Between *Saree* and Skirt: Legal Transculturality in Eighteenth-Century Pondicherry[1]

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RESÜMEE

Der Aufsatz erprobt das Konzept der transkulturellen Staatlichkeit am Beispiel der Rechtsordnung, d. h. Rechtsprechung und Gesetzgebung. Untersucht werden ausgewählte Aspekte der französischen Rechtsprechungspraxis gegenüber indischen Akteuren in Pondicherry, der wirtschaftlichen wie administrativen Zentrale der französischen Unternehmungen in Südindien, während des 18. Jahrhunderts. Obwohl die Haltung des frühen französischen Kolonialregimes gegenüber der zivilen Gerichtsbarkeit darauf ausgerichtet war, über jede soziale Gruppe gemäß ihrer eigenen Rechtsnormen Recht zu sprechen, argumentiert diese Arbeit, dass die Situation in der Praxis weitaus uneindeutiger war. Dies gilt insbesondere für die indischen Christen, deren Existenz bereits Resultat von Kulturkontakt war und die daher nicht in die sozial-rechtlichen Kategorien passten, die durch das frühe Kolonialregime als Grundlage für die Rechtsprechung definiert worden waren. Ausgehend von einer Untersuchung verschiedener Rechtsstreitigkeiten aus der zweiten Hälfte des 18. Jahrhunderts zeigt der Aufsatz auf, dass die Demarkationslinien in dieser Situation der Rechtsvielfalt insbesondere in Bezug auf indische Christen viel flexibler und in höherem Maße offen für Aushandlung waren als bisher in der Forschungsliteratur angenommen. Die Prozesse brachten gerichtliche Entscheidungen hervor, die einen Kompromiss zwischen verschiedenen Rechtstraditionen darstellen. Durch diesen Kompromisscharakter standen die Urteile paradoxerweise nicht nur im Konflikt mit eben jenem Prinzip, welches die Verwaltung von Pondicherry der Rechtsprechung eigentlich zugrundelegte, sondern sie sind zugleich paradigmatisch für die Transkulturalität des in der Entstehung begriffenen französischen Kolonialstaats in Indien.

1 This article is partly based on the fourth chapter of my ongoing doctoral dissertation provisionally entitled "The Religion of the Tribunal': Transcultural Dimensions of State-Building in the French Territories in India during the Eighteenth Century." I am very grateful to the editors, Tobias Graf and Julie Marquet for critical readings of the article.

1. Introduction

Although the concept of transculturality can refer to both an analytical method and an object of investigation, it is the latter understanding that guides this article.[2] In this sense, transculturality refers to 'processes through which local forms emerge within circuits of exchange' and is at once conceived of as a process and its result.[3] Such a conceptualisation of transculturality allows us to regard cultures and cultural encounters within the same conceptual matrix, wherein both are constituted and reconstituted processually through entanglement, exchange, appropriation, hybridization, and circulation on the one hand, and relationally through dissonance, rejection, alterity, and asymmetries of power on the other.[4] In this article, the concept of transculturality is employed to take cognisance of processes and products of interaction in the cultural encounter between the French and the Indians, even as the very nature of this encounter was transitioning from commercial to colonial.[5] As a consequence, when used as an attribute of the idea of statehood, transculturality signifies an examination of processes of interaction between the French and Indians as well as its effects on the emerging French colonial rule in India.

At the heart of this enquiry on dimensions of transcultural statehood lies the hypothesis that the interactive exchange between the binary of French and Indian, congruent with that of the ruler and the ruled, albeit not exclusively so, was liable to produce new forms of governance hitherto unforeseen. This assumption is based, on the one hand, on the now commonplace understanding of the dynamics of colonial encounters in which subordinate groups are no longer viewed as entirely passive subjects but rather as active agents who, although 'not in control of what emanates from the dominant culture, do determine to varying extents what they absorb, and what they use it for.'[6] On the other, it draws partially on the idea of 'empowering interactions' according to which the state is an unintentional outcome of interactive processes between political authority and local subjects.[7] The crucial link that sustains this superimposition of cultural encounters on

2 M. Herren / M. Rüesch / C. Sibille (eds.), Transcultural History: Theories, Methods, Sources, Heidelberg 2012.

3 Monica Juneja, Understanding Transculturalism. Monica Juneja and Christian Kravagna in Conversation, in: F. Amir et al. (eds.), Transcultural Modernisms, Berlin 2013, pp. 22-33.

4 This formulation is based on M. L. Pratt's concept of transculturation as a phenomenon of cultural encounter and W. Welsch's non-essentialist understanding of culture or cultural formation as transcultural. See M. L. Pratt, Imperial Eyes: Travel Writing and Transculturation, London 2003, Introduction, and W. Welsch, Transculturality: The Puzzling Form of Cultures Today, in: M. Featherstone / S. Lash (eds.), Spaces of Culture: City, Nation, World, London 1999, pp. 194–213. For an excellent introduction to the multiple terms currently in use to describe and analyse cultural interaction, see P. Burke, Cultural Hybridity, Cambridge 2010.

5 For the significance of the eighteenth century in Indian history in light of the debates on whether the pattern of change witnessed by this period was revolutionary, resulting from the disruptions caused by European domination, or evolutionary, showing continuities with the precolonial past, see P. J. Marshall (ed.), The Eighteenth Century in Indian History – Evolution of Revolution?, New Delhi 2003; D. Washbrook, South India 1770-1840: The Colonial Transition, in: Modern Asian Studies, 38(2004) 3, pp. 479–516.

6 M. L. Pratt, Imperial Eyes: Travel Writing and Transculturation, (4), p. 6.

7 A. Holenstein, Introduction: Empowering Interactions: Looking at Statebuilding from Below, in: W. Blockmans / A. Holenstein / J. Mathieu (eds.), Empowering Interactions: Political Cultures and the Emergence of the State in Europe 1300–1900, Farnham 2009, pp. 1–34.

state-building is the very idea of interaction, which is also operative in the concept of transcultural statehood, thus making it doubly fruitful to study state-building in Europe and elsewhere during the early modern period. Because the concept of transcultural statehood understands state and state-building not only as 'a space for interaction and a result of interactive processes' between political authority and subjects at a local level, but also as a result of contact and exchange between cultures, state-building in the metropolis and the colony becomes part of a shared and entangled history, rather than a top-down process, initiated at the centre and percolating in a linear manner to the bottom.[8] Indeed, by conceptualising the state in terms of interaction and cultural exchange, the concept of transcultural statehood levels the analytical framework for the analysis of state and state-building in Europe and elsewhere while at the same time answering to the growing need, articulated predominantly by Anglo-American scholarship, to view state-building in the metropolis and the colony not as parallel but rather interdependent processes.[9] Thus, the concept can be successfully employed to account for both the role of cultural encounter in its myriad forms, and the role of the colonies as one of the locations for that encounter, in state-building in France and elsewhere in Europe during the early modern period. In this article, however, my geographical focus remains a single territory under French rule in south India.[10]

In the following I will apply the concept of transcultural statehood principally to examine the administration of justice and legislation related to this sphere as an integral aspect of governance. The choice of the eighteenth-century judiciary as a field of investigation to demonstrate the transcultural dimension of the emerging colonial rule rests on its recognition not solely as an instrument of colonial control, but rather as 'a relatively open arena where colonial as well as indigenous agents could advance their interests and hope to gain strategic advantages.'[11] As this article will show, not only was this a forum where indigenous interests were most directly manifested, but it was also a forum that saw these interests alter the administration of justice.

8 The idea of studying the state and state-building as transcultural phenomena was developed by Antje Flüchter to counter the spatio-temporal centrality of Europe and its modernity in conceptualizing its own experience as a fixed model that was later exported to the rest of the world. Among other things, she historicizes the concept by taking into account the extra-European factors that contributed to its formation in Europe and advocates a processual understanding of the state. See A. Flüchter, Introduction, in: ead./S. Richter (eds.), Structures on the Move: Technologies of Governance in Transcultural Encounter, Heidelberg 2012, pp. 1–27.

9 H. Dewar, Litigating Empire: The Role of French Courts in Establishing Colonial Sovereignties, in: R. J. Ross/L. Benton (eds.), Legal Pluralism and Empires, 1500–1850, New York 2013, pp. 49–79, p. 51.

10 Besides Pondicherry, the French had several other enclaves in India, most of them situated along the eastern and western coasts of the Indian peninsula. Mahé, Karaikal, Yanam, and Chandernagore, along with a few trading posts and Pondicherry, were commonly referred to as French India or as French territories in India. Today, with the exception of Chandernagore, these former French colonies are part of the Union Territory of Puducherry. It may be noted that the town officially changed its name to Puducherry in 2006. The change of name, however, has been slow to emerge in academic usage.

