwanji Tata: A Chronicle of his Life* (London: Oxford University Press, 1925), 280; R. P. Karkaria, "A Great Parsi. The Late Mr Jamshedji N. Tata. An Appreciation," *The Parsi I* (1) (1905): 10–13; Darukhanawala, *Parsi Lustre*, 432–33; and Amalendu Guha, "More about the Parsi Seths: Their Roots, Entrepreneurship, and Comprador Role, 1650–1918," in *Business Communities of India: A Historical Perspective*, ed. Dwijendra Tripathi (Delhi: Manohar, 1984), 143.

113. See, for instance, Saritha Rai, "Tata Steel buying Corus for $12 Billion," *New York Times*, January 31, 2007; and Somini Sengupta, "Indians Hit the Road Amid Elephants," *New York Times*, January 11, 2008.

114. Eckehard Kulke, *The Parsees of India: A Minority as Agent of Social Change* (Munich: Weltgorum, 1974), 1:55–90. Census totals for Iranis in India in 1931 and 1941 were 4,000 to 5,000 (Kulke, *Parsees of India*, 35).

115. Persian racial purity was a key concept in the writings of Parsi eugenicists of the early twentieth century. See J. J. Vimadalal, *Racial Intermarriages: Their Scientific Aspect* (Bombay: The Times Press, 1922); and Sapur Faredun Desai, *Parsis and Eugenics* (Bombay: Sapur Faredun Desai, 1940). Libel suits turning upon accusations of racial impurity also arose between Parsis. See Sharafi, "Bella's Case," 290–354.

cousins of the Parsis—newcomers who were not quite as stylish, moneyed, or fluent in the ways of British India as their coreligionists.[116] Iranis went into the hotel business and the running of teahouses, which were famous for their mix of Zoroastrian meat patties, British baked sweets, and jovial banter between regulars.[117]

The standard narrative of Irani history in the colonial period is one of an optimistic and unidirectional population flow.[118] Iranis migrated from Persia, where Zoroastrians were at the mercy of oppressive Muslim rulers and their discriminatory policies, to India, where they could join in the flourishing success of Zoroastrians under colonial rule.[119] The records of the Parsi Chief Matrimonial Court (which heard Irani cases equally) reflect a more circular pathway from Persia to India, and from India back to Persia, whether for frequent visits or for more permanent relocations. Jurisdictional jostling was one good reason to move back to Persia, after making the reverse move from Persia to India a generation or two earlier. This was particularly so if one wanted to take a second wife.

In Suit No. 6 of 1919, an Irani woman living in Bombay Presidency came to the Parsi Chief Matrimonial Court requesting that her marriage be dissolved on the basis of her husband's bigamy.[120] She was living in Bombay city, but her husband was living in Yazd, the largest Zoroastrian center in east-central Persia. His family had migrated from Yazd to India at least one generation earlier.[121] In British India, Parsi polygamy had been prohibited at the behest of the Parsi community in

116. See "XIX. August 31, 1910. Western Civilization and the Parsees. From 'Faith in Honest Doubt,'" in *Mr. Vimadalal and the Juddin Question* (Bombay: Crown, 1910), 49; M. N. Dhalla, *Dastur Dhalla: The Saga of a Soul. An Autobiography of Shams-ul-Ulama Dastur Dr. Maneckji Nusserwanji Dhalla, High Priest of the Parsis of Pakistan*, trans. Gool and Behram Sohrab H. J. Rustomji (Karachi: Dhalla Memorial Institute, 1973), 724, 726; and Kulke, *Parsees of India*, 35.

117. On one Bombay Irani teahouse established in 1923 that is still in operation today, see Melanie Mize Renzulli, "Rule, Britannia! Iran Meets India at the Heart of Mumbai," *Saveur* 94 (2007): 17–18.

118. For a history of the Iranis, albeit semantic in focus, see the judgment of Parsi judge Mody in *Jamshed A. Irani v. Banu J. Irani*, 68 B.L.R. 794–809 (1960).

