Introduction

Colonial Law in India and the Victorian Imagination reads works of fiction from the nineteenth century alongside three legal cases heard before the Judicial Committee of the Privy Council (henceforth the Privy Council or JCPC), which was the highest court of appeal for colonies within the British Empire. By pairing legal judgments with novels by prominent Victorian authors such as Charles Dickens, Philip Meadows Taylor, Wilkie Collins, and George Eliot, I show how crosscurrents between literature and the law shaped, and were shaped by, the broader ideals of imperial expansionism during the nineteenth century. Rather than thinking of the legal and literary realms as distinct, I read the judicial opinions as instances of narrative that share many of the same tropes and strategies typical to the nineteenth-century novel. The legal cases in the study are summarized in *Moore's Indian Appeals*, a fourteen-volume catalog of appeals from Indian courts to the Privy Council from 1836 to 1872. The written summaries of the cases, consumed as texts, were the main avenue through which an English audience could become acquainted with legal disputes in India. And, as is clear from my readings of the judicial opinions, the Privy Council used modes of narrativity (to organize temporality, character, plot, etc.) that were also commonplace in Victorian literature. Reading the legal texts as literature allows us to explore the division between reality and fiction, and to look at the ways in which legal opinions created norms that intersected, often unpredictably, with other forms of cultural representation. As this book demonstrates, reading the archives of the JCPC and the Victorian novel together opens up a series of questions. Does fiction shape materiality in ways that are similar to how materiality shapes fiction? Does reading a text as fiction create different strategies and avenues of interpretation? Is what we think of as reality possible outside of the turns of imagination that we recognize in fiction? These are some of the questions that motivate this study and which *Colonial Law in India and the Victorian Imagination* seeks to answer.

By reading these colonial legal opinions in a study of nineteenth-century literature and culture, I foreground both the narrativity of the law and the disciplinary function of literature. Like literature, the law takes shape at the intersection of representation, narrative, and claims to truth and reality. And as in the broader cultural turns envisioned in literature, the law provides a critical index of the imaginative possibilities available to subjects under its jurisdiction. In particular, by looking at the archive of the JCPC, this study examines how colonial legal appeals from India resonated with, reflected, shaped, reframed, and even obscured the ideological questions raised in the nineteenth-century novel. While *Colonial Law in India and the Victorian Imagination* contributes to a broader discussion of law and literature, its primary focus is on how the specific archive of the Privy Council appeals relates to these Victorian novels. One of the main arguments of the book is that the opinions of the JCPC not only reveal critical intersections between the law and literature but also enliven new interpretations of canonical nineteenth-century novels. As its title indicates, its real interest is in the ways that these realms work together to shape the broader cultural imagination of both India and England. In other words, reading the novels alongside these colonial judicial opinions illuminates critical insights about the Victorian imagination in both the texts and contexts of the novels and legal cases that I discuss.

The Privy Council

I begin with the observation that similar historical forces and cultural anxieties attending the rise of British imperialism not only produced the nineteenth-century novel but also shaped the narrative practices of the JCPC.[1] In this regard, I read colonial law as part of a larger network of narrative practices, developing alongside the literary form of the novel, which furthered a particular notion of English selfhood and sovereignty.[2] The reconstitution of the JCPC in England in 1833 was central to the evolving performative nature of British sovereignty, both at home and in the colonies. A popular narrative that was often recounted by Privy Counselor Lord Haldane involved an Englishman who purportedly came upon a tribal sacrifice in India. When the Englishman enquired about the god to whom the sacrifice was being made, the worshipper replied that he didn't know much about the god, but that its name was the JCPC and it had intervened with the government and restored their lands to the tribe.[3] The story is suggestive of both its mythical, or literary, quality and the absolute authority that the Privy Council sought to invoke.

As I discuss in detail in Chapters 3 and 4, over the period between the 1830s and the 1870s, which forms the historical backdrop for all of the legal cases I consider in this volume, Britain was embracing parliamentary democracy at home, while the Government of India, and later the Crown, was implementing principles of absolute sovereignty abroad. This reverse trajectory for domestic and colonial state forms and governmentality began in the seventeenth century and continued through the early twentieth century.