11 As N. Brimnes has observed, this is based largely on the change of perception among scholars of the Anglo-Indian judiciary in South India. N. Brimnes, Beyond Colonial Law: Indigenous Litigation and the Contestation of Property in the Mayor's Court in Late Eighteenth-Century Madras, in: Modern Asian Studies, 37 (2003) 3, pp. 513–50, p. 517.

The litigation examined in this article is drawn from the records kept by the two official forums principally involved in settling civil disputes among the inhabitants of Pondicherry: the *Tribunal de la Chaudrie* (hereafter the Chaudrie) and the *Conseil Supérieur* or the Sovereign Council (hereafter the Council).[12] These judicial records provide detailed summaries of the contested issues which present the contents of the arguments made by the litigants in their pleas to the court in addition to the final verdict.[13] The bulk of the litigation, especially for the Chaudrie, relates to debts and contracts, although a significant number of records concern issues of succession, adoption, and marriage – issues that are now categorized under the rubric of personal law.[14] This article concentrates on inheritance disputes as it was mainly in the context of these that the clash between legal traditions emerged. Given the relative minority of Indian Christians, compared to the *gentils*, and that of inheritance disputes in the sources, the records of legal conflicts over inheritance among Indian Christians are not numerous. Yet despite the relative dearth of the material, it is still possible to illustrate the complexities in litigation involving Indian Christians, as well as the clash and compromise between legal traditions that these generated.

2. Complicated Categories: Social and Legal Pluralism in Pondicherry

In line with Alf Lüdtke's observation that any authority rests on the obeisance of some, if not all, of its subjects, the emergence of colonial authority also hinged on the cooperation of at least some local actors.[15] In the particular case of French rule in Pondicherry,

12 The Council, also the principal administrative organ of the French territories in India, was composed of five or more members, including the Governor. The first councilor (i.e. the deputy governor), along with two associates, presided over the Chaudrie. Together, the two courts held mixed jurisdiction over the French and Indian population of Pondicherry. For example, although designated as a native tribunal, the Chaudrie adjudicated litigation not only between Indians, but also between European claimants and Indian defendants. Similarly, the Council, in its capacity as an appellate court, also adjudicated litigation between Indians. M. Laude, Études sur les origines judiciaires dans les établissements français de l'Inde, Pondicherry 1860. Although this dual-court system, one native and one foreign, was common in European colonies in India, their respective jurisdictions over the population was subject to some variation. For an initial comparison of this jurisdictional set-up between Madras under the English and Pondicherry under the French, see A. F. T. Reyes, English and French Approaches to Personal Laws in South India, 1700–1850, PhD Dissertation, University of Cambridge, 1986.

13 The records of the Council decisions from 1701 to 1814 were published in G. Diagou (ed.), Arrêts du Conseil Supérieur de Pondichéry, 8 vols., Pondicherry 1935. Although the Chaudrie, too, functioned from the beginning of the eighteenth century, its judgments started being recorded only in 1766. A selection of the Chaudrie decisions was published much more recently in J.-C. Bonnan, Jugements du tribunal de la Chaudrie de Pondichéry: 1766–1817, 2 vols., Pondicherry 1999. The litigations examined in this article are drawn from the two compilations as well as archival research in the National Archives of India, Pondicherry Records Centre (hereafter NAIRPC), which houses the registers containing the civil judgments given by the Chaudrie.

14 For more details on the type of litigation adjudicated by the Chaudrie, see J.-C. Bonnan, Introduction, in: id., Jugements du tribunal de la Chaudrie de Pondichéry: 1766–1817, vol. 1(13), p. xlvii.

15 A. Lüdtke, Einleitung, in: id. (ed.), Herrschaft als soziale Praxis. Historische und sozialanthropologische Studien, Göttingen 1991, pp. 9–63; as cited in S. Brakensiek, New Perspectives on State-Building and the Implementation of Rulership in Early Modern European Monarchies, in: A. Flüchter / S. Richter, Structures on the Move (8), pp. 31–41.

the cooperation of Indian subjects was contingent on one condition: the freedom to live according to their manners and customs. In 1673, when Sher Khan Lody, the regional ruler, granted the small fishing village that was later to become Pondicherry to the French to set up a trading post, it was on the promise that they would respect the natives' customs and protect their temples.[16] In 1708, in an effort to make the colony commercially profitable by attracting as many Indians as possible to settle there, the administration issued public notices in several languages granting prospective migrants liberty of commerce as well as conscience, that is, 'the freedom to live according to their ways and customs'.[17] Thus, from the very beginning, this administrative stance or 'indigenous policy' (*la politique indigène*), as Jacques Weber terms it, was critical to the growth of prosperity and colonial authority in Pondicherry.[18]

Besides its impact on the social and religious spheres, this policy also had certain implications for the legal sphere.[19] As different groups of Indians had their respective laws, norms, and customs, civil justice had to be administered through a plurality of indigenous laws.[20] This is how the principle of administering justice was formally expressed in the edict detailing the functions of the Civil Judge in Pondicherry. Article 16 of this edict states:

> *As the nation has undertaken to judge Malabars and other Indians, who take recourse to French justice, according to Malabar mores, usages, customs, and laws, since the beginning of its establishment in Pondicherry, the Civil Judge will conform in this regard to what has been practised to date at the civil seat of the Chauderie.*[21]

16 J. Weber, La mosaïque pondichérienne, in: R. Vincent (ed.), Pondichéry, 1674–1761: L'échec d'un rêve d'empire, Paris 1993, pp. 144–63. For eighteenth-century history of French territories in India, see A. Ray, The Merchant and the State: The French in India, 1666–1739, 2 vols., New Delhi 2004; S. P. Sen, The French in India: First Establishment and Struggle, Calcutta 1947; id., The French in India, 1763–1816, 2nd ed., New Delhi 1971; G. B. Malleson, History of the French in India: From the Founding of Pondicherry in 1674 to the Fall of That Place in 1761, London 1868.

17 Règlement du 29 juillet 1708, in: A. Martineau (ed.), Procès-Verbaux des délibérations du Conseil Souverain de la Compagnie des Indes, vol. 1, Pondicherry 1911, pp. 46–47.

18 J. Weber, Pondichéry et les comptoirs de l'Inde après Dupleix: la démocratie au pays des castes, Paris 1996, chap. 4.

19 In the first decades of the century, this policy was a sore point in the relations between the administrators and the Jesuit missionaries, who were insistent that the religious freedom given to the Indians be curtailed. P. Olagnier, Les Jésuites à Pondichéry et l'affaire Naniapa, 1705 à 1720, Paris 1932. P. Haudrère, Des chrétiens chez les hindous, in: R. Vincent (ed.), Pondichéry (16), pp. 88–105. F. Richard, Les missions catholiques, in: P. Le Tréguilly/M. Morazé (eds.), L'Inde et la France, deux siècles d'histoire commune, XVIIe–XVIIIe siècles: Histoire, sources, bibliographie, Paris 1995.

20 Although the distinction between laws, norms, and customs is a matter of much debate, it suffices to say here that in the legal context and with regards to Indians, the French administration used them interchangeably. See, for example, article 16 of the edict of 1769 quoted below (footnote 21).

21 'La nation s'étant engagé dans les commencements de son établissement à Pondichéry à juger les Malabars et autres Indiens qui auraient recours à la justice Française suivant les mœurs, us, coutumes et loix malabars, le Lieutenant Civil se conformera à cet égard à ce qui s'est pratiqué jusqu'à ce jour au siège civil de la Chauderie.' Article 16ème du règlement du 30 décembre 1769. Expéditions des règlements fait tant par MM les administrateurs que par le Conseil Supérieur de Pondichéry depuis le 6 Mars 1742 jusqu'au 18 octobre 1777. ANOM, Le Fonds Ancien, 1690–1855, Microfilms, p. 107. All translations in this article are mine.

