Introduction

Between 1852 and 1859, a British artist named George Frederic Watts painted a fresco of world lawgivers in the Great Hall of Lincoln's Inn in London. Watts's idea was to create a semicircle of religious and political figures who had helped create the world's great bodies of law. The diners of Lincoln's Inn – lawmakers of the present and future – would form the other half, closing the circle. Watts's fresco included Justinian, Confucius, Mohammed, Manu, Moses, and the authors of the Magna Carta. With them was a lesser known figure. The ancient Persian prophet Zarathustra sat in a patch of light, swathed in white cloth while leaning against a golden pillar (Figures I.1 and I.2).[1] Watts may have included the Persian prophet as an allusion to Raphael's famous Vatican fresco, *The School of Athens*, which also featured Zarathustra in white and holding a glittering globe. Equally, the prophet may have appeared as part of an all-inclusive survey of world religions. In the same way that one ridge of the Grand Canyon was named the "Zoroaster Temple" (using the Greek version of the prophet's name), Zarathustra's presence may have satisfied the Western comparativist's taste for the exotic.

Watts's inclusion of the figure could not have reflected a careful inquiry into the law-related aspects of the Zoroastrian religion. Had he consulted officials at the India Office circa 1850, he would have been told that Zoroastrianism lacked a real legal tradition. More precisely, colonial administrators would have said that the religion's followers in India, a population of Persian origin called the Parsis, seemed to have no knowledge of any religious law.[2] The fresco was painted at a time when English law governed Parsis in

[1] Warwick H. Draper, "The Watts Fresco in Lincoln's Inn," *The Burlington Magazine for Connoisseurs* 9:37 (1906), 8–15; Mark Ockleton, "A Hemicycle of Lawgivers by George Frederic Watts (1817–1904)," in *A Portrait of Lincoln's Inn*, ed. Angela Holdsworth (London: Third Millennium, 2007), 129.

[2] See Chapter 3.

FIGURE 1.1. G. F. Watts's "Justice; a Hemi-cycle of Lawgivers" at Lincoln's Inn. *Source:* Lincoln's Inn photograph. Reproduced with kind permission of the Masters of the Bench of the Honourable Society of Lincoln's Inn.

British India. In this way, Parsis differed from Hindus and Muslims, to whom the colonial courts applied Anglo-Hindu and -Islamic family law, known as personal law. In the words of one British lawyer arguing in court in 1839, "My Lord, *what is Parsi law?* Since I have been in Bombay, I have never been able to discover it; and I have never met any man who had . . . I think I may insist, that the Parsis have no law."[3]

Watts was probably familiar with Zarathustra through his friend Henry Thoby Prinseps, a retired East India Company official who had been the Persian secretary to government.[4] For a quarter century, Watts was a guest or lodger at Holland House, the home of Mr. and Mrs. Prinseps. The Kensington property was a favorite meeting place for artists and intellectuals in mid-century

[3] "I. Conversion of Two Parsis, and Prosecution of the Rev. John Wilson, D. D., on a Writ of *Habeas Corpus*, before the Supreme Court of Judicature at Bombay. Crown Side," *Oriental Christian Spectator* (June 1839), 255–6; cited in Jesse S. Palsetia, *The Parsis of India: Preservation of Identity in Bombay City* (Leiden: Brill, 2001), 118.

[4] Alexander J. Arbuthnot, "Prinsep, Henry Thoby (1792–1878)," in *Dictionary of National Biography*, ed. Sidney Lee (New York: Macmillan and Co., 1896), XLVI: 392–4.

FIGURE I.2. Enlargement of the prophet Zarathustra (in white) from upper right-hand side of Watts's fresco.
Source: Photograph by the author. Reproduced with kind permission of the Masters of the Bench of the Honourable Society of Lincoln's Inn.