In Britain, though, the path to national unity was long and brutal. Nevertheless, the deposing of Charles I, the Interregnum, and the bitter economic and sectarian strife that characterized the beginnings of a united Britain in the seventeenth century, produced valuable lessons for the expansion of the empire in other parts of the world. As Linda Colley observes, after 1707, the British "came to define themselves as a single people not because of any political or cultural consensus at home, but rather in reaction to the Other beyond their shores."[4] The same types of conflicts that threatened British unity in the seventeenth century were made useful in the scramble to secure British colonies in the eighteenth and nineteenth centuries.[5] Sudipta Sen brings this history of British state formation to bear on Indian colonial expansion. "Along with the concerns of profit and investment for corporations and spoils of trade and war overseas for individuals," Sen observes, "colonial wars were certainly being projected, if not fought, as national wars. . . India as an arena of struggle for colonial possession provided an equally significant imperial *and* patriotic arena for the realization of a Greater Britain."[6] Turning back to a past before the period of internal strife helped craft a narrative of unity and progress within the domestic context. If in the British literary arena the medieval romance was a source of influence for the nineteenth-century novel, colonial law also looked to the Middle Ages for inspiration in constituting new modes of governance.[7]

A holdover from earlier legal formations, the Privy Council originates in the medieval Curia Regis, or royal court. Following the Norman Conquest, the Privy Council was established as a group of advisors to the monarch to enable the exercise of royal prerogative. During the fifteenth and sixteenth centuries, the Privy Council occupied an important position in British judicial and administrative governance. For example, the monarch, in consultation with the Privy Council, was permitted to enact laws, inflict punishment (with the exception of death), and hear appeals. In the wake of the English Civil War at the end of the seventeenth century, however, the Privy Council's jurisdiction over England was abolished and the exercise of royal prerogative seriously curtailed.

Yet, the Privy Council's role in the colonies follows a different trajectory. Models of absolute sovereignty that were decisively rejected in England in the seventeenth century took on a productive afterlife through the management of judicial appeals from the colonies in the eighteenth and nineteenth centuries. While the Privy Council ceased to adjudicate most legal matters in England, by the early eighteenth century the Council decided all judicial appeals from British overseas territories.[8] Although initially the jurisdiction of the colonial courts, including the Privy Council, was limited to British subjects and Indians residing within the presidencies of Bombay, Calcutta, and Madras, over the course of the eighteenth and nineteenth centuries, colonial expansion extended its reach. A statute passed in 1726 provided for appeals from the colonial Mayor's Court within the presidencies to the governor-in-council and then to the King's Privy Council. This change in appellate jurisdiction brought Indian colonial courts into alignment (though unevenly) with English law and systems of justice.[9] From this point forward, civil matters in the presidencies in excess of a particular sum were eligible for appeal to the Privy Council.[10]

In 1772, during the British and Mughal era, Warren Hastings, then governor general of Bengal, established in Calcutta the *Sadr Diwani Adalat* (civil and revenue court) and the *Sadr Nizamat Adalat* (criminal court), which served as the colonial civil and criminal high courts.[11] He also replaced Persian with English as the language of the courts. In practice, the *adalats* served to align local laws with colonial ideologies, instituting pandits and muftis (Hindu and Muslim legal practitioners) on the one hand, but subordinating their authority to Orientalist interpretations of scriptures on the other.[12] While nominally endeavoring to preserve local Hindu and Muslim judicial practices, colonial law often worked in practice to invent tradition rather than to accommodate it.[13]

As the empire expanded, the volume of cases heard by the Privy Council grew, and in the nineteenth century the jurisdiction of the JCPC was established statutorily.[14] The Judicial Committee Act of 1833 outlined the rules governing it as a final court of appeal for the colonies.[15] Also in 1833, the Government of India Act sought to normativize the terrain relating to Indian criminal law by appointing a law member to oversee the development of a uniform penal code. Thomas Babington Macaulay was the first law member, and the main author of the Indian Penal Code, which ultimately came into force in 1860. Both Acts worked to bring colonial law increasingly into the fold of English legal norms, one by exporting

English legal principles abroad, and the other by importing colonial legal disputes for resolution in England. At this point a civil code was also considered, but was ultimately rejected.