Almost exactly half a century later, in 1819, this principle was rearticulated when the colonial state promulgated the French codes in their territories in India. Although aimed at the French segment of the population, this regulation nonetheless contained an article concerning the administration of justice to the Indians that reiterated the stance of the colonial state's eighteenth-century predecessor: 'Indians, whether Christians, *maures* or *gentils*, will be judged, like in the past, according to the laws, usages, and customs of their caste.'[22] In essence, through these proclamations, the French administration was not only acknowledging the existence of various personal laws among the local population but also promised to administer civil justice according to those laws. Thus, the administration of justice in Pondicherry and other French territories in India was formally proclaimed to be legally plural in civil affairs throughout the eighteenth century.[23]

Evidently in acknowledging the existence of these various sets of laws and judging individuals in relation to these laws, the French were no different from their European counterparts elsewhere in Asia and Africa. Legal pluralism or rather, what Sally Merry has termed the 'classic legal pluralism' saw the intersections of European and indigenous laws in colonial regimes. [24] However, the particular patterns of intersection between European and indigenous laws and their outcomes varied in these territories. [25] Tracing transculturality in the legal sphere in Pondicherry, in effect, amounts to examining the entanglement between French and Indian laws. In the case of French territories in India, historians have often used these proclamations, especially that of 1819, to acknowledge the plurality of laws prevalent among the Indian population and reiterate that conversion to Christianity did not bring any change in an individual's legal status. For example, a nineteenth-century French judge in Pondicherry began his treatise on Hindu law by quoting the above-mentioned article 3 of the 1819 regulation and observed that even though the article distinguished three kinds of categories based on religion, juridically speaking there were only two because those who converted to Christianity had to be governed according to the same laws and customs as the *gentils*.[26] More recently, David Annoussamy, one of the foremost legal historians of French India, explained the very same article in no uncertain terms: 'Christians did not change laws because of their

22 Règlement du 6 février 1819, article 3 – 'Les Indiens soit chrétiens, soit Maures ou gentils seront jugés, comme par le passé, suivant les Lois, us et coutumes de leur caste.' G. Diagou, Arrêts du Conseil Supérieur, 13), pp. 279–80.

23 This is not surprising given that early modern France, much like most other European polities, consisted of a plurality of legal frameworks and political authorities. See J. H. Elliott, A Europe of Composite Monarchies, in: Past & Present, 137 (1992), pp. 48–71. For example, the French Civil Code, also known as the Napoleonic Code, replaced as many as sixty general systems of law in France. P. Curzon, Jurisprudence, London 1998, p. 290. On the history of law in early modern France, see F. Olivier-Martin, Histoire du droit français: des origines à la révolution, Paris 2010.

24 S.E. Merry, Legal Pluralism, in: Law & Society Review, 22(1988) 5, pp. 869–96, p.872.

25 This is a subject that needs further research in a comparative framework than has been undertaken till now. For some notable works in this direction, see M. B. Hooker, Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws, Oxford 1975; W. J. Mommsen / J. A. de Moor (eds.), European Expansion and Law: The Encounter of European and Indigenous Law in 19th- and 20th-Century Africa and Asia, Oxford 1992; L. Benton, Law and Colonial Cultures: Legal Regimes in World History, 1400–1900, Cambridge 2001.

26 L. Sorg, Introduction à l'étude du droit hindou, Pondicherry 1895, p. 1.

conversion, they continued to follow their ancient Hindu customs.'[27] Although correct in principle, simply acknowledging the plurality of laws and observing that conversion brought no change hardly suffices to show the realities on the ground and the complexities that beset the administration of justice time and again. Above all, such observations fail to recognise and explain the complex and contingent character of the legal ordering and categorization of difference through which justice had to be administered For example, how are we to reconcile the categories of caste and religion not only with regards to *gentils*, but also with regards to *maures* and Christians, as employed in the proclamation of 1819, in their relevance to determining an individual's legal status? Let us, then, begin by examining the sheer multiplicity of categories identified by the official proclamations quoted above as the basis for administering personal laws among the population of such diverse make-up. In the remainder of this section, I will briefly describe these various categories and their interrelation to depict the social diversity of the Indian population and, more importantly, to illustrate the complexity subsumed in the legal categorisation that formed the basis for administering personal laws.. It must be noted that the following analysis discusses only such social categories that had legal relevance and is by no means an exhaustive ethnographical account of the social stratification in Pondicherry.[28]

The simultaneous use of the terms *Indians*, *Malabars*, *gentils*, *chrétiens*, *Maures*, and *caste* in the official proclamations quoted above aptly exemplifies how an individual's legal status, far from being simply a matter of religious affiliation, lay at the varying intersections of ethnic, social, and religious axes. The basic demarcation is evidently ethnic: Indians as opposed to Frenchmen or Europeans. Its corresponding legal demarcation prescribed that while the French were subject to the Custom of Paris, Indians were subject to Malabar laws.[29] Although a misnomer, the term Malabar, as employed in the proclamation of 1769, was a sub-category of the term Indian and generally referred to the local, Tamil-speaking population of the south-eastern coast of the Indian peninsula (present-day Tamil Nadu). Within this ethno-linguistic category, a further distinction of religions was recognised. The second proclamation identifies three religious categories

27 D. Annoussamy, L'intermède français en Inde: secousses politiques et mutations juridiques, Pondicherry 2005, p. 239.

28 For such an account, see L. S. Vishwanath, Social Stratification in Colonial India with Special Reference to French India, in: K. S. Mathew / S. Jeyaseela (eds.), French in India and Indian Nationalism (1700 A.D.–1963 A.D.) vol. 1, New Delhi 1999, pp. 273–97; J. Weber, La mosaïque pondichérienne (16); J. Deloche, Le vieux Pondichéry (1673–1824) revisité d'après les plans anciens, Pondicherry 2005, pp. 18–22.

29 The Custom of Paris was the customary law of the Parisian region. The first collection of the Parisian customary law was printed in 1510. L. Warner, Customary Law? Roman Law? Sixteenth-Century Lawyers' Pleadings before the Parlement de Paris, in: A. Bauer / K. H. L. Welker (eds.), Europa und seine Regionen: 2000 Jahre Rechtsgeschichte, Köln 2007, pp. 253–62, p. 253. In the French colonies in the East Indies, just like in the North Atlantic colony of New France in the seventeenth century, 'the French state allowed only the custom of Paris to operate.' (ibid. p. 256); Article 33 of the founding charter of the French East India Company expressly bids the judges to administer justice following the laws and ordinances of the kingdom of France and to conform to the 'coutume de la prévôté et vicomté de Paris'. Déclaration du Roy portant établissement d'une Compagnie pour le commerce des Indes Orientales, registrée en la cour de Parlement le premier septembre 1664, in: Le Sieur Dernis (ed.), Recueil ou collection des titres, édits, déclarations, arrêts, règlemens et autres pièces concernant la Compagnie des Indes Orientales établie au mois d'août 1664, vol. 1, Paris 1755, p. 62.

among the Malabars: *gentils*, *chrétiens*, and *maures*. The French word *gentil*, like the English *gentoo*, originated from the Portuguese *gentio*, meaning heathen, and was an early modern label for the non-Christian and non-Muslim population of India that was later supplanted by the term *Hindu*.[30] Similarly, the French term *maure*, a derivative of the Portuguese *mouro*, designated Mohammedans or Muslims.[31] The religious distinction is further supplemented by the social category of caste, understood here as one of the many hereditary and socially distinct groupings constituting the Indian population, as an equally fundamental determinant of an individual's legal status.[32] What is important and interesting to note here is that the caste category was a legal determinant not just for *gentils*, but for all three religious denominations. The administration's 1819 proclamation effectively confirmed the administration of justice to Indians according to caste laws, be they *gentils*, Christians, or Muslims. Indeed, although castes and the caste-system as a principle of social organisation are predominantly associated with Hinduism, as an empirical phenomenon they were observed across different religious denominations throughout south India in the early modern period.[33] French travellers and colonial officials alike observed that the *maures* constituted one of the castes among the *gentils*.[34] In fact, the colonial state itself eventually recognised them as a caste with the qadi as their caste-chief.[35] Thus, caste was recognised as a trans-religious category and an important marker of legal identity.

Seen from this perspective, and as indicated in the official proclamations, the term *Malabar laws* is to be understood as a collective heading for a conglomeration of custom-

30 H. Yule / A. C. Burnell / W. Crooke (eds.), Hobson-Jobson: A Glossary of Colloquial Anglo-Indian Words and Phrases and of Kindred Terms, Etymological, Historical, Geographical and Discursive, London 1903, p. 367.

31 Ibid., p. 581. The term was used to refer to the descendants of Mughals, Arab merchants who settled on the coast during the medieval period, as well as local converts to Islam. For the different origins of Muslims in the French territories in India, see J. Weber, Les établissements français en Inde au XIXe siècle (1816–1914), vol. 2, Paris 1988, pp. 554–62.

32 Much ink has been spilled over the historical, sociological and anthropological aspects of the caste system in India. As this debate is not central to my argument here, my own use of the term follows its use in my sources as a way to designate a social group, often, though not exclusively, used in conjunction with a proper noun qualifier, for instance 'caste agamboudia' or 'caste pally'. For some of the notable works on this debate, see L. Dumont, Homo Hierarchicus: The Caste System and Its Implications, Chicago 1980; N. B. Dirks, Castes of Mind: Colonialism and the Making of Modern India, Princeton 2001; S. Bayly, Caste, Society and Politics in India from the Eighteenth Century to the Modern Age, Cambridge 2001. For a nineteenth-century ethnographical survey of the castes and sub-castes in India identified by French colonial officials, see A. Esquer, Essai sur les castes dans l'Inde, Pondicherry 1871.

