Racial Categories, Religious Distinctions:

Mixed Buddhists and the Burma Laws Act, 1898-1947

by

Matthew Venker

A dissertation submitted in partial fulfillment of

the requirements for the degree of

Doctor of Philosophy

(Anthropology)

at the

UNIVERSITY OF WISCONSIN-MADISON

2023

Date of final oral examination: 5/10/2023

The dissertation is approved by the following members of the Final Mentor and Examination Committee:

Katherine A. Bowie, Professor, Anthropology
Jerome Camal, Associate Professor, Anthropology
Larry Nesper, Professor, Anthropology and American Indian Studies
Tyrell Haberkorn, Professor, Southeast Asian Studies
Nick Cheesman, Associate Professor, Political and Social Change (Australian National University)

DEDICATION

To my parents, who were the first to teach me about law.
Lisa, who taught me how it can protect the marginalized.
And Vince, who taught me that it must be fair to all.

ACKNOWLEDGMENTS

This dissertation is the product of eight years of shared intellectual labor, and it is only through generous contributions of thought, time, and care offered by many that it exists.

I want to thank first the members of my dissertation committee, to whom I owe a great debt of gratitude for their unwavering guidance throughout the many twists and turns this project has taken. I could not have asked for a more patient and understanding advisor than Katherine Bowie, who has always allowed me to seek out down a path of my own curiosity. From my first discussions of studying cross-border migration, to an interest in citizenship law, to emailing her from a plane to announce I was leaving Myanmar amid the coronavirus pandemic in March 2020, and finally discovering the first cases that would lead me to the topics I take up in this work, she has provided both support for the interests that led to this project and the hard questions that were necessary to turn it into a dissertation. Larry Nesper contributed to the intellectual shape of this project by both introducing me to many of the key ideas I take up in this dissertation and working with me to make them mine. I took his Anthropology of Law course my second semester of graduate school, where he introduced me to Ian Haney-Lopez's *White By Law*. This, more than any other work, offered a model upon which this dissertation is built, and its ideas run through this entire document. Working further with Larry in an independent study he graciously designed with me helped me contemplate how to use the ideas from that class to write on Myanmar. I am lucky to have worked with Jerome Camal both on this dissertation and beyond. In addition to contributing to the ideas I take up here through both seminars and independent study, I served as a teaching assistant under him for four semesters. I have benefited greatly from watching him weave ideas across varying levels of complexity - from freshmen in a lecture hall to graduate seminars to writing groups - without ever oversimplifying or losing nuance. I can only hope my writing in this document portrays such big ideas so clearly. Tyrell Haberkorn came to Madison near the end of my graduate coursework and I am very fortunate to have been able to take her seminar on human rights during her first term there. Tyrell is uniquely capable of offering poignant criticism that inspires. She is the best person to discover issues both minor or major because her critique will leave you reassured in your ability to address them. I strive to be as gracious a reader, collaborator, and teacher to others as she has been to me. While Nick Cheesman was the last to join this committee, his work was among the earliest influences on it. I read his book *Opposing the Rule of Law* my first year in graduate school (not coincidentally alongside *White by Law* for a paper in Larry Nesper's class) and its moral clarity and intellectual vision have provided a guiding light to my research and writing ever since. His work, in that book and elsewhere, has shaped not just my research interests, but also how I want to be as a researcher. Since joining my committee, Nick has also offered both challenging conversations and thoughtful critiques that shape this project.

There have been many others in the Anthropology Department and beyond that contributed to this project. In particular, I want to thank Mitra Sharafi, whose course on legal pluralism inspired many of the ideas I address in this dissertation. An early intellectual effort to trace the use of Chinese customary law in Burma's courts can be found in a term paper I wrote for her course. Larry Ashmun offered unparalleled support in tracing down many of the materials I engage in this work. Every scholar should be so lucky to have a librarian like him on their side. I also want to thank Ian Baird, Mike Cullinane, Thongchai Winichakul, Nam Kim, Al McCoy,

Maria Lepowsky, Amy Stambach, and Claire Wendland. Fellow graduate students offered support, fellowship, and engagement throughout my time in Madison. I want acknowledge the other members of my cohort, Caitlin Benedetto and Sarah Bruno, who offered a sense of solidarity from day one. I was lucky to have both taught and learned beside many other Anthro grads, including Peng Ai, Aida Arosoaie, Chanida Chitbundid, Stephanie Duchatellier, Jen Estes, Mollie Gossage, Tyler Hook, Juniper Lewis, Caitlin Mayer, Bri Meyer, Joe Quick, Edgar Villas, and Jiangjiang Wu. Mollie Pauliot deserves special mention for offering all of the above as well as an introduction to the world of film photography and development, a hobby that trained me to be attentive to ways of seeing and engaging the world that made me a better anthropologist, and hopefully a better person. Through the Center for Southeast Asian Studies and especially the graduate student Southeast Asia Research Group I made many more colleagues and friends that contributed untold insights to this work, including Phil Cerepak, Nathan Green, Anthony Irwin, Khine Thant Su, and Will Shattuck. Jose Richard Aviles is the most encouraging friend I could ask for. Your interest in my work reminded me of its importance outside my little academic niche, and your motivational messages breathed new life into it whenever it began to lag.

Studying Burmese in Madison and around the world introduced me to people uniquely capable of offering friendship, support, and insights that go far beyond this project. Teachers include Sayama San San Hnin Htun, Saya U Mya Hla, Sayama May Zin, Sayama Tharaphi Than, Sayama Hnin Lae, Sayama Yu Yu Khine, Saya Allen Lyan, Ward Keeler, John Okell, and Justin Watkins. Ward Keeler deserves further thanks for guiding this project as both a language teacher and a fellow anthropologist, who contributed thoughtfully to my early research efforts. Fellow classmates include Nathan Gonzalez, Mulong Hsu, Jennifer Otting, Leah Roco, Ryan Roco, and Siew Han Yeo, all of whom provided both companionship in the classroom and a sense of community outside of it. Dinith Adikari, Luke Corbin, Joe Decker, Beying Deng, Marshall Kramer, Dominique Dillabough-Lefebvre, Izzy Rhoads, Anthea Snowsill, Aye Min Thant, Mindy Walker, and Courtney Wittekind offered friendship and many thoughtful conversations during my time in Burma. I owe enormous gratitude to Benedict Mette-Starke, Matthew Schissler, and Esther Tenberg for meeting with me almost every Thursday for a year to keep this research on track; MK Long deserves separate mention for her efforts to organize this group since its inception. This is a small list of the many people who contributed to making my trips to Burma as meaningful as they were - many more colleagues, collaborators, and friends remain unnamed even as their contributions to this work were among the most critical. To you I say only: အရေးတော်ပုံအောင်ရမယ်.

I was fortunate to receive generous financial support for this research from many sources. A Scott Kloeck-Jensen award funded my initial pre-dissertation research, and I thank his family for their support of graduate student research. I am proud to share two schools with Scott, as an Ole and a Badger, and I thank you for keeping his spirit alive. Two Mellon grants supported both pre- and post-fieldwork research during the summers of 2017 and 2021. Archival research for this project was supported by a University of Wisconsin Center for Southeast Asian Studies fellowship, an Inya-CAORC short-term fellowship,and a Fulbright-Hays DDRA award. I want to especially thank Mark Lilleht in University of Wisconsin's Institute for Regional and International Studies for his help organizing my funding through the tumult of a pandemic and a coup. There were many times when I was unsure if funding for this project would pull through, and it is only through his efforts that it did.

For the last two years I have been a visiting student in the Southeast Asia Program at Cornell University. I want to thank Andrew Willford for sponsoring my status here, and Thamora Fishel and James Nagy for setting me up an office at the Kahin Center, where the majority of tihs dissertation was written. Josh Mitchell, Aparajita Majumder, and Xinyu Guan offered generous feedback to portions of this dissertation - thank you especially to Josh for kicking off this writing group. Darren Wan was among my first friends here, and his insights into this project have been both critical and reassuring. Thank you for sharing your thoughts with me, and for welcoming me to Ithaca. Josh Kam and Juan Fernandez served the best food and threw the best parties. Jeremy Ditrich and Josh Twinning showed me how to get food from the lakes and the forests around here and Bernd Blossey showed me what to do with it, and that fed the life of this work.

Presentations on this research-in-progress were given to the National University of Singapore's Training Initiative for Asian Law and Society Scholars (TRIALS), Cornell University's Southeast Asia Program Graduate Student Conference, the 2022 meeting of the Association of Asian Studies, and the comments and criticisms received during these presentations shaped this project I owe special gratitude to Lynette Chua and David Engel for their work in developing the TRIALS program. Delayed by 18 months owing to Covid, it nevertheless came at a critical moment and helped me to define this project.

A few people deserve special mention for linking many different worlds together. Mike Dunford was my first friend in Madison and the person who picked me up at the airport on my first trip to Burma. He is among the most generous people I know in every sense of the word. The first day I met him he introduced me to his friends, his favorite places in Madison, and his cat, and we played chess and talked about what I wanted to do in graduate school until three in the morning. Since that day he has always been equally prepared to share both thoughts, drinks, and time from early in the morning until late at night. In the eight years I've known him, we've only spent two on the same continent, and it is a testament to his infinite capacity for friendship that any time I am lucky enough to see him it is as if no time has passed at all.

Ma Ei was among my first Burmese teachers, but she quickly became a great friend and an important source of both intellectual collaboration and moral inspiration. From her delicious mohinga in small dorm rooms to shared google docs across continents, she has sustained the work that this dissertation is rooted in. Her bravery and commitment to politics of the most grass root sort offer the greatest vision of what radical education can do for a person and for a people, and I am grateful that she has contributed to mine.

My journey through graduate school to the completion of this project would not be possible without the influence of many who entered my life before that. Perhaps the most important of these were a group of high school teachers who set me down this path. I was an erratic and problematic student who came to love learning late, I suspect, by the standards of most academics. I was failing English my sophomore year in high school and had to do a great deal of extra credit to avoid losing my place on the football team. Terry Quinn offered both suggestions for make up work and conversation about the books he introduced me to that first inspired me to take the ideas I came across seriously. I quit football after that year to have more time to read. The next year, Steve Missey taught me to love writing, even when it was challenging, when it wouldn't come, when it became emotionally draining. Fr. Jeffery Harrison taught me to think through critical race theory before I had the language to describe what it meant. He taught me how to speak out against power and study history from the ground up, and his voice rings through in the ideas I grapple with in this dissertation. Tim O'Neil introduced

anthropology as an elective social studies course my senior year, and I knew upon taking it that I wanted to take more. More than anyone, Dr. Ching-Ling Tai taught me how foreign languages open new worlds when you use them to think and make community through rather than study.

This dissertation is about the capacity to make family across difference, and it is in coming from a large, blended, and matriarchal family that I first learned how families exist in many forms. Mentioning everyone in the extended H2V family by name would double the page count of this dissertation, but their love supported this work even when they didn't always know what I was doing over the past decade or why. First and foremost is Meemaw, Cynthia Herder, who insists prayers work even upon the non-believer - completing this dissertation must prove that they do, and I thank her for her faith. Teri Venker's has contributed to my life and education since before I can remember - she gave me my first home in Madison, and provided great company, endless love, and many meals in the years I spent there. Madelaine and David Rekemeyer offered friendship, fun, and a welcoming retreat from the city in the dog days of Covid. David's encouragement as I began to hunt and fish these past few years is especially salient - it was often sitting alone in cold, snowy woods that I could give myself the chance to breath and actually think through what I wanted to write in this dissertation. My sisters, Ceci and Julia, remind me to find joy in all places and to make space for family even on the verge of grant deadlines. Growing up with Nick Schleicher and Alex Iberg taught me many lessons, none more so than how to get up when you fall, throw some dirt on your wounds, and go again. I would not have completed this project without the perseverance I learned with them. I'm proud of the people you've both become, and there is no greater mark of honor than knowing I make you both proud of me, too.

My mother, Lisa Herder, has done more to make me who I am than I capture in words, and so that is the one thing I will not even attempt in this dissertation. It is in recognition of the magnitude of the debt I owe to her that I can only say thank you, and I love you.

The Soe family has provided untold kindness and generosity in New York, California, and Yangon, and I am grateful to them for welcoming me into the family so warmly. It is impossible to imagine a more ideal mother-in-law than Sandar Soe, who goes so fully out of her way to care for those she loves and who asks only for love in return. Thank you for showing me where to get the best *beh byoke*, and thank convincing me to go to the hospital when I had dengue fever. More than anything, thank you for sharing with me your home and all the good memories we've made there I promise to never again delay the mohinga by clogging up your kitchen making orange marmalade. To Kyi Kyi, Aunty Nge, Aunty Omar, U Simon, U Dicky, and U Yamon; to all the cousins and nieces and nephews: thank you.

There is no one I owe more thanks to than Nicole, whose encouragement has sustained this work for nearly six years now. She is often the first person I share ideas with, and it is only through many, many conversations with her that the ideas presented in this dissertation have been distilled from so many half-thoughts and fleeting insights. She has validated this work when it seemed pointless, and encouraged this work when it seemed impossible. She has modeled for me how research should be done and to what ends it should be put. Thank you, too, Nicole, for sharing with me your well-worn copy of *Sand County Almanac*, and pushing me to the woods and waters where this life is made meaningful. Home is wherever I'm with you.

ABSTRACT

At the eve of the 20th century, following the full annexation of Burma into the British Raj after the third Anglo-Burman War, the British implemented legal structures empowering a secular civil judiciary to administer religious law as the personal law of its imperial subjects through the Burma Laws Act of 1898. For Buddhists, the Burma Laws Act set off fifty years of confusion over two questions: what is the religious law of the Buddhists; and who counts as a Buddhist in the first place?

Racial Categories, Religious Distinctions draws on colonial era litigation involving mixed Buddhist families to propose new ways of speaking about race, religion, and ethnicity in Burma. In this dissertation, I argue that the racialization of foreign Asians in occurred through both legislation and judicial interpretation. Because it is religious distinctions that legitimizes the conceptual separation and jurisprudential segregation of different types of Buddhists I refer to this means of categorizing people as 'religious racialization.' Recognizing the role that law played in producing different sets of rights, opportunities, and protections for different kinds of Buddhists, I argue that British Burma's courts did not develop different legal codes for the different the various races that lived under them as colonial subjects. That is, they did not find naturally occurring racial groups with their own laws and customs that the colonial power then protected as a matter of imperial benevolence, as the legislative logic of the Burma Laws Act seeks to project. Rather, through particular modes of seeing and a selective listening of the claims put forward by the litigants that came before them, the justices of Burma's courts first imagined and then materially empowered different racial categories. That is, for the many men and women who lived beyond the bounded religious categories of imperial imagination, the courts did not *give* different people different rights; rather, the courts *produced* different peoples by defining, empowering, and protecting the distinct rights they granted to them.

This dissertation engages contemporary debates in the field of anthropology. Through this study of Burmese history, I argue that understanding the social impacts of racialized social structures requires attention to how those constructions become defined, articulated, justified, and empowered through institutions such as the law. Focusing on the litigation of mixed Buddhists, which special attention to Chinese-Burmese families in particular, I develop the idea of 'religious racialization' to describe how colonial jurisprudence cleaves racial categories from socio-religious practice. Through the idea of religious racialization, I argue in this dissertation that narrow judicial interpretations of the terms 'Buddhist' and 'religion' in reference to the 1898 Burma Laws Act established divergent customary law and property rights regimes for native and foreign Buddhists, marking the latter as racial other. My articulation of religious racialization investigates how multiplex religious forms can become singular and oppositional religious identities. This dissertation documents how, for those many who crossed the boundaries that a foreign regime imagined, the question of where the legal boundaries between foreign and indigenous lie were not necessarily clear, even as which side of that divide they fell on carried significant weight.

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Introduction

Judges in colonial Burma had a problem: they neither knew who was Burmese; nor who was Buddhist. Their inability to determine these features was a problem for them because the Burma Laws Act of 1898 required them to decide cases of family law in accord with the litigants' religion. This problem grew when the courts began considering the different family law customs of migrant Buddhists who were not Burmese. Thus, whether someone standing before the court fit into either, or both, of the categories 'Burmese' and 'Buddhist' determined the treatment they were entitled to under the law. These legal instructions became confused when people did not readily confine themselves to the communities of legal interpretation that the courts sought to practice through.

The judges' challenge of figuring out who was who in their courts was exacerbated because they could not simply ask people what their race was or what religion they believed in. For one, they might lie; for another, people often described themselves in ways that further confused the judge. In the stead of self-disclosure, the courts developed an elaborate system for fact finding. They scrutinized litigants about their family history, where they lived, the work they did, their names, their clothes, their friends, their hobbies. Friends, family members, and neighbors were grilled about the rites of passage they went through as children, and whether they put their own children through the same rites. Litigants were interrogated about what deities they worshiped and where, whether these figures were Gods or gods,[1] and what they believed would happen to them in the afterlife.

[1] Re. Whether they saw figures as nats or gods - see page 53-54 on nats, Burma's indigenous spirits.

These tests were interpreted through any given judge's own understanding of who in their colony believed what and why. They based these opinions of information they gathered from a combination of sources: ancient texts, imperial observations, and their own parochial experiences. The result of these findings determined whether couples were married; what entitlements a woman or child held upon a death, divorce, or remarriage; and even whether one could hold property at all.

Like any formula, this judicial algorithm changed over time to better respond to user needs. New information was periodically added into the source code to better reflect the growing body of knowledge that the colonial courts had of their subjects. Early errors were periodically scrutinized, thrown out, and replaced with more sophisticated scripts. Changes in the social and political contexts made justices weigh different bits of evidence differently at different points in time, even when they dealt with cases that bore remarkable similarities to cases past. But, choppy though the story unfolded, over a near five decade span, from 1898 to 1947, this process of algorithmic refinement allowed the courts in British Burma to produce increasingly finer and finer grained understandings of who counted as Burmese, who was really a Buddhist, and who deserved what types of recognition and protection under the colony's system of laws.

Because of material differences in how rights, obligations, and familial membership are defined between Burmese and other Buddhist cultures - or, at least between what the colonial courts recognized as constituting those cultures - this judicial process of discovery would have many detractors. They included: people who believed they were Buddhist but were not recognized as such; people who believed they were Burmese but were not recognized as such; people who believed that other people were Burmese or Buddhist, but were determined not to be; and people who believed they were neither Burmese nor Buddhist, but were found to be both.

Differences in Buddhist rights regimes became especially contentious when people formed families across difference — whether those differences are understood in terms of race, ethnicity, religion, generation, or even just subjective perceptions of personal identity.

This dissertation centers on a group that I refer to as 'mixed Buddhists.' They are constituted as a collective only by their shared involvement in contentions over the very categories that do or do not apply to them under the racio-religious legal frameworks created by the Burma Laws Act. I refer to them as 'mixed Buddhists' - rather than as mixed race, interreligious, or any other derivation - to indicate the ambiguity in the nature of their mixing. Significant effort among both litigants and the judiciary itself went into determining whether the correct religious frameworks for understanding whether people in mixed Buddhist families should be determined by the blood of their ancestors, the beliefs they held, or how they behaved as members of a particular cultural community.

Forming families across difference could expose people to social and legal vulnerability in colonial Burma because what constitutes a family is itself a matter of cultural perception. What might be recognized as a marriage within Burmese Buddhist tradition may only constitute concubinage in Chinese customs law, for instance. Similarly, there is no one way to recognize membership in a religious community. Whether a court recognized a conversion to Buddhism, to take another example, could affect the rights of one's children to inherit. If Burma's colonial courts did largely accept the proposition that 'to be Burmese is to be Buddhist,'[2] they did not simplistically accept the inverse proposition: to be Buddhist did not necessarily make one Burmese. As such, in disputes where the rights, recognitions, or obligations of different types of Buddhist law diverged, the colonial courts became arenas for working out ideas of what

[2] See Schober 2018 for a discussion on this idea.

constituted specific forms of racial, ethnic, national, and religious personhood.

In this dissertation, I argue that narrow judicial interpretations of the terms 'Buddhist' and 'religion' in reference to the 1898 Burma Laws Act established divergent customary law and property rights regimes for native and foreign Buddhists, marking the latter as unassimilable and ultimately undeserving of legal recognitions. I advance this argument on three fronts. First, I trace the history of jurisprudence regarding mixed Buddhists to detail how the courts sidelined emergent forms of cultural hybridity. Second, I document the forms of evidence that were used to place people into different ethno-religious categories to show how the courts relied on locally irrelevant doctrines of patrilineal descent when more culturally relevant ideals of belonging proved too ambiguous. Third, I analyze divergences between witness depositions and judicial decisions according to theories of race contra ethnicity to demonstrate how the courts endow divergent Buddhist identities with racialized property rights regimes. Through this argument, I forge the idea that the colonial legal frameworks adopted by Burma's courts distribute racial privileges according to a logic of religious distinction, a process I refer to as "religious racialization."

My argument is organized around the central contention that over the course of British rule, colonial jurisprudence forged ever firmer boundaries between who counted as 'native' versus 'foreign' Buddhists in Burma, and what counted as native or foreign Buddhist practice. Reading colonial-era litigation over mixed Buddhist law conflicts through the lenses of racial formations (Haney-Lopez 2006; Omi and Winant 2015), critical race theory (Bhandar 2018; Harris 1993; Seshadri 2022), and the anthropology of citizenship (Balibar 2017; Mamdani 1996) demonstrates the processes by which pluralist possibilities become closed off as particular cultural symbols, social affiliations, and lines of descent become indexed as Burmese or foreign as exclusive categories. Tracing the development of these judicial arguments from the late 19th

century into the middle of the 20th century demonstrates how technical legal debates over how to juridically place people that fit into multiple subject categories gradually yields to a 'common sense' (Haney-Lopez 2006) assumption that these subjects hold apparent, inherent, and oppositional identities.

This legal history, while displaced by over seven decades and much more contemporary contentions over rights of belonging in Burma, is not simply an artifact of a bygone era. Rather it provides crucial insight for understanding how dual axes of religious nativism and racial indigeneity have structured citizenship through several iterations of the post-colonial Burmese state, from the parliamentarian democracy of the 1950s, to the military dictatorships of the latter decades of the 20th century, and beyond. Understanding how notions of 'Burmese-ness' slip easily between these religious and racial signifiers elucidates the struggles of minoritized peoples to assert their belonging within a constantly shifting hierarchy of social identities.