As the court of final appeals for the colonies, during the nineteenth century the JCPC served a parallel function to the House of Lords for English appeals. In his speech before the Cambridge Law Society in 1938, Sir George Rankin raised the question of this discrepancy between the domestic and international contexts. "How comes it that for these islands jurisdiction in an appeal became vested in one only of the two Houses of Parliament, and why in Parliament at all?" Rankin asked.[16] And relatedly, he also wondered, "How is it that to the Dominions overseas the highest judicial determination comes in the form of an Order in Council, the very voice of executive authority?" These questions, Rankin speculated, "will press strongly for an answer."[17] Throughout the nineteenth century, however, the JCPC's absolutism remained occluded by its apparent reliance on Indian custom and religion in its deliberations.

The Heteroglossia of Colonial Law

Continuing the tradition of the local colonial courts, the JCPC adjudicated cases based on indigenous laws. This created the odd situation in which British judges in London, who were often largely ignorant of the legal traditions under which they were operating, were attempting to apply Hindu or Muslim law, for example, to cases originating from India. Early colonial law was in this sense as thoroughly heteroglossic as the novel in Mikhail Bakhtin's analysis of it. As Lauren Benton, Mitra Sharafi, Rohit De, and others have shown, the application of Indian law by the Privy Council judges was "variegated" and uneven.[18] Yet, just as Bakhtin describes the novel's tendency to draw heteroglossic elements into alignment with an overarching narrative, colonial legal heteroglossia afforded the Privy Council the opportunity to shape the story of the subjects it legislated over while at the same time appearing neutral and objective. A 1917 article in *The Canadian Law Times* praised the Privy Council for its cultural objectivity:

> It is by thus divesting itself of its own particular brand of *Kultur* that the Privy Council successfully interprets the multifarious varieties of law – Hindu, Mahomedan, Canadian-French, Roman-Dutch, and English common law transmuted by the statutes of scores of local legislatures – with which it has to deal; and its practice is an education in the elements of empire.[19]

In this manner, the Privy Council was celebrated for its capacity to convert the heteroglossia of local laws into a coherent narrative of legal rationality. Indeed, as the recurrent themes across the various cases discussed in this volume indicate, JCPC opinions often drew on stock narratives about Britain's colonial populations.[20]

Consequently, under the rubric of opening itself to colonial difference, the law, through the appeals process, reworked native forms of sovereignty into colonialist ones. The paradox between the rhetorical construction of the law as accommodationist and its despotic material practice is a definitive, and by now well-known, feature of British colonial rule in India.[21] One of the foundational points that Radhika Singha makes in *A Despotism of Law* is that the colonial legal system represented itself as embodying a direct relationship to the sovereign on the one hand, and the colonial subject on the other. Despite the unwieldy and varied reality of the legal system, the narrative crafted was one of cohesion and hierarchy. Singha shows how across a range of social issues the narrative of the law sought to bring cumbersome, and implicitly dangerous, Indian practices under the rational "rule of law." In the paradigmatic example of thuggee, which inspired the Criminal Tribes Act of 1871, English fictions about hereditary Indian criminality resulted in material laws.

Nevertheless, like the heteroglossic novel, colonial jurisprudence was neither univocal nor uniform. It varied across history and over different regional and religious contexts. At times, especially over the course of the appeals process, as the cases discussed in this volume indicate, British colonial jurisprudence even worked in alliance with Indian assertions of sovereignty. Lauren Benton, Mitra Sharafi, and others have shown that the pluralism of colonial law offered the occasion for litigants to "forum shop" for the most advantageous venue in which to present their cases. Not only did litigants shop for different courts in which to argue their cases, but, as Elizabeth Kolsky has demonstrated, different categories of subjects were acted upon differently under the law. In short, it is important to state that from early Company-administered courts to the apex of imperial law, there never existed a fully coherent and intentional legal master plan.

Yet, as Jane Burbank and Frederick Cooper argue, jurisdictional complexity and multiplicity did not necessarily undermine legal cohesion. Burbank and Cooper show that "even in situations of local empowerment, obstructionism, and self-serving interpretation – all common phenomena – an underlying assumption for most people involved was that the emperor (the king, the queen, the sultan, etc.) was the head of state and responsible for its provision of legal governance."[22] The "verticality" that "imbued

even the controversies over imperial law and its potential" is inescapable, even if the narrative generated by the law was not univocal.[23] Dating back to its medieval origins, the Privy Council reflected the notion that "The King is the fountain of all justice throughout his Dominions, and exercises jurisdiction in his Council, which act in an advisory capacity to the Crown."[24] The absolute sovereignty of the king was mirrored in the sovereignty of the Privy Council, and this model continued to inflect the administration of justice in the colonial era.