33 For a study on how three major world religions came to interpenetrate each other in South India, see S. Bayly, Saints, Goddesses, and Kings: Muslims and Christians in South Indian Society, 1700–1900, Cambridge 1989.

34 Guillaume Joseph Hyacinthe Jean Baptiste Legentil de la Galaisière, Voyage dans les mers de l'Inde fait par ordre du roi, à l'occasion du passage de Vénus, sur le disque de soleil, le 6 juin 1761, et le 3 du même mois 1769, vol. 1, Paris 1779, p. 93. As per his observations of the *maures* of Pondicherry, LeGentil, a French astronomer who spent some time in Pondicherry during his travels in the East Indies in 1760s, made an interesting distinction between Mughals (French *mogols*) and the *maures* of South India and cautioned readers against the mistake of confusing the two.

35 The official proclamations of 5 March 1840 and 11 November 1861 recognise *maures* as a fifth caste among the local population and the qadi as their caste-chief. L. de Langlard, Leçon de droit Musulman, Pondicherry 1887, pp. 20–21.

ary laws applicable in eighteenth century Pondicherry that varied from caste to caste.[36] Given the customary character of these laws, eighteenth-century judicial administrators possessed no code to administer them and had to rely on their working knowledge of them. Consequently, judges often took recourse to individual caste-chiefs, other caste-members, and caste-assemblies to settle disputes that required detailed knowledge of a specific body of caste-laws.[37] In the case of 'Muslim' groups, such as the *choulias*, it was the qadi and the mullah who were called upon as legal experts. These local bodies of dispute resolution, often designated as 'arbitrators' in the Chaudrie documents, played an active role in settling conflicts in family matters such as succession, adoption, marriages, and so forth.[38] Thus, in practice, the administration of Malabar laws by the French relied heavily on the support of these indigenous authorities.[39] They continued to be an important source of Malabar laws for the colonial administration well into the nineteenth century till the administration's repeated efforts to codify these laws with the help of consultative bodies eventually proved successful.[40]

In any case, administering personal laws in eighteenth-century Pondicherry required above all establishing the ethno-socio-religious status of a person. The rather common intersection and juxtaposition of these various categories, which today seem paradoxical, best emerge in the very registration of litigation in the eighteenth century records. As these were categories that determined an individual's legal status, officials were careful to note these especially for litigants involved in familial disputes over property. Thus, for instance, one commonly encounters references to Christians who are qualified as *agamboudia* or *pally*, two of the local caste-groups. Choulias, a Muslim social group, are referred to as *caste choulia*. The ethno-linguistic category of Malabar, generally used to distinguish the mass of the local population, as in 'the Malabars', from Indians from

36 In the nineteenth century, however, such a description became associated only with what the colonial state labelled as Hindu law. L. Sorg, Introduction(26), p. 7. This same understanding underpins the current understanding of Hindu law in which it is defined as a conglomeration of customary laws that varied from caste to caste and locality to locality. J. D. M. Derrett, Essays in Classical and Modern Hindu Law, Leiden 1976, p. 233.

37 Although historians and anthropologists have acknowledged the presence of these caste-bodies, also known as caste panchayats, within the colonial and post-colonial legal system in India, there is a dearth of in-depth studies on these indigenous forums for conflict resolution. For some ethnographic forays in this direction, see S. G. Vincentnathan, The Social Construction of Order and Disorder, in: The Journal of Legal Pluralism and Unofficial Law, 24 (1992) 32, pp. 65–102; R. M. Hayden, A Note on Caste Panchayats and Government Courts in India, in: The Journal of Legal Pluralism and Unofficial Law, 16 (1984) 22, pp. 43–52.

38 J.-C. Bonnan, L'organisation judiciaire de Pondichéry au 18ème siècle: l'exemple du tribunal de la Chaudrie, in: K. S. Matthew (ed.), French in India and Indian Nationalism (1700 A.D.–1963 A.D.), vol. 1, Pondicherry 1999, pp. 535–52.

39 The functioning and jurisdiction of such legal intermediaries within, or even parallel to, the colonial institutional regime also indicates another aspect of legal transculturality and has been explored more extensively in my dissertation (1).

40 With the help of the *Comité Consultative de Jurisprudence Indienne*, the *Code des lois, us et coutumes de la côte de Coromandel* was produced in 1840. J. Weber, Pondichéry(18), p. 94. Although the history of the codification of indigenous laws by the French needs further exploration, the French approach to codifying indigenous laws does present interesting contrasts and similarities to the British approach, and like the latter, is not without its critics. For a brief comparison, see L. S. Vishwanath, Social Stratification (28), pp. 284–86; for a deeper comparison, see A. F. T. Reyes, English and French Approaches (12). For an incisive critique of the process of codification, see L. Sorg, Introduction (26).

other regions, such as Bengalis or Gujeratis, was further qualified to help differentiate between religious affiliations. Malabar Christian, for example, was used in opposition to Malabar *gentil* to highlight the difference in religion among the locals. Furthermore, for reasons that we shall presently explore, the term *Malabar Christian* also acquired a finer meaning, especially when contrasted with *pariah Christian*, to designate someone from one of the higher caste-groups in the *gentil* caste-hierarchy.

These are just a few examples to illustrate the complicated and entangled character of the socio-legal categories along which personal laws had to be administered. They reflect the flexible and fluid nature of the terms and categories employed to express and establish legal difference. They also show contemporary officials efforts of getting to grips with the emerging diversity: their relational, rather than essential, understanding of these categories indicates that the use of any clear-cut analytical or source-based terms to refer to these categories is troublesome.

Although historiography has emphatically written off conversion to Christianity as having no legal relevance, this certainly does not preclude the possibility – as apparent in some of the categorical examples given above – that the emergence of Indian Christians did indeed add another dimension to the complex character of this social and legal plurality.[41] In Pondicherry, Christianity came in the wake of the French East India Company. As a result of conversions, the town witnessed the proliferation of a number of social groups that straddled the socio-religious and ethnic boundaries between Europeans and Indians in varying degrees and modes.[42] Besides the creoles, products of interaction of a more physical kind, there were the Indian Christians.[43] Although judicial sources from the eighteenth century did not employ this expression, my use stems from its utility as an umbrella term to denote a heterogeneous group that nonetheless shared two traits: Indian ethnicity and Christian religion. Some such groups identified in the judicial records were the *topas*, the Malabar Christians, and pariah (Tamil *paṟaiyaṉ,* plural *paṟaiyar*) Christians. The terms *topas* and 'the people of the hat' (*les gens à chapeau*) referred to Christian converts who claimed to be of European descent and dressed as

41 The existence of a community of Syrian Christians in Kerala, claiming the Apostle Thomas as its founder, attests to the presence of Christianity in South India from the fifth century CE. However, it was not until after the arrival of the Europeans in the sixteenth and the seventeenth centuries that it spread to other parts of India. J. Weber, Les établissements français en Inde (31), p. 571.

42 As evident in article 30 of its founding charter, the French East India Company was committed to propagating the Christian religion. See the *Déclaration du Roy portant établissement d'une Compagnie pour le commerce des Indes Orientales, registrée en la cour de Parlement le premier septembre 1664* in: Le Sieur Dernis (ed.), Recueil (29), p. 61. In Pondicherry, moreover, several legislative policies were adopted to help the propagation of Christianity in India, such as the baptism of slaves and the employment of Indian Christians in the Company's service. Pressure, persuasion, and preference were employed to increase conversions among the local population. J. B. P. More, Hindu-Christian Interaction in Pondicherry, 1700–1900, in: Contributions to Indian Sociology, 32 (1998) 1, pp. 97–121.

43 I borrow this term from recent English-language research on the legal implications of Indians' conversion to Christianity during the eighteenth and nineteenth centuries. See N. Chatterjee, Religious Change, Social Conflict and Legal Competition: The Emergence of Christian Personal Law in Colonial India, in: Modern Asian Studies, 44 (2010) 6, pp. 1147–95; C. Mallampalli, Christians and Public Life in Colonial South India, 1863–1937: Contending with Marginality, London 2004.

Europeans. They were generally, though not universally, applied to soldiers of this class.[44] An early eighteenth-century source describes them as 'the natives that are brought up and dressed as French, and who are instructed in the Christian religion by some of our missionaries.'[45] This description captures the essential markers of identity of this community – the Europeans looked upon them as locals who dressed as Europeans and were of the Christian faith.