Locating Race in Burma

I rely in this dissertation on frameworks that emerge in the tradition of critical race theory, a literature that emerges out of and largely speaks to North American contexts and the history of the United States. While I believe this literature serves as a useful guide for understanding race in colonial Burma, its application to this new context warrants care. A crude or uncritical borrowing of this American tradition would risk diluting the power of its specificity: the enduring legacy of race as a structure of power and oppression in America emerges from this country's long history of indigenous genocide and chattel slavery, the gendered violence through which that genocide and slavery generated economies of land and agriculture, and the use of law as a weapon of segregation and denigration once that slavery was abolished and the Indian wars

were ended.

Burma was neither run as a settler colony nor did the colonizing British institute a system of slavery in it, and thus the violence through which imperialism generated power and profit for those colonizers operated through different social structures and created different social impacts. It would cheapen both sides of the comparison to presume a simplistic one-to-one relation between the indigeneity of Burmese and American groups or between the positions of trafficked Africans in the Americas and migrant Asians in Burma.

There has, however, been productive work exploring the social conflict in Myanmar through the lens of critical race theory. Ten years ago, political scientist Matthew Walton (2013) sought to explicate a social duality in the experience of the majoritarian Burmans. Burmans have numerous social advantages in relation to ethnic minorities in the country, but still suffer under totalitarian government oppression. Walton argues that the various forms of violent dispossession that majority Burmans do suffer renders this hegemonic social group blind to the racial privilege that their subjective position endows, undermining possible ethnic solidarities. Walton draws on Charles Mills' *The Racial Contract* and W.E.B. Du Bois'[3] concept of social 'wages' (as in 'the wages of whiteness') to articulate how Burman-ness holds racial characteristics that liken it to whiteness, even though Burman is an ethnic rather than a racial classifier.

While Walton's article remains highly influential within Burma studies, a recent reevaluation takes issue with its 'liberal' interpretation of white privilege theory. Stephen

[3] Though Walton traces this through the work of David Roediger rather than W.E.B. Du Bois, himself (2013: 5-6). specifically Roediger 1999, *The Wages of Whiteness*. See Campbell and Prasse-Freeman (2021: 180-181) for a more extensive critique of this decision than I will offer here.

Campbell and Elliot Prasse-Freeman (2021) offer this specific critique in advocating viewing ethno-racial dyamics in Burmna through a 'radical' lens. In their revisitation of Walton's thesis, Campbell and Prase-Freeman emphasize that 'the wages of Burman-ness' are produced in the stratification of labor under (racial) capitalism. In their class-attentive interpretation of the changing boundaries around Burman-ness under colonialism, the category 'Burman' is a relatively open signifier, accessible to people of many ethnicities (including foreign laborers) who share in workers-led struggles against colonialism under the rubric of being *Dobama* (တို့ဗမာ, 'our Burmese' in Campbell and Prasse-Freeman's interpretation; also often translated as 'we-Burman').

The reification of this open ethnic signifier into a racial boundary marker, Campbell and Prasse-Freeman show, emerges when those labor solidarities are broken by those who accept the privilege afforded by becoming the middle managers of a racialized economy, oppressing those who are more vulnerable than them, whether owing to ethnic markers, rurality, or something else. Campbell and Prasse-Freeman retain Walton's location of the analogue to racial whiteness in the subject position of Burman-ness, but point towards this being, for the non-elite majority, an ultimately harmful 'bourgeois poison' wherein the enjoyment of privilege is conditioned upon their own subjugation under capitalism.

I follow a similar tract as Campbell and Prasse-Freeman in regarding 'Burman-ness' as a historically contingent category that becomes more rigid, ascriptive, and reified through colonial practice. Specifically, I follow in their recognition that the category of 'Burman' is historically more fluid, flexible, and open to the entry of other ethnic bodies. It should be said that Campbell and Prasse-Freeman are not alone in making this point: Aurora Candier's (2019) account of the Burmese concept *lumyo* (လူမျိုး; 'kinds of people,' typically translated as 'ethnicity') likewise

shows that precolonial categorizations of people were largely organized around the relationship an individual had to a locale rather than to an ancestral territory, opening 'Burmese-ness' to putative 'foreigners' who nevertheless forged local commitments. This need not entail wholesale assimilation into a monolithic Burmese-ness - Candier emphasizes that the 'myanma-myo (မြန်မာမျိုး),' or the Myanmar people, was always constituted of numerous *lumyo* encompassing different ethnolinguistic groups - so much as a political commitment to the Burmese sovereign.[4]

But Campbell and Prasse-Freeman do, I believe, more clearly foreground two elements about the nature of Burman-ness than any other work in this domain. First, that "Burman-ness is best understood as an identity that has a broad semiotic range, partaking of classic… 'ethnic' indices and privileged class-inflected expressions simultaneously" (2021: 188), and further that, even in the contemporary, "Burman-ness remains mutable" (2021: 190). Second, that the exclusionary lines that form around a *racialized* construction of Burman-ness emerges out of a complex interaction between capitalist penetration, ethno-national chauvinism, and political projects that seek to conjoin the two, advancing capitalist interests through ethnic divisions.

While I have critiques of their theory that I draw out more in chapter 4 - specifically related to their view that capitalism generates a *transition* (however incomplete) from ethnicity to race; I believe they co-exist in ways that complicate this story - my own work can also be

[4] I see valences of this, too, though perhaps only in shades, in Ardeth Thawnghmung's (2011) work on 'the other Karen' which takes place amid a radically different political environment defined by 60+ years of ethnic based civil war. Briefly, the 'other Karen' refers to Karen who do not participate in the armed struggle against the Burmese military (circa the 1990s and 2000s). These Karen often live in Burman majority spaces and are more interested in getting by and getting along than in participating in conflicts that take place along ethnic fissures. Existing between Karen who have wholly assimilated into majority Burmese society and those who have wholly withdrawn from this ethnonational body in their attempt to create a new ethnostate of their own, the 'other Karen' represent the ambiguous position of ethnic minorities who seek to exist within Burma without giving up their Karen-ness. I make this observation by way of footnote because I confess that I have not exactly worked out how 'the other Karen' fit into this broader narrative of ethnic fluidity, but reading it some years ago made me reflect on what the possible present of ethnicity and citizenship dynamics could have been outside the conditions of war that have defined Myanmar's socio-political environment since independence.

thought of as an expansion of their general project that brings the story of racialization forward from the 1930s and roots it in property rights regimes rather than class politics.

It is my contention in this dissertation, then, that research on litigation involving mixed families offers the best route into understanding how colonial interpretations of race affected access to different identities and the legal power that came with them. Examining litigation that sought to clarify where to place persons of mixed ancestry, multiple faiths, or other ambiguous identities forced the courts to clarify what they mean when they use unstable abstractions like race and religion in the first place. While it might seem that the judges of Burma's courts are simply finding preformed racial categories out in the world and applying them to the cases they are tasked with deciding, critical attention to cases involving subjects that fall through the cracks these categories leave open show rather that judicial actors *produce* race by fixing rights to singularized and mutually exclusive identities.

This does not mean that judicial actors make up new racial categories wholesale. Racial formations like 'Burmese,' 'Chinese,' 'Buddhist,' and 'Chinese' are perhaps distinct from racial categories like white or Black in that these are historically salient markers of identity that precede the legal structures that empower them as races. Indeed, I am perhaps even being a bit cavalier in drawing too firm distinction between 'finding' and 'producing' racial categories: those that I locate operating in Burma's colonial courts are neither invented out of thin air nor are they natural categories. But that I feel justified in terming them races speaks to their endowment as legal constructs that emerge in the interaction between litigant claims, colonial knowledge, and judicial conjecture.

Colonial Law and the Burma Laws Act

The chief antagonist of this dissertation is the Burma Laws Act of 1898, specifically Section 13 of that Act. This is the piece of legislation that divides native litigant according to religious personal law. It reads:

> Where in any suit of other proceeding in Burma it is necessary for the Court to decide any question regarding succession, inheritance, marriage, or caste or any religious usage or institution
>
> (a) the Buddhist law in cases where the parties are Buddhists,
>
> (b) the Mohammedan law in cases where the parties are Mohammedans, and
>
> (c) the Hindu law in cases where the parties are Hindus,
>
> shall form the rule of decision, except insofar as such law has by enactment been altered or abolished, or is opposed to any custom having the force of law.

Andrew Huxley has described the issues wrought in the pursuit of Buddhist law under this act thusly:

> Subsection (a) woefully blinders by renaming the *dhammathat* law [a Burmese Buddhist specific genre of legal writing, discussed further in chapter 2] as Buddhist law with the implication that it is a universal religious system analogous to the Islamic Shariah. The Anglo-Burmese courts, in fifty years of struggle with this subsection, never succeeded in making it yield a sensible result (1988: 32).

Huxley located the problem of the Burma Law Act in its corruption of Buddhist law. I locate the problems in the Acts effort to rule an interacting and overlapping population with a tool that presumed separation. This is not a new insight. Historical anthropologist Bernard Cohn writes that modern European empires "took control by defining and clarifying spaces" (1996: 1). Writing in *Colonialism and Its Forms of Knowledge* (1996) on the development of a similar set of legal principles in British India, he characterizes the work of Warren Hastings, the architect

behind that system, as seeking to define for the British a form of law that was essentially Indian while still manageable by English men (61). His efforts were not malicious - they came from an appreciation of the unique insights preserved in Indian law and were pointed directly at competing imperial efforts to denigrate Indian traditions as 'despotic' and wipe them away entirely. But by locating traditions in the ancient past while dismissing contemporary development as the results of colonial corruption to be fixed, the effort to preserve culture ends up generating new tensions out of it.

Strictly speaking, the Burma Laws Act was not solely responsible for the messy attempt to make Burmese Buddhist legal forms work within a British bureaucratic structure. The Indian Succession Act of 1865 created a carve out to exempt Buddhists in preference to Buddhist laws of succession. Chapter II of the Burma Courts Act of 1875 introduced similar provisions in Lower Burma – the half of the country that the the British then ruled - that the Burma Laws Act would later stipulate across the whole colony. But the Indian Succession Act conducted this work in reverse, exempting Buddhists from the law and thus drawing questions of who was *not* a Buddhist rather than who *was*.[5]

And the provisions of Chapter II of the Burma Courts Act simply did not produce the same jurisprudential confusion over who counted as a Buddhist that both Huxley and I identify. In the cases I have found that include mixed and migrant Buddhist litigants between 1875 and 1898, the question of what form of Buddhist law applies does not come up: cases are heard according to judicial interpretations of Burmese Buddhist law without conflict. As I discuss in

[5] See chapter 2 for a discussion of the substantive implications of this technical distinction in regards to the case of *Hong Ku and Hong Kung V Ma Thin*. This case was decided in 1881, seventeen years before the passage of the Burma Laws Act, and was thus heard under the Indian Succession Act.

chapter 2, *Fone Lan vs Ma Gyee* (1903) was the first case to bring Chinese Customary Law[6] into the Burmese courts after the promulgation of the Burma Laws Act. This case instigated the torrent of jurisprudence I take up in this dissertation: it came through by the back door, when the presiding judge reflected on what the wording of the Burma Laws Act meant for Chinese litigants even though neither litigant sought the application of Chinese law to their case. But, even if the specific introduction of this question came only by way of historical accident, the Burma Laws Act was nevertheless designed to render colonial subjects cognizable in terms that would make judicial administration efficient and imperial rule smooth. In Cohn's characterization, law offered a solution to the problem of alien rule by creating a structure to domesticate dissent. It is this impetus that sets the stage for the issues I take up in this dissertation.

Blood, Belief, and Behavior - Epistemologies of Religious Personhood in Burma's Courts

In my survey of the jurisprudence of mixed Buddhist litigation, I identify three epistemologies of personhood through which the British courts of colonial Burma based their categorizations of the litigants that came before it - those of 'blood,' 'belief,' and 'behavior.' I utilize these frameworks to describe how judges navigate the different valences of what it means to belong to a certain religion in analyzing the cases I present in this dissertation. If these three frameworks appear today to blatantly conflict with each other, I would submit that only hindsight offers a clear picture of how much antagonism sits between them. After all, the courts were, on the whole, consistent in recognizing that their job was to determine religion, rather than race,

[6] I capitalize this term throughout the dissertation to mark it as an object of imperial creation rather than a fluid and negotiable set of ideas and practices.

ethnicity, or nationalism. The questions that vexed Burma's judiciary were what exactly a religion is and, with so much potential for fraudulent declarations of this ambiguous category, how to place someone within a fixed, definite, and singular faith.

It should be said at the outset, however, that though judicial opinions frequently reference it, the sincerity of personal faith was often of only tangential interest to the court. It is beyond any court's capacity to determine what one truly believes, in their heart of hearts, and the most proximate measures for peering in upon faith - personal declarations of one's own belief; witness testimony about that of a friend or family member - are liable to fraud. People may state that their religion is whichever religious law suited them best in a particular case. Moreover, it was never clear that personal faith *should* matter: if one's religious law determines the succession of their worldly property, should, say, a deathbed conversion disinherit an adopted child who cared for the deceased when they were ill and nearing death? 'Personal law' is somewhat of a misnomer in most cases involving civil litigation, as determinations of one person's law inherently impact the rights and recourse available to another. Thus, the court often faced a balancing act of weighing how much it should privilege belief against the material consequences that one individual's faith may hold upon another.

Moreover, the ostensible purpose of section 13 of the Burma Laws Act - the legislation that empowers religious law for civil matters - was to protect religious communities threatened by secular bureaucracy. From their experience in India, the architects of British colonialism learned that interfering too much in native religious life could engender anti-colonial sentiments they were keen to avoid.[7] While a central argument of this dissertation is that this legislative

[7] I.e., Adcock 2014; see also Crouch 2016; Hatcher 2022.

structure of non-interference did in fact paradoxically affect religious practices, it is still important to observe that colonial agents like judges did consciously craft their workings around this prerogative. Thus, it was never entirely clear that questions about religious personhood should revolve around determinations of individual faith over and above any particular judgment's potential impact upon the broader religious community. This is not to say that colonial judges were simplistic handmaidens of imperial policies. Different judges did hold different jurisprudential philosophies, some that were more absolutist in view that personal rights should be weighted more heavily over communal impacts. But all judges did have to consider how much 'faith' was a personal versus a communal matter.

Perhaps what is most remarkable about the story of this legal history is that, despite the significant volume and the long period over which British, and eventually Burmese, courts heard cases over the legal status of various Buddhists, the courts never established clear rules or procedures for resolving such pesky questions. The courts never conclusively determined whether Buddhism, or Confucianism or Taoism for that matter, should be regarded as a philosophy or a faith, and how either of those determinations might impact personal law cases.

Nor did the courts establish a clear rule over how to evaluate Buddhist conversions, a matter which offered enough trouble in cases that involved Buddhist-Muslim conversions, which involved defined rituals. For most of the colonial period, the British courts recognized Chinese and Burmese Buddhism as separate religions. But the courts also recognized that many Chinese Buddhists would worship in Burmese spaces, participate in Burmese holidays and rituals, and join in Burmese Buddhist social affairs, and vice versa. The courts ruled that transitioning from one form of Buddhism to another was both possible and would significantly impact how the courts would handle matters of marriage, adoption, succession, or divorce, but, given all the

forms of mixing that went on, they were never able to offer a definitive answer as to the question of when one moved conclusively from one religion to the next.

Thus, these three colonial religious epistemologies - blood, belief, and behavior - do not represent an orderly schema of evaluation, nor do they suggest a chronological development of jurisprudential knowledge, but rather a messy, overlaid, and overlapping structure of all the things the courts took religion to mean, a structure that was never fully articulated and was thus often inconsistently applied. In his work on legal constructions of whiteness in the United States, Ian Haney-Lopez (2006) describes the American court's consistently inconsistent frameworks for articulating who was and was not legally white as reflecting a form of 'common sense.'

Through his analysis of racial tests in citizenship and immigration cases, Haney-Lopez shows that American judges routinely fail to articulate a cohesive definition of whiteness that makes sense of both the people that are united under the rubric of whiteness and those that are excluded from it. And indeed, how could such an illusory, imagined, and socially constructed category like whiteness ever achieve a logical definition? Instead, judges approach the question of whiteness with a cavalier disinterest in definition reminiscent of Justice Stewart Porter's famous quip on when pornography becomes 'hard-core': they just know it when they see it. Similarly, the various judges of Burma's colonial judiciary possessed an inbred intuition that the Chinese and the Burmese were simply different groups of people.

But the various forms of interaction that occurred in colonial Burma troubled this commonsense understanding. Burmese and Chinese Buddhists mixed, more so than either did with other international groups like the Indians and the British, or even Chinese Muslims; both mixed with each other perhaps even more so than either did with other groups within Burma, like the Shan or Kachin or the Karen (though this presumption is troubled by a similar inexactness in

colonial definitions of who counted as part of these various groups, and by the fact that, when describing mixtures of ‘natives’ and ‘foreigners,’ court reporters often begin using ‘Burmese’ as a national umbrella term rather than as synecdoche for ‘Burman’ or ‘Bamar,’ the majority cultural group; it is perhaps telling that there are a number of cases in the materials I am drawing on that involve ethnic Mon persons included under the term Burmese). Burmese and Chinese Buddhists went to each other temples; they gambled, made music, and held pwes (festivals, ပွဲ) together; they married each other, had their own children together, and, when facing abandonment, death, or destitution, adopted each others’ children. With all of this mixing going on, no single standard of determining a person’s religion could accomplish all of the work that common sense was expected to do to keep the Chinese and Burmese as separate legal categories. So the courts used three.

“Blood” refers to the presumption that religion is less a category of personal faith than it is a matter of familial inheritance. It is through this ontology that religious personhood most simplistically resembles a racialized logic: religion is carried through one’s family line (typically passed down by the father in cases of mixed-religion marriages), remains uniform throughout one’s life, and is passed on to one’s children. Though the courts generally acknowledged that people could change religion over the course of their lives, there was never a unified opinion that religious change - whether through ritual conversion or gradual assimilation - resulted in a change of personal religious law. That the courts would view religion as an elemental aspect for categorizing persons rather than a reflection of personal faith points towards how legal structures in colonial Burma served as an important tool in the imperial project of fixing persons into ethnologic taxonomies. Recent scholarship has offered important critiques of the role anthropology played in advancing imperial interests by organizing colonized societies into more

easily knowable, and thus dominable, cultural groups. Yet, there has not been a corresponding focus on how the handmaidens of colonial knowledge - officials, bureaucrats, and, most importantly for this story, judges - turned that knowledge into practical, and practicable, power. One such way that imperial power used colonial ethnologies was through the selective application of a racialized logic that viewed distinct cultural groups as a priori creations that are inherently different, incompatible, and necessarily separate. That these ideologies found firm foothold in the halls of the colony's courts made them material, determining the rights and legal recourse available to the parties that came before them.

"Belief" refers to the opinion that personal religious law should be rooted in the actual faith of a given individual. While this is on the surface the most straightforward approach to finding a person's religion, it actually presents the greatest challenge for the courts. Part of the challenge is that the epistemological tools of legal reasoning are wholly incapable of reaching down into one's heart of hearts to determine true faith. It is one thing to hear a person declare that they view Buddha as their lord, believe in the reincarnation of souls, and consider the karmic merit and demerits of their actions as influential upon the placement in the next life;[8] it is another thing entirely to know whether they believe it. The courts approached statements of belief skeptically not only because the positivist legal methodologies available to them were insufficient, but also because the material interests involved in disputes over large estates or maintenance for a divorced wife created strong motivations for people to claim their religion was whichever set of personal laws most benefited them.

[8] While much of this - like the idea that Buddha is the lord of the Buddhist religion - is unorthodox and may rile Buddhist scholars, these are unorthodoxies that carried weight in the colonial imagination and were questions that were often used to determine a person's Buddhist-ness - more will be said on this later.

This was additionally complicated by the fact that people often engaged in a multitude of religious practices. A typical Sino-Burmese person might worship at the epicenter of Burmese Buddhism at Shwedagon, where they could also pop in to have their fortune told by a Brahmanic Hindu priest who tells them to make sure they give special offerings to both the nats and their ancestors, both of which they venerate at their home altars. The heterodox and syncretic nature of religious practice prevalent in Burma thus offered a greater degree of 'faith forum shopping' than were feasible in the stodgy monopolies over the soul available in dominant Europeans religious practices. If a person was both Buddhist and Taoist in equal measure, why wouldn't they assert that their religious law was the one that gave them the biggest net payout in an inheritance dispute?

The problem that religious multiplicity posed for judges tasked with administering a law predicated on neatly delineated categories of faith was further complicated by the blurry boundaries around membership in the Buddhist community. That Buddhism lacks the sort of formal conversion rituals of, say, Christianity, created ambiguity around whether participation in certain practices makes somebody a particular kind of Buddhist. Perhaps a Chinese migrant has been visiting a Burmese temple more so than they've visited the Chinese one. Does that mean they've abandoned their 'native' religion? Or maybe the Burmese temple is simply closer, making it more convenient to go there? Perhaps they visit the Burmese temple, seeking friendship or fiscal connections in their new homeland? Or take, as in the case over Maung Ohn Ghine's estate, discussed in chapter 3, a half-Indian half-Burmese man married to a half- Indian half-Burmese woman who twenty years ago swore in court that he was Hindu. If he starts going to Burmese Buddhist temples in the years before his death, should he then be considered Buddhist? Or is it possible that, as his derelict son alleges, his father knew full well of the legal differences

between Hindu and Buddhist personal law codes, and wanted to change religions so that he could disinherit the boy. Together the challenges of proving religious belief, applying a singular religious identity to predominantly heterodox practices, and the potential that perverse incentives might motivate malicious conversions made faith a much more challenging basis for determining personal law than it may originally appear. The varied meanings and inconclusive categories that faith confers suggest good reasons why the courts would prefer the relative fixity of founding religious law on 'blood' over 'belief.'