London.[5] And although the Parsi legal tradition would have looked thin to most observers in the 1850s, the inclusion of Zarathustra on the fresco was uncannily prescient. Parsis would become some of the British Empire's greatest lawyers and judges. In the century following Watts's creation of the painting, a shifting coterie of Parsi law students dined beneath his fresco at Lincoln's Inn.[6] By the early twentieth century, the Parsi lawyer had become a familiar figure in Bombay and Rangoon, Colombo and Singapore, Aden and Zanzibar, and in London.[7] Soon, there were other signs of the Parsi legal tradition in the Great Hall. Hanging at right angles to the fresco was the crest of Parsi treatise writer and Privy Council judge Dinshah F. Mulla. It bore the words "Vohu Manah," a reference to the Zoroastrian concept of the good mind (meaning good purpose or thinking) in the ancient Persian language of Avestan. It also featured the winged *fravahar* figure (Pahl. *frawahr*), the unofficial symbol of Zoroastrianism (Figure I.3).

[5] Allen Staley, *The New Painting of the 1860s: Between the Pre-Raphaelites and the Aesthetic Movement* (New Haven, CT: Yale University Press, 2011), 261.

[6] The Lincoln's Inn admission registers include the names of approximately eighty Parsi students between 1864 and 1947. [*The Records of the Honorable Society of Lincoln's Inn. Vol. II: Admissions from AD 1800 to AD 1893 and Chapel Registers* (London: Lincoln's Inn, 1896); *Vol. III: Admissions from AD 1894 to AD 1956* (London: Lincoln's Inn, 1981).]

[7] For example, see "Parsi Receiver in London," *TI* (19 July 1911), 8; letter from P. B. Mehta (12–13 July 1937) in "File 3/29. Acts and Regulations: The Parsi Marriage and Divorce Ordinance" (30 June 1937–19 May 1939), 10 (IOR/R/20/B/44). See also Chapter 2 at note 201.

FIGURE 1.3. Crest of D. F. Mulla in the Great Hall of Lincoln's Inn.
Source: Photograph by the author. Reproduced with kind permission of the Masters of the Bench of the Honourable Society of Lincoln's Inn.

Study at the Inns of Court was an important pathway for the production of Anglicized elites from across the empire. Arguably, Parsi lawyers were exactly the type of population that Macaulay aspired to create in 1835 – a class South Asian "in blood and color, but English in taste, in opinions, in morals, and in intellect."[8] One could equally assume that the Parsis lost something of

[8] Thomas Babington Macaulay, "Minute on Indian Education," in *Archives of Empire. Vol. I: From the East India Company to the Suez Canal*, eds. Mia Carter with Barbara Harlow (Durham, NC: Duke University Press, 2003), 237. See John R. Hinnells, "Parsi Attitudes to Religious Pluralism," in *Modern Indian Responses to Religious Pluralism*, ed. Harold G. Coward (Albany: State University of New York Press, 1987), 205.

themselves in assimilating to the ways of the colonizer.[9] Writing on mimicry, Homi Bhabha (himself Parsi) suggests that what colonized mimickers retained was a psychological edge. There was satisfaction in Anglicizing to such a degree that the British were unsettled by it.[10] But there were other rewards, too, including collective institutional ones. In addition to the ironic smiles of colonized subjects who had mastered the colonizers' own game, Parsis gained the tools to de-Anglicize colonial law by working through it. And although a certain degree of Anglicization was a prerequisite for becoming a lawyer in the colonies, fluency in English and a legal education did not necessarily bolster loyalty to British rule. The colonial administration learned this lesson in India through nationalist leaders like Gandhi, Tilak, Jinnah, and Nehru. All were barristers trained at the Inns of Court.[11] Parsi lawyers, too, did not forget their cultural interests simply because they were speaking English and wearing barristers' gowns. On the contrary, their mastery of the form of Anglo legalism enabled them to evacuate its contents.

Scholars like Jerold Auerbach and Mari Matsuda have suggested that adopting common-law legalism eroded the cultural and religious integrity of minorities like Jews and indigenous Hawaiians in the United States.[12] The Parsis were an example to the contrary. Parsi lobbyists, legislators, lawyers, judges, jurists, and litigants de-Anglicized the law that controlled them *by sinking deep into the colonial legal system itself*. Not only did they work in the colonial courts, they also sued each other there. Litigation between Parsis constituted roughly a third of reported lawsuits involving Parsis. It was arguably the most striking type: there was something counterintuitive about taking intragroup disputes to the state courts. Inevitably, these lawsuits produced heartbreak and social loss. But although the microprocess may have been destructive at the personal level, it was part of a macroprocess that was collectively productive: the acquisition of skill in the colonizers' law ways. Through the steady consumption of colonial law, the Parsis built up a knowledge of how legislation and litigation worked. This legal know-how enabled them to create pockets of autonomy right at the heart of state legal institutions. By the end of British rule in 1947, Parsi law consisted of distinctive legal institutions and substantive law, all of which came about