Malabar Christians and pariah Christians, on the other hand, were those who had adopted Christianity without the appropriation of European dressing habits. The origin of the distinction between Malabar Christians and pariah Christians lies in the strategy of accommodation through the so-called Malabar Rites advocated by the Jesuits. Among other things, the Rites allowed for the continuation of caste distinctions among converts. Thus, as mentioned before, the term *Malabar Christians* referred to converts from higher caste groups such as, for example, *agamboudia* Christians, while pariah converts were referred to as pariah Christians.[46] The plight of the pariahs in Indian society is a well-document phenomenon. Suffice it to say that, in spite of conversion to Christianity, pariahs continued to be at the bottom of the social hierarchy.[47]

Indeed, Indian Christians were a product of Indo-European interaction in two different modes: one based solely on conversion to a religion brought by the Europeans, and the other on the adoption of the Europeans' religion as well as their clothing habits. While the common profession of Christianity set these groups apart from other non-Christian Indians, the *topas*' claim to a mixed origin and their habit of dressing as Europeans also set them apart from other Indian Christians. This social distinction was also reflected at the level of personal laws. Unlike the latter, the *topas* were, like the French, subject to the Custom of Paris, which historians have been quick to assert, albeit without referring to any legislation regarding this practice.[48] As we shall see a little later, that the *topas* had come under the jurisdiction of the Custom of Paris was itself a result of processes of cultural appropriation and serves as a case in point of the transculturality in the colonial legal sphere.

Having provided an overview of the social makeup of the colony and the plurality of laws along which justice was to be administered to the inhabitants of Pondicherry, this article turns in the following section to analyse a select number of litigations to por-

44 H. Yule / A. C. Burnell / W. Crooke, Hobson-Jobson (30), p. 933. In fact, the etymology of the term itself captures an important outward marker of identity of this community. In spite of the different origins proposed for the term, the one that seems most plausible is that it derives from the Hindi word *topi* (a hat), which refers to the characteristic hat worn by the men of this community as a marker of their cultural attachment to the European community.

45 '… *Topas, qui sont des gens du pais qu'on élève et qu'on habille à la Française, lesquels ont été instruits dans la Religion Catholique par quelques' uns de nos missionnaires.*' Luillier, Voyage du Sieur Luillier aux Grands Indes …, Paris 1705. As quoted in ibid., p. 934..

46 On Malabar Rites, see S. Neill, A History of Christianity in India: 1707–1858, Cambridge 2002, p. 75; A. Launay, Histoire des missions de l'Inde, Pondichéry, Maïssour, Coïmbatour, Paris 1898, p. 105.

47 J. Weber, Les établissements français en Inde (31), p. 580.

48 See for example, D. Annoussamy, L'intermède français en Inde (27), p. 250; J. Deloche, Le vieux Pondichéry (28), p. 112.

tray the processes and actors that underpinned the emergence of transculturality in the administration of justice. Although historiography on French India has reaffirmed the administration of justice to the *topas* in accordance with the Custom of Paris and to other Indian Christians in accordance with caste laws, the need to reconsider these assertions arises from the evidence gleaned from descriptive sources. It was especially, though not exclusively, with regards to Indian Christians, by virtue of being the products of Indo-French interaction, that legal distinctions were blurred. The result was, paradoxically, a reconfiguration of the very legal categorization that, in principle, was to have guided the administration of justice by the French to the Indians in the eighteenth century.

3. Legal Transculturality: Processes, Actors, and Results

On 9 November 1766, two men appeared before the Chaudrie, each claiming to be the sole heir to Moutané, a Malabar physician. One of the petitioners, Chinadou, was a Malabar *gentil* and claimed the inheritance on the basis that he was Moutané's universal legatee as declared in Moutané's testament. On the other hand, the second petitioner, Dobascayen, who was a Malabar Christian, declared that he was the sole inheritor as he was the only son born of a legitimate marriage between Moutané and Anna Christinne.[49]

This short exposé of a rather banal inheritance dispute serves to highlight an ubiquitous process that underpinned the administration of justice at the grass-roots level. This was the appropriation of foreign legal practices and laws by the litigants and its sanction by the judges in the administration of justice. It is this appropriation that lay at the root of creating legal conundrums whose resolution escaped the legal principle. Chinadou was a Malabar Hindu whose claim rested on the fact that he was named as the universal legatee in Moutane's testament. While in itself such a claim is ordinary enough, it nonetheless highlights the appropriation of a foreign legal practice – that of writing a testament – by Indians. Traditionally, Malabar law did not provide for making a will and did not contain any provisions for making a testament. Various legal treatises from the nineteenth century, as well as more contemporary research, point out that this practice had clearly come from Roman law and was adopted by Indians during the course of their encounter with Europeans.[50] In the case of Pondicherry, court evidence suggests that this practice had indeed taken root earlier in the century and was accepted by the courts as legally relevant.[51] Thus, by the latter decades of the century, it had emerged as a legal norm

49 J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13), pp. 4–5.

50 Ibid., p. 5; L. Sorg, Avis du Comité consultatif de jurisprudence indienne, Pondicherry 1897, p. 93; F. N. Laude, Manuel de droit Indou et de législation civil et criminelle applicable dans les établissements français de l'Inde, Pondicherry 1856, p. 180; J. D. M. Derret, Essays (36), p. 148.

51 Ambavalem vs Moutayen, 2nd June 1775, Sentence 393, Folder 224, Chauderie, sentences et jugements civils, Public Records, NAIPRC, (hereafter cited as Chaudrie Jugements). This entry refers to a testament dated 4 December 1738; the last case examined in this article mentions that an inheritance dispute dated 1750 was settled in accordance with the deceased's testament (58); Apou Modély vs Aya Modély, 30th April 1767, Folder 223,

and it was on the basis of this appropriated norm that the court admitted Chinadou's claim of being Moutané's universal legatee. It is also the basis for asserting the validity of Moutane's testament, which, as the record informs us, was 'in the correct and due form, written on an *ollah* which has been verified by the experts of the Chaudrie …'[52]
Eventually, the practice of making testaments acquired the force of law in 1775, when the Council set in place a regulation regarding the testaments made by Indians. Article 19 of this *Règlement du Conseil Supérieur* prescribes the conditions under which Indians' testaments should be noted:

> *The testaments of Malabars, gentils or Christians, of Maures, or other Indians, will be admitted only by the notary of the Chaudrie, who will be summoned for this purpose along with an official interpreter and two witnesses of the same religion as the testator, and the Muhammadans will summon the qadi and the mullah along with two witnesses.*[53]

The fact that this and several other cases involving testaments predate the actual legislation only goes to illustrate that the practice of writing testaments had become an established norm among Indians and was accepted by the administration even before the 1775 regulation.[54] The ensuing legislation is rather the end result of a process of cross-cultural appropriation of practices, in this case the writing of testaments, and serves to illustrate how the administration of justice itself was adapted to these new practices. Indeed, tailored to meet the different religious affiliations of individuals, it is a case in point of the transculturality in the colonial state.
Apart from the material issue, this case also presented a contest between a standard European practice – a man's right to will – and the local norms and customs of inheritance. On the one hand, a *gentil* was laying claim to a man's inheritance on the basis of the deceased's testament – a practice clearly appropriated from a foreign legal system – while, on the other, his opponent Dobascayen, a Malabar Christian, based his claim on Malabar laws according to which a man's inheritance automatically devolved onto his males relatives. Such were the complications that often appeared in the settlement of disputes and generated a clash of laws that impeded an unequivocal application of the basic tenet of legal pluralism in the administration of justice.

Chaudrie Jugements; 23rd March 1773, Sentence 198, Folder 223, Chaudrie Jugements, also in J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13), pp. 50–51. This last entry shows the Chaudrie's approval of a widow's request for the certification of her husband's testament.

52 '*Vu le testament bien et dument en forme, écrite sur une* olle *laquelle* olle *a été vérifiée par les experts de la Chaudrie, entendu les témoins cités dans la dite* olle …' J.-C. Bonan, Jugements , du tribunal de la Chaudrie (35). The English *ollah* or *olle* in French referred to a palmyra leaf used for writing in India. H. Yule / A. C. Burnell / W. Crooke, Hobson-Jobson (30), p. 636.

53 'Les testaments des Malabars gentils ou chrétiens, des Maures ou autres Indiens, ne pourront être passés que par le tabellion de la Chaudrie, lequel sera appelé à cet effet avec un interprète juré et deux témoins de la religion du testateur, et les mahométans appelleront le cazi et le molla avec deux témoins.' Règlement du Conseil Supérieur de Pondichéry du 2 Septembre 1775 in P. Dislère, Traité de législation coloniale, 3rd ed., vol. 2, Paris 1906, p. 3.