The practical challenges of forming personal law around religious identity were only compounded when the courts were forced to consider what, in fact, religion is in the first place. Did religion require some form of faith in a higher power? Or at least a soteriological message? Or did 'backwards' facing practices like Chinese ancestor worship count as a religion separate from Buddhism? And should Buddhism really count as a religion if one were to treat it as more of a moral code than a doctrine of salvation? The courts were legislatively mandated to apply religious personal law in cases involving Buddhists, but whether that proscription further demanded recognition of things like Taoism or Confucianism as parts of a cohesive Buddhist practice could hinge on whether Buddhism is a faith or a philosophy.

So, 'blood' was clean and precise, but arguably only tangentially related to religion, while 'belief' was most certainly rooted in religion but lay beyond the reach of legal reason and was in any case too liable to spin out into intractable debates. In the gap between these two epistemic poles lay 'behavior.' The courts routinely relied on what people *did* to make inferences about who that person *was* - or at least to which community they felt most attached. As alluded to above, the court's focus on behavior could overlap with epistemologies of belief when litigants introduced evidence about an individual's religious practice: that a person regularly

visited a Chinese temple, incorporated Hindu rituals into their children's marriage ceremonies, or sponsored the novitiation of their own or others' children could be taken as evidence that a person was Taoist, Hindu, or Burmese Buddhist respectively.

But the courts also regularly factored evidence of non-religious forms of behavior into their decisions about where to place a given person. A foreign-born Buddhist's adoption of Burmese dress could indicate their assimilation, for instance; or else one's defiance of dominant cultural expectations might indicate their lack of attachment to their ancestral faith, as one Chinese couple's adoption of a girl over a boy was taken to indicate. Indeed, and perhaps unexpectedly, it is in their regard of epistemologies of behavior that the courts appeared most willing to yield their dominant presumption that religious personhood was inherited and unchangeable. Migrants carried their personal law with them, and mixed-race children inherited their religion from their fathers no matter what they might have believed, but unexpected behaviors and atypical social affiliations could be taken as proof that one had 'abandoned their ancestral religion' and taken up a new one.

My use of the language of 'abandonment' here is intentional, and points towards the uneven availability of this type of behavioral forum shopping. For one looking to change their personal law, it was not enough to take on a new religion; they also had to prove that they had given up their old one. Judges operated under the presumption that one took on their family's religion and kept it throughout their life. Because mixed people would often maintain multiple religious practices simultaneously, there was not a moment of transition between faiths that they could point to in pressing the courts to recognize their right to, say, Burmese Buddhist law. In comparison, it could be relatively more straight forward for someone who was not ethnically mixed to document the abandonment of their ancestral faith in preference of a new one. For

instance, in the case of *Ma Sein vs Ma Pan Nyun* (discussed in chapter 3) it was possible for an ethnically mixed Burmese-Chinese woman to argue that her 'pure-blooded' Burmese mother's marriage with a Chinese man led her to adopt the Chinese religion, qualifying her to have her personal law switched from Burmese Buddhist to Chinese Customary Law. The radical departure from her ancestral Burmese Buddhist practices upon her marriage offered a clear distinction that the court accepted as proof of her abandoning that religion, and with it her race, and adopting a new one, and the court ultimately agreed that she became Chinese through her long association with that community.

The use of epistemologies of behavior points towards the fact that British judiciary in Burma viewed religion - or at least native religion - as an inherently social or communal event, and that indeed the courts viewed protecting the legal traditions of these communities of worship as their highest priority in determining how to apply the law. That the courts viewed it as their prerogative to protect native religion from the changes that colonial subjugation could bright is further evidenced in the fact that the courts typically determined that Burmese custom formed the culture's Buddhist legal tradition over and above the dhammathats in situations where text clashed with tradition - even though the colonial state expended considerable resources in finding, translating, and organizing Burma's pre-colonial Buddhist legal texts in a manner that could be adopted by the court. Again, this jurisprudential weighting of custom over code makes sense when put in the context of the colonial project's prerogative to govern the colony as a commercial enterprise rather than a cultural project: applying the proscriptions of the dhammathats too zealously would mess a good deal with the normal ways that family disputes were handled, and could foment the exact types of agitation that section 13 of the Burma Law Act was created to avoid.

Taken together, ‘blood,’ ‘belief,’ and ‘behavior’ represent different ontological assumptions about what religion is, of which each requiring unique legal epistemologies to find and carrying with them divergent consequences for the exercise of rights among Burma’s Buddhists. It is important, however, to caution against over determining the boundaries around these categories. I argue, and I believe the evidence more than fully supports, that these three epistemologies are visible in the divergent arguments heard before, debated in, and validated through the courts. Uncovering these categories is important for analyzing how each operates in distinct ways to differently structure rights and privileges in this colonial context. But it does not escape my notice that these three terms are my own, stemming from the interpretive lens I apply to the documents that form the basis of my research. That is to say, no judge ever consciously foregrounded the fact that they were utilizing one or another of these frameworks to a case under their deliberation; they never explicitly justified why a particular situation called for the application of a belief-based rather than blood-based framework for determining whether given person is a Buddhist; throughout the six-plus decades that the ambiguities of what it means to be ‘Buddhist’ produced over six dozen cases on the question, the court neither ever explicitly deliberated the strengths or weaknesses of any of these frameworks nor did they attempt to create a rule for when one or another should apply.

The judiciary’s lack of clarity over the terms of their debates means that there is not a clear chronology to follow in retracing this legal history. The multitude of different ways that people could be Buddhists - or not - meant that every set of litigants to come before the court had some distinguishing characteristic that troubled set practices enough to warrant reconsideration. Add to this the different assumptions any given judge could make about ‘what we talk about when we talk about religion,’ and we find that the case law history over mixed Buddhists in

colonial Burma more often defies than conforms to normative expectations of precedent. Other than a few landmark rulings that bound the courts to consider Chinese Buddhist practices as a protected form of Buddhism, judges most often cited precedent for the purpose of distinguishing the case they were currently considering from what was done in a prior case. Indeed, the best explanation for why there are so many cases over such a long period of time is that there are a near endless number of ways that a person can hold a personal faith, relate to their cultural identity, and be a member of a religious community. This diversity of ways that one can *be* Buddhist produced a similarly endless number of unique circumstances for judges to untangle in determining who *counted* as Buddhist within their courts.

However, there are some through lines that make this story more cohesive than the chaotic explosion of cases might make it seem. I identify at least two. The first is that the inconsistent application of epistemologies of blood, belief, and behavior to determine legal religious personhood worked to facilitate the consistent application of patriarchal privilege. In cases when men and women fought over things like inheritance, maintenance payments, and other money matters, judicial opinion usually worked to preserve men's power over their estate.

While there are exceptions to this trend, especially when Burmese nationalist groups begin focusing on the plight of Burmese women in interracial marriage as a central cause around which to organize, throughout the colonial period the court's favored arguments that kept fiscal power in men's hands. For instance, in the case of *Tun Tha vs Ma Pu* (1909), a half-Chinese Buddhist denied his four-year relationship with a Burmese woman constituted a marriage and refused her maintenance payment when he left her. In this case, Judge Parlett relied on a blood-based assumption that the man should be considered a Chinese Buddhist unless it could be definitively proved that he was not, accepting that the marriage was invalid under Chinese

Customary Law.

Five years later, Parlett would again hear a case in which two parties are disputing the validity of a marriage between two half-Chinese people based on a lengthy period of cohabitation in the case of *Thein Shin and E Chi vs Ah Shein* (1914). This time, Parlett accepts that even though the couple, In Ya and Ma Le, are half-Chinese, the lengthy period of their cohabitation validated their marriage under Burmese Buddhist legal custom. The major difference in this case is that the case involved a male heir arguing that he should take precedence in inheritance over his father's second wife. As the sole male heir, Ah Shein believes the estate should be handled according to Chinese Customary Law, which would give him the entirety of the estate if he could prove that his parents were Buddhist. Thein Shin, the second wife and widow of In Ya, argued that In Ya and Ma Le were never validly married according to Chinese law, and thus both she and Ah Shein should split the estate, which would devolve equally to In Ya's children. In accepting a behavior-based argument that positioned the parents as Burmese Buddhists, Parlett accepted that Chinese Customary Law should win out over civil law, handing the majority of the estate to the son, Ah Shein. The common denominator in Parlett's inconsistency is a decision favoring patriarchical power.

The second through line I identify is a 'common sense' (Haney-Lopez 2006) presumption of difference between foreigners and Burmese, particularly as it regards the Chinese. This is not to suggest that ideas of foreignness were 'foreign' to Burma before the arrival of the British; people recognized differences in language, culture, religion, lifestyles, and other domains long before colonialism, and indeed there are long histories of communication and differentiation between the Burmese and others beyond their borders on the basis of distinctions in Buddhism.

My point is rather that pre-colonial difference was never as fully reified nor as

impenetrable as the British would subsequently come to view it. The imperial desire to place people into clear, distinct, and bounded categories blinded the British courts to the fact that people did not actually live in accord with what would later become the colonial civil servant and influential historian J.S. Furnivall's theory of the 'plural society,' wherein he articulates that Chinese, Indians, and Burmans in the colony 'mixed but never combined.' Indeed, a central contention of this dissertation is that the colonial courts were routinely presented with evidence of social, cultural, and familial Buddhist mixings, which, rather than simply accepting, the courts put an incredible amount of intellectual work into qualifying, explaining away, or otherwise denying.

Taken together, this dissertation seeks to show how the colonial judiciary's varied arsenal of religious epistemologies facilitated divergent racializations for 'foreign' and 'indigenous' Buddhists. Recognizing the role law played in producing different sets of rights, opportunities, and protections for different kinds of Buddhists illustrates that British Burma's courts did not develop different legal codes for the different races that constituted their colonial subjects.

Rather, the patriarchal prerogatives and ethnological modes of seeing adopted by the justices of Burma's courts first imagined and then materially empowered different racial categories. That is, the question this dissertation seeks to answer is not, as I initially imagined this research, 'what were the rights of foreign Buddhists in colonial Burma?' The question is rather 'what were the rights that *produced* foreign Buddhists as a people separate, distinct, and distant from the Burmese?'

Archival Ethnography and Reading History Against the Grain

Riven from 'the field' by Covid, a coup, and an ongoing civil war,[9] this dissertation relies on the methodological insights of archival ethnography to develop my argument as a work of historical anthropology. While the rapprochement between anthropology and history goes back nearly a century, and I am not the first to use the term 'archival ethnography,'[10] historical anthropology remains marginal within socio-cultural anthropology.[11] The reason, I believe, owes to the dominance of participant-observation as the quintessential method of anthropological research, an association that is so strong that 'participant-observation' is practically synecdochical for what it means to 'do anthropology.'

However, the past three years have shown the need for developing new approaches to field research that can accommodate both ruptures and increasingly pertinent ethical demands regarding considerations like asymmetrical access to visas, jet fuel, and immunizations. I intend this dissertation, therefore, as a pitch for a more expansive conceptualization of what we accept as anthropological 'work' that bridges disciplinary divides with our fellow historians - as well as legal scholars, sociologists, and philosophers, among others. And it is towards that object that I offer a brief examination of what it means to conduct 'archival ethnography,' and how this method fits into our traditional paradigm.

As the name suggests, participant-observation traditionally requires a two-part process

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[9] It bears noting, of course, that for many ethnic minorities independent Burma has always been at war, arguably beginning with the formation of the Karen National Union in 1947, the final year of the colonial era.

[10] Though I admit that I thought I was when the term came to me while conducting research at the British Library's India Office Records in London. I excitedly noted the phrase down in my fieldnotes, thinking I'd coined a quotable phrase that could generate tremendous citations and the sort of marginal fame that only an academic could dream of. While I was dispirited to find the term used by Karen Gracy as early as 2004, the literature that I found on the topic was immensely generative, making my loss of fame and fortune easier to swallow.

[11] Indeed, its oversight inspires the title of Brian Keith Axel's 2002 edited volume *From the Margins*. The situation, I feel, remains much the same even two decades later.

wherein a researcher not only directly observes a particular social event (as distinct from early ethnological methods, wherein observations were made through mediated accounts produced by, say, missionaries or government agents) but also works to obtain an *in situ* subjective understanding of those events by participating in those events oneself. Temporal distance makes direct participation in a community, and thus participant-observation in its truest sense, untenable for the historical anthropologist.

Still, this distance can be attenuated, if never entirely closed, through efforts to understand the community of one's interest in other ways combined with other critical analytic skills. Applying understandings gained from participant-observation and the application of critical analysis allows historical anthropologists to approach historical documents as portals for a type of empirically grounded yet inherently imaginative methodology termed 'archival ethnography' (Carminati 2019; Decker 2014; Decker and McKinlay 2020; Gracy 2004; Punathil 2019).[12]

This approach embraces as a core tenant of anthropological methodology that social life, whether detailed by an outside anthropologist or described by the protagonist of an event, is only accessible through particular subjectivities. Applying this truism to archival documents, archival ethnography shifts the focus of ethnographic enquiry from a presumed-to-be-shared social world that the anthropologist can directly access through observation, conversation, and interaction to the conditions of the creation of an unshared, singularized, presumed-to-be-objective representation of that social world. These representations - all the errors they contain, all the

[12] 'Archival Ethnography' can be used to mean two different things. The first usage, as adopted by information studies scholar Karen Gracy and historian Lucia Carminati, refers to an 'ethnography of the archive.' That is, an in situ study of the institutions that store archival documents and the people that staff them, with attention to the mindsets of preservationists, their daily practices, and the networks they engage in, as well as the barriers they place on access to documents, and how those regimes of access "generate what is historically thinkable and politically utterable" (Carminati 2019: 36). The second, as I adopt here and explicate in this section, refers to the practice of conducting an ethnography study of the past through archival sources.

countervailing thoughts they erase, all that through their omission vanishes in the mist of history- effectively become the historical anthropologist's field site.

Contemporary approaches to archival ethnography draw on earlier insights of historical anthropologists, particularly those drawing on the legacy of Bernard Cohn. Cohn's influence on archival ethnography is present in both the mission and approach taken by historical anthropologists. As he summarized the project of historical anthropology circa 2002, Brian Keith Axel wrote that the goal of historical anthropology is not to describe the past as if it were the present, but rather "to explain the production of a people, and the production of space and time," and to further "understand the politics of living the ongoing connections and disjunctures of futures and pasts in heterogenous presents" (2002: 2-3). Axel draws this project back to Cohn's insights, dating back to the 1960s, that colonizer and colonized are not pre-formed categories, but "indissociable" connections formed out of a dialectical relationship, an insight that requires anthropologists to step out of the village and into the archives to understand colonialism as "larger scale cultural phenomena and transformative processes over the long term" (2002: 9).

Archival ethnography likewise draws on Cohn's innovative approach to viewing archival documents as ethnographic field notes. Axel summarizes this method as "bringing an ethnographic sensibility to an archival document" (2002: 14), but it goes beyond that. Treating archival documents as field notes requires attention to postcolonial critiques of archives - we must recognize that archives are sites of power, that the documents within them are neither neutral nor apolitical representations, and that the silences archives contain tell us as much about the work that they do as what we can glean from the actual writing on the page - but also compels us to go *beyond* critique and find constructive ways to *use* them (Punathil 2021: 313). Salah Punathil does this, for instance, in his work on histories of communal violence in India by

tracing how specific contentious spatial and social boundaries were obfuscated in colonial riot reports that gloss motives as inherently religious (2021).

Accepting archival documents as field notes allows us to 'be there,' whether that 'there' is a colonial riot inquiry or a court of law. That we are 'there' only through a limited and problematic perspective is true of any type of ethnographic enterprise, whether historical or in the contemporary, and thus the question is not whether our perspective is limited, but rather how we work around or expand the perspective that is available to us - and, when we have stretched the bounds of what is possible, how to acknowledge the limitations of the perspective we have access to. With that in mind, I turn briefly to a discussion of how I conceive closing the distance between the then-then and there now-here by approaching archival documents as sources that can be read *'against* the grain,' followed by a discussion of the sources I employ for such a reading in this dissertation.

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In her 2010 book on searching out Dutch racial anxieties as produced through archival practices, Ann Stoler likens state power in archival productions to a watermark. Developed as a security measure to protect the currency and official communiques from counterfeit, watermarks are "fashioned for the privileged, with tools that engrave[] their rights and b[ear] their stamp" (2010: 8). Simultaneously hidden and in plain sight, viewing a watermark requires both light and the right angle, offering Stoler an apt metaphor for her mode of peering through the surface of documentary practices and into the stamp of power inscribed "along the grain."

In this dissertation, I set out down the path Stoler charts, but approach 'grain' with a different meaning in mind. Rather than the spongy texture of paper which accepts an embossed

stamp at the point of production and carries it forever, I take ‘grain’ as the long, strong, elastic fibers of muscle or wood. Grain, in this rendering, is not an inanimate stamp, but a living, breathing thing. It also appears natural in this usage, a fact that disguises the human manipulation often involved in modern agricultural or human growth regimes. So to do racial and ethnic categories exist as profoundly unnatural constructions which, tenuous at the moments of their inception, have become so juiced up and well-exercised that they appear a consequence of an evolutionary drive to stick with our own kind.

Conceiving of historic structures of race and ethnicity as wood or muscle grain also enables a metaphoric solution to the problem posed by Stoler’s watermark: the grain can be cut. So, too, is the goal of entering the archive not simply to see the imprint of the state, but to cut against it, to sever the well-nourished fibers of imperial practice and create breathing room for other connections to flourish.

Perhaps cutting against the grain is crude - much more so than Stoler’s dexterous tilting. My interest in this dissertation lies in uncovering how European visions of humanity as a breed of naturally tribal, xenophobic, and mutually exclusive groupings came to displace the pluralisms that have historically reigned outside of the strictures of colonial categories. I see no reason to shy away from severance. We all breathe better in a world of entangled ecologies than monocrop plantations.

I characterize my approach to historical analysis as reading ‘against the grain’ because I focus in this dissertation on the moments of miscommunication between imperial and colonized perceptions of where people fit within the social world of colonial Burma. I approach this project by locating cases where Asian and European voices come into direct contact over the question of who gets what rights and under what circumstances. While not losing sight of the fact that

powerful actors - often European, but inclusive of Burmese judges, as well - are the ultimate authors of these documents, both in authorizing the final judgment of a case and in literally publishing these documents, legal documents allow space for counterhegemonic disagreements to spill out. Legal documents facilitate this type of reading because the structure of legal argumentation requires judges and lawyers to detail the specific bits of evidence - testimonial or otherwise - upon which they base their categorizations of litigants. In this dissertation, I locate moments that litigants, witnesses, and judicial officials speak to each other at cross purposes, misunderstand each other, ignore key details, and lose themselves in translation, both linguistic and otherwise. It is in these moments that I find productive mismatches between the categories of imperial convenience and those of actual practice.

Sources, and a note on Burma's Law Reports

This work is based principally on the analysis of court reports published in colonial legal circulars. These circulars consist of case digests and law reports. Digests, for instance, the *Digest of Burma Rulings*, contain short summaries of reported decisions of the high court and other jurisdictions organized topically and covering a long period of time (for instance, fifty years in the case of the *Digest of Burma Rulings*. Through digests, it is possible to locate a great deal of cases on a particular topic. There are headers for "Chinese Buddhist Law" broken down into sections on 'Chinese Customary Law, When Applicable," "Adoption," "Inheritance," "Marriage," and "Wills," for instance, and similar headers for "Burmese Buddhist Law," as well as "Maintenance," "Marriage," "Divorce," and other topics. Digest cases provide a summary of the important features of cases related to a given header, but offer little detail.

Law reports are volumes of published judgments organized chronologically and divided

by jurisdiction. In the case of Burma, the law reports covered the jurisdictions of Upper Burma, Lower Burma, or Rangoon (which covered the high court) broken up into a variety of journals like *The All India Reports-Rangoon Series* and *Lower Burma Rulings*. The law reports print the judicial decisions of important cases that took place within a particular jurisdiction for that year, offering significantly greater detail regarding the facts of the case, the evidence that was produced and how a judge evaluated it, and the jurisprudential rationale by which the presiding judge came to their decision. Since law reports typically report cases that are heard on appeal, they often additionally describe why a higher court is agreeing with or dissenting from a lower court, offering further insight into the dialectical nature of judicial decisions. In reprinting judicial decisions, law reports also report the precedents that the presiding judge takes into account in authoring their opinion, and may also provide details of unreported cases that the judge takes into consideration.

Through a survey of these circulars, I have located 67 cases that relate to conflicts over the application of Buddhist law in mixed families that were heard and reported on in Burma's courts. A majority of cases were first discovered through a preliminary survey of cases related to religious law (under the headers Buddhist Law; Burmese Buddhist law; Chinese Buddhist law; Hindu Law; Muslim Law) and the Burma Laws Act (under the header Burma Laws Act [XIII of 1898]) in two digests[13] and nine additional law reports[14] covering the years 1872 to 1947.

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[13] The *Digest of Burma Rulings* (1872-1922) and *Decennial Digest of Burma Rulings* (1923-1932).

[14] In chronological order from the first date of publication, these are: *Lower Burma Criminal Circulars and Judgments* (1872-1894); *Upper Burma Rulings, Criminal and Civil* (1897-1901); Lower Burma Rulings (1900-1922); *All India Reporter, Burma-Lower* (1914-1922); *All India Reporter, Burma-Upper* (1914-1922); *All India Reporter, Rangoon* (1923-1947); *Burma Law Journal* (1922-1927); *Indian Law Reports, Rangoon Series* (1923-1937); *Annotated Law Reporter, Rangoon Section* (1932-1935); and *Rangoon Law Reports* (1937-1947).

Additional cases were located by tracing the precedents cited in particular judgments. I have complete records of 60 of these cases; the other seven include three unreported cases that I have partially reconstructed through the details reproduced in judgments that draw upon them,[15] and four cases that I have not been able to locate. Of these, 56 cases deal explicitly with either ethnically mixed families or ethnically homogenous families conflicted over which form of Buddhist law should apply to them (I.e., a Chinese family settled in Burma for several generations wherein at least some members seek the application of Burmese Buddhist law to their case).