As Lauren Benton and Richard Ross point out, historians "have noted a long-nineteenth-century turn away from jumbled jurisdictions to the imagination of a more hierarchical and streamlined legal administrative order."[25] While iterations of colonial law were not necessarily cohesive, over time increasingly vertical pronouncements worked to create and perpetuate ideological norms. The narrative of colonial jurisprudence thus reflects the ways in which, at least in popular imagination (both British and Indian), the law came into increasing alignment with a more vertical administration of justice.

Making Law

The Privy Council was central to this project of streamlining colonial jurisprudence by harnessing and shaping the narrative from above rather than evaluating evidence and testimony on the ground. As is common in appeals processes, in deciding its opinions the Privy Council relied on narratives about cases (provided by lawyers, case records, and law reports from earlier rulings) rather than on direct evidence or witness testimony. But, in addition to filtering the narrative representation through the voice of attorneys and lower court judges, the judgment in a Privy Council appeal during the colonial era, as Mitra Sharafi notes, was univocal, with no dissenting opinions allowed.[26] The JCPC, Rohit De explains, "was premised on the fiction that its judgment was advice to the King" and therefore, "they could not offer divided counsel."[27] The immense heteroglossia of colonial law, then, was rendered at least partially monologic through the judicial opinion of the Privy Council.[28] The univocal nature of the opinion, and the analogy with counsel to the king, further highlight the absolutism of the JCPC in particular. The tension between the heteroglossic nature of the law on the one hand and the monologic judicial opinion on the other was not unique to the JCPC or the colonial context, but it was heightened by the diversity of legal terrains and the externally imposed sovereignty of the judgment.

Writing about appellate judicial opinions as a literary genre, Robert A. Ferguson observes that they are "the most creative and generally read literary form in the law."[29] Like Victorian novels, legal opinions were produced in relation to the larger historical, political, and cultural context from which they arose. Unlike their literary counterparts, however, legal opinions also immediately shaped materiality. The legal opinion, then, bears an interesting relationship to fiction, insofar as it is an utterance that is both representational and real.[30]

In particular, Ferguson examines the question of voice and the monologic quality that the judicial opinion seeks to project: "the speaking judge in the act of judgment and after is profoundly monologic in voice and ideological thrust."[31] As Ferguson observes, the judicial opinion is monologic, but not purely personal. Instead, sifting through the multiple and often contradictory perspectives in the courtroom, "the judicial voice works to appropriate all other voices into its own monologue. The goal of judgment is to subsume difference in an act of explanation and a moment of decision."[32] Ferguson further draws a connection between the monologic tone and voice of the legal opinion and the overarching monologism of the law's ideology as a framework within which the legal opinion is always situated.

The paradoxical nature of the judicial opinion, then, is that it must be both entirely monologic and sovereign in its pronouncement yet at the same time "appear as if forced to its inevitable conclusion by the logic of the situation and the duties of office, which together eliminate all thought of an unfettered hand."[33] "Free from direct interference," Ferguson explains, "the monologic voice nonetheless assumes a larger persona that is enmeshed within the social machinery of decision-making. The voice speaks alone, but the persona behind it accepts and moves on a stage of perceived boundaries, compelled narratives, and inevitable decisions."[34] As Ferguson shows, even though the judge's monologism is absolute in a legal opinion, the encompassing umbrella of the law's rationality works to channel decisions away from individual whim or bias and toward a fixed matrix of norms and standards, mirroring the ways in which, in Michel Foucault's terms, the juridical gives way to the normative.

The normative impulse of the law, including the monologism of judicial opinions, can be seen in relation to larger claims about the law's inherent rationality and objectivity. The judicial opinion's monologism thus works to obscure the law's inherent recourse to fiction and ambiguity. Yet, as the earlier discussion reminds us, fictions of nationalism and selfhood

constitute the foundational narrativity of the law. This was true in the domestic British context, and perhaps even more so in the colonies, where narratives about the objective rationality of colonial law were not part of any collective national or cultural interest. Nevertheless, the narrative of the law's rationality, fictional as it might be, served a powerful function in cultivating and reproducing disciplinary norms.

