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Race, Religion, and Law in Colonial India. Trials of an Interracial Family

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This book uses the story of one family and its legal battles to uncover relationships between religion, race, gender, identity, and personal law in south India in the first half of the 19th century. Matthew Abrahams was an Indian Roman Catholic of lowly background but increasing wealth. He married an Anglo-Portuguese woman, Charlotte Fox, and adopted what was regarded as a largely 'East Indian' (or Anglo-Indian) lifestyle. His money was made from the *abkari* (liquor) contract, trading in arms and money lending in Bellary and also Kurnool after the annexation of 1839. One of his sons, Charles, was sent to Cambridge University to study for the law. After Matthew's death, intestate, in 1842, his younger brother, Francis, continued to manage and develop the business. Starting in 1854, suits were brought against Francis by Charlotte and her sons, for possession of Matthew's estate. They progressed from the Bellary District Court, on appeal to the Sadr Adalat in Madras, and then to the Privy Council in London.

The main point at issue was whether or not Matthew and Francis had operated on a joint family basis, as partners, or as master and servant. It suited Francis's case to claim that the Abrahams were a joint family, in line with supposed Hindu custom, but also with the alleged practice of many Indian converts to Christianity. It suited Charlotte to insist that Francis had been a mere employee with no rights in his brother's estate,

which therefore ought to devolve according to 'Christian' principles. The District Court agreed with Charlotte; the appellate court found for Francis; and the Privy Council cut through both arguments, arguing that personal law ought to follow not inherited traditions but the lifestyle. This final judgment (of 1863) favoured Charlotte on the point of inheritance. But it also supported Francis's rights as an active partner in business, entitled to rewards at very much the level Francis had offered to accept before the litigation began.

The story is used to advance several themes. The first concerns the conditions of life in the towns and military cantonments of a southern dry zone during a period of transition, from around 1812 to the 1850s. The second covers questions of family life, custom, and identity, particularly among liminal peoples such as the Abrahams, comprising as they did 'Hindu' Christians and mixed-race Protestant 'East Indians'. (A chapter on Charles in Cambridge provides an intriguing but inconclusive footnote to this story.) Finally there are the legal and policy changes in the run-up to the establishment of the Indian High Courts in 1862, and in particular the development of a personal law according to religion – and hence the re-invention or formation of 'communities' in British India.

There is much of interest under the first two themes, many details being revealed in the trial papers. Several chapters are devoted to the growing wealth and status of the Abrahams. Bellary, ceded to the Company by Hyderabad in 1800 under the subsidiary alliance, is painted as a frontier place, dominated by the Company's army and a host of camp followers. A very good impression is conveyed of the intermixture of races and communities. Bellary was clearly changing and offered opportunities to the resourceful, such as Matthew Abrahams. The Rev. John Hands of the non-denominational LMS, who converted Matthew to Protestantism, and who was later known for his translation of the Bible into Kannada, arrived in Bellary in 1810, before the change in the charter that permitted missionaries in Company territories (1813). On his arrival, Hands reported, the settlement already had seven native schools with 300 children.⁽¹⁾ In this milieu, Matthew and then Francis shrugged off any links to an 'untouchable' *paraiyar* ancestry and became *dora* (big man). Their patterns of marriage and association show, it is suggested, somewhat obscurely, 'how lower orders of society within an economic dry zone were uniquely suited for various forms and degrees of mixture' (p. 26). More obviously, the circumstances seem to have provided for upward mobility.

There will always be questions about the representative quality of such evidence – I am acutely aware of these in my own recent work ⁽²⁾ – but here the problem is somewhat increased by two factors. First, the trial records (though large) are still limited in size and by purpose and perspective. Materials were gathered to advance particular legal arguments that were manifestly factitious. Mallampalli attributes them and their claims about both family and business life to the parties to the dispute (such as on p. 141), whereas the internal evidence rather suggests that they were advanced by counsel on an opportunistic basis to suit the evolving legal framework. There are examples of Francis worrying about his standing in the family and business after his brother's death, while much of the evidence on his behalf sought to prove that Hindu joint-family arrangements had prevailed, making him head of the family. What was meant by joint family was in any case ambiguous and changing, and presumably none of it was in the minds of any of the protagonists at the time (as Mallampalli agrees). Therefore, we have to ask how far we may consider as representative, for example, the trial evidence that such 'Hindu' practices were common among Indian Catholics. At best what we see, and to be fair the book does not make larger claims, is that 'European' customs seem to have been followed more among Indian Protestants than Catholics, and most of all, of course, among mixed-race families. As is well-known, those who identified themselves as East Indian or Anglo-Indian often aspired to be regarded as European in custom – through dress, food, social and business pursuits, language, and Protestantism or Anglicanism. (Matthew Abraham's mother tongue was Tamil, as it happened, though little is made of that.)

Secondly, with regard to these aspects the book makes relatively little use of other evidence or academic studies that would help give one confidence in its judgments. There are some references to other scholarship, but they are not always appropriate or challenging. Useful comparisons might have been made with, say, David Arnold's articles on poor whites, Laura Bear's study of Anglo-Indians, Fischer-Tine's book on *Low and Licentious Europeans*, Satoshi Mizutani's Oxford DPhil. thesis and articles on 'whiteness' (the book appeared only in 2011), and so on.⁽³⁾ In methodological terms, the absence of Ann Laura Stoler and

Catherine Hall and several others is all the more remarkable for their prevalence almost everywhere else.