I conducted additional archival research in London, England and Ithaca, New York. In London, I located printed case papers for the eighteen available Privy Council cases that came out of Burma's colonial courts. These Privy Council papers are notable for their preservation of witness depositions and other evidence, offering significantly greater detail about what the courts heard and how they arrived at their ultimate judicial decisions. Three of these cases I located deal explicitly with questions of Buddhist family law, including one case that deals with a mixed Buddhist family (*Ma Yait vs Maung Chit Maung* [1921], considered in detail in chapter 4). Additional Privy Council files cases remain under a standard one hundred year embargo by the United Kingdom's National Archives at Kew.[16]

In Ithaca, I surveyed news media archives and records of colonial administration to further contextualize the cases that I found. Cornell University's Kroch Library holds

[15] Primarily in the case of *Phan Tiyok V Lim Kyin Kauk* (1930), which prompted a major review of judgments related to the position of Chinese Customary Law in Burma, discussed further in chapter 2.

[16] These files can theoretically be opened early through freedom of information (FOI) requests. The UK's Freedom of Information Act 2000 requires FOIs be responded to within 30 days of receipt, but allows record holders to respond noting that they have not decided on whether to open a record at the end of that time frame. My efforts to open relevant files during the course of my research were unfortunately in vain.

microfilmed versions of Burmese, Chinese, and English language newspapers published in Burma. While these sources, especially those in Chinese and to a lesser extent Burma, were too spotty to help trace particular cases or figures, they offered valuable background on pressing issues in these different communities. The Kroch Library also holds the British government's internal *Reports on the Administration of Burma* (1860/70-1935/36), which provided relevant background context to the structure of judicial administration.

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There are a few important observations to note regarding my choice to source this dissertation through imperial legal circulars. In his analysis of criminalized bodies in Burma's Law Reports, legal scholar Nick Cheesman argues persuasively that this genre offers critical insights into the core techniques of political power in Britain's overseas empire. "The bodies placed on the line in criminal cases," he writes "most clearly reveal the specific relationships with which the body politic is concerned;" "in the exercise of control over the body of a colonised accused lies the schema for the exercise of control over the body itself" (2014: 78). Cheesman's interest in state violence, historically and in the present (2015), leads him to focus his analyses on instances where legal structures enable the exertion of literal physical force over the body.

Yet, Cheesman's insights suggest the significance that law holds for exerting control over not just physical bodies, but their social meanings, as well. Extrapolating from the effects of laws upon the body to the broader ideological work that the presence and performance of law enacts upon the colony, he notes that law reports "interpret and legitimise prevailing social relations" by "interpret[ting] and legitimis[ing] certain types of violence, while delegitimsing unruly force beyond the borders of law" (2014: 77). Legitimizing particular social orders, however, requires

more than the simple physical exertion that an empire's military superiority makes available to the colonizers; it requires ideological persuasion, as well: "the success or failure of the legitimising project hinges on the ability of courts to obscure the prejudices of the judge and the politics of his or her institution" (2014: 77).

This analysis points towards two simultaneous processes that the law report genre facilitates. First, the reports empower particular social relations. The law reports empower both a dominating relationship between the colonizer and the colonized (through, for instance, the unilateral power of the colonizer to imprison the colonized); and a varied but limited set of relationships among the colonized. Among this latter set we could include (the empire's view of) proper gender relations, filial relations between parents and children, and the appropriate relationship between both church (read 'sangha') and state and religious leaders and their subject communities, as examples.

Second, the reports obscure the parochialism of the social relationships that they empower, invisibilizing their Euro-centric origin and in doing so rendering them as objective, universal, and natural features of a modern society. Through this simultaneous empowerment and obscurance, the law reports thus both limit the range of social choices or affiliations considered right, rational, or that otherwise 'make sense,' and work to transform deviations from this new norm. They are, in other words, a critical site for understanding how empire works to mold the colony in its own likeness.

Cheesman focuses his analysis on criminal law reports, arguing that "in a politically repressive setting, these cases [criminal cases] are the representative mode of legal authority" (2014: 78). Without disputing the unique ways that criminal law structures repression in colonial

settings,[17] I set out in this dissertation to mark of how civil law also acts upon colonial societies. Like criminal law, civil law statues interpret and legitimize particular social relations while rendering others specious if not impossible. Like criminal law, civil law only succeeds as an ideological project to the extent that it can obscure the prejudices of those that write, enact, and rule through its codes. Like criminal law, civil law envisions a proper relationship between not only subjects' bodies, but between subjects and property as well. And while the abstractions through which civil law exerts control over bodies, relationships, and property might seems anodyne when set against the visceral violence of torture and imprisonment, to those so affected by the parochialism of civil law - the woman labeled a concubine and refused her rights as a wife; the son denied his adoption and left penniless upon his parents' death - it is no less real.

This work, then, focuses on the genre of civil law legal circulars because they, too, show an empire at its apex, and reveal not only the extent of its power, but the technology that facilitates it in the first place. After all, even if most colonial subjects most frequently experience the state most directly through domineering apparatuses like the police or institutions of surveillance, repressive functions represent only the most inefficient minority of colonial techniques of rule. More influential are those 'positive' and 'productive' - in Foucault's sense of the terms[18] - functions that bring people into the ideological world of the colonial state through the seductive lure of hegemony. Though perhaps only a small, elite, privileged sector of society had both the means and the modes of access to make litigation an attractive arena for the settlement of disputes, the courts' resolution of those disputes created social effects that stretched far beyond the litigants in question.

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[17] See also Brown 2022; Ferguson 2014; Saha 2013.

[18] I.e., Foucault 1995, 2003, 2008; See also Behrent 2013; Cooper 1994.

I approach the sources I use and the cases I cite in this dissertation, then, to consider not only how the British courts' interpretive errs, oversights, and ideological impositions abrogated the justice sought by those particular litigants that actually came before it, but how the precedents set by those judgments impacted those who never came before the courts in the first place by communicating, and thus legitimating, the right way to form partnerships, families, and communities amidst the cultural mixing of colonial life.

Still, the question of whether the courts produced as hegemonies the relationships they sought to constrain into existence remained open at the end of the colonial period. One of the most intriguing things I noted as I proceeded through this research is simply that the courts heard an enormous volume of cases involving Buddhist mixings, a fact that attests to both the limited impact the courts had on creating the social segregations they envisioned and the tenacity with which litigants challenged the hegemonies of empire. Try as the courts might to establish firm and clear rules for how to define, delineate, and litigate mixed relationships, no body of law could in the end anticipate the varied ways that people would claim particular identities and the attendant rights entailed within them.

Indeed, in the end these rights claims would end up outlasting the empire itself: in mid-December 1947, just three weeks before Burmese independence, among the last cases the British decided before they turned the keys to the courts back over to the Burmese involved a question regarding the personal law status of a Chinese woman who remarried a 'necromancer' after her husband's death (*Tan Swee Kyu vs Chan Chain Lyan*, 1947, discussed in Chapter 5); and one of the first cases heard under the newly independent courts of the Burmese nation reasked the well-litigated question of whether Sino-Burmese could make wills, allowing Burma's high court to overturn sixty years of British precedent by declaring the Sino-Chinese more Burmese than

Chinese (*Cyong Ah Lin vs Daw Thike,* 1949). By symbolic coincidence, the judgment of this latter case was announced on January 4, 1949: the first anniversary of Burmese independence.

Conclusion - On 'Religious Racialization'

This is a dissertation about the pursuit of rights and the identities through which those pursuits were necessarily channeled. It is about the interactions between an alien legal system and the people that sought to make it work for them. It is about people that found themselves caught in between their past and their present, their mothers and their fathers, their ancestors and those they love in the present, because the law could only understand them if they picked sides. This is a dissertation about how people who join, create, or are born into mixed families confuse an imperial order that tries to keep those that it dominates happy by keeping them separate.

Confusion is not all bad - or at least it is not bad for everyone. If someone who decides your fate does not know who you are, you might be able to convince them that you are someone who deserves special treatment. A dearth of information allows savvy actors to exploit a situation. We will meet many people throughout this dissertation who were able to use the confusion that their mixing generated to their own advantage. But when conflicts enter an adversarial legal system, resolutions necessarily take the form of winner take all solutions. For every person who wins the court's recognition, who is able to convince the judge that they are who they say they are, there always a loser, a person who has an identity that they wish not to wear thrust upon them, a person who is told that a part of who they say they are is invalid, illegitimate. What is more, they are told that because they are not who they say they are they do not deserve the rights they believe they should hold.

I am interested in studying these conflicts of categories, identities, and rights in colonial

Burma because I want to understand the connection between law, society, and justice, both in Burma and outside of it. I have chosen to focus this research on Burma for two main reasons. One is personal: I lived on the border between Burma and China for two years, where I became interested in the movements and familial connections I saw exist across borders. Living there in the heady days of Burma's nascent move towards democratization, I became progressively more and more interested in happenings further across the border. That is where I decided to learn Burmese, and have always since retained an interest in the history of interaction between these two places. Less subjectively, I chose to study Buddhist mixings because I am interested in how multiplex identities are necessarily made singular for the efficient organization of rights and easy discharge of justice. The British who colonized the country sought to administer it as a modern and objective legal bureaucracy. The colonizers believed that they could content their subjects to alien rule by recognizing each native group's codes of law. That their effort produced so many conflicts thus helps illuminate how identities are neither singular nor objective and how the strict separation of persons by legal identity exacerbates rather than ameliorates conflicts of law.

I approach the interactions between law, individuals, and communities of representation that play out in personal law litigation conflicts through the lens of racialization. I take the legal struggles over representations of self and other that occur in the courts as turning identities into races. This approach is not new, though it is different in important ways from both popular and scholarly approaches to race. It does, therefore, warrant some explanation.

Viewing race as a legal category is distinct from viewing it as a natural category in that this approach foregrounds the social construction of this category. Viewing race as a legal category is also distinct from viewing race as simply *any sort* of social construction in that it emphasizes the outsize role that state institutions have in empowering the racial signs, signifiers,

and categories of its own conception. Moreover, taking race as a specifically legal category clarifies that the way state make their racial categories real is through the legal definition of racial identities, the organization of rights and privileges through those identities, and the protection of the bounds around those identities through a variety of punishments it legitimizes as jurisprudence. Thus, law designs race, polices its bounds, and makes it enticing - at least to those who can benefit from particular claims made through its imaginative structures.

Of course, scholars in various disciplines have long known that identities are complicated and that law drives conflict. Here is where Burma adds something new: the legislative structures designed by the British created racial legal categories not through the typical referents of phenotype, ancestry, or blood quantum but rather by way of religious personhood. That is, a subject's religion defined the way that they were seen and treated in legal spaces. The British courts in Burma did not define racial categories per se; rather, by structuring one's rights and legal privileges according to their religion, the courts race out of faith, a process I term 'religious racialization.'

While global theories of race are paying more attention to the ways in which race, as legally structuring identities (Harris 1993), is constructed outside of the bodily orientations that emerge from American contexts (e.g., McKinley 2016; Smith 2019; Tewolde 2019, 2021), there remains an urgent need to research the ways that religious identity both informs and is itself remade by racial ideologies (Husain 2017). To the degree that there is research on religious racialization, religion is often only appreciated insofar as it draws racial distinctions between people of different faiths: for instance, the racialization of Arab (e.g., Considine 2017) and Persian (e.g., Maghbouleh 2017) Muslims as Black or Brown against a white Christian hegemony in the US, or the political persecution of Muslims in Europe (Bringa 1995; Rexhepi

2018). When intrareligious dynamics are analyzed, discussions are limited to considering how shared faith fails to overcome *pre facto* racial distinctions among, for instance, Ethiopian- and Israeli-born Jews (Ben-eliezer 2004; Fenster 1998). What remains unexamined is when, and how, religious distinctions are themselves the source of racial ascription.

My contention is that, in Burma, throughout the period of British colonial rule, litigation established progressively firmer and clearer lines defining differences between Buddhists who were, and are still, Burmese, indigenous, native to the country, and those who are foreign, set apart from, and in some ways, or at certain political moments at least, antithetical to a particular vision of the Burmese nation. Religious racialization, then, allows me to pursue mixed Buddhist litigation through an analysis of racio-religious ascriptions while maintaining care to avoid reifying either race or religion as ahistorical social attributes.

By viewing colonial law as a site of racial formation, I argue that colonial courts served as the arenas in which people with various claims over Burmese or Chinese identity worked out particular understandings of what it means to be Burmese, what it means to be Chinese in Burma, or what it means to be a Buddhist of particular Burmese or Chinese cultural orientation, and what rights, privileges, or recognitions should come with those particular identity claims. In other words, this dissertation is not about answering the question of 'what were the rights of the Chinese in colonial Burma?' Rather, the question animating this paper is: what were the rights that *produced* the Chinese as a people separate, distinct, and distant from the Burmese in colonial Burma? And how did claims to these unique rights usurp competing legal claims voiced by others interpolated as Chinese, including Chinese migrants and mixed-race person, who sought recognition as Burmese?

Understanding the significance of religious racialization as a distinct intersection of faith,

identity, and power requires appreciating the unique religious milieu confronting mixed Buddhists in Burma. I identify two socio-cultural conditions that in conjunction make the position of mixed Buddhists in Burma different from those in other colonial situations. The first is that as a Buddhist majority country with a high degree of migration from other Asian countries, cultural mixing in Burma produced unique interactions between native and foreign Buddhists that trouble simplistic attempts to divide the two. Burma's Buddhist majority distinguishes it from the British colonies of India, to which it was initially attached, and Malaysia (Malaya) and Singapore (the Straits Settlements), which also had a large Chinese population but few native Buddhists. Both of these other colonies maintained similar structures for empowering religious law as personal for different religious communities, but neither produced the same volume of litigation over questions about how to categorize litigants that seem to simultaneously belong to multiple religions. In India, a clearer system of ethnic distinction and more developed system of Hindu law - or at least systems that were more accessible for the colonists to apprehend - helped judges categorize the population and find the law without the same unanswerable questions that would emerge in the Burmese condition. In Malaysia and Singapore, a firmer religious distinction between indigenous Muslim Malays and Chinese migrants would prevent the sort of indeterminate crossings that so troubled the operation of categories of distinction in Burma.

The second is that Buddhism in Burma is in many ways open to kinds of multiplicity that colonial assumptions of strictly delineated religious identities are not. Take, for instance, the two defined categories of Buddhism that were validated through Burma's courts, Burmese Buddhism and Chinese Customary Religion. For many Burmese, Buddhism in a sense integrates two distinct religions: the 'higher' or more 'pure' practice of attaining spiritual refinement through

meditation and mindfulness; and the mundane, 'lower' calling of worshiping gods or other minor deities that one can form a relationship with or even call upon for a variety of practice purposes. There is then a sense that it is not at all out of place for a Burmese Buddhist to also maintain other practices of worship - for instance, maintaining practices of ancestral worship, or Taoist practices - or even gods from ostensibly different religions - like Ganesh, as will be discussed in chapter 4 - so long as those other practices or objects of worship are clearly in support of a Buddhist practice that remains fundamentally superior.

'Religious racialization,' then, offers a language through which we can interrogate how colonial jurisprudence cleaves otherwise mutual, even co-constituting, socio-religious practices to neatly order distinct rights regimes among subject populations that may otherwise see themselves as shared congregants rather than separate races. Perhaps this framework seems hyperbolic. There were not explicit 'race laws' that actually sought to define who was Burmese or Chinese by some measurable principles of blood quantum or jus soli citizenship. Nor was the question of what it meant to be Chinese or Burmese solely a question of rights, given the ways that people recognized distinctions between these groups outside of legal production, for instance, by language or cultural markers like ancestor worship. But, for those many who crossed the boundaries that an alien regime imagined most fundamental – foreign Buddhist migrants domiciled, Buddhists in inter-'racial' partnerships, and especially their mixed children – the question of where the legal boundaries between foreign and indigenous lie, was not necessarily clear. And which side of that divide they fell on carried significant weight, determining matters such as the legitimacy of their marriage, how much they could inherit from their parents' estate, and eventually, what form of citizenship they could hold in the country of their birth.

Dissertation Outline

This dissertation proceeds through six chapters, divided into two sections focused on historical context and theoretical analysis respectively.

Chapter one, *Law and Society in Pre-Colonial and Colonial Burma*, is a focused history offering the reader relevant background to this dissertation. It begins with an overview on histories of law and colonial ordering in Burma, making the case for why a history of civil law conflict is valuable for a field heretofore dominated by an interest in criminal law, rebellion, and other iterations of force that I think of as 'hard' colonial power. It then moves into a discussion of what different communities of Buddhists existed in colonial Burma to better acquaint the reader with the diverse groups that colonial interpretations of Buddhist law affected. Here, I also offer some preliminary ideas about why the Chinese, or Sino-Burmese, are the community most directly invoked in jurisprudential conflicts over categorizations of Buddhist law and personhood. I then offer concise summaries of customary social structures and both customary and colonial law practices, which will offer relevant background for understanding the cases and analysis that follows.

Chapter two, *Locating the Chinese Religion: The Jurisprudence of Chinese Customary Law under the Burma Laws Act*, offers a chronological history of the development of jurisprudence over Chinese-Burmese family law conflicts through four cases that each represent turning points in the ways that these conflicts were adjudicated. I read these four cases through theories of racial formation (Omi and Winant 2015) to demonstrate how colonial jurisprudence sidelined emergent forms of cultural hybridity, ultimately defining Chinese and Burmese Buddhists as mutually exclusive and oppositional categories. While careful to emphasize that this jurisprudential trajectory is not linear, the chapter concludes with what would be the final

determination of colonial jurisprudence on Chinese-Burmese mixing: "that Chinese Buddhists are not Buddhists in the same sense that the Burmese are Buddhists," and the Chinese are thus only Burmese to the extent that they have abandoned their Chinese ways (*Phan Tiyok vs Lim Kyin Kauk* 1930: 120).

Chapter three turns towards the more theoretically driven chapters of this dissertation through an evaluation of the types of evidence that Burma's colonial courts used to prove the racial categories of the litigants that stood before them. Titled *Colonial Theory, Social Belonging, and Lineage Tracing: A Politics of Evidence in Burma's Colonial Courts*, this chapter adapts theories regarding 'evidence of the intimate' (Gribaldo 2019; Kobelinsky 2015) to a setting where courts create evidence that is intimate though abstract, giving life to the social fiction of racial difference. I locate three epistemological frameworks through which the courts find evidence of religious personhood as a fact of one's blood, belief, or behavior - that is, their parentage, what they say the believe or what they know about different religious systems, or how they act in society. I further locate three distinct forms of evidence, which I term 'legal ethnology,' 'faith finding,' and 'lineage tracing,' that the colonial courts develop in their search for litigants' essential personhood. Through this chapter, I demonstrate how the ways that colonial courts approached evidence in their search for categories of religious personhood simultaneously relies on and constructs a vision of religion as binary, singular, and mutually exclusive in a cultural context where overlap and engagement were the standard.

Chapters four and five, which are meant to be read in relation to one another, engage theories of ethnicity and race, respectively, in my analysis of mixed-Buddhist families. Chapter four, titled *Navigating Multiplicity: Maung Ohn Ghine, Wun Pain Wain, and Buddhist Ethnicities*, considers 'what exactly is 'mixed' in the case of mixed-Buddhist families?' I explore

this question through two cases, one centered on a Ganesh worshiping Indian-Burmese Buddhist and another on Burmese adopting Chinese couple, that together show illustrate the religious and social fluidities that are possible under the rubric of 'Burmese-ness.' These fluidities, I argue, suggest the essentially ethnic character of that classifier.

However, as I show in chapter five, titled *Religious Impositions and Racial Property Status: San Hla, Ma Sonna, and Raced Foreignness*, reading Burmese-ness as an ethnic identity is problematized by the historical structuring of rights around categories of religious personhood. Drawing on insights from legal scholar and critical race theorist Cheryl Harris that race operates as a property right (1993), this chapter illustrates how colonial distinctions of Asian populations in reference to religious incompatibility endows the categories of 'Burmese' and 'Chinese,' and 'native' and 'foreign' more broadly, with racial characteristics. This chapter further emphasizes that, like all processes of racialization globally, this was a fundamentally gendered project where courts found the fundamental essence of Chinese distinction in men's rights claims and the thoroughly patriarchal structure of Chinese Customary Laws.

I draw this dissertation to a close through chapter six, *Heeding the Counterclaim: Approaching Litigation as an Act of Citizenship*, and a short conclusion, *Lee Ah Yain's Alternative*, which are united in their mission of showing the alternatives that always existed to colonial jurisprudential logics that found the separation of Buddhists by ethno-racial status a foregone conclusion. Chapter six takes this up through an exploration of the claims that mixed Buddhist women make in the litigation that they initiate as a practice of citizenship. Pushing back against a general trend in anthropology to view citizenship outside the state - a trend generalized under the framework of 'cultural citizenship' and its many descendants - this chapter adapts the political vision of Etienne Balibar and the framework of citizenship (vis-a-vis

subjecthood) developed by Mamood Mamdani to recognize how attempts to act *through* the state offer a more fulfilling articulation of citizenship than simple cultural recognition. The conclusion reiterates this message through the excavation of an unreported case that offers just the barest sketch of what possibilities may have existed outside the aperture of court documents.

Chapter 1:

Law and Society in Colonial and Precolonial Burma

British colonialism in Burma proceeded in three stages, moving successively from the coastal fringes of the geobody up from the south. The first Anglo-Burmese war, fought over two years from 1824-1826, resulted in the British taking possession of the coastal regions of Arakan and Tennaserim, along the southwest and southeast coasts respectively, as well as Burmese controlled regions of modern-day India, including Assam and Manipur. After the second Anglo-Burmese war, a nine-month affair from April 1853-January 1854, the British took over the rest of southern or 'Lower' Burma, a much larger geographic chunk of the country. Lower Burma included Rangoon, then a sleepy fishing town most notable for its proximity to the Shwedagon Pagoda. The British developed a new administrative bureaucracy in Rangoon, transforming it from a small pilgrimage town into the seat of colonial administration.

Throughout both wars, the Burmese government in the northern part of the territory ('Upper Burma') was centered in Mandalay and continued to operate as a sovereign power, though over a greatly diminished kingdom. About thirty years after the end of the Second Anglo-Burmese War, the British proceeded north to complete their imperial endeavor through the three-week long Third Anglo- Burmese War, which concluded with the exile of the Burmese king to India in 1885.