[9] See Tanya Luhrmann, *The Good Parsi: The Fate of a Colonial Elite in a Postcolonial Society* (Cambridge, MA: Harvard University Press, 1996), 1–2, 110–16; Dinyar Patel, "Gandhi and the Parsis: A Minority Community's Involvement in the Constructive Program for Swaraj," 4, 6–18, 31, 33 (unpublished paper).

[10] Homi Bhabha, *The Location of Culture* (New York: Routledge, 1994), 85–92.

[11] See Mitra Sharafi, "A New History of Colonial Lawyering: Likhovski and Legal Identities in the British Empire," *LSI* 32:4 (2007), 1060. The same phenomenon occurred elsewhere in the empire. See Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill: University of North Carolina Press, 2006), 106.

[12] Jerold Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (Bloomington: Indiana University Press, 1990); Mari J. Matsuda, "Law and Culture in the District Court of Honolulu, 1844–1845: A Case Study of the Rise of Legal Consciousness," *Am. J. Leg. Hist.* 32 (1988), 16–41.

through Parsi-led initiatives or new professional opportunities exploited by Parsis. The Parsi world of law included special marriage and inheritance legislation applicable to Parsis alone; a jury system of co-religionists for matrimonial cases, a privilege granted to no other population in British India; and a corps of Parsi lawyers and judges who came to manage much of the litigation among Parsis in the colonial courts. In short, the Parsis worked from within and through the colonial state, rather than from outside or against it.

Here was a community unusually invested in colonial law. Through the creation of legislation and litigation in the fields of marriage, inheritance, religious trusts, and libel, Parsi values made their imprint on law. Factions vying for the power to represent their community promoted competing models of Parsi identity. The vision that ultimately captured the power of state law entailed not only a particular picture of the Parsi family, but also a notion of Persianness legitimated through eugenics-inspired claims to racial purity. Law also circled back to shape Parsi identity: being legalistic and litigious became a stereotype of the colonial Parsi. Thus, influence between law and identity flowed in both directions.

This was the Parsi story in a nutshell. The longer version unfolded through three overlapping revelations. The first emerged in answer to the question with which my research began: why did Parsis sue each other so frequently in the colonial courts? The Parsi population of India hovered around 100,000 in the early twentieth century and was most concentrated in Bombay.[13] Even there, they were only 6 percent of the city's population.[14] But they were almost a fifth of the parties in the reported case law.[15] Equally important was the fact that suits between Parsis constituted 5 percent of all reported cases, a rate much higher than one would expect, given their small population.[16] The phenomenon is only interesting if legal pluralism is taken as a basic condition of social life. *Legal pluralism* is the idea that law does not emanate solely from the state, but that a multiplicity of normative orders – of the clan, tribe, religious or ethnic group, club, school, profession, commercial community, and corporation – produce their own rules, enforcement mechanisms, and bodies for dispute resolution among group members.[17] It is only when these non-state legal orders cannot resolve a conflict that most people turn to state law. The Parsis, however, turned to the courts rather than to their own religious or community authorities with striking frequency in disputes among themselves, particularly in religious

[13] According to the 1901 census, there were 94,190 Parsis in India. By 1941, the census total was 114,890. [Sapur Faredun Desai, *History of the Bombay Parsi Punchayet, 1860–1960* (Bombay: Trustees of the Bombay Parsi Panchayat, [1977]), 235.]

[14] See Chapter 1 at note 8.

[15] See Chapter 1 at note 9.

[16] See Chapter 1 at 40.