119. See, for example, Jehangir Coyajee, "A Brief Life-Sketch of the Late Mr. Dinshah Jeejeebhoy Irani, Neshan-e Elmi, Solicitor," in *Dinshah Irani Memorial Volume. Papers on Zoroastrian and Iranian Subjects. Contributed by Various Scholars in Honor of the Late Mr. Dinshah Jijibhoy Irani, BA, LLB, Solicitor, Nishan-I Elmi (Iran)* (Bombay: Dinshah J. Irani Memorial Committee, 1943), vi–vii.

120. PCMC 1920–23, I:17–24 (Suit No. 6 of 1919).

121. Ibid., I:17, 21. The Irani husband spoke only a little Persian, which suggests that he was not born in Persia (ibid., I:22).

1865.[122] In Persia, though, it was still legal for Zoroastrians where there had been no issue from the first marriage.[123] The Persian rule probably reflected both the absence of a need to mollify European rulers who considered polygamy barbaric, and the fact that polygamy was legal for the majority Muslim population. The Irani wife in India had borne two children—both stillborn.[124] In Persia, her husband had taken a second wife, and two of three children from that marriage were alive.[125] Although the husband's second marriage was perfectly legal under the Zoroastrian law of Persia, he had kept his first marriage a secret in Persia because it would have made his second one less socially acceptable.[126]

It was only when other Iranis from India were visiting Persia that the husband's real situation was revealed. The discovery was another reminder of the transnational circulation of informal social information in a trade diaspora like the Zoroastrian one.[127] Persia, unlike British India, had no system of registered certification of marriage.[128] Islamic law's strong presumption in favor of marriage when a couple cohabited may have explained this apparent evidentiary laxity.[129] Equally relevant was the fashionability of registration systems across the British Empire in the latter half of the nineteenth century. The registration craze cloaked everything from private landholdings to marriages, births, and deaths in a new layer of imperial authority.[130] Because he could avoid the new insistence upon

122. Parsi Marriage and Divorce Act 1865, sec. 4–5, annotated in Rana, *Parsi Law*, 27–29; and Bengalee, *Parsee Marriage and Divorce Act*, iii.

123. PCMC 1920–23, I:18–19.

124. Ibid., I:17.

125. Ibid., I:21–22.

126. Ibid., I:22.

127. Ibid., I:19–20, 22.

128. Ibid., I:18–19.

129. See Saksena, *Muslim Law*, 237–40.

130. See, for example, James Edward Hogg, *Deeds Registration: A Treatise on the Law of Registration of Documents affecting Land under the Registration of Deeds Act of Australasia, with References to Analagous Statutes and Cases on Them in England, Ireland, Canada, West Indies, Ceylon, Straits Settlements, etc.* (London: Stevens and Sons, 1908). On the Torrens land registration system, pioneered in Australia in 1857, see S. R. Simpson, *Land Law and Registration* (Cambridge: Cambridge University Press, 1976), 68–71, 80–83. On the land registration system of colonial Fiji (modeled on the Torrens system), see Annelise Riles, "Law as Object," in *Law and Empire in the Pacific: Fiji and Hawaii*, ed. Sally Engle Merry and Donald Brenneis (Sante Fe, N.M.: School of American Research Press, 2003), 198–204. On debates over the registration of Kandyan marriages in Ceylon in 1869, see William Digby, *Forty Years of Official and Unofficial Life in an Oriental Crown Colony, Being the Life of Sir Richard F. Morgan* (Madras: Higginbotham, 1879), 2:66–77. The registration of infant births and deaths played an important role in providing plaintiff husbands seeking divorce with definitive evidence of their estranged wives' adultery. The registration of marriages helped husbands and wives in

publicly ascertainable marital status, the Irani husband's plan worked. His actions violated the criminal law of British India, but while he remained in Persia, there was nothing the Bombay court could do but grant his first wife's request to dissolve the original marriage.[131] She had requested many times that her husband bring her to Persia with him.[132] But his alternative plan—to replace her with another woman—succeeded because he understood how to manipulate discrepancies in legal regimes.