Law was a central technology of British colonial domination in Burma. Law justified the British invasions of Burma,[19] and legitimated British presence once they took over. It facilitated the subordination of anti-colonial resistance as well as the social transformations the British

[19] Huxley 2010: 270-272.

sought to affect in the interest of disincentivizing resistance. And it was more than just a convenient structure for expediting power; law was critical to the British self-image of what colonial rule meant for the world. The British promoted their transformations of the legal system as a principle achievement of their rule, a *noblese oblige* gift of modernization for a benighted people.

Histories of law in Burma, and elsewhere in and outside the colonial world, debate where legal practice lies on a spectrum from 'rule of law' and 'law and order.'[20] 'Rule of law' signifies a liberatory view of law constraining sovereign violence. In this view, the sovereign (whether a state or royal) is forced to adhere to legal procedures in carrying out an action, whether that be levying a tax or executing a criminal. Law thus protects the populous from caprice by offering both oversight of and a means intervention into unjust sovereign action. 'Law and order' signifies a subordinating view of law enabling sovereign violence. In the space of 'law and order,' law is focused on policing the populous rather than the sovereign. The sovereign sets the terms of life the populous must abide, and any deviation from permitted practice warrants violent suppression. Law thus protects the sovereign by giving them license to subdue even the most innocuous deviance.

Not surprisingly, answers to the question of whether the British practiced 'rule of law' or 'law and order' in their colonies depends on where you look and who you ask. British administrators and a variety of imperial hagiographers would characterize their influence as a promotion of 'rule of law,' arguing that, cruel as the theft of national sovereignty might be, the

[20] I draw on the framework Nick Cheesman develops in his 2015 book *Opposing the Rule of Law: How Myanmar's courts Make Law and Order* and his 2016 article *Rule of Law Lineages in Colonial and Early Post-Colonial Burma* in this section. For other uses of this framework, see also Tamanaha 2004.

strict legalism of the colonizers at least imposed some inhibitions upon the imperial power' (Thompson, quoted in Saha[21]). But generally those who focus their analytical efforts on the subject of law itself in Burma refuse the simplistic binary, describing a more complex and ambiguous relationship between law and sovereign power in the colonial period and beyond.

Tracking this ambiguity requires attention to the multiplicity of law. Law can do different things or have different effects even if legal structures are part of an administrative apparatus built for the explicit purpose of domination. Nick Cheesman, for instance, considers the procedural and substantive aspects of law separately to show how British Burma's superior courts did constrain colonial abuses of criminal law legislation, even if the procedural application of law enabled certain local despotisms (2016). Similarly, Ian Brown does away with the imperial fantasy of the monolithic bureaucracy to show how British officials found themselves caught between metropolitan pressures to order the colony, on the one hand, and pressure from colonial subjects demanding the empire live up to its proclaimed ideal of justice, on the other (2022). In Brown's rendering, agents struggled against the most repressive urges of the coercive state but ultimately failed to implement true 'rule of law' until the inexorability of independence allowed them more freedom to act against the interests of the imperial elite. Even Jonathan Saha, the preeminent historian of the colonial police in Burma, describes Britain's rule of law rhetoric as a foundational to efforts to constrain colonial abuses of the law as a tool of repression, though in his telling this is less an outcome of the justice system itself than of local political organizing (2012; see also Saha 2013).

Reviewing the various works on the question, then, shows how it is helpful to use the tension between 'rule of law' and 'law and order' as a heuristic for probing how the law

[21] Saha 2012: 187–212

generates a space in which colonizer and colonized engage each other in a struggle over representation, and what substantive rights, privileges, or even just parochial opportunities one can access through such representation. Contemplating the space between 'rule of/law/and order' allows us to ask questions like: 'How did imperial prerogatives shape colonial judges' interpretation of justice?; 'How did colonial agents weigh the smooth operation of government against their commitments to their subjects?;' And 'How did colonized subjects exploit ambiguities in rule of law discourse for their own ends?' It is exactly these questions that I take up in my own analysis.

But I must also address at the outset an important point of distinction between these works on rule of/law/and order and my own work. This literature largely focuses explicitly on law as coercive capacity, whether that coercion abides in surveillance, policing, sentencing, imprisonment, or the infliction of violence upon bodies. This interest in coercion leads scholars to focus principally on criminal law cases, that domain of law which most directly takes up the connection between law and repression (whether freedom from or subjection to). My work, which takes up the study of ethno-racial identity and cultural citizenship, focuses on civil or family law, a domain in which the coercive capacities of the state are less easily visible. Though a small minority of cases I cite are criminal law cases (mostly cases regarding spousal abandonment or kidnapping, where divergent interpretations of marital custom lead to criminal prosecutions), the cases that do the heavy lifting in demonstrating the arguments I lay out in this thesis have a more tenuous relationship to hypotheses regarding rule of/law/and order in colonial power systems.

How then does my work articulate with literature that focuses on criminal law? I see two points of articulation between the normative approach to studying rule of/law/and order through

criminal law and my diversion of this literature towards considerations of civil law. The first of these considers how this literature asks fundamental questions of my work. The second considers how my work points towards critical oversights in normative understandings of law in colonial environments, at least outside settler colonial situations.

The first point of articulation is that I follow a similar track as rule of/law/and order theorists in positioning law as a 'technology of governance.' This approach, an extension of Foucault's theorization of technologies as "the methods and procedures for governing human beings" (Behrent 2013: 55), underscores that law is primarily concerned with structuring relations of power both between institutions and individuals and, importantly, among individuals themselves. While theorists have used criminal law to elucidate the first of these two - that is, structures of power in the relationship between people and institutions - I turn towards civil law to pursue latter of these, wherein law facilitates differential access to power between people outside of an institution. My interest in racialization in colonial Burma explores the material, social, and interpretive stakes that different categories of identity gave those who contended membership in them. That law structured access to, and the potential to exclude others from, these categories demands attention to the question of whether law functioned to facilitate substantive justice or to order colonial subjects.

This methodological decision guides me to a second point: that civil law litigation offers a unique insight into the intersection of legal processes and everyday society through which we view how the modern bureaucracy of law structures colonial life. In reading criminal approaches to law in the colony as an inspiration in my work, I have nevertheless come to see the preference for studying law through its most repressive moments as missing the full extent of impacts that centralized, bureaucratic, imperial legalism has on the structure of power in colonial societies. It

is an axiom of political theory that power cannot only function through repression; it must also inspire positivist allegiances that cultivate power through participation.[22] So why would we only look to those moments where violence comes to the fore, that minority of moments where states fall back on force to label and then repress criminality, to understand the operation of law as a technology of governance? Missing from this a description of how law develops power in ordinary time, when its workings are quiet, but no less seductive. This thesis begins the work of offering such a description by showing how law first empowers particular categories of identity with privileged rights that are denied to others and then structures differential and discriminatory access to those categories.

The Buddhists of Colonial Burma

At the outset of this dissertation, it is worth considering briefly the question, of who were the Buddhists of colonial Burma? The historical diversity of cultural groups and religious practices in pre-colonial Burma, as well as histories of migration under colonialism, makes a full consideration of this question beyond the scope of this dissertation. But some basic understanding of the different cultures of Buddhism that have long existed in Burma and the ways that Buddhism has been enmeshed in both local cultural identity and historic structures of power in the kingdom, colony, and eventual country of Burma will be important for the arguments that I subsequently develop in this thesis. With the important disclaimer, then, that what follows is oriented towards some necessary scene setting than an exhaustive accounting of the history, theological foundations, or social diversity of Buddhism in Burma, I will briefly identify the major Buddhist groups that will be relevant for understanding the legal position of

[22] Indeed, this is Gramsci's central insight on hegemony.

mixed-Buddhists in colonial Burma. For the sake of brevity, I paint with a broad brush in ways that I recognize are over-simplified, though I append more comprehensive descriptions in the footnotes for clarity.

First, let us consider the Burmese. Contemporary discussions of Buddhism and politics in Burma inevitably touch upon the idea that 'to be Burmese is to be Buddhist.'[23] While the saying is of more recent vintage, the power of this idea derives from the salience of a historical narrative about the essential connection between Buddhism and the socio-cultural territoriality of Burma itself. Implicit in the statement is the assertion that whatever forms the land has taken on in the intervening centuries, it was the introduction of Buddhism in the middle of the 11th century that made Burma 'Burma.' While it is likely that Buddhism came to what is now Burma through other peoples earlier than this (even as early as the 5th century [e.g., Skilling 1997]), the 11th century periodization refers to the Buddhicization efforts of King Anawrahta (r. 1044-1077. The founding sovereign of the Pagan Empire, Anawrahta is considered the founding figure of Burmese nationhood for his role in unifying disparate kingdoms centered around the low-lying central plains of the Irrawaddy River. Anawrahta relied on a combination of military might and cultural persuasion in his efforts to centralize power around his court in Pagan (Bagan). Anawrahta heavily promoted Theravada Buddhism to achieve this goal. But at the same time that Anawrahta sought to project and expand his power through the promotion of Buddhism, he also worked to avoid inciting anger by wholly suppressing existing spiritual practices.

To this end, as the story goes, Anawrahta sought a sort of detente with non-Buddhist indigenous animist practices centered around the worship of *nat*, god-like spirits that took a

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[23] See again Schober 2018. See also Crouch 2016, Jordt 2007, Keeler 2017, Robinne 2016, and Walton 2015 for further discussion on the intersections of race, religion, and local belonging between Burmese-ness and Buddhism.

variety of forms: some *nat* exist as the spirit of natural objects, including bodies of water and mountains, and ranging in territorial potency from whole forests to particular trees; some exist as guardians, including spatialized protectors of entire villages (*ywasaungnat*, ရွာစောင့်နတ်) and personalized 'guardian angels' (*kosaungnat*, ကိုယ်စောင့်နတ်); and some exist as named and known individuals on their own right, unattached to another particular entity like a person or a tree. Anawrahta worked to, in a sense, 'tame' the nat by integrating this spiritual framework into Buddhism. While nat worship was allowed to continue, it was fit within a cosmological hierarchy that supported Buddhism as the supreme power. As part of this, the nat were themselves placed within a cosmological hierarchy, wherein the named and known deity were canonized as pantheon of 37 'Ahtet Nat' (အထက်နတ်) or 'Upper Nat,' and the more particularized animistic spirits relegated to consideration as 'Auk Nat ' (အောက်နတ်), or 'Lower Nat.'

While the years between Anawrahta's reign and the intrusion of the British brought eight centuries worth of historical developments, for the purposes of this dissertation it is sufficient to observe that Burmese Buddhism exists at this intersection of Theravada and the nat. The nat remain an important cultural marker of 'what is Burmese about Burmese Buddhism' today, as they were throughout the colonial period. This is not to say that 'Buddhist animism' is solely Burmese. There are similar spirit figures in other Theravadan contexts: similar sub-Buddhist spirit-deities exist in Cambodia and Thailand. Nor is this to say that all Burmese approach the nat in the same way: they are a central object in the worship of some; for others, they are a false idol distracting from orthodox Buddhism. The point this history makes is that the incorporation of the

nat mark specific Buddhist practices as culturally Burmese.[24]

But the definition of something as 'culturally Burmese' begs a question: what do we mean by 'Burmese?' This brings us to a second group of Buddhists in colonial Burma, indigenous non-Burmans.[25] The slippage here between 'Burmese' and 'Burmans' is intentional: they mean different things, but uneasily overlap. As a heuristic anachronism, we can say that 'Burman' refers to a particular ethnic group, the *Bama* (ဗမာ), while 'Burmese' is a national category

centered on various hegemonically Burman historic political organizations - the pre- colonial Burmese kingdoms, the post-colonial state of Burma, and now Myanmar - which are nevertheless inclusive of non-Burmans. Non-Burman Burmese ethnic groups would include the Shan, Mon, Karen, Kachin, Chin, and Rakhine, all of which are internally diverse and hold different relationships to Bama Burmese culture and 'Burmese-ness' in general.[26]

Over the past seventy-plus years members of many of these non-Bama ethnic groups have organized military resistance movements in opposition to the (Burman-)Burmese state. Often, these military resistance movements have been organized on the basis of ethnicity and

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[24] On Cambodia, see, for instance: Ebihara 2018; O'Lemmon 2014, Work 2019; On Thailand, see, for instance, Kirsch 1977; Kitiarsa 1977, Tambiah 1970. For discussions on the ambiguous position of the nat in Burmese Buddhism, see, for instance, Brac de la Perrière 2009, 2015; Spiro 1982, 1996; Stanford and Jong 2019

[25] My discussion in this paragraph relies n discussions found in Boshier 2018; Boutry 2016; Dunford 2019; Ferguson 2015, 2022; Harriden 2002; and Lwyn 1994. Undoubtedly my thinking on this topic has also benefitted greatly from many more works I have encountered over the past 8 years, which I only do not include here owing to space and the challenge of boiling down a decade of learning into a single paragraph.

[26] The diffuse borders between different ethnic and national categories, like Burmese, Karen, and Chinese, as well as slippage and ambiguity regarding whether any of these terms are referring to ethnic, national, racial, or other types of categories at any given moment of time leaves scholars of race and ethnicity in Burma with considerable anxiety whenever we have to pin down what exactly we are talking about. Throughout this dissertation I frequently deploy the suffix '-ness' to indicate that an identifying term like Burmese or Chinese has the general shape of a taxonomizing category while refusing the impression of stasis, agreement, or sedimentation that such a category unsuffixed might create. I draw on precedents in Burma studies scholars working in anthropology, political science, and literary studies in using this signification. See, for instance, Campbell and Prasse-Freeman 2022; Charney 2000, 2004, 2006; Dun 2023; Walton 2013.

have pursued explicitly ethno- national goals. Two of the most significant of these 'Ethnic Armed Organizations,' for example, are the Kachin National Organization and the Karen National Union. That many of these ethnic groups have actively resisted incorporation into the Burmese nation warrants caution against describing these groups as 'Burmese' in the first place. I am sympathetic to this perspective. At the same time, the social, cultural, and political heterogeneity of these groups also calls us to recognize that many ethnicized non-Burmans nevertheless have complicated relationships to Burmese-ness that cannot be simply dismissed in recognition of the national aspirations of some within those groups.[27]

There is also good reason to describe indigenous non-Burmans as 'Burmese' within this dissertation: the colonial courts typically rendered indigenous but non-Bama ethnic groups as 'Burmese.' In cases regarding Buddhist family law conflicts, it is often only parenthetically or through an off- hand remark that the judiciary discloses when a Burmese Buddhist is Mon or Shan rather than Burman. Further, in my review of these cases, the courts do not appear to consider the ethnicity of indigenous non-Burmans as significant for determining whether different rules of Buddhist law should apply to these litigants. As far as I can tell, this may be a result of a lack of litigious activism on this front. I have not come across any cases in which a non-Burman Burmese Buddhist asks the court to recognize a distinct set of Buddhist law rules for their case.

But this curious absence only raises more questions as to why non-Burman Burmese Buddhists would so readily accept the same versions of Buddhist law as Burmans when so many other Buddhist groups are in fact litigating this: Do non-Burman Burmese accept the dominant

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[27] For instance, see Thawnghmung 2014 for a powerful discussion of the fraught position of 'the other Karen' caught between local life and the demands of competing ethnonationalist loyalties.

frameworks of Burmese Buddhist law as their own? Do they have less recourse to litigation than other Buddhists? Are they petitioning for divergent Buddhist law rules that the courts simply dismiss out of hand, going unreported in the legal circulars? It is my hope that future research will take up these questions. For now, answers to these questions remain shrouded in the mists of history. While it may run counter to contemporary expectations, for all intents and purposes, the courts of colonial Burma simply took these indigenous non-Burmans as Burmese.

A third group of Buddhist in colonial Burma comes from South Asia. Most South Asian migrants to Burma were not Buddhist. Most were either Hindu or Muslim. In fact, of all of the cases that I consider in this thesis, none feature an example of South Asian migrants coming to Burma as Buddhists; they feature instead the Burma born Buddhist descendants of South Asia Hindus or Muslims. It is difficult to get a grasp on how prevalent Buddhism was among South Asians in Burma, at least in part because Buddhist South Asians de-linked assumed categories of race and religion. Whereas colonial censuses record Indian Hindus and Indian Muslims as separate demographic categories, those South Asians that fall outside of either religion could either be listed as 'Other Indians' or 'Indo-Burman races,' both of which would record Buddhists. Likewise, census categories did not capture all of the ways that even the colonial state knew people to identify themselves: even a decade after a Privy Council case explicitly centered on the question of who the 'Kalai' were (discussed in chapter 4), the 1931 census does not record the term in either the population figures or the accompanying census report.

The descendants of Hindu migrants in particular become relevant to the story of mixed-Buddhist family law in colonial Burma because the historical relationship between Hinduism and Buddhism compels the courts to confront questions about religious pluralism, how personal faith confronts ancestral religious heritage, when and how new cultural communities form, and what

is 'Buddhist' about 'Buddhist law.'

The fourth group of Buddhists that I discuss in this dissertation is the Chinese. The Chinese are also the group that provoked by far the most consternation among the colonial court, and is therefore the group that the vast majority of cases revolve around. The judiciary's confusion over how to place the Chinese within the normative frameworks of religious categories established through the Burma Laws Act seems to stem in large part from the ways that the Chinese both integrated into and yet remained distinct from the Burmese Buddhist majority. Indeed, there are two irreconcilable narratives about how the Chinese have existed in Burma from the colonial period to the contemporary: the first posits that the Chinese were entrepreneurs who engaged others in the colony solely for economic transactions - this is JS Furnivall's 'plural society' thesis (1956), that the Chinese 'mix but never combine';[28] the second is that the reason that the Chinese have never provoked the same xenophobic fears that South Asian have is that the Burmese accepted the Chinese as fellow Buddhists.

For the courts, the challenge of placing the Chinese into a singular religious framework stemmed from their heterodoxy: they seemed to be Buddhist, Taoist, and Confucian all at the same time. Indeed, the concept of *sanjiao* (三教; the 'Three Teachings') and the discourses regarding *sanjiao heyi* (三教合一; 'the Three Teachings are harmonious as one') date back to at least the fourth century in China (Gentz 2011, 2013; Wright 1957), and were especially relevant throughout China in the late-Qing period of the 19th century (Muelenbeld 2012), when most of

[28] See Lee 2009 for a contemporary discussion of Furnivall's theory and its place in the historiography of Burma; for a contemporary account that risks falling into similar grounds as Furnivall see Mya Than 1997 and Li 2017 (c.f., Yeo 2018 for a discussion of the limitations that this trap ultimately has on Li's otherwise excellent historic work). For discussions that are more careful to avoid this characterization see Chen 2015; Ho and Chua 2015; Roberts 2016.

the Chinese in Burma would have emigrated. In this syncretic[29] framework Buddhism, Taoism, and Confucianism are said to be mutually supportive, rather than exclusionarily competitive, spiritual practices: participating in Confucian rites supports Taoist practices that advance Buddhist spiritual development. As with the relationship between Buddhism and nat worship in Burma, there is often an implicit hierarchy that posits Buddhism as spiritually superior to the other two elements of this triad. But the *sanjiao* syncretic framework is also not necessarily absolute: people may only consider themselves Taoist and not a Buddhist in a way that is largely unheard of in Burma. And while there is a recognition that Buddhism is the perhaps 'purest' of the Three Teachings, its orientation towards other- or next-worldly concerns means that it is also often to be the most distant compared to Confucian and Taoist practices that are more concerned with the here and now. As a result, outward expressions of Chinese religiosity are often more visibly Taoist or Confucian.

Chinese religious heterodoxy thus provoked a number of questions among the colonial courts. The courts puzzled over whether it was reasonable to assume that all Chinese are Buddhists; or, failing that, whether a Chinese who worshiped Confucius or practiced Taoism could then also necessarily be taken to practice Buddhism, since the three were so intertwined. The courts also grappled with questions regarding how to interpret specific ritual practices as evidence of particular religious belief: did the practice of Chinese funerary rites signal a Buddhist faith, or a more agnostic cultural performance? What about marital rites? And the courts faced further confusion over how to organize Chinese religious practices when they were interpreted into Burmese cultural frameworks: Did a witness's testimony that Guanyin, a Buddhist Bodhisattva popular in China, was a *nat* signal that they were a Buddhist? If that

[29] C.f., Brook 1993.

witness was of mixed ancestry, did that person's worship of Guanyin signal that they should be considered Chinese rather than Burmese? The judiciary in colonial Burma typically conveyed this specific syncretism through the phrase 'the Chinese religion.' But it was always unclear how Buddhism figured within 'the Chinese religion,' as well as where the boundary lie between 'Chinese religion' and 'Burmese Buddhism.'

It is worth noting, however, that the binarized categorization and jurisprudential segregation of the Chinese and Burmese went beyond considerations of personal religious law. Chinese-ness also facilitated an exemption to certain vice laws, most notably the prohibition against opium in Burma. The 1894 Burma Amendment to the 1878 All India Opium Act made Burma the first site of opium prohibition in Britain's Southeast Asian colonies. In *Empires of Vice*, Diana Kim traces how low-level administrators in Burma built support for this prohibition at a time that it went against imperial fiscal and social prerogatives by developing a haphazardly constructed but popularly persuasive narrative of the 'moral wreckage' opium consumption inflicted upon the Burmese body (2020: 91-120). The racial specificity of these narratives was an important factor in their success. Kim writes: "by theorizing the causes of 'moral wreckage' and demonstrating its specific applicability to Burmans, local administrators helped translate vague concerns regarding the vulnerabilities of non-Europeans into specific agendas for regulation that metropolitan officials could accept from a distance" (2020: 118). As a result, Chinese were exempted from the amendment, even in spite of the efforts of a Chinese temperance movement asking for the prohibition to extent to their community (Li 2017: 156-7).

The opium legislation would be plagued by similar issues of definitional unclarity as those that I take up in this dissertation. Kim quotes the perplexed commissioner of Tenasserim, in southeastern Burma, before the amendment went into effect: "Many of the officials have not

understood the question… Who is a Burman… the definition of 'Burmese race' or 'Burman' for the purposes of the new regulations has not yet been authoritative decided on" (2020: 119). In contrast to the definition of Burmese Buddhists, which would include non-Bama indigenous Burmese groups, the opium amendment would define Burman to exclude Kachins, Shan, and Palaung, three ethnic groups from north and northeastern Burma (Wright 2014: 59), in addition to the exemptions for Chinese.