[17] See Sally Engle Merry, "Legal Pluralism," *LSR* 2 (1988), 869–96; Mitra Sharafi, "Justice in Many Rooms since Galanter: De-romanticizing Legal Pluralism through the Cultural Defense," *Law Cont. Prob.* 71 (2008), 139–46.

conflicts. Why so? The phenomenon was especially perplexing in South Asia, where community boundaries were tightly sealed and adjudication by religious authorities or *panchayats* (caste or community councils, Guj. *pañcayāt*) was well developed.[18]

The question became even more intriguing because the Parsis were living in a colonized society, British India. Arguably, the conditions of colonial rule made some populations cling to their own internal dispute resolution processes.[19] The Parsis prospered under colonialism; they acted as mercantile middlemen between Indian and British traders during the East India Company's rule and migrated from the Gujarati-speaking hinterland to the new city of Bombay as it morphed from a fishing village into the subcontinent's commercial capital.[20] Could the relative Anglicization of the Parsis have removed any qualms they may have had about taking their intragroup disputes to an outside forum like the colonial courts? There were other similarly placed groups in western India at the time, but the Bohras, Khojas, Marwaris, Jews, and Jains did not exhibit the same litigation pattern as the Parsis.[21]

Taking a step back from the courts brought a second realization. Even before litigation between Parsis began jumping out of every volume of the Bombay law reports, Parsis were organizing themselves into lobby groups. In the 1850s–60s and again in the 1920s–30s, bodies like the Parsi Law Association and the Parsi Central Association drafted legislation that would govern marriage and inheritance among Parsis. They aspired to create a body of personal law for Parsis – community-specific laws governing marriage and inheritance – that would put them on an equal footing with Hindus and Muslims, to whom Anglo-Hindu and -Islamic law had applied since the early period of Company rule. They pushed to have these bills made law, and their campaigns usually succeeded. The reconfiguration of law around a selectively blended amalgam of customary

[18] For example, see Amrita Shodhan, *A Question of Community: Religious Groups and Colonial Law* (Calcutta: Samya, 2001), 29–33.

[19] See, for instance, Werner Menski, "Jaina Law as an Unofficial Legal System," in *Studies in Jaina History and Culture: Disputes and Dialogues*, ed. Peter Flügel (London: Routledge, 2006), 428–31.

[20] See Nile Green, *Bombay Islam: The Religious Economy of the Western Indian Ocean, 1840–1915* (Cambridge: Cambridge University Press, 2011), 5.

[21] Ibid. See also Chapter 1 at note 233. There was a handful of intragroup cases among the Jews and Khojas, but they did not compare to the much larger volume of intragroup suits among Parsis. For a sample, see *Advocate General of Bombay, at the relation of Arran Jacob Awaskar and others v. Davi Haim Devaker and two others* ILR 11 Bom. 185 (1887); *Haji Bibi v. His Highness Sir Sultan Mahomed Shah, the Aga Khan* 11 Bom. LR 409 (1909). See also Teena Purohit, *The Aga Khan Case: Religion and Law in Colonial India* (Cambridge, MA: Harvard University Press, 2012); J. C. Masselos, "The Khojas of Bombay: the defining of formal membership criteria during the nineteenth century," in *Caste and Social Stratification among the Muslims*, ed. Imtiaz Ahmad (Delhi: Manohar, 1973), 1–19; Shodhan, *Question*, 82–116. On intragroup litigation among Jains, contrast Menski, "Jaina Law," with John E. Cort, "Jain Identity and the Public Sphere in Nineteenth-Century India," in *Multiplicity and Monoliths: Religious Interactions in India, 18th–20th Centuries*, eds. Vasudha Dalmia and Martin Fuchs (Delhi: Oxford University Press, in press).

norms and aspirational visions of community life affected everything from the privileges of patriarchs to the intergenerational distribution of wealth. It reflected a readiness to connect law with Parsi social life. Even in a colonial world where political power was anything but representative, the Parsi affinity for colonial legalism reached into legislative processes. Indeed, the absence of representative democracy may have helped. It was by no means clear that minorities fared better under majoritarianism than under colonial rule, particularly when their elites enjoyed close relations with the colonizers.