54 See footnote 44.

Like many similar litigations on succession, the French judges sought a clarification on the subject of inheritance in Malabar law from the *nattar*s, or caste-chiefs.[55] They consulted 21 *nattar*s on the following queries: 'According to Malabar norms and usages, can a father, at the moment of his death, disinherit his son and give away his property to any other individual other than his son? Does he have the authority to do so?'[56] Of the twenty-one *nattar*s, sixteen affirmed that a father could do as he saw fit.[57] The judges, however, decided to overlook the affirmation given by the majority of *nattar*s and adopted a different solution. As this case record is one of the very rare examples in which the motivation behind the judges' decision is clearly mentioned, the entire passage that gives the final verdict is worth quoting in full:

> *We have, as a consequence, obtained the knowledge of Malabar practices, mores, and customs, and at the same time,* to not hurt or harm the propagation of the Christian religion *that Moutané professed, [have decided] that his possessions will be divided into two equal parts, one for Dobascayen and his mother Anna and the other for Chinadou, [his] universal legatee.*[58]

The resulting verdict, then, is a settlement that simply divided Moutane's property into two equal halves, one for the universal legatee and the other for his legitimate wife and son.

Indeed, this is a telling example of the judges' none-too-infrequent disregard of the opinions and decisions of caste-chiefs and other local bodies in the dispensation of justice.[59] But more significantly for our purpose, this verdict is also a telling example of the administration's agency in circumventing the very principle of judging Indians according to their own laws that it had promised to uphold. Even after having formally established that Malabar law allowed for the father to disinherit his son, the judge's decision partially ignored this provision in favour of the propagation of the Christian religion, thereby bringing the administration's very overt support for Christians in its legislative policies

55 Chody vs Yagapen, 9th November 1767, Folder 223, Chaudrie Jugements; Colandé, Vengatassalam vs Candapan, 20th November 1767, Folder 223, Chaudrie Jugements; Maduron vs Louis Labéry, 20th August 1771, J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13), pp. 31–32; Ayatal and Vengoche vs Armougam and Arnasalam, 31st March 1775, in: ibid., pp. 75–80;

56 'Un père suivant les usages et moeurs des malabars peut-il déshériter son fils ou donner son bien en mourant à tout autre que son fils ? En a-t-il le pouvoir?' J.-C. Bonan, Jugements du tribunal de la Chaudrie (13).

57 There can be several interpretations to the sixteen *nattars*' answer in the affirmative, which seems rather puzzling in the face of the received knowledge that the traditional 'Hindu' legal framework did not envisage the right to disinherit one's offspring by willing away one's entire property to a third person. I discuss these at length in my dissertation (1).

58 'Nous avons en conséquence ordonné pour connaitre tout à la fois les usages, les moeurs et les coutumes malabars, *et en même temps ne pas blessé ou nuire à la propagation de la religion chrétienne* [emphasis added] que professait le dit Moutané, que ses biens seraient partagés en deux parts égales, l'une à Dobascayen sa mère Anna, et l'autre à Chinoudou légataire universel.' J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13).

59 Asarapen vs Visserayamodély and Vaitinadanmodély, 29th July 1774, no. 321, Folder 223, Chaudrie Jugements; Darmachivenpoullé vs Candapachetty, 20th September 1774, no. 342, Folder 224, Chaudrie Jugements; François Xavier Naniapa vs Louis and Thomas Labéry, 3rd January, 1775, no. 365, Folder 224, Chaudrie Jugements; Pontchamalle vs Chinivasachery, 25th April 1775, no. 386, Folder 224, Chaudrie Jugements; Devion vs Sandou, 5th May 1775, no. 390, Folder 224, Chaudrie Jugements.

to have a bearing on judicial decisions.Furthermore, cases such as this pitted against each other claims founded on two different legal traditions, one Indian and the other French. By dividing the inheritance between Chinadou and Dobascayen, this verdict symbolizes reaching a material settlement between the opposing parties as well as a settlement between different bodies of law.

A similar settlement is also reflected in the resolution of an inheritance dispute in a *topas* family.[60] Two brothers, Francois and Jacques Tarabellion, claimed that Marie Pereira, a deceased *topassine*, had left her inheritance to them by way of a verbal testament. This was contested by Marie Pereira's widowed sister, who claimed to be the sole inheritor and therefore to have exclusive right to her sister's inheritance. In accordance with witnesses' accounts and on the written testimony of Père Dominique, the superior of the Capuchin order in Pondicherry, the court established that Marie Pereira was the adoptive mother of the two brothers and had made them her universal legatees.[61] Consequently, Pereira's sister's claim was dismissed and the two brothers were declared as Pereira's rightful heirs. However, the court also ordered the brothers to pay a regular sum for the maintenance of Marie Pereira's sister.[62]

Once again, this seemingly straightforward inheritance dispute illustrates the court's agency in thwarting the legal principle vis-à-vis the *topas* as well as a pragmatic resolution between two legal traditions. By ordering the brothers to pay a certain amount of maintenance to the widowed sister of the deceased, the court actively participated in reinforcing a Tamil custom on the *topas*. This specific custom, called *caypencourou* (*cayempencourou, kaymancourou*, *kaimpeu*, *küru*), entitled widows to a maintenance derived from communal property. Even in the event of partition of property among community members, widows had a right to receive either immovable property or money in proportion to the resources of the family.[63] However, unlike in the first case I discussed, the judges' motivation behind this solution was not specified in court records. Nevertheless, the final verdict at once makes use of the testament to establish the rightful ownership of the inheritance, and of a Tamil custom to provide for Pereira's sister.[64] By doing so, the judges' decision was not confined solely to settling the main issue of contention, namely, establishing the rightful ownership of the inheritance; they additionally used their authority to secure maintenance of the *topas* defendant by the application of a Malabar custom.[65]

The cases discussed above demonstrate some of the complexities in administering justice strictly along plural lines in the face of changing social norms. Although the administra-

60 J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13), pp. 3–4. J.-C. Bonnan has incorrectly dated this case: the entry is dated to 5 December 1766 in the archival records and not 9 December 1766 as published in ibid.

61 Like the French, but unlike other Indian Christians, the *topas* were under the religious purview of the Capuchins. Hence the involvement of Père Dominique in ascertaining the validity of Marie Pereira's verbal testament.

62 J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13), pp. 3–4.

63 L. Sorg, Introduction (26), p. 10; J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13), p. 959.

64 J.-C. Bonnan, Jugements du tribunal de la Chaudrie (13), pp. 3–4.

65 Surprisingly, J.-C. Bonnan does not comment on this discrepancy between the verdict and the principle of applying French law to the *topas* in his explanatory note on the case. Ibid.

tive principle and the historiography prescribed the application of Malabar laws to Tamil Christians and the Custom of Paris to *topas*, the underlying process of appropriation necessitated a departure from the strict application of this principle by issuing verdicts that mirrored this appropriation by compromising between Malabar laws and the Custom of Paris. The partial rejection of the *nattar*s' opinions, the support for Christian converts, and the application of Malabar customs to the *topas* family amply demonstrate the administration's active role in blurring the legal faultlines along which justice had to be administered to these different social groups. Yet, often enough, it was not the judges alone, but the litigants themselves who were instrumental in perpetrating this complexity.. As the next example will show, litigants also instrumentalised cross-cultural appropriations to reflect on their legal status.

An entry dated 13 January 1770 in the registers of the minutes of the Council's decisions describes a case concerning an inheritance dispute among the members of a family of pariah Christians. The opening lines of the entry introduce the crux of the dispute and the litigants involved:

> *[T]he request presented at the Chaudrie Tribunal by Antique, attorney for Dominique, Georges and Antoine of Pariah caste dressed as* topas*, fraternal nephews, claiming to be legitimate heirs of the deceased [Michel] Dragam, a Pariah, holds that Marie André, a Pariah dressed as a* topassine*, daughter of Francisca Demonte [Dragam's daughter], Pariah dressed as a Malabar, is falsely claiming the succession of the said Dragam. [The request states that,] as a Pariah, she is subject to Malabar laws where women have no right to inherit when there are male relatives from the paternal line and that this case [should] be sent for adjudication to the Maganattars, judges for caste disputes, [and] then be decided by the Chaudrie Tribunal.*[66]

Besides giving us the main cause of dispute, these lines also bring to the fore another level of cultural appropriation that serves to highlight the shifting and flexible nature of the legal categories.. All members of Michel Dragam's family were Christians of the pariah caste. Equally important, all members except Francisca Demonte (i.e. Dragam's daughter) were dressed *à la topas*. In other words, these were Indians who had not only converted to Christianity, but had also adopted European dress like the *topas*, and, in doing so, had also claimed a different social identity. However, as the nephews' claim shows, their legal identity was still a matter of debate: notwithstanding the change in attire, the nephews requested that the dispute be settled according to Malabar laws. Thus, by dressing as *topas* and yet claiming for the jurisdiction of Malabar laws as pariah Christians, such actors further proliferated jurisdictional complexity and defied being categorized simply as pariah Christians or as *topas*.