In this connection, I was unconvinced by some rather conventional questioning of the contradiction between liquor and religion on one hand (pp. 18-19), and of the link between Protestantism and the work ethic on the other (p. 62). The business model adopted by the Abrahams was unremarkable, and it seems about as useful to compare it with caste-based enterprise, as by Chettiars (p. 20), as it would be with European or Armenian partnerships before the Companies Act of 1850. Nor was I as surprised as Mallampalli seemed to be (pp. 42-3) that a probably mixed-race Anglo-Portuguese girl would have married an Indian or 'Hindu' Christian. Charlotte described her mother as 'Portuguese' and claimed to know nothing of her extraction save what she deduced from her 'manners' (p. 44). But there are many accounts of the modest standing of so-called 'Portuguese' in early British India. Moreover, the label usually meant a mixed-race Christian, often a servant or slave, with some notable exceptions such as the Barretto family of Calcutta. There were many instances too, of 'mixed' marriages, where the 'manners' of the European partner might or might not be followed in the household, but in many cases would eventually prevail. That was certainly the case for many self-declared and publicly-recognised Anglo-Indians, though (as I have described) there were also instances in which the illegitimate daughters of a respectable English father and a disavowed Indian mother married European-born men and produced numerous 'English' children. Christianity was certainly a factor, too: despite many debates about jurisdiction in India, and much pragmatism, British law made religion all-important to formal marriage, as a sacrament reserved to the established churches.

In chapter five, the story of the Abraham litigation finally begins in earnest; and we reach the core, and the most significant and successful parts, of the book. Francis had managed more and more of the business, as his brother drank more heavily, probably suffered from syphilis, and became increasingly unreliable. After Matthew's death, Francis salvaged the business, making great effort in the family's interest, according to his own account. Charlotte suspected him of siphoning off the profits.

The family argument was exacerbated by juridical disputes, the uncertainty of the relevant law and procedures, and the decline of the Company's *adalat* and *zillah* courts, soon to be replaced. In this part of the book, we are provided with the necessary background (with an apology, which is curious). The fascinating story of the evolution of personal law in this period is well-told, mainly on the basis of actual cases drawn from legal manuals of the day. It did indeed help 'invent a fiction of coherent Hindu and Muslim communities' (p. 22). *Pandits* or *qazis* made very varied and, as this book shows, often self-serving and contradictory choices of textual authorities and precedents, in particular cases, from which mainly European jurists (at this time) forged a codified system of communal personal law. The anomalous position of both Christian Indians and Eurasians was a matter of extended debate, at first with respect to transposed English law, and then in regard to these emerging personal law codes. This is a complex story richly illustrated by the Abraham litigation, where the question was whether the household of an ethnic Hindu and an Anglo-Portuguese woman could become so European in custom and practice as to be subject to European rather than 'Hindu' laws.

An important context was the emerging essentialism of identity that that question reveals. Though class and economic standing were important (and perhaps might have been considered further), the key issue for legal judgment was: could an Indian Christian family adopt 'Hindu' customs and practices in their daily lives, or were 'Religion, laws, language and dress the most powerful instruments of amalgamation or separation?', to quote Charlotte's English counsel (p. 143)? The legal action occurred in the midst of at least two kinds of ambiguity 'about law, Hindu and European, and about people, especially how those at the margins acted and should be treated.

The time and setting increase the interest of this study. The incursion of joint-family rules and Sanskritic authorities into south India and among lower castes of Hindus was controversial, even without considering conflicting interests and the arguments about what the rules required. The character of mixed-race families and the rights of Christian converts became matters of urgent debate during the very period of the Abrahams' story. Also brought into relief is the muddling and contingent character of British rule and institutions. Support for the Hindu joint family and other concessions to what were supposed to be India's

religions and vested interests were seen as properly respectful of an ancient culture or, more plausibly, as insurance against rebellion by powerful Indians and strong, traditionalist communities. By contrast, a sometimes covert but often flaunted ambition for change sought a regulatory role for the state, where individual rights were to be protected, not only at one moment but over time, by inheritance, as for Christian converts, but also for princes (properly educated), landholders (such as in the court of wards), tenants, women, labourers, and so on. These contrary impulses were somewhat reconciled because the preservers of custom re-invented and systematised it.

The process was visible in the Privy Council judgment of Thomas Pemberton, Lord Kingsdown, in the Abrahams' cause. Matthew was of Hindu stock, though Christian at birth, and his wealth was self-made, not inherited. 'If the spirit of an adopted religion improves those who become converts to it', he wrote, should their 'abandoned usages be treated as ... still the enduring customs of the family?' (pp. 233-4). It is true, as Mallampalli concludes, that this emphasis on personal change and choice seems to contradict the rigid implementation of law (p. 239), and arguably reifications of all kinds. On the other hand, it might also be said to be characteristic of its time, of the law, and of colonial policy.

Notes

1. *Madras Missionary Register*, I, ii (February 1836), 26; 'List of Missionaries and Missionary Stations, July 1820', in Z. Lewis, *American Missionary Register*, i (New York 1820). [Back to \(1\)](#)
2. In Peter Robb, *Sex and Sensibility* and *Sentiment and Self*, both sub-titled *Richard Blechynden's Calcutta Diaries, 1791-1822* (New Delhi 2011), I sought to combat the problem through the vastness of the source and the variety of its voices, as well as through context, comparison, and interpretation. [Back to \(2\)](#)
3. For example, David Arnold, 'Race, place and bodily difference in early nineteenth-century India', *Historical Research* 77, 196 (May 2004); Laura Bear, *Lines of the Nation: Indian Railway Workers, Bureaucracy, and the Intimate Historical Self* (New York, NY, 2007); Harald Fischer-Tiné, *Low and Licentious Europeans: Race, Class and 'White Subalternity' in Colonial India* (New Delhi, 2009); and Satoshi Mizutani, *The Meaning of White: Race, Class, and the 'Domiciled Community' in British India 1858-1930* (Oxford 2011). [Back to \(3\)](#)

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