Why so much focus on the Chinese?

It is my argument in this dissertation that civil litigation involving mixed Buddhist families was integral to the legal construction of Burmese Buddhists as a racial category in the British courts of colonial Burma. This construction was produced through the definitional content generated by judicial decisions authored in these cases, and it was enforced by court rulings affecting the distribution of both material and immaterial resources along the racial lines that the courts drew. I further argue that the racial category of Burmese Buddhist was not constructed against the categories of white or European as its antagonistic opposite; rather it was constructed against and in opposition to the category of the foreign Buddhist, most often Chinese Buddhists, or simply the Chinese.

I identify three reasons that the Chinese are overrepresented in suits involving mixed Buddhist families. First, Chinese practices of religious syncretism raise unique questions about whether being Buddhist means being *exclusively* Buddhist - or exclusively *Burmese* Buddhist. This question does crop up in other places, but with much less frequency than it does with the Chinese, who could be said to traditionally worship 'three religions uniting as one' (三教合一).

The second reason that the Chinese are so prevalent in the archive of mixed Buddhist

families is that, in contrast to other foreign Asian groups, the most Chinese were Buddhist.[30] It is commonly stated that Chinese-Burmese intermarriage does not cause the same sorts of conflicts that Burmese-Indian or Burmese-European relationships do because both the Chinese and the Burmese are Buddhists (Ikeya 2013). While this dissertation documents that, even though such pairings were seen as less of a problem to the young Burmese nationalists in the early 20th century that the studies that make such claims center, the legal ambiguities of Burmese-Chinese intermarriage could and did cause those involved in them myriad problems, there is truth to the claim that Burmese-Chinese relationships were more socially acceptable than relationships involving more overtly recognizable religious differences. Certainly, the records I find in law reports suggest that they were, and so they produced the great volume of legal writing on which this dissertation is based.

The third and final reason that this dissertation draws so heavily on examples from Chinese-Burmese families is that the discrepancies between Chinese and Burmese forms of Buddhist law generate conflict in cases involving this type of mixed family. What the judiciary eventually comes to empower as 'Chinese Customary Law' is highly gendered in a way that produces great tension between men and women within the same family. The sets of rights that the court accepts as representative of Chinese Customary Law - a construct that I scrutinize further in chapters 2 and 3 - deeply privilege men and profoundly disadvantage women. For families that are both Chinese and Burmese, therefore, there is great incentive for men to demand that they be recognized as Chinese and for women to seek recognition as Burmese. Both the sheer number of families divided over the issue of their racial status and the multitude of unique

[30] Or, to frame this along with the point made in the previous paragraph, most Chinese were Buddhist to some degree, even if they also worshiped other things. See also Chang 2014, ch 4; Forbes 1986; and Yegar 1966 for further discussion on Muslim Chinese in Burma.

ways that individuals claim and seek recognition as either of these statuses produced a larger volume of cases regarding this type of family than other mixed families.

If, for these reasons, the records I engage focus most acutely on the estrangement of the Chinese as Burma's most visible foreign Buddhists, I nevertheless maintain that the structures of racialization that I identify here are relevant for clarifying what operations were involved in the construction of race in Burma more broadly. While there are fewer Indian Buddhists and other non-indigenous Buddhists in Burma than there are Chinese Buddhists, there is great value in considering the experiences of those for whom we find records. Recognizing the ways that the courts approached and interpreted Indian Buddhists differently from Chinese Buddhists points towards the role that judges' parochial assumptions of cultural norms factored into decisions. For instance, examples where a judge considers, then dismisses, precedents involving other forms of Buddhist intermarriage often openly acknowledge that the precedent is irrelevant because they consider the Chinese to be uniquely misogynistic and refuse to impose another culture's high evaluation of women upon a family that is at least partly Chinese.[31] And, in the other direction, the finding of similarities in judicial approaches to different types of Buddhist intermarriage suggests that these lines of thinking lie in something else. For instance, the general difficulty that different kinds of mixed Buddhists faced in their pursuit of recognition as Burmese points towards the courts holding the status of Burmese to a high bar of 'racial purity.' It is through reading this wide swathe of mixed Buddhist family law conflicts, then, that I find confidence in my argument that the construction of non-indigenous Buddhists as foreign races to evidence the

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[31] I.e., *Ma Yin Mya and one vs Tan Yauk Pu and two* (5 ILR, p. 406; see also chapter 3); *Ma U vs Mg Kyin Htat* (4 BLJ p. 255, 1925), *Chan Pyu vs Saw Sin and others* (6 ILR-Rang. P. 623; 1928); c.f. *Ma Pwa vs Yu Lwai* (8 LBR, p. 404, 1916; see also chapter 4). For more on the supposed high status of women in Burma, see Ikeya 2005, 2011; c.f., Thein-Lemelson 2017.

process that I term ‘religious racialization.’

Terminology - on ‘Mixing’

As one might anticipate from my discussion in the last section, both the diverse array of Buddhists groups living in colonial Burma and the myriad connections between them complicate any effort to speak of either ethnocultural (‘Burmese,’ ‘Chinese’) or religious (‘Buddhists’) communities in broad strokes. As such, this writing is troubled by irresolvable issues of terminology.

Because I am writing about people entering relationships, forming families, and engaging in disputes across difference, how I choose to describe or label particular litigants risks projecting potentially unwarranted stability or cohesion on identity claims that are being contested. In identifying the challenges of finding law and pursuing justice across difference as my subject matter, I risk overdetermining both the scope and sources of that difference. In other words, in declaring what sort of differences made a difference for the people I write about, I risk reinforcing the idea that those differences *should* matter, or *will* matter, for others that are different in the same ways. I see this as perilous because my hope is quite the opposite. I seek to show, through this work, that the fact that the differences I describe - primarily differences in how people are defined by particular ideas of race, religion, and ancestry - only come to create the problems that I identify under particular conditions. In particular, I am interested in questions about what rights are recognized and what protections are denied owing to the divisions created through that difference.

It is perhaps a bit of ‘bad news bias’ that I write about the problem of difference at all. It is quite presumptive to unilaterally declare that people who have chosen to share their lives

together - people who, through this act of living together, are perhaps telling us that they believe that they are more similar than different in the ways that matter to them - are so fundamentally different that that difference becomes a defining aspect of their relationship. That I do so anyway is a decision I justify by noting that I am not actually the one defining these people as different, by pointing out that I am working through terms set by the colonial judiciary and that the power vested in that institution gives those terms exceptional weight and influence, which makes them a worthy topic of scholarly excavation and examination. But that cognitive explanation does not entirely do away with the risk of working through these terms in the first place.

In her study on cohabitation, concubinage, and other ways of making interracial relationships in Early Colonial Bengal Ruchika Sharma raises similar concerns regarding her decision to use the terminology of 'native' women, asking "Who constitutes a native" (2023: 5)? The term, she observes, can obfuscate more than it reveals, for it allows certain contemporary assumptions about who bears the term to be projected upon the past. That recognition as 'European' required certain temperamental dispositions and cultural knowledge (habitus) in addition to the right skin color meant that, for instance, many women of Portuguese and French descent were termed native. Native, then, serves as an ambiguous signifier, justifying the denial of certain persons from the ranks of European prestige without going into too many details of what exactly warrants their exclusion. But such a troublesome term is nevertheless necessary, she finds, for her goal to "capture as closely as possible what our archive tried to represent," and to "understand the meanings the word carried" for those living in the times and places and situations in which she is interested (2023: 5).

It is with a similar set of both objectives and concerns that I engage many of the terms I use throughout this dissertation. Speaking in the context of "mixed" relationships renders any

singularizing ethnonym - Burmese, Chinese, Indian, et cetera - problematic. Often, these terms definitionally place people into the categories that they seek escape from, establishing an arbitrary asymmetry: beginning with the assumption that a woman whose mother was Burmese is "Chinese" because her paternal grandfather can trace his lineage to Fujian by way of Penang places a higher burden of proof on her if she seeks to be treated as a Burmese Buddhist. That I refer to her as Chinese at all, even if I offer myself the 'out' of hyphenation - for instance, when I refer to people as Sino-Burmese or Chinese-Burmese - means that I risk committing the same historical injustices committed by the colonial judges who made these determinations even in my act of critiquing them. Another problem I engage is that many of the terms that I use also contain the problem of anachronistic obfuscation that Sharma describes with the term native. That the term 'Burmese,' for instance, is often used for Shan, Mon, and other non-Bamar people that are native to 'Burma,' and that these people are additionally subjected to an undifferentiated projection of 'Burmese Buddhist Law' flattens a diverse demographic.

Much of the concern I raise in this introduction lie beyond the scope of this dissertation. Like Sharma, my objective lie in examining how particular categorical constructions affected the lives of those who did not fit into neat boxes of identity. That this involves documenting how those categories were used necessitates working through those categories, compromised though they may be. While I make every effort to signal when, how, and why particular categories of identity are felt unsatisfactory by those to whom they are applied, it is nevertheless necessary to work through them to some extent.

Burmese Family and Society

Many of the conflicts that I will describe in this dissertation invoke differences in cultural

attitudes towards the position of women in the family. This is especially pointed in cases centered on the divergent rights, entitlements, and place that women hold in the 'traditional' Burmese versus Chinese social orders, like the majority of cases that populate this study. While the work of historians like Chie Ikeya (2005) and Alicia Turner (2015) complicates the simplistic narrative that traditional Burmese society was as progressively feminist as either imperial European or nationalist Burmese commentators pronounced, the relative gender equality of traditional Burmese Buddhist law and culture viz-a-viz the patriarchal norms of Qing-era Chinese society was very much so at the forefront of both litigants and the judiciary in cases involving mixed Burmese-Chinese families. It will therefore be helpful to briefly sketch a general description of the divergences in traditional family patterns and women's rights in traditional family law contexts as they would have been understood by the colonial courts, even if such an outline may be historically fraught. Where it will be relevant to my subsequent discussion, I will briefly note the divergences between the traditional Burmese social structures and cultural norms that I take up here and their Chinese analogues, though an overarching ethnological comparison between Burmese and Chinese society is beyond the scope of this section. Likewise, while I focus this account on what would be considered the 'customary' practices of the Burmese, as will be invoked by the courts as the standard for determining 'customary law,' I will note, too, where there are relevant converges and divergences between Burmese custom and Burmese Buddhist law. The relation between custom and law will be most relevant in my discussion of divorce and inheritance.

I rely in this section on a combination of colonial and post-independence ethnographic accounts of 'traditional' (read: village) Burmese society (Scott 1910 [1882]; Furnivall 1911; Nash and Nash 1963; Spiro 1975, 1977). While there are limitations to these sources - and,

indeed, pointed critiques of the presentation of kinship in the ethnographic materials I draw from (e.g., Kumada 2015) - I nevertheless find these sources most capable of illustrating an archetypal portrait of the family patterns and gender ideologies relevant to the early 20th century jurisprudence that I engage in subsequent chapters. To put the Chinese social context into perspective, I rely on historical accounts of Qing (1636-1911) and Republican (1911-1949) era Chinese kinship with a particular emphasis on women and property rights (Du 2021; Lin and Xie 2018; Kuo 2012; Lu 2021; Mann 1987; Wakefield 1998; Wong 2020; Yang 1959; Zhang 2019) and social histories of South and Southeast China (the regions from which the majority of Chinese in Southeast Asia migrated) in the late imperial era (Faure 2007; Li 2016), as well as Yi Li's history of the Chinese in Burma (2017).[32] For my discussion of Chinese customary family practices in this section, I will limit my portrayal to one that clarifies what colonial officials understood as representative practices, as a more nuanced account would extend beyond the scope of my dissertation.

Kinship

Broadly speaking, Burmese kinship is cognatic. Relations are traced equally through the maternal and paternal lines (and there are traditionally no surnames in Burma), though there is traditionally a strong emphasis on the mother-daughter relationship. Residence patterns are generally neolocal and matrilineal. Upon marriage, a man and woman will usually live with the

[32] Yi Li's 2017 book *Chinese in Colonial Burma* is the most comprehensive history of the Chinese in colonial Burma available in English. While it offers a nuanced portrait of the varieties of ways of 'being Burmese Chinese,' unfortunately for this study, one blind spot of her study is gender, which she offers little more direct consideration than a comment about how women in the community were barred from all formal occasions "according to strict Chinese gender hierarchy" (117). Thus, my interpretation of Li's work requires a degree of reading between the lines, which opens the possibility of errors of interpretation that , where they occur, are mine rather than Li's.

wife's family for at least a few years. Writing in 1903, John Nisbett writes of this as a period of the husband's socialization into the wife's family: "Formerly, the custom universally adhered to was that the son-in-law should get broken in to the yoke of married life by residing for two or three years under the roof-tree of his father-in-law, working for hum till the time arrived when, sanctioned by usage, he and his wife could build a house for themselves" (1903: 338). Even in setting out on their own, the pair retain a connection to the wife's family, who, upon their moving, were expected to cover the costs associated with the younger generation's establishing their own household as compensation for the labor during those early years of marriage.[33] Typically, the family of the youngest daughter of a household will continue to live with her parents after marriage until the parent's death. Spiro conveys the maintenance of matrilineality through colonialism in observing that the common perception that "when children marry, one loses a son, but one does not lose a daughter" continued to hold through into the era of Burmese independence (1977: 82).

Usually, couples will marry within the same community. In their demographic survey of six villages in the late 1950s, Nash and Nash document that 57% of marriages are formed from people living within the same village (with some villages made up of over 90% intra-village marriages). When couples marry from different villages, however, there is a slight preference for the husband to move to the wife's village (16%) than visa-versa (12%) (Nash and Nash 1963: 261). Scott suggests that there is a degree of regional variation, with matrilocality being somewhat more common than neolocality in Upper Burma compared to Lower Burma, though he suggests that this more a product of economic conditions than cultural ideals (1910:55). This point is supported in a general way by Nash and Nash's hypothesis that a preference to retain

[33] Though Nisbett notes that this custom is dying out by the turn of the twentieth century.

household labor is a driving factor in delaying marriages in Upper Burma (1963: 257).

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In contrast, Chinese family patterns were more rigid, definite, and patriarchal.[34] The social influence of Confucian moral teachings produced strict gendered and generational hierarchies, where children were expected to serve and respect their parents and women were expected to be obedient to men, whether fathers, brothers, husbands, or even sons. Kinship was patrilineal, traced through the father's line as far back as possible.[35] Reverence to the patrilineal clan was maintained through practices of ancestor worship. Women are excepted to move in with their husbands family after marriage, and are therefore through marriage taken out of their natal kinship unit.

Marriage

In traditional Burma, individuals generally have great latitude in the choice of their marriage partner. Marriages are typically made by the couple themselves rather than arranged

[34] At least in the colonial imagination. Even in allowing myself to speak in broad brushstrokes in this section, I feel it important to qualify this characterization of Chinese patriarchal domination. Historian Wenjing Lu notes that while marriage patterns in Qing China were highly fluid and varied according to class and regional differences, it is nevertheless not strictly true that for social elites arranged marriages meant sons and daughters had no say in their marriage partner, nor was uxorilocal residence entirely uncommon (2021: 79-106).

[35] There is again great variation here, and I deploy the term 'possible' somewhat strategically. There were at certain times in China's imperial history prohibitions on commoners worshipping ancestors at all, or worshipping more than five generations of ancestors, or other such things that could make it only 'possible' to worship one's ancestors back through a relatively short period in the grand scheme of things. There are also families, particularly descendants of ancient nobility, that are able to draw their ancestral lineage back incredibly far owing to the continuous maintenance of lineage records. This would most notably include the family of Confucius, which is notable for carrying the surname Kong (孔) and documents some 80 generations over two and a half millennia back to Confucius himself, assisted by the Confucius Genealogy Compilation Committee. Legal historical Taisu Zhang observes a general consensus among historians that the entrenchment of kinship networks and hierarchies began to spread from the elite to the general population by the 11th century, and that by at least the 16th century these practices were well saturated through the major population centers of North China and the Lower Yangtze (2017: 196-7).

through the parents, though the consent of the parents is required. There may be both a dower and a dowry - that is, property gifted and brought into the relationship by both the groom and bride, respectively - though a marriage can be effected without either. Where they are given, the dower is more common and typically more significant: whereas the dower might be part of the couple's shared estate, the dowry might instead be a gift of gold jewelry or the like given to the bride to keep for herself and carry out of the marriage if it ends. Importantly, these are neither a bride- nor groomwealth, meaning that they are not payments from one of the pair's parents to the other, but are rather gifts to the individual children. Yet, even as parental consent is recognized as the prerequisite of a valid marriage, parental disapproval does not kill a desired marriage. Couples that are unable to get their parents' approval might run away to elope, remaining away for some months or even years before coming home to seek recognition from their parents once more, opting for strategy of 'asking for forgiveness rather than permission.'

Marriages are in a sense solemnized neither by a religious institution nor a government body but by the community itself. Beyond the approval of the parents, the customary validation of a man and woman as man and wife comes from communal recognition of a couple as a married pair. This recognition can come through varying degrees of formality. On the informal end, a man and woman may simply start living together, perhaps even referring to each other as husband or wife; if the community knows the pair view themselves as married, then the community considers them married, and the relationship is validated as a marriage through the community's recognition of them as such. This is of course lends itself to the potential for misunderstanding. More formally, a couple will perform carry out some variety of marital rites that are essentially secular announcements of a couple's marriage carried out to avoid the potential for ambiguity. Generally these rites revolve around food. At a minimum, community elders will be invited into the family's

home (usually the woman's family's home, where most couples reside at least temporarily after their marriage) for a meal. More elaborately, the family will prepare a great banquet of sorts for everyone in the community, and perhaps beyond. More ritualistically, the couple may ceremonially eat *lahpet* (pickled tea) or rice from the same dish to symbolize their intent to share their meals, and thus their lives, together in the future.

Married couples hold both joint and individual property. Broadly, there are three recognized types of marital property: *payin* (or *atetpa*) property is either spouse's individual prenuptial property that they bring into the marriage; *lettatpwa* property is that which is acquired by either spouse during their marriage; and *thinthi* property is acquired separately even during the course of their marriage (typically through gift or inheritance). *Lettatpwa*, the joint form of property, may further be distinguished between 'ordinary *lettatpwa*' property and '*hnapazon*' property, with the latter more specifically emphasizing that the property was acquired by the mutual labor of both husband and wife (Khetarpal 1966). This could all be further complicated - *payin* could be converted to *lettatpwa* by pre-nuptial agreement; different kinds of gifts may affect whether something is considered *payin* or *thinthi;* categorizing *lettatpwa* property can be affected by who is the dependent (*nissita*) versus the supporter (*nissaya*) in generating it - but for simplicity's sake, what is relevant here is that personal forms of property (*payin* and *tinthi*) are taken by their owner in the event of a divorce while joint property (*lettatpwa*) must be divided by either mutual agreement or arbitration. As a general principle, the couple's joint property should be divided equally. The important point here is that are robust recognitions of women's equal right to hold and control property in and outside of marriages.

Polygyny (generally spoken of as polygamy in older texts, though polyandry [a woman's marriage to multiple husbands] is forbidden) is allowed, but it is onerous to enter into a valid

second marriage as particular conditions, like the consent of both wives, are required. It is also generally looked down upon. As such it is rare except among the royalty and to a lesser extent among the official classes or other people whose work engages them in travel, in which case the different wives reside in different places. When there is a second (or more) marriage, the first wife is regarded as the 'chief wife' (*mayagyi,* မယားကြီး, with *maya* မယား signifying wife), but all other wives are considered valid wives (*mayange* မယားငယ်) rather than concubines, though concubinage is also recognized.[36]

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In China, by contrast, marriage was historically viewed as more of a family than an individual affair. The Qianlong emperor, who reigned for most of the 18th century, wrote that "The purpose of marriage is to get a wife to serve one's parents" (quoted in Du 2021: 174). The sentiment was not limited to imperial circles. C.K. Yang observes the same general idea holds in the southern village of Nanching that he conducted fieldwork in the 1950s, even in spite of Maoist efforts to reform traditional gender ideologies (Yang 1959: 82-4). Marriages were arranged by parents, often with the help of a matchmaker, and the satisfaction of the family's needs were more important in the choice of marriage partner than was the desire of the child to be married.

[36] The distinction of wives and concubines in Burmese Buddhist law and custom can become confusing in part because there are a variety of canonical rules that do not exactly match up to customary practice. Maung Maung writes that the Dhammathats "mention different grades and classes of concubine… but the classifications bore traces of the Hindu caste system and were never fully valid in the Burmese family, except perhaps in the royal family circles" (1963: 86). There is an ostensible distinction between concubines whose children do versus don't inherent, and a conceptual distinctions between 'free concubines' and some unnamed (in Maung Maung's work) other that leads me to believe that this has some relation to slaveholding. Fortunately, this complexity is immaterial to all the cases that I discuss. The more pressing issue in my subsequent analyses will be the distinction of Burmese minor wives from Chinese concubines.

While Chinese marriages were also secular and communal affairs, they were formalized by the performance of specific rites, in the absence of which a marriage would not be legally valid. The consent of both parents was required for a relationship to be valid and binding. A brideprice, paid by the family of the groom, was mandatory, and could cost over a year's income (Yang 1959: 83). Several formal ceremonies had to be performed, including both public and private rites. The private rites were generally oriented towards ritually bringing the wife into the husband's family's lineage.[37] These might ideally include: a bride would be brought into the groom's family's home and ritually bow to all four cardinal direction; the bride would be taken into the ancestral hall to offer sacrifice to the ancestors; the groom's family would host their entire clan for three meals. Public ceremonies would further announce the couple's marriage to the community and could include the parading of a marital sedan from the bride's family's home to the groom's and additional banquets for those beyond the clan unit.