The nephews' claim for the application of Malabar laws, as presented by Antique, evidently stemmed from the advantage these laws provided for men in matters of succes-

66 G. Diagou (ed.), Arrêts du Conseil Supérieur de Pondichéry, vol. 2 (13), pp. 174–78.

sion.[67] Like many other personal laws that discriminate(d) explicitly on the basis of sex, Malabar law prescribed that the estate of a deceased man passed on to his male descendants.[68] Indeed, in matters relating to inheritance, male members of the family frequently used this claim to prevent female relatives from inheriting, possessing, or disposing of any property independently of male control beyond that allocated to them as *caypencourou*.[69] Even in the absence of a direct male heir, as in this case, an indirect male heir rather than a direct female heir was the prime contender for the inheritance.[70] In fact, it was on this point, concerning collateral descendants that, compared to the Custom of Paris, Malabar laws provided a significant advantage to the nephews. Unlike Malabar laws, the Custom of Paris prescribed that, among the four kinds of successors, direct descendants took precedence over collateral descendants.[71] Thus, by staking a claim to Malabar laws, the nephews, as collateral descendants, hoped to and could exploit the gender bias in their favour and gain their uncle Dragam's inheritance.

Claude Sof, a European, husband and attorney to Marie André, presented several reasons why the nephews' claims should be dismissed. Firstly, they were contesting an issue that had already been settled almost twenty years earlier. The Chaudrie judge at that time, M. Bartélemy, had dismissed their claims and divided the inheritance between Francisca Demonte and Marie André, in accordance with Dragam's testament.[72] They now made the same request again because Michel Dragam's testament had recently been destroyed in a house fire. Secondly, Sof targeted the discrepancy created by the nephews' claim to Malabar laws and their *topas* identity expressed by the adoption of European dress:

67 The role of these earliest Indian pleaders or 'attorneys', predecessors of the nineteenth-century Indians, trained formally as lawyers, still remains to be mapped. For a study of Indian lawyers as transcultural agents in the nineteenth-century Anglo-Indian judiciary, see the contribution by Verena Stellar in this special issue.

68 J. Nair, Women and Law in Colonial India: A Social History, Bangalore 1996, p. 10. Indeed, as Nair points out, because personal laws are often considered to have a basis in religion, reforming them and redressing the explicit gender bias has been a long and hesitant enterprise.

69 Lazaro Modeliar vs Natchattiramamal, 20th March 1747, G. Diagou (ed.), Arrêts du Conseil Supérieur de Pondichéry, vol. 1 (13), pp. 178–181; Canagarayen and Cheganivasa vs Velavendren, 19th December 1766, Folder 233, Chaudrie Jugements; Sandaye vs Arlapean and others, 30th September 1774 in J.-C. Bonan, Jugements du tribunal de la Chaudrie (13), pp. 69–71. Nonetheless, there were exceptions to this practice; Poullé Mouttapoullé vs Gnanamoutamal, 20th February 1767, Folder 223, Chaudrie Jugements; Pogamalle vs Vinayagapoullé et Vedaguirypoullé, 2nd August 1774 in J.-C. Bonan, Jugements du tribunal de la Chaudrie (13), pp. 67– 68; Pragachen vs Canagapen, 2nd September 1774, no. 349, Folder 224, Chaudrie Jugements.

70 F.N. Laude, Manuel de droit Hindou (50), p. 120.

71 See the opening lines of the section on succession in Duplessis' treatise on the Custom of Paris, in C. Duplessis, Traités de Mr. Duplessis, ancien avocat au Parlement, sur la Coutume de Paris, Paris 1754, p. 191. Similarly, Bourjon's commentary on the succession laws in the Custom of Paris declares that 'the law summons collateral descendants only when there are no children ....' F. Bourjon, Le droit commun de la France et la Coutume de Paris réduits en principe, vol. 1, Paris 1770, p. 935.

72 G. Diagou (ed.), Arrêts du Conseil Supérieur, vol. 1 (13), p. 176. Given that Chaudrie judgments started to be registered only in 1766, the earlier verdict is not available in the Chaudrie registers. However, I have been able to confirm the existence of the judge, M Bartélemy. This was Louis Barthélemy, who had been in the Company's service since 1728. He served as a counsellor on the Provincial Council of Chandernagore from at least 1739 to 1742. He was a councillor at the Sovereign Council in Pondicherry between 1745 and 1759 and died in 1760. A. R. Pillai / H. Dodwell (ed.), The Diary of Ananda Ranga Pillai, from 1736 to 1761, vol. 8, Madras 1922, p. 27; G. Diagou (ed.), Arrêts du Conseil Supérieur, vol. 1 (13), pp. 60, 99, 139,324, 358.

Michel Dragam's nephews are falsely claiming pariah laws in their favour, for it is a custom among all European nations established in India that the said laws do not affect the people of the hat who are entirely subject to the laws of the Europeans under whose pavilion they reside, through privileges whose origins the petitioner [Claude Sof] does not know but which have passed into laws…[73]

In the absence of definite legislation regarding the administration of justice to *topas* according to French law – or perhaps in the face of historiography's inability to pinpoint its exact origin – Sof's argument is a rather accurate description of how French laws came to be applied to the *topas*. Judging *topas* according to European laws had originally been a custom in the European enclaves but had eventually acquired the force of law. At the origin of this custom lay cultural appropriation – the *topas*' adoption of French attire – which, over time, became legally relevant and thus brought a change in the administration of justice according to the basic tenet of legal pluralism in the French territories in India. In a way, this process was similar to that which eventually turned the practice of making testaments among Indians, appropriated from a foreign legal tradition, into positive law. That the source of both these customary practices that acquired the force of law were 'subjects from the local society' rather than the administration also effectively illustrates the idea of 'empowering interactions.'[74] The end result – that a section of the Indian population, the *topas*, came to be formally recognised as being under the jurisdiction of French law – is symptomatic of transculturality in the emerging French colonial state.

In the immediate context, Sof further pointed out that if the contrary were to be done – that is, if the present case were to be subject to the practices and judgments of the people of the turban (*les gens de toque*) – all the deeds that his parents-in-law and his wife had executed in accordance with French laws, which they had adopted to the exclusion of all other laws, risked being annulled. Indeed, this would reversely affect not only his own, but all hat-wearing families. Thus, Sof pointed out the repercussions not only for his spouse's family, but also those that would probably affect society at large, if this pariah Christian *topas* family were to be subject to Malabar laws.

As a rebuttal, Antique raised several objections to the very legitimacy of Sof's contesting the nephews' claims at the Council. First of all, he remarked that there was no legal basis for Sof to contest Dragam's nephews for his succession. Since Francisca Demonte was still alive, she alone could contest her cousins, Dragam's nephews, for Dragam's inheritance, whereas her daughter would be able to acquire her mother's inheritance only after

73 'Les dits neveux de Michel Dragam réclament mal à propos en leur faveur les lois des Paréas, étant de coutume parmi toutes les nations Européennes établies dans l'Inde que les dites lois ne touchent point les gens à chapeau qui sont soumis en tout, aux lois des Européens sous le pavillon des quels ils résident, par des privilèges dont le suppliant ignore l'origine mais qui sont passés en lois.' G. Diagou (ed.), Arrêts du Conseil Supérieur, vol. 1 (13), p. 176.

74 For an examination of custom as a source of law from below and, therefore, an important aspect of state-building from below in Europe, see R. Garré, The Dynamics of Law Formation in Italian Legal Science during the Early Modern Period: The Function of Custom, in: W. Blockmans / A. Holenstein / J. Mathieu (eds.), Empowering Interactions (7), pp. 91–100.

the latter's death. Having pointed out the legal technicalities to disqualify Sof's request at the Council, Antique brought forward a jurisdictional objection. He rightly stated that, as a dispute involving only Indians, this case fell under the jurisdiction of the Chaudrie and should therefore be judged and settled there before an appeal could be made to the Council. As to Sof's central argument for the application of French laws to decide this case, Antique replied:

> *[W]hat he [Claude Sof] says, that the hat or the turban decides the law that one should be subject to, is not a fixed axiom, especially for pariahs who, according to the circumstances, their fancy or necessity, sometimes use one and sometimes the other; that for them the freedom in dressing and eating essentially characterises their caste; that by admitting this axiom, one must also inevitably admit the other, that the skirt or the saree equally decides [the law], and that according to this Dragam's daughter, having never worn a skirt but, on the contrary, always a* saree*, was always subject to pariah law, according to which men inherit to the exclusion of women.*[75]

Thus, Antique pointed out the fallacy in Sof's claim for the application of French law to pariah Christians, and ended his petition with a brilliant stroke of 'lawyerly' logic that cleverly demonstrated that even by conceding the other side's line of argument, Dragam's nephews, and not Dragam's daughter, were his legitimate heirs. What is remarkable in Antique's argument is his description of the essential characteristics of the Pariah caste and its use to form the basis of his argument. Antique used this characteristic – the freedom of eating and dressing habits, the very quality at the root of pariahs' supposed impurity that situated them on the bottom rungs of the caste hierarchy while at the same time earning them the reputation of being licentious and the 'dregs of the society' by Europeans[76] – to support his claim for the application of Malabar laws. His reasoning was that, if such a norm, that is, 'the hat (*le chapeau*) or the turban (*la toque*) decides the law', were to be admitted for the pariahs, it would have dire legal consequences.[77]

75 '… que ce qu'il [Sof] avance en disant que le chapeau ou la toque décide quelle est la loi à laquelle on doit être soumis, n'est pas un axiome bien certain, surtout pour les Paréas qui suivant circonstances, leur caprice ou la nécessité, se servent tantôt de l'un tantôt de l'autre ; que parmi eux la liberté dans le vêtement et le manger, caractérise essentiellement leur caste ; qu'en admettant cet axiome il faut nécessairement admettre aussi cet autre que la jupe ou la pagne décide également pour les femmes et que suivant ce dernier, la fille de Dragam n'ayant jamais porté jupe mais au contraire toujours la pagne, elle a toujours été et est soumise à la Loi paréate, suivant laquelle les mâles héritent à l'exclusion des femelles.' G. Diagou (ed.), Arrêts du Conseil Supérieur, vol. 1 (13), pp. 177–78.