The Irani case contrasts with my other two case studies in several ways. While Mrs. Wadia's forum shopping was "offensive"—she traveled to and filed suit in her ideal jurisdiction—the Irani husband engaged in "defensive" forum shopping, pursuing a strategy of avoidance perfected by international fraudsters and con men. Like the Baroda-bound couples and unlike Mrs. Wadia, he probably did not pay for legal advice. His wife told the court that he ran a small tea shop and was barely functionally literate.[133] He was probably of limited means. As noted above, though, getting legal advice for free was always a possibility in a lawyerly community like the Zoroastrian one.[134] Regardless, the Irani's strategy was the only one of the three that worked. Like the Bombay visitors to Baroda, he risked criminal proceedings for bigamy. But unlike them, he made his move permanent. Mrs. Wadia lost because she was a mere tourist in Bombay, while the Baroda visitors lost because they were not willing to move to Baroda. Together, the three case studies suggest that one's chance of success in forum shopping may have had more to do with the permanence of the relocation than with formal access to professional legal services.

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divorce proceedings give proof of their spouses' bigamy. These government registers were open for public inspection (see Parsi Marriage and Divorce Act of 1865, sec. 8, annotated in Rana, *Parsi Law*, 31). See PCMC Notebook 1893–1903, I:38 (Suit No. 5 of 1893); I:105 (Suit No. 4 of 1894); and II:49 (Suit No. 5 of 1898). A Zoroastrian priest officiating at a Parsi marriage was required by law to sign a certificate of marriage and send it—upon penalty of up to a year's imprisonment or a fine—to the appropriate registrar of Parsi Marriages, who in turn conveyed it to the registrar-general of Births, Deaths and Marriages (Parsi Marriage and Divorce Act of 1865, sec. 6–14, annotated in Rana, *Parsi Law*, 29–34).

131. Section 494 of the Indian Penal Code laid out the penalty for bigamy: "Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine." For commentary, see Ranchhoddas and Thakore, *Indian Penal Code*, 435–40.

132. PCMC 1920–23, I:17, 21.

133. The Irani husband had only basic reading and writing ability in Gujarati (probably his mother tongue), and almost none in Persian (PCMC 1920–23, I:18, 24 (Suit No. 6 of 1919)).

134. See note 107 (above).

Conclusions

These three cases reveal layers of telltale legal sediment. *Wadia v. Wadia* relates the story of a remnant of ecclesiastical law, the restitution of conjugal rights, that had been retired from service in its jurisdiction of origin while unexpectedly lodging itself in the law of a colony halfway around the world.[135] The Baroda no-fault divorce case underscores the ironic presence of what in the early twentieth century could be considered a "futuristic" legal device, divorce by mutual consent, in an independent princely state. Rather than being a deliberate effort at modernization, though, the availability of no-fault divorce to Parsis in Baroda was a long-standing tradition, as it was in a handful of other South Asian societies that came under British rule.[136] The Irani case study recounts the expunging of polygamy from the law of a colonized community that was influenced by Anglicized conceptions of civilization and barbarity. In the uncolonized state of Persia next door, the ruling regime was Muslim, not European and Christian, and Zoroastrian men were permitted to take a second wife, in line with general entitlements among Persia's Muslim majority.

Together, these three episodes create a picture of Baroda as the Las Vegas of western India: a place of expanded options (including polygamy) at the point of entry, and of easy dissolution (by consent) on the way out. For Bombay Parsis, Baroda was the next-door divorce haven that Nevada would have been for Californians around the same time.[137] British India was stricter and more staid than its princely neighbor. Freedom of contract may have been valued by British courts trying to fast-track South Asians

135. The same phenomenon occurs in the comparison between English and American law today. Old English legal terms and devices like felonies, misdemeanors, and the Statute of Frauds no longer exist in English law but thrive in many U.S. jurisdictions.

136. Testimony of D. E. Patel, PCMC 1903–13 (Suit No. 6 of 1910), II:99. Burma and Ceylon also had traditions of divorce by consent before (and during) British rule. See Maung Maung, *Law and Custom in Burma and the Burmese Family* (The Hague: Martinus Nijhoff, 1963), 72; and Digby, *Forty Years*, 2:66–77. Divorce by consent was also customary practice among certain lower caste Hindu communities, despite the impossibility of divorce in classical Hindu law (Rana, *Parsi Law*, 49).