Polygamy is likewise traditionally permitted in China, though there is a more rigid delineation between wives and concubines. Further elaboration on polygamy in China would involve considerable digression, so to focus this point on what will be relevant later on, I will simply note that what colonial officials in Burma took away from their studies of Chinese marriage law and custom led them to see three points of contrast with Burmese polygamy. First, there was a hard distinction between the first wife as the chief wife and all other wives. Second, concubines were not considered wives. Third, the importance of marriage rites meant that any

[37] Interestingly, C.K. Yang, writing on the experience of transition from tradition to socialism in a small village in the mid-1950s, views the procedures and ceremonies as designed in part "to prevent the married son from breaking away into a new family unit with his wife" (Yang 1959). In Yang's observation, we see men presumably eager enough to join new lineages that elaborate rituals are made up to prevent them so doing. I find this relevant because it alludes to the weakness of the idea that Chinese tradition is so rigidly bound by family-oriented and patriarchal values or some form of Han or Confucian chauvinism that even in diaspora Chinese populations are fundamentally oriented towards an ancestral land over their new home. See also Du 2021: 168-190 for further discussion of 'runaway marriage' in late imperial and early republican China.

partnership formed outside of those rites indicated that such a relationship was one of concubinage rather than marriage.

Divorce

Just as a couple is free to enter into a marriage at will, so too are they free to dissolve it and divorce at will. Both husband and wife have the right to initiate a divorce, and, as with the marriage ceremony, there is a spectrum of ways that one can carry out a divorce ranging from formal to informal. Most formally, and most clearly, a couple might approach an elder for help dividing their property, in effect declaring their intent to divorce.[38] One step down the ladder of formality, a couple may just tell others in their community that they are no longer married. Most informally, and perhaps most commonly (certainly most commonly among the cases that make their way to law reports), one of the pair would simply leave their marital home and not return.

For this last case, there is a somewhat elaborate set of rules that determine whether an abandoning spouse had intent to dissolve their marriage – if a husband goes away to war, a business trip, or is sentenced to jail, a wife cannot marry someone else because the intent to divorce was not there – and the conditions that have to be met to declare a divorce has taken place (Maung Maung 1963: 75). These conditions are somewhat more onerous on the woman than the man: wives must wait three years to declare their marriage ended by a willful act, while husbands only have to wait one year (Maung Maung 1963: 75). But both men and women can declare their marriage over even if those conditions are not met, the only difference being who would be considered the party at fault for the divorce.

In situations where the divorce is not brought about through mutual agreement,

[38] Additionally, in more modern times, the couple may take out newspaper announcements declaring their divorce (Maung Maung 1963: 73).

determining who is the party at fault is relevant for figuring out how the marital property is divided upon separation, with the at fault party receiving a punitive share.[39] Here, there is a tight relationship between Burmese custom and Buddhist law, especially in regards to the reasons a woman may divorce her husband without fault. Scott reports that the reasons a wife may divorce come from the Buddhist laws of Manu and include: "[w]hen her husband is poor and unable to support her; when he is always ailing; when he does not work and leads an idle life; when he is incapacitated by reason or old age; when he becomes a cripple after marriage" (1910: 60). There are additional protections for women divorcing for reasons of abuse, taking a second wife without the consent of the first,[40] and, as mentioned earlier, desertion.

Yet even with cause, the party initiating a divorce is expected to try reconcile the marriage before walking away from it, creating complicated rules about how property is split owing to the varying degrees of effort either party puts into repairing the relationship. One case from the 1890s offers details of how village elders may have mediated a wife's plea for divorce owing to spousal abuse. The elders counseled that the *dhammathats* offer that a single instance of abuse is sufficient grounds for divorce without fault, but still insufficient for finding the husband at fault, so that if the wife goes through with the divorce the property will be split evenly; if, however, the wife reconciles with her husband and he is abusive once more, she is entitled to leave with all the marital property (Ma Gyan vs Maung Su Wa 1897).[41] The sum total of all this is that divorce is:

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[39] Though different proportions vary according to factors like what class or occupation the couple are, who is dependent upon whom, etc.

[40] Though this is complicated by what Burmese Buddhist law considers legitimate grounds for divorce by the husband, which would include things like a wife bearing only daughters, being immodest, or contracting leprosy, among other things (Maung Maung 1963: 78; Scott 1910: 60). If a man has such legitimate grounds for divorce, he may take a second wife without his first wife's consent without then giving her legitimate grounds to divorce him. She may still freely divorce him, of course, but she would then be considered the party at fault.

[41] This case is further discussed in the conclusion.

1. A customary right; 2. Carried out by social procedure; 3. Backed by religious law. How exactly either the community or the courts balance these individual, social, and religious interests against each other will animate many of the cases discussed in this dissertation.

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In China, divorce was in theory permitted, but onerous, stigmatized, and rare. Divorce could be conducted through mutual agreement, but only husbands could initiate a unilateral divorce until the 1930s. The Qing codes in effect until the early 20th century recognized seven valid reasons for a husband to divorce his wife: "having no son, lascivious conduct, failure to serve her parents-in-law, loquacity, larceny, jealousy, and incurable disease." A wife could defend herself from her husband's divorce claim on three grounds: "that it was a period of mourning, that the husband's family had been poor before by was now rich, that after being divorced the wife would have no home to which to return" (Mya Saw Shin 1971). In 1930, the Republican government (the Kuomintang, or Guomindang, government, China's first non-dynastic government) passed the Republican Civil Code, which established a woman's right to divorce on the grounds of "bigamy, adultery, spousal intolerable cruelty, in-law intolerable cruelty, abandonment,… [and] lengthy disappearance," among other reasons (Kuo 2012: 527). These laws came late in the period I consider here and were slow to influence traditional ideas about marriage and divorce. While there were efforts among litigants in Burma to apply the Republican Code's more expansive vision of women's rights to Chinese marriages, as I will describe in chapter 5, they were seen by the colonial government as antithetical to the general will of the Chinese people.

More common than formal divorce was the informal separation of the couple. This generally took the form of the wife leaving her husband's family's household and returning to

her natal kin. Yang reports that this was not entirely uncommon, and that it was even a frequent enough occasion that many villages had ‘old maids homes’ which were something of a social institution for widows and those who were never married in addition to wives that separated their husbands (1959: 85-6). I have not found good information on how property would or should be split in the case of either formal or informal divorces in China, but for the purpose of the present study it will suffice to observe that the colonial judiciary in Burma did not recognize a woman’s right to hold property under Chinese Customary Law.

Children and Adoption

As a general principle, Burmese custom does not favor sons over daughters, whether in the responsibilities either is expected to contribute to their household nor in the ways that they are treated in matters of inheritance. Children share equally in both household duties and common property without regard to gender or seniority. This is not to say that traditional Burmese society is gender egalitarian, nor that there are not patriarchal biases in Burmese culture. It is, for instance, common for men to eat first and women are expected to serve them; and, as mentioned above, a husband may take issue with a wife that only bears daughters. But daughters are viewed more as a blessing than a burden, are valued as members of the family up through adulthood and even into marriage, and are not expected to be obsequious or servile to their brothers.

With one exception, children naturally born of a valid marriage are treated the same, but there are some recognized differences between children that are either adopted or, in regards to a man’s estate, born of unrecognized wives. Children born of a given couple are termed their orasa (from Pali, *awyatha* သြရသ in Burmese) children. Confusingly, orasa can also refer to the eldest

son or daughter, which, in some interpretations, does have preferential inheritance rights (owing to seniority, not gender) that, while only selectively practiced in custom, are generally enforced by the British courts. The distinctions between children born in- versus outside of valid marriages will not come up in subsequent analysis, so for brevity it will be sufficient to simply note that they exist in Buddhist law but I have no information regarding how they would be dealt with in practice.

What will be important is that both Burmese custom and Buddhist law recognizes distinctions between categories of adoption, namely kittima (or keittima) versus apatitha adoption. These distinctions render different degrees of distance between the adoptive family and the adopted child: kittima children are considered the same as natural born children, and are entitled to inherit without distinction from them (except in reference to preferential rights for the eldest child); apatitha children are in a sense cared for by but kept out of the family, and thus not entitled to inherit from the family's estate. Like marriage and divorce, whether an adopted child is recognized as kittima or apatitha is largely a matter of the parents' intent, and is validated through community recognition. And like customary marriage and divorce, the opacity of parental intent can muddle attempts to distinguish one type of adoption from the other. In the early 20th century, the colonial government attempted to generate clarity in this regard through legislation (first, the Registration of Adoptions Act of 1926, which was subsequently replaced by the Registration of Kittama Adoptions Act of 1941). But this legislative requirement did not induce everyone to register their adoptions and, in some ways, the mandate that adoptions must be registered only harmed the position of those children who were adopted as kittama children to

parents that did not register them,[42] as it effectively makes it insufficient to effect or prove an adoption through customarily acceptable practices.

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In the Chinese family, Confucian gender ideologies, which emphasize patriarchal authority and the hierarchical supremacy of men over women, lead to a preference for sons over daughters. The adoption of strangers is rare, and when adoptions do occur there is a strong preference to adopt from within one's immediate family or at least within their clan. Generally adoption would be limited to childless couples who want a son to carry on their family line, and, to more closely maintain the family line, the couple would usually adopt a son of the husband's brother. Since daughters would not carry on the family line, the adoption of girls is rare.

Succession

Regarding rules of inheritance, it will be important for my subsequent analysis to observe a tension between Burmese customary practices, which are more equitable, and Buddhist law, which is less so. One way in which this will be relevant is that Burmese Buddhists are not allowed to dispose their property through wills. While Burmese Buddhists did leave wills, the practice was formally forbidden under canonical Buddhist law and, after conducting a survey of the question in relation to an 1878 suit, the British courts decreed that these testamentary

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[42] This is not limited to Burma, either. There is a 1974 case regarding a Burmese couple with an adopted child who immigrated to the US. The child had been adopted at the age of 5 and the parents declared that they intended to adopt him as kittama child, but they did not register him in accord with the act until ten years later. Since the Registration of Kittama Adoptions Act requires children to be registered before the age of 14, the US government did not recognize the adoption as valid, denying the mother's petition to apply for her son's status as beneficiary under the Immigration and Nationality Act. See *Matter of Kong, Interim Decision #2275,* March 25, 1974) [https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/17/2275.pdf] See also https://tile.loc.gov/storage-services/service/ll/llglrdppub/2019669105/2019669105.pdf]

practices were of only recent origin, formally forbidding them for Burmese Buddhists (*Ma Bwin vs Ma Yin 1878*). The divergence between religious law and customary practice is also relevant in relation to the way property is inherited. To reiterate, there is a recognized preferential inheritance share for the eldest child, as the orasa child. There are also some recognized privileges for male heirs. Customarily, neither of these are carried out in practice, and all heirs inherit equally. Again, however, the British courts will often (though not exclusively) issue rulings that prefer the rules of the Dhammathats over those observed in customary practice.[43]

Upon the death of the patriarch, widowed wives are recognized as the primary holder of family property, though children can inherit some portion of the estate while their mother's are alive. The breakdown of family property can become confused if there are more than one wife, especially if they have different numbers of children, even more so if those children are adults, married, and have children of their own. But, in general, this complexity emerges from the simple rule that all members of a family hold an equal right to share in the familial estate. As such, when either the matriarch predeceases the patriarch or in instance that the matriarch holds the entire estate until her own death, sons and daughters share equally in the estate. The exception to this rule is that in certain circumstances a child can be disinherited from an estate if they do not fulfill their duties to their parents during their parent's lifetime, especially if the parent dies of a protracted illness that required their family's labor in caretaking. I will avoid diving into the complexities of this, though, as further explication of this will be immaterial to my subsequent discussion.

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[43] Furnivall, for instance, points to the question of orasa privilege as the predominant example of departure from customary law in the courts that claim to rule in its accord. In his interpretation, all Burmese *know* that there is a privileged allowance for the orasa child in inheritance, but almost universally ignore it in preference for equity among children. The courts, however, rigorously enforce orasa rules (1944: 14).

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Customary rules on succession in China only allow men to inherit. If a widow only has sons under the age of majority, she will control the estate until her sons come of age, but she will not be recognized as its actual owner. Adult sons inherit to the exclusion of their mother and sister, and there the eldest son is recognized to inherit a preferential share of the estate. Sons are required to support their mother, which may include giving her some money as maintenance on a regular basis. Inheriting sons are likewise required to support their unmarried sisters until they are married, but married sisters are not recognized. Both widows and sisters can bring claims against sons or brothers who neglect these responsibilities, but such claims, if successful, would only merit what is effectively an advance payment of the required maintenance costs, rather than control over any portion of the family's estate. Chinese men are allowed to test property through wills.

Village, Royal, and Colonial Structures of Burmese Law

This section will offer a brief description of the legal setting in colonial Burma. I will focus my account on what will be useful as background to this dissertation. This will include basic accounts of the legal actors and institutions of pre-colonial Burma, the judicial architecture that the British set up in Burma over the course of the 19th century, and the customary law practices that bridge both eras. I will also describe the civil codes and legislation that the British administered, though only in so far as these enactments will feature later on in this dissertation.

In writing this account, I rely on the scholarship of precolonial Burmese political and legal institutions, law codes, and legal practice (Cady 1954; Huxley 1995, 1997, 2008; Kyaw Yin 1977; Lammerts 2018; Okudaira 2018), both imperial and academic accounts of the civil and

judicial administration of colonial Burma (Donnison 1953; Furnivall 1944; Ireland 1907; Mya Sein 1973 [1938]; Scott 1910 [1882]), and a survey of the internal reports of the British colonial administration (The Reports on the Administration of British Burma [RAB]) from 1910 to 1936. I also draw on ethnographic materials of village society from the postcolonial era to better understand the role of the village head in resolving conflicts 'in the traditional way' (Huard 2022; Nash and Nash 1963; Spiro 1977) though I recognize that one cannot assume such practices to exactly match what may have existed fifty or a hundred years earlier. To simplify the numerous variables that could complicate the picture of 'customary legal practice,' I attend to descriptions from central, Buddhist majority, Bamar Burmese villages, while recognizing both that what we might call customary law is still practiced in urban settings and that there are many cultural differences that could further complicate this picture if I were to attend to variations of region, religion, or ethnicity.

In what follows, I will proceed from customary law practices to the judicial administration of pre-colonial Burma. From there I will move into a discussion of the civil and judicial administration of colonial Burma, with additional reference to the relation between customary practice and legal administration in the colonial era.

Customary Legal Practice

Customarily, disputes in Burma are mediated through communal figures. The most important of these is the *myothugyi* (မြို့သူကြီး), which is an office variously described as something between a chief, the link between the state and the society, and the very instantiation of local self-government itself (Kyaw Yin 1963). The office of the *myothugyi* is generally, though not exclusively, hereditary, but not directly: the office is passed down through the matriline but only

held by men (c.f., Spiro 1977: 25).Both colonial and scholarly accounts attest to idea that *myothugyi* was viewed as being more closely connected to 'the people' than 'the state'(e.g., Cady 1953: 5; Kyaw Yin 1963: 86; Mya Sein 1977: 67). But the power of the *myothugyi* also varied considerably between different offices, and one important factor of the *myothugyi*'s power was his proximity to the state or royal family (Mya Sein 1977: 66). Cady describes the various functions that fell upon this office:

> He [the *myothugyi*] was a police officer, the collector of household taxes, and the local recruiter of forces in times of war… [H]e frequently mediated differences developing within his township constituency… [and] helped finance religious celebrations, officiated at boat races and marriages (1953: 5).

This general picture could be further complicated owing to the fact that the jurisdiction which the *myothugyi* is chief over could vary considerably (historian Thant Myint-U notes instances of *myothugyi* ruling over hundreds of towns and villages [2007: 90]), and the *myothugyi* could have minor figures under him (*ywagaung* or *myedaing*). But that the customary processes of arbitration I describe would hold whether the figure in question is the *myothugyi* or a *ywagaung*, it will suffice to use the *myothugyi* as a stand-in for the illustration that follows.

In traditional village life, the myothugyi had the power to settle all civil disputes and some criminal complaints. The myothugyi's power in criminal matters varied in relation to both the nature of the crime as well as his own personal power: all myothugyi could determine guilt and administer punishment in minor crimes; excepting very powerful or well-connected myothugyi, all major criminal cases had to be kicked up to the *myowun*, which was the town administrator appointed by the royal government, for prosecution, though the myothugyi would still be expected to lead the local investigation into such crimes. For civil matters, the *myothugyi* took fees for his work in mediation, which may have encouraged people to settle disputes

amongst themselves where possible. Half of which would be kept and the other half sent to the government (Mya Sein 1973: 66).

The *myothugyi* could hear civil cases on his own or with the counsel of a body of elders. This, too, seems to be a question of the seriousness of the dispute and its capacity to affect the broader community. Since marital affairs are a frequent topic of this dissertation, it is relevant to note that Spiro, writing from the perspective of a village in Upper Burma shortly after independence (1948), notes that the *myothugyi* nearly universally hear divorce petitions in conjunction with other elders (1977: 25). This observation is borne out by my own research wherever there are references to customary settlements attempted before a particular case came into the British court system.

Myothugyi sought to keep disputes local through efforts in mediation guided by principles of compromise and conciliation. The *myothugyi* may have some degree of understanding of the religious laws of the Dhammathats, but the degree to which he relied on them would have been more as a guide to good thinking than as a formula for righteous resolution. As Okudaira reports, "the [Burmese] have a saying that the rules of the Dhammathats are overridden by the mutual consent of the contending parties" (2018: 46). The general principle was 'to make a big problem small, and a small problem disappear'[44] (Mya Sein 1973: 66), which discouraged punitive

[44] It was surprising to see this phrase - ကြီးတဲ့ကိစ္စငယ်အောင်၊ ငယ်တဲ့ကိစ္စဖျောက်အောင် - reported in writing on the colonial era, especially in this positive sense. I first became aware of this saying in relation to the contemporary literature on rule of law and judicial fairness in the contemporary, where it was used to complain about corruption in the courts. The courts are unfair, people say, because no matter what a rich person does they can get away with it. They pay the judges to make big cases small, and to make small cases disappear. That the phrase popped back up in colonial writings that emphasize the introduction of western courts as an alien imposition that only exacerbates grievances reminds me of how 'harmony ideology' (Nader 1990) can work against the marginalized, and makes me wonder for whom it is favorable to make cases disappear in these upbeat accounts of traditional dispute resolution processes. While I share critiques of the imposition and operations of the British courts - indeed, this dissertation could be considered one long critique of the British courts in Burma - the divergent interpretations of this phrase

resolutions that could keep bad feelings simmering even after the dispute was settled.

The *myothugyi* had little but the powers of his own persuasion to compel disputants to accept his resolution, which may have additionally encouraged the search for solutions that would be mutually satisfactory. While it may be too charitable to say that the *myothugyi* found win-win solutions, both colonial (Furnivall 1944: 15) and academic (Spiro 1977: 25) accounts point towards a palpable discomfort with the 'winner-take-all' resolutions of formal, western legal proceedings among the Burmese public. As Spiro tells it, if a villager brings a petition to the court rather than the *myothugyi*, "it can be assumed that his motivation is usually one of hostility or revenge, and this it is very strong indeed" (1977: 37). Nevertheless, parties that were not content with the resolution proposed by the *myothugyi* had the right to appeal their case by bringing it into the formal legal system.

Royal Courts

Okudaira (2018) reports four levels of formal jurisprudence in the justice system of the Konbaung dynasty, the last royal kingdom in Burma before colonization (1752-1885). He further notes that these are further broken up administrative region, with a distinction between district and capital courts. Moving in order from lowest to highest as we depart from local arbitration and enter the judicial system, at the district level, one would go first to the *kondaw* (the 'lower court,' presided over by the *konmin*, or judge) and then to the *myoyon* (the 'district court,' presided over by the *myowun*, or regional governor). If a case could not be solved at the district level, one would go into the capital courts: first, through the high (or 'royal') court, called the

offers some reminder of the need to be circumspect in how we evaluate public sentiments towards the *myothugyi* from the sources I rely on here.

Taya-Yon-Daw; and subsequently to Hluttaw, or Supreme Court, constituted by a council of ministers.[45]

Ostensibly, the formal judiciary would practice the law as laid out in the Dhammathats[46] - the Burmese Buddhist legal canon - but this statement must be qualified on a number of fronts. First, to employ an analogues, the Dhammathats are more a collection of case law than legislation. While there are certain rules contained in the Dhammathats, they do not offer much by way positivist codes to implement, but rather document cases and wise decisions from past kings, judges, councilors, or other figures. As such, they contain points of contradiction, ambiguity, and ambivalence, meaning that judges cannot simply 'follow' precedent (to employ another analogue) so much as interpret it. Second, the legal canon that is contained within the Dhammathats is not meant to exist in opposition to custom as much as alongside it. The Dhammathats were meant to be applied with consideration of both time and place (as well as the value and nature of the dispute), reflecting a recognition that the rules and ideas therein would be liable to constant revision.

Colonial Administration of Law

The British colonization of Burma took place in three stages over the course of three Anglo-Burmese wars (1824-26, 1852-53, and 1885). The British, already then resident in India,

[45] Strictly speaking, the Hluttaw, a body constituted of four chief ministers, was more expansive than a court of law: Cady observes that the Hluttaw held "the ultimate responsibility for decisions covering all planes of the central government, executive, legislative, judicial, or military" (1954: 2), and today the word is used to signify the Burmese parliament and its constitutive chambers. Okudaira further complicates the capital court structure by pointing out intermediary offices between the Taya-Yon-Daw and the Hluttaw. But these added complexities offer little relevant to the scope of this present topic.

[46] Lammerts (2018) prefers *dhammasatha*, to better reflect the Pali. While I defer to him on the accuracy of this rendering, I retain the colonial usage 'Dhammathats' which both preserves the spelling of my source material and reflects how this dissertation traces a colonial construct more so than an authentic source of law.

ruled over their Burmese territories as part of India until 1937, first through their administration of lower Burma out of Bengal and subsequently, after 1862, as the Burma Province of British India. The British imported the judicial administrative structures they developed in India to Burma practically wholesale. This is especially true in terms of criminal administration, where the British carried out justice through the Indian Penal Code. Owing to the Burma Laws Act, the situation was somewhat different for civil law, though Indian civil codes applied in places that were not covered by the Burma Laws Act.

The British sought to modernize the administration of justice in Burma, by which they meant develop a robust judicial bureaucracy and a scientific code of law. They established local courts in Aykab, Moulmein, and Rangoon (adding more to these later), but the relationship between these disparate courts was not clear until the Burma Courts Act of 1875 which brought all the courts in the province under a singular and hierarchical system centered on the high court of Rangoon, known as the Recorder of Rangoon (and later, The Chief Court of Lower Burma, following the Lower Burma Laws Act in 1900). From lowest to highest, the order of the courts in Lower Burma went: 5) Township; 4) Subdivisional; 3) District; 2) Divisional; 1) High Court.