Often, especially in the colonial context, the disciplinary force of the law masqueraded (via broader cultural and literary narratives) as a liberatory structure. As my readings of the cases in this volume show, the law thus both enables the imagination of certain novel possibilities and constrains those possibilities in meaningful ways. This tension within colonial appeals to the Privy Council and the Victorian novels is one of the central threads of the argument across the book. The movement between disciplinary and liberatory models manifests differently in each thematic pairing of literary and legal texts, though there are certain recurring qualities such as the focus on the individual in the English context and the collective in the Indian; material or financial forms of value in the English example as opposed to religion or ideology in India; and the primacy of psychological ties in the English instance in contrast to the recourse to normative modes of family and inheritance in the Indian context. Throughout the book I consider how the Victorian novel and colonial law frame one another's imaginations and create an entwined narrative of ideas and practices. Broadly speaking, in each of the three pairings I examine, the nineteenth-century novel posits the imaginative horizons of imperial subjectivity, while the judicial appeal explains why, and ensures that, those under its jurisdiction fall short of the possibilities represented in the literary texts. Although this may seem to confer a utopian idealism upon literature, while consigning the law to the realm of the real, my objective is rather to emphasize the ways in which colonial law, no less than Victorian literature, is engaged in imagining political subjectivity, of both subject and sovereign, into being.

Like Ayelet Ben-Yishai, I read the disciplines of law and literature "not as two discourses on opposite sides of an imaginary divide but as two discourses and practices taking part in a shared endeavor."[35] Especially when read in relation to popular literary works, the archive of the JCPC's opinions offers insight into how colonial law drew upon certain ideological frameworks to subtend its narrative claims. As historical artifacts, the opinions rendered by the JCPC are in many ways more relevant today for their narrative performativity than for their influence on legal doctrine.

While examining the doctrinal effects of judicial opinions is one method of engaging the legal archive, my interest here is in how narrative structures invoke and make possible certain realities, legal and otherwise, while foreclosing others. In *Colonial Law in India and the Victorian Imagination*, I read the legal opinions of the JCPC as brief glimpses into the psychic lives of individual characters, as well as a window into the functioning of an empire where subjects wrangled with sovereigns. I treat each judicial opinion as a self-contained narrative that deploys many of the recognizable tropes of nineteenth-century novels. By virtue of their selection for appeal before the Privy Council, the cases in this study are exceptional. The characters are eccentric, the turns of plot are unexpected, and the stories they tell are often didactic. In short, these cases share many qualities with the novels with which I pair them, but they are crafted narratives that have a unique relationship to materiality.[36] Reading the colonial appeals alongside these Victorian novels allows us to see how the law's explicit orientation toward material outcomes intersects with the literary texts' capacity to engender real and meaningful changes in what is possible to imagine, and in turn, to be and do.

In my consideration of Privy Council appeals and Victorian novels, therefore, the two categories of law and literature are not separable, but they are also not the same. The "and" within the model of colonial law and nineteenth-century literature that I describe delimits the two spheres while at the same time bringing them together as two components of a single concept category. This relationship can be conceived of in spatial terms, as a model of adjacency. The judicial opinion and the novel can be seen as beside each other, but at the same time, the differences that separate them are in many ways beside the point. Both colonial law and Victorian literature, I show, function within the larger arenas of culture and ideology.

José Muñoz offers a useful way of conceptualizing the relationship I describe. Citing a manifesto written by "a group calling itself Third World Gay Revolution," Muñoz draws attention to the nature of the "we" that forms the collective advocating for rights. Within the manifesto, the group calls for "a new society – a revolutionary socialist society" that would bestow fundamental rights "regardless of race, sex, age or sexual preferences."[37] Theorizing the orientation of the "we" identified in the manifesto, Muñoz shows that the "particularities that are listed – 'race, sex, age or sexual preferences' – are not things in and of themselves that format this 'we'; indeed the statement's 'we' is 'regardless' of these markers, which is not to say that it is beyond such distinctions or due to these differences