137. Admittedly, the comparison is a loose one: Baroda's rulers cultivated the image of a progressive and well-run princely state, whereas Nevada was more often characterized as wild and lawless. However, the effect of the no-fault divorce regime in both places was the same: it acted as a magnet for couples from neighboring jurisdictions in search of a no-fuss divorce. Other U.S. states had played a similar role before Nevada (see Hartog, *Man and Wife*,14). Aligning Baroda with Connecticut, Indiana, or South Dakota may have been equally (or more) apt. For comments likening South Asian and U.S. marital regimes and practices in the early twentieth century, see A. R. Wadia, *The Ethics of Feminism: A Study of the Revolt of Women* (Delhi: Asian Publication Services India, 1977), 149. See also *George Reynolds v. United States*, 98 U.S. 166 (1879).

"from status to contract," but this laissez-faire approach to the marketplace did not extend to the family.[138] Only one flavor of marriage—monogamy—was on offer for Parsis in British India, and it took time, expense, and the risk of publicity and social humiliation to terminate a marriage.[139] People of all religions who abandoned their spouses unlawfully in British territory could face imprisonment. Persia lay beyond the reach of most litigants in colonial South Asia, but not of the Zoroastrians in India, for whom it was the ancestral motherland, and the site of ready-made networks of coreligionists and family. For Iranis in India at the turn of the twentieth century, immigration to India may have occurred only one or two generations back, such that returning to Persia was feasible both socially and linguistically. Taking advantage of a legal regime in which polygamy remained unlinked to barbarism thus became a legal option.

Cherry-picking from the Eurasian marital patchwork was a technique attempted by those with money and those without, through interactions with lawyers or with none at all, between metropole and colony, and between the empire and its neighbors. However, these case studies suggest that forum-shopping attempts often failed, and that success did not depend upon financial resources. Having money did not ensure victory for Eleanora Wadia. Like the working-class Bombay couple, Mrs. Wadia's jurisdictional strategy failed because she was only willing to relocate *temporarily* for the sake of her jurisdictional claim.[140] The Irani husband, by contrast, violated not just civil but also criminal law in British India, and yet he succeeded (at no expense) because he made his move permanent.

Colonial litigants may have tried to strategize and exercise agency at the microscopic level of the individual case. But at the macroscopic level of a

138. Henry Maine argued that societies evolve from being status-based, where people are born into certain categories that they cannot change, to being contract-based, in which individuals have the power to set their own relationships, obligations, and entitlements. See Henry Sumner Maine, *Ancient Law: Its Connections with the Early History of Society and its Relation to Modern Ideas* (London: John Murray, 1887). For examples of the judicial promotion of a freedom-of-contract ideology, see *Ibrahim Saib v. Muni Mir Udin Saib*, Madras High Court Reports 26 (1870); and *Nagalutchmee Ummal v. Gopoo Nadaraja Chetty et al.*, 6 Moore's I. A. 309 (1854–57).

139. Many Parsi Chief Matrimonial Court suits were reported in the press. See, for example, "Parsi Matrimonial Court," *Times of India*, July 5, 1910, 4; and "High Court Matrimonial Suit Withdrawn," *Advocate of India*, April 12, 1911, 7. PCMC suits could be held in camera at the request of either party, according to section 38 of the Parsi Marriage and Divorce Act 1865. However, even when held behind closed doors, the outcome of such cases could be reported in the press. See PCMC 1903–13, II:81 (Suit No. 1 of 1906).

140. Although the Bombay couple's case was resolved out of court, their Baroda divorce would not have been recognized by British Indian law. See PCMC 1903–13, II:101.

court's full case load, colonial judges were not easily fooled by opportunistic attempts to shift between territorial jurisdictions. Why then did the pattern continue? By offering colonial subjects the chance of success through forum shopping, the colonial legal system created small spaces for the exercise of agency. But in doing so, it reinforced its hold on colonized social life by strengthening its legitimacy, eliciting the participation of players, and blurring their view of the system's larger biases. Colonial litigants may have felt that they were acting strategically in making forum shopping arguments. In fact, it was the mechanism of the legal lottery—the promise that one might win this time, even if one probably would not—that had the greatest strategic value, and for the colonial state.