76 For example, in a letter dated 15 February 1710 to le Compte de Pontchartrain, *Secrétaire d'État à la Marine*, the Governor of Pondicherry observed that of all the *gentils* who had embraced Christianity, most were pariahs who were also the most licentious. As cited in P. Olagnier, Les Jésuites à Pondichéry (19), p. 18. Almost half a century later, the famous Pierre Sonnerat observed that most of the converts were 'the miserable dregs of society.' P. Sonnerat, Voyage aux Indes orientales et à la Chine, Paris 1782, vol. 1, pp. 194–95.

77 The distinction between the hat-wearers and the turban-wearers seems to have been a common feature of early modern Eurasia. In early modern Europe, the turban was predominantly associated with Muslims – hence, for example, the expression, 'donning the turban' became synonymous with converting to Islam in early modern England. See the section on 'turbans' in G. MacLean / N. Matar, Britain and the Islamic World, 1558–1713, Oxford 2011, chap. 6. In India, however, the hat/turban dichotomy symbolised the distinction between Europeans and Indians, Muslims or *gentils* alike. H. Yule / A. C. Burnell / W. Crooke, Hobson-Jobson (30), p. 935.

For example, if the same man were to appear in the court on two different occasions, wearing a hat and a turban respectively, he would be subject to French law in one case and Malabar law in the other. Furthermore, if the hat/turban binary distinction were to be admitted as the decisive factor for men, then the skirt/*saree* (*jupe/pagne*) distinction had to be admitted for women. From this point of view, Francisca Demonte , who had always worn a *saree*, was still under the jurisdiction of Malabar laws. And, as this law dictated that men inherited to the exclusion of women, Dragam's nephews would be his legitimate successors.

Evidently, like many litigations of this kind, material gain rather than ideological affinity lay at the source of each party's claim to have the issue resolved according to a different set of laws. If the case were decided in accordance with Malabar laws, the nephews stood to gain the inheritance. On the other hand, if the French laws were applied, then Dragam's daughter, Francisca Demonte and her offspring, Marie André, would continue to be in possession of Dragam's inheritance. Clearly, if the positions had been reversed, actors such as these would not have hesitated to take advantage of the alternate side of their transcultural status to claim a different set of laws.

Although this case is one of a kind, it nonetheless brings to the fore a general tendency among pariah Christians to adopt *topas* dress, thereby blurring the very distinction that set the *topas* apart from the rest of the Indian Christians. Antique did not entirely refute Sof's claim that *les gens à chapeau* were subject to French laws; rather, he argued that, for pariahs, this was not a fixed rule considering their indiscriminate use of hats and turbans. Evidence that Antique's impression of a tendency towards the indiscriminate use of headgear among pariahs, and possibly even among the Indian population at large, is provided not least by the French administration itself. A decree issued on 7 July 1826 made it illegal for 'Indians of both sexes, Christians, *maures*, *gentils*, and pariahs, to take on the costume of the *topas*'.[78] Although the particular context of this decree remains to be examined, it nonetheless illustrates another process of cultural appropriation and symbolises the nineteenth-century state's disparaging attitude towards it.

In the immediate context, however, the question remained: which law was applicable to pariah Christians dressed as *topas*? The conundrum before the judges was not just that of identifying the rightful inheritor, but, more importantly, the legal tradition according to which the rightful heir was to be determined. Should it be French or *Malabar* law? Should the verdict be based on the legal principle that underlay the administration of justice, or on a judicial norm that had emerged in and through Indo-European cultural interaction and was in direct contradiction to this very principle?

Like in the previous verdicts, the judges decided to choose a middle path and resolve the dispute through a settlement, rather than declare one party the rightful heir. They reinstated the status quo at the time of Dragam's death and ordered the inheritance to be divided in half between the nephews and the granddaughter. That it was Dragam's grand-

78 F. N. Laude, Manuel de Droit Hindou (50), pp. 319–20.

daughter Marie André and not his daughter Francisca Demonte who was declared the partial heir to his inheritance was the result of an inter-vivos donation by which Marie had become her mother's heir. For this reason, Antique's shrewd observation that French laws were not applicable to Francisca Demonte because she had always worn a *saree* was ultimately irrelevant. In issuing the new verdict, the administration revoked the previous verdict given nineteen years earlier. This litigation, therefore, also presents a case in point of Indian Christians' successful manipulation of the administrative principle of judging each caste according to its laws to paradoxically produce a verdict that was at odds with this very principle.

As is typical of this source material, however, the verdict does not elaborate on the exact process and specific concerns that guided the judges' decision. It makes no mention of any particular law emanating from any one set of laws that could be considered as a basis for the judges' decision to divide the property equally among the claimants. Nevertheless, the verdict was not just a settlement of the inheritance, but, in a way, also a settlement between the two legal systems pitted against one another in this dispute. By dividing the inheritance equally between the two parties on the basis of their claims to two different legal systems, the verdict, like the verdicts of the preceding cases, made concessions at once to Malabar laws and the Custom of Paris. A pragmatic compromise between a *saree* and a skirt and the different sets of laws they symbolised ruled the day.

4. Conclusion

The cases and the verdicts examined in this article illustrate the processes of appropriation that introduced transculturality in the social and legal spheres. Although in principle, legal pluralism, whereby the French and the Indians were under the jurisdiction of the Custom of Paris and Malabar laws respectively, this principle was time and again circumvented in the administration of justice in order to adapt it to the changing norms of local society. This was especially apparent in conflicts involving Indian Christians who, as by-products of Indo-French interaction, straddled the socio-legal categories of French and Indian. The appropriation of the testament as a legal tool by Indians, the *topas*' adoption of a European lifestyle and legal status, the adoption of *topas* attire and, by extension, European laws by pariah Christians, were processes of appropriation that effectively challenged the materialization of legal pluralism along the prescribed legal categories of 'French' and 'Indian'. For it was often, though not exclusively, with regards to these actors that legal disputes also became disputes about which law was applicable. Only a minute analysis, such as the one conducted in this article, reveals that the ensuing verdicts were compromises between two legal systems. Either because of the judges' active intervention or as a result of the claims made by the litigants themselves, such verdicts drew on elements of both the Custom of Paris and Malabar laws. This matter-of-fact compromise between legal traditions not only reflects the rather pragmatic

approach adopted by eighteenth century judges in settling familial disputes, but also laid the groundwork for the Indo-French jurisprudence of the nineteenth century.[79]

As mentioned in the beginning, this much-too-brief analysis of the administration of justice in eighteenth-century Pondicherry was also undertaken with the objective of assessing the relevance of the concept of transcultural statehood in a colonial context. Tracing transculturality in this sphere of governance – that is, by bringing to light such verdicts and the underlying processes that led to them – served to highlight one particular dimension of the transcultural nature of the emerging colonial state. At the root of the transculturality in the functioning of the early colonial state lay the selectiveness and inventiveness of subordinate groups in adopting practices of a dominant culture and using them to their own advantage. Equally important, the analysis illustrates how these appropriations came to have legal relevance over time and influenced judicial verdicts as well as legislation, thus highlighting the ability of individual and group actors to instrumentalise aspects of governance in order to influence it to respond to their needs and interests, in spite of the prevailing power asymmetries. The concept of transcultural statehood thus compels us to take into account the agency of both rulers and ruled, the processes of cultural interaction, and their eventual outcome on governance in order to develop a more nuanced picture of the colonial transition in India.

79 How, to what extent, and in what areas is, of course, a matter of further enquiry. J.-C. Bonnan, L'organisation Judiciaire (38), p. 549.