Another step back revealed a third insight. There was an important account to be written of Parsis in the legal profession. Like Jews in the German-speaking world of the 1930s, Parsis populated the colonial legal professions of western India at disproportionately high rates. In the early twentieth century, between a third and half of Bombay's lawyers and a sixth of its High Court judges were Parsi, even though Parsis constituted just 6 percent of the city's population.[22] Even before the upper ranks of the legal profession were opened up to South Asians from the 1860s on, Parsis were there – as lower ranking legal agents or *vakils* (Pers. *vakīl*) and officials in the colonial courts.[23] These key figures led the earliest efforts to draft legislation for the Parsis and lobbied for its passage. They were also some of the first to send their sons to London to become barristers. These sons returned to Bombay and became advocates in the courts. Eventually, some Parsi lawyers became judges, not only at the Bombay High Court, the highest court in western India, but even in the Judicial Committee of the Privy Council, the final court of appeal for the British Empire. Parsis were also central players in the production of legal texts. They authored treatises on British Indian law and edited law reports and journals, the tools that knitted the far corners of the Anglosphere into an empire of common law.

Together, these pieces of the Parsi law picture – litigation, legislation, and the legal profession – created a rich and fascinating portrait of a minority community that internalized colonial legalism to an extreme degree. The extent to which Parsis turned to the colonial legal system allowed them to make the methods of state law their own. This was particularly so in Bombay, where the Parsi population was concentrated. By the early twentieth century, it was common enough for Parsi solicitors and advocates to represent Parsi litigants suing each other before Parsi judges, all in the mainstream courts of Bombay.[24] These judges were often applying Parsi-drafted legislation or case law from earlier suits between Parsi litigants. The phenomenon of Parsi legalism was an unusual instance of both colonized and minority legal culture. Whereas many colonized and minority populations attempted to protect themselves by avoiding

[22] See Chapter 2 at notes 70 and 169.
[23] On *vakils*, see J. D. M. Derrett, "The Administration of Hindu Law by the British," *CSSH* 4:1 (1961), 23 at note 42 and accompanying text.
[24] See Chapter 6 at note 62.

interaction with the state, the Parsis did the opposite.[25] Simply by creating the possibility of deciding intragroup disputes in court, the colonial state interfered in South Asian life, altering the power dynamics within families and communities in fundamental ways. The Parsi approach gave a twist to the all-encompassing logic of colonial law. Even within the constraints of Anglo legalism, it was possible to protect community interests to a significant degree by embracing the methods of colonial law and infiltrating its institutions.

LEGAL HISTORY, SOUTH ASIA, AND THE BRITISH EMPIRE

These three revelations about Parsi legal history mirror three areas of research that have remained relatively discrete in South Asian legal history: the history of case law, of legislation, and of the legal profession.[26] In contrast to Anglo-American legal history with its heavy focus on case law, the history of law in South Asia has been dominated by studies of legislation.[27] As the legacy of J. D. M. Derrett has faded, case law has become the neglected stepchild in South Asian legal history.[28] The phenomenon reflects the bifurcated structure of the colonial archive. Records pertaining to the executive and legislative branches of the state are housed in state archives. Comprehensive bodies of court records remain in the law courts. Most historians of South Asia rely on state archives for their staple diet of unpublished materials. These repositories contain the best documentation of the life cycle of bills as they became statutes. But state archives are

[25] For example, see Menski, "Jaina Law"; Harold Dick, "Cultural Chasm: 'Mennonite' Lawyers in Western Canada 1900–1939," in *Lawyers and Vampires: Cultural Histories of Legal Professions*, eds. W. Wesley Pue and David Sugarman (Oxford: Hart, 2003), 329–66. See also Werner F. Menski, "Muslim Law in Britain," *JAAS* 62 (2001), 127–63; Latif Taş, "Kurds in the UK: Legal Pluralism and Alternative Dispute Resolution," PhD dissertation (Law), Queen Mary, University of London, 2012; Alvin Esau, "Mennonites and Litigation," unpublished paper (accessed on 8 January 2008): http://www.umanitoba.ca/law/Courses/esau/litigation/mennolitigation.htm.

[26] For a survey of the field until 1990, see Michael R. Anderson, "Classifications and Coercions: Themes in South Asian Legal Studies in the 1980s," *SAR* 10:2 (1990), 158–77.

[27] See R. H. Helmholz and Thomas A. Green, eds., *Juries, Libel and Justice: The Role of English Juries in Seventeenth- and Eighteenth-Century Trials for Libel and Slander: Papers read at a Clark Library Seminar, 28 Feb. 1981* (Los Angeles: William Andrews Clark Memorial Library, 1984), v; Mitra Sharafi, "The Semi-Autonomous Judge in Colonial India: Chivalric Imperialism meets Anglo-Islamic Dower and Divorce Law," *IESHR* 46:1 (2009), 59 at note 7; Rochona Majumdar, *Marriage and Modernity: Family Values in Colonial Bengal* (Durham, NC: Duke University Press, 2009), 168–237. For work that is explicit in its legislative focus, see Perveez Mody, "Love and the Law: Love-Marriage in Delhi," *MAS* 36:1 (2002), 223–56; Elizabeth Kolsky, "Codification and the Rule of Colonial Difference: Criminal Procedure in British India," *LHR* 23:3 (2005), 631–83.

[28] See especially J. D. M. Derrett, *Religion, Law and the State in India* (Delhi: Oxford University Press, 1999). For exceptions, see Rachel Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights* (Cambridge: Cambridge University Press, 2012); Ashwini Tambe, *Codes of Misconduct: Regulating Prostitution in Law Colonial Bombay* (Minneapolis: University of Minnesota Press, 2009), 79–99; references in Sharafi, "Semi-Autonomous Judge," 59 at note 6.

thin on case law, holding the records of only a tiny fraction of all the cases heard. With few exceptions, these archives only include records of lawsuits that had special relevance to the state – whether because the government was a party to the suit, because the government was approached with reference to a case, or because a case had important political ramifications. To get at case law in all its archival richness, historians of South Asia must look beyond state archives. A galaxy of published case law exists in the libraries of law faculties, the Inns of Court, law firms, and courts. Even more precious are the unpublished case records and judgment notebooks stored in current-day courts themselves. These records are only rarely replicated in state archives and are generally absent from South Asian legal histories.[29] Even the towering figure J. D. M. Derrett failed to use unpublished case records, instead making published law reports the building blocks for his portraits of case law.[30]

Histories of the British Empire often fall prey to what may be called the "codification fallacy" – the idea that where there was no legislation, there was no state law governing a domain of social life.[31] In fact, courts decided many cases on subjects for which legislation was never passed. Their rulings could be just as binding and invasive as statutes would have been. Through the process of reasoning by analogy, lawyers and judges applied principles from cases on related issues – often from jurisdictions across the British Empire.[32] Case law came *before* legislation and *in its absence*. It also came *after* legislation. On occasion, colonial courts pulled against the spirit of a statute, pretending to apply provisions of a colonial statute while quietly unraveling the work of legislators.[33] Yet scholars with a blind spot for the courts imply that areas of social life ungoverned by statute were somehow shielded from interference by the state. In short, case law and its archives deserve a greater role in histories of the British Empire and South Asia. Accordingly, this account of Parsi legal history marries legislation with case law, combining legislative papers from state archives with case records and judgment notebooks from the Judicial Committee of the Privy Council, Bombay High Court, and Parsi Chief Matrimonial Court of Bombay, all of which continue to function as courts today.

[29] For an exception, see Arjun Appadurai, *Worship and Conflict under Colonial Rule: A South Indian Case* (Cambridge: Cambridge University Press, 1981), 176–7 at note 41. On locating and using records at Indian courts, see Mitra Sharafi, "Research Guide to Case Law" (accessed on 7 April 2013), available at http://hosted.law.wisc.edu/wordpress/sharafi/research-guide-to-colonial-south-asian-case-law/.

[30] See Derrett, *Religion*.

[31] For example, see Nair, 180–1; Shodhan, *Question*, 73–4; Jon E. Wilson, "Anxieties of Distance: Codification in Early Colonial Bengal," in *An Intellectual History for India*, ed. Shruti Kapila (Cambridge: Cambridge University Press, 2010), 15–16. See also Elsa Goveia, *The West Indian Slave Laws of the Eighteenth Century* (Barbados: Caribbean Universities Press, 1970), 30.

[32] See Mitra Sharafi, "Bella's Case: Parsi Identity and the Law in Colonial Rangoon, Bombay and London, 1887–1925" (PhD Dissertation, Princeton University, 2006), 355–95.

[33] See Sharafi, "Semi-Autonomous Judge."