Following the third Anglo-Burmese war, Upper Burma was also brought into the Burmese court system (through the Upper Burma Laws Act in 1886). The two regions, Upper and Lower Burma, operated separately with slightly different networks of courts, grades of pleader or advocate, and routes of appeal. The ultimate court of appeal for the province would remain the high court of Rangoon.

Demographically, the courts were mainly staffed by Burmese judges, but the power of final judgment laid in British hands for most of the colonial era. From Alleyne Ireland (1907), one of the earliest analyses I can find on the judicial administration of Burma, by 1904 each

Upper and Burma had over 100 Burmese judges seated in their respective courts, though these were almost all at the township level. Only four Burmese judges in total had power to hear appeals in 1904, and all of the high court judges were European at that time. Some Burmese judges would later join the high court - we will meet some of them later in this dissertation - but there was a European majority until Burma separated from India (though remained under British imperial rule) in 1937, which began a number of reforms aimed at Burmanizing the civil service.

Ireland reports that Burma's courts (including both Upper and Lower Burma) heard roughly 78,000 civil suits in 1904, of which 5,500 were appealed. These numbers would vary from year to year (though on the whole declining more than rising), but my review of the Reports on the Administration of British Burma suggest that this number would be roughly the same throughout the colonial era, with 40,000-50,000 cases heard in Lower Burma and 20,000-30,000 cases heard in Upper Burma per year.[47] The Chief Court in Rangoon would receive roughly some eight hundred appeals cases per year, the majority of which would be heard by a single judge. For the year 1919-1920, for instance, the Report on the Administration of British Burma reports that only 145 cases heard by the high court at Rangoon had a two judge bench, and only 2 cases were heard by each a three-judge bench and a full bench of four justices.[48] At all levels of court throughout the survey I conducted, roughly 60% of appeals cases resulted in the confirmation of the lower court's ruling.

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[47] Years with fewer cases generally correspond to wartime situations.

[48] The number of judges seated for a case offers an indication of both the level of complexity of a case and the authority of the decision. While a more straight-forward case might be deftly handled by a single judge, a judge reviewing a more complex case might petition to seat a full bench to handle the question involved. These figures were likely somewhat lower than would be normal, as the year 1919-1920 was still reporting an overall downturn in cases owing to the effects of World War I. I draw on these figures, however, because the division of high court hearings is somewhat inconsistent and does not always report the number of cases heard by different numbers of justices at the high court. This figure, while low, is also reasonably representative and usefully a figure from around the mid-point in the dates I consider in this dissertation.

One could appeal against the decision of the high court of Rangoon (the highest court in Burma) to the Privy Council (the highest court of the British Empire). Chapter XLV of the Indian Code of Civil Procedure, 1882 lays out this appeals process, and sections 596 and 597 of that chapter lay out three conditions upon which such an appeal to the Privy Council can be brought forward. Those conditions are: the value of the subject matter the case is over is greater than 10,000 Rupees; "the appeal must involve some substantial question of law;" and the high court judgment must have been made with a majority of judges present (that is, a bench of three or more judges). While there may have dozens of appeals to the Privy Council in a given year, these cases were not always taken up by the Council. My survey of the archives shows that the Privy Council only took up 108 cases out of all of Burma between 1873 and 1941. While they were few in number, appeals to the Privy Council suggest the difficulty the British courts had in figuring out how to deal with multicultural Burmese Buddhist families: between 1881 and 1939, they heard five separate cases that engaged questions of what law applies to Buddhist families in Burma.[49]

Customary Law in Colonial Burma

Though the British sought to enable their colonization of Burma by administrating law through a modern judicial system, they did not intend to wholly eradicate customary law, neither

[49] Unfortunately, there is a standard 100 year embargo on the full records of Privy Council cases. While I have reviewed the three available cases related to these matters, I determined that two cases (*Moung Hmoon Htaw V Mah Hpwah* [1891] and *Mi Me and ten V Mi Shwe Ma* [1912]] fell outside the scope of this dissertation, as they deal with question of indigenous Burmese Buddhist family law. Two more (*Maung Dwe and others V Khoo Haung Shein and others* [1924] and *Tan Ma Shwe Zin and others V Khoo Soo Chong* [1939]) were unavailable while I was conducting my research. I was able to open these closed files early through Freedom of Information request, but this decision by the National Archives at Kew only came in December 2022 and as such was too late for inclusion in this dissertation. I plan to further review these cases, both of which deal specifically with question of the position of Customary Chinese Law as Buddhist law in Burma in future research. I deal with the case of Maung Chit Maung V Ma Yait, which centers on the ambiguous position of the Ganesh worshipping Indian-Buddhist Maung Ohn Ghine in chapter 5.

its codes nor its personalities. As a matter of both political and administrative expediency, the British sought to rule *through* customary law rather than *against* it, so much as it was possible.

This effort was partly accomplished by the continued use of a system of *myothugyi*, village headmen, and village committees. While the British administration had been reliant on these traditional figures since their first incursion into Lower Burma, the structure was consolidated and clarified under The Village Act of 1907, which stipulated that every village-tract[50] would have a village committee of between five and nine persons, chaired by a village headman. Village committees could be empowered with civil judicial authority, but they had to be validated to do so by the colonial administration. While the figures on village justice are inconsistently reported, to give a sense of the scale and development of this operation it will suffice to consider that in 1911, there were 448 recognized village headmen in Upper Burma, of which 238 had power to try cases, trying 1,978 cases in total; in 1936, there were 76 *myothugyi* and 9,449 village committees in Upper Burma, roughly half of which were empowered with judicial authority (38 *myothugyi* and 4,856 village committees), which collectively took in fines of about 63,000 Rupees (the number of total cases was unreported). The other way that the British sought to rule through customary law was by requiring the colonial courts to administer the personal law of native subjects as the relevant civil law. However well-intentioned this system, formalized by the Burma Laws Act of 1898 (see Introduction, pgs 9-12) may have been, it became confounding owing to its failure to distinguish between customary law and religious law. For Burmese Buddhists, for instance, it was unclear if 'personal law' should refer to the religious laws of the Dhammathats or customary practices that emerged in village jurisprudence handed down by the *myothugyi*.

[50] An arbitrary rural unit designated by the Deputy Commissioner, though ostensibly the boundaries of any one village tract would encompass several nearby villages.

The colonial judiciary, among other colonial agents, recognized the tension between customary law and the Dhammathats as a problem. To hear the former Indian Civil Service officer and renowned colonial scholar J.S. Furnivall tell it, British Burma's justices knew that they should draw more from custom than canon but that they just couldn't figure out how to do it. Reflecting on Burma's judicial development as the colonial administration prepared for reconstruction following World War II, he wrote:

> [E]ven where [British judges] professed to be following Burmese usage, they substituted the [D]hammathats for Burmese custom, and [as a result] the greater part of Burmese Buddhist law has been invented , on the basis of the [D]hammathats, by British judges… [Judicial commissioners know that custom is more important than the dhammathats, but] in the courts, however, they have been treated as far as possible like Western codes (1944: 15).

Further, Furnivall saw the confusion of Burmese custom with the Dhammathats as more than a question about the substance of the law. He saw it as a force hastening a form of 'lawfare' (though he didn't use this term) that eroded traditional social bonds:

> A Western court tries to ascertain the law and apply it without regard to persons or circumstances. That was not at all the function of the Burmese court… the principle aim of the judge [in pre-colonial times] is, if possible to satisfy both parties, the result in most cases being a compromise (1944: 15).

Later, he spells out what exactly he sees this leading to as the dusk set on the colonial era:

> Western procedure changed all this [the traditional impetus to compromise]. No one knew the law anymore, not even the judges below those of the Privy Council, and any claim, no matter how perverse according to traditional ideas, might stand a chance in the law court… [The] supply of lawyers created a demand for cases… The collapse of custom fostered litigation, and litigation fostered the collapse of custom (1944: 16).

While I have reservations about the wholesale embrace of 'harmony ideologies'[51] that Furnivall dances with in his critique of colonial law, I do share the basic premises of his analysis. The ambiguous frameworks empowered by the Burma Laws Act created openings for litigants who recognized that 'any claim might stand a chance in the law courts' of colonial Burma. More

[51] Nader 1990; see footnote 25, pg 42, this chapter.

specifically, this dissertation critiques the dichotomous racial imaginaries of the colonial judiciary, who were unable to entertain the idea that being Buddhist meant that one could be *more than one kind of Buddhist*. It is this lack of imaginative capacity, clung to despite constant evidence to the contrary, that generates a rigidly exclusive rights-bearing categories out of a socio-cultural world that had historically been open to plural and multiplex forms of social belonging.

Conclusion

This chapter has introduced the social and political foundations of Burmese, and to a lesser extent Chinese, kinship structures. It has further reviewed historical dispute resolution practices from the pre-colonial to the colonial era, taking account of both formal and informal systems and the interactions between the two. Finally, this chapter has offered an initial explanation of why Chinese-Burmese interactions would have produced such a large volume of litigation, despite the Chinese constituting a relatively small proportion of migrants in colonial Burma. In the next chapter I will offer a more pointed analysis of the history of jurisprudence over the question of how to categorize Chinese-Burmese litigants in reference to the Burma Laws Act before proceeding, in the remaining chapters, to theorize how this legal history emerges through the colonial processes that I call religious racialization.

Chapter 2

Locating the Chinese Religion: The Jurisprudence of Chinese Customary Law under the Burma Laws Act

In this chapter, I present a historical sketch of the racio-religious framework of law that operated in Burma's colonial courts. I begin by describing the specific reasons that Buddhist law became a site of critical contentions in Burma before offering an analysis of four cases which, considered chronologically, offer a rough timeline of the major contentions that emerged through litigation around Buddhist law. Throughout this chapter, I analyze Burmese-Chinese Buddhist family law conflicts through theories of racial formation to illustrate how colonial jurisprudence sidelined emergent forms of cultural hybridity by defining the personal religious status of mixed Buddhists according to imperial projections of personal status as patrilineage.

Theories of racial formation emphasize that race is not biologic reality but a structure that cultivates unequal flows of power, resources, and opportunity by categorizing populations according to historically salient perceptions of difference. Theories of race are most fully developed in the Americas, where the legacy of chattel slavery and white supremacist settler logics developed a robust ideology describing race as fundamentally somatic, a social construction that is read from and upon the body (Buck 2001; Omi and Winant 2015; Sturm 2014; Thomas and Clarke 2013; Yancy 2017). Outside of the Americas, race is most often adopted as a framework for understanding how European colonizers structured their legal and political distinction (Stoler 1989) from native populations in places like India (Mallampalli 2011), French Indochina (Firpo 2016), and Indonesia (Stoler 2010).

Historical research on the processes by which colonial administrations delineate rights and entitlements among subject populations helps us understand how 'race' is a salient structure for understanding social belonging and legal rights outside of American settler colonial contexts.

Typically, research on the production of non-white differences within colonial contexts frames the construction of difference as 'ethnicity' in contrast to the 'racialized' distinctions of white colonizers and colonial subjects. This usage, however, refrains from more critically grappling with the extent to which race is a legal and political project that goes beyond a dichotomy of domination (c.f., e.g., Seshadri 2020, discussed in chapter 5). In other words, limiting the articulation of race to distinctions between (white) colonizers and (black or brown) colonized, this usage reinforces the premise that race is a necessarily somatic or phenotypic construction, even outside of the contexts from which this paradigm emerges. In erasing law and politics from the consideration of race in Asian contexts, these discussions tautologically naturalize the very subjects they seek to problematize.

In this chapter, I pursue Chinese-Burmese Buddhist litigation through an analysis of racio-religious ascriptions while maintaining care to avoid reifying either race or religion as ahistorical social attributes. My contention is that, in Burma, throughout the period of British colonial rule, litigation established progressively firmer and clearer lines defining differences between Buddhists who were, and are still, Burmese, indigenous, native to the country, and those who are Chinese, held to be foreign, set apart from, and in some ways, or at particular political moments at least, antithetical to a particular and hegemonic vision of the Burmese nation.

This chapter asks two questions: what were the rights that produced the Chinese as a people separate, distinct, and distant from the Burmese in colonial Burma? And how did claims to these unique rights usurp competing legal claims voiced by others interpolated as Chinese, including Chinese migrants and mixed-race person, who sought recognition as Burmese? I trace how particular cultural markers of Burmese or Chinese belonging become key sites through which colonial judges distinguish Burmese and Chinese as competing forms of Buddhist legal

identities. I further show how the jurisprudential project of disentangling the Burmese and Chinese Buddhist practices of mixed families ultimately positions Chinese spiritual practices as foreign, even where they co-articulate with Burmese Buddhism.

Historical Context

Current scholarship on race, ethnicity, and migration in colonial Burma understates the racialization of the Chinese in this period. This is a result of the interaction between two historical narratives that, while both valid and rooted in admirable intentions, orient discussions of racialization towards a comparativist evaluation that might do more harm than good.

The first of these narratives is that racial anxieties in the colonial era emerged out of anger over the degradation of Buddhism. In the most comprehensive account of this idea, Alicia Turner (2014) documents how Burmese Buddhists interpreted socio-political changes following the fall of the Burmese monarch as evidence of waning of the *sasana* - the Buddha's teachings - in their land, motivating newly nationalist forms of political organization rooted in 'Saving Buddhism.' Because these movements were oriented towards preserving religion rather than an ethno-racial identity, they targeted non-Buddhists rather than non-Burmese as the objects of their scrutiny. Muslims in particular were singled out owing to the prevalence of narratives that posited both intentional global Islamic expansionist conspiracies and that Muslim men intentionally abused Burmese social customs to escape commitments to Buddhist women (Mazumder 2014; Ikeya 2013). Because in practice ethno-national and religious categories overlapped, these Burmese Buddhist movements focused on the figure of the Indian Muslim, shaming Buddhists who sought to interact with them and calling for expulsion of Indians and the political control to regulate migration from India.

Intersecting with this is a second narrative that argues the Chinese were not considered a problem because they were Buddhists. While this co-articulates with demographic trends - there were between roughly five and nine times more Indian migrants than Chinese at different points of the colonial period (Kyaw 2019:3-4) - scholars commonly observe that the Buddhist faith of the Chinese rendered them less vulnerable to a xenophobic nationalist agenda. For instance, while Kyaw notes that mixed Chinese (*tayoke* [Chinese] *kabya* [mixed parentage], တရုတ်ကပြား) were not considered a "demographic and political threat [because they] lack[ed] the same connections to imperial rule held by the Indian population" (2019: 6), he also claims that Buddhism was an essential aspect of this assimilation. Blending the religious and legal aspects of Chinese assimilation he writes that *"Tayoke* were increasingly considered as Buddhists, and Burmese customary law was applied to them" (2019: 7).

Ikeya likewise suggests that Chinese intermarriage must be understood in relation to the racio-religious dynamics present in Indian intermarriage. As she observes, while many colonial era Burmese lawmakers and politicians expressed an inherent disdain for Indian-Burmese mixings, they expressed something between approval and acceptance of Burmese-Chinese mixing

> on the basis that the Chinese in Burma were by and large Buddhist (or partial to Buddhism). They posited, in other words, that the Chinese and the Burmese were not, on the basis of their religion, incompatible; Indians, however, were 'non- Buddhist' (2020: 766).

Though both of these narratives are in a sense correct, I propose that their interaction constructs an implicit third narrative that Chinese socio-legal exclusions of the contemporary are a product of the post-colonial era. This narrative, which is present for instance in Kyaw's account (2018: 9-10), suggests that the forms of Chinese exclusion that occur in the post-colonial period (Fan 2012; Ho and Chua 2015) are a product solely of the propagandizing efforts of a military regime

struggling to pin their problems on a scapegoat-able population. This argument very rightfully centers Myanmar's discriminatory citizenship law as the antagonist of post-colonial exclusions. But it does so without asking how foreign bodies - rather than non-Buddhist bodies -became politically salient as scapegoats. Why, for instance, would Ne Win so fully center the problem of the Chinese specifically in selling his citizenship law to the nation if Indian or other bodies could be so much more cognizably made foreign?[52]

To illustrate how the ambiguous Buddhist-ness of the Chinese becomes symptomatic of their essential foreignness in the colonial era, this chapter traces the exclusion of the Chinese from Burma through law and litigation. There is little existing work on Chinese-Burmese or mixed-Buddhist family law litigation in Burma, and that which has been done is restricted in scope. In 1958, Hla Aung, the executive secretary of the Burma Law Institute, wrote a summary paper tracing the development of the law as administered to Chinese Buddhists in Burma. In 1990, legal scholar M.B. Hooker wrote of the problems that colonial and, to a certain extent, post-colonial courts had in deciding whether the Chinese were Confucian or Buddhist and thus whether their relevant law was Chinese Customary Law, (Burmese) Buddhist law, or the secular civil law of the British courts. While both of these papers offer valuable textual legal analysis - an analysis of what law and society scholars often refer to as 'black letter law' - their approach of considering the Burmese and Chinese as a separate, *a priori*, and 'natural' social categories rather than groups that are co-constructed *through* these legal conflicts limits their utility for understanding the racialization of the Chinese as foreign.

[52] To be clear, Ne Win does signal his disdain for South Asians, as 'kala,' in this speech, but spends much more time discussing the *ta-yoke,* Chinese, who send family members to Singapore, Hong Kong, Australia, and America to harm the nation by smuggling goods out of Burma (*Working People's Daily* 1982).

Chie Ikeya, in her 2013 piece *Colonial Intimacies in Comparative Perspective*, offers a more nuanced account of three mixed-Buddhist family law cases, through which she persuasively demonstrates that colonial jurisprudence "ossified religious and ethnic identities and eroded heterogenous customs and cultures" (2013: n.p.). While I share Ikeya's analysis and conclusions, I depart from her account in two ways. First, Ikeya selected cases that center on litigation between women, which leads her to conclude that "the majority of these [mixed-Buddhist] legal battles were fought between female family members" (2013: n.p.). While here again I share her conclusion that "debates about which law was to be applied" in family law cases "were not about religious traditions or communal identities per se but a gendered negotiation over the power and authority to define family bonds and control who had access to property and privilege and who did not" (2013: n.p.), I draw on a greater body of case law, both in this chapter and throughout this dissertation, to show that male property rights were actually more important in this story of racialization than the struggles between women (a point that will be more fully considered in chapter 5). Second, I seek to go beyond the idea that colonial jurisprudence ossified identities and eroded heterogeneity by showing that while social heterogeneity did still persist, the consolidation of these categories - Chinese and Burmese, or, more broadly, native and foreign Buddhists - as oppositional and mutually exclusive subjectivities rendered individuals only legally cognizable in binary terms.

For Chinese migrants, ethnic Chinese born in Burma, and mixed Chinese-Burmese subjects, attempts to access customary legal rights as Chinese Buddhists required litigants to prove a number of claims. They had to prove that they were both Chinese and Buddhist, but also that they practiced Buddhism in a sufficiently different fashion from the Burman majority.

Litigants claiming Chinese-ness often fulfilled this requirement to prove their distinction

from the Burmese by claiming that they practiced either Confucianism or Taoism, or both, in addition to Buddhism. That these litigants had to show their reverence for two or three religions at once required balancing on argumentative tightrope: they needed to demonstrate that they were sufficiently different from mainstream Burmese Buddhists to gain access to unique legal privileges their Chinese-ness might offer; but they also had to avoid seeming so reverent to their 'ancestral faith' that a court might question whether they were Buddhist at all. I will detail four cases, each of which forming a critical moment in defining whether religious status is a matter of personal faith, cultural practice, or familial inheritance. Through this chapter, I offer a summary of the trajectory that Chinese-Burmese Buddhist law would take in the years up through the end of the colonial era.

The first case, *Hock Ku and Hong Kung vs Ma Thin* (1882), is a dispute over the estate of a Chinese migrant. This case gives rise to the notion that there is a distinct 'Chinese religion,' which incorporates but is not encompassed by Buddhism. Taking place over a decade before the Burma Laws Act would ratify the religious laws of Buddhists, Muslims, and Hindus as valid personal laws in the colony, the decision in *Hong Ku* explicitly validates 'the Chinese religion' as a non-Buddhist belief system, excepting the claimants from the application of the Indian Succession Act from their case.

The second case, *Fone Lan vs Ma Gyee* (1903), which involved an intrafamilial confrontation over an alleged adoption and the right for the adoptee to inherit, witnesses the first time that something termed 'Chinese Customary Law' would attain recognition as a form of Buddhist law following the passage of the Burma Laws Act in 1898. This finding would subsequently augur an explosion of cases over the contents, limits, and application of Chinese Customary Law over the decades that followed, with nearly forty cases reported over just the

next twenty-five years. Auspiciously, the decision in *Fone Lan* would authorize Chinese Customary Law to take precedence over most cases involving conflicts of Chinese and Burmese Buddhist law forms even as the litigants in the case organize around a seeming hybrid of these two codes.

The third case, *Ma Yin Mya vs Tan Yauk Pu* (1927), begins from a question regarding the validity of a marriage between an ethnic Chinese man born in Burma and a Burmese Buddhist woman. It ends with the court nullifying the presumption that the Chinese in Burma should enjoy a distinct personal law from Burmese Buddhists. This decision is based on the presumption that the Chinese are assimilated into Burmese culture by the 1920s. While at first this may seem to disprove the notion that the Chinese were a racialized group in colonial Burma, in defining legal access to particular social recognitions through cultural practice – that is, the degree to which a particular person has or has not assimilated – this ruling creates a firm binary between Burmese and Chinese identities.

Finally, the fourth case, *Phan Tayok vs Lim Kyin Kauk* (1930), involves an inheritance dispute between the wife, sons, and daughter of a deceased Chinese migrant. This case wends its way up to the highest court of the empire, the Privy Council, which determines that Chinese Buddhists are so distinctly different from Burmese Buddhists that they cannot be said to be Buddhists at all under the colony's legal frameworks. While accepting that in some rare cases Chinese migrants may 'abandon' their religion to become Burmese, the judicial decision in Phan Tiyok forcefully establishes the presumption that religious status is a matter of familial inheritance. In further describing that the Chinese are a particularly conservative and patriarchal group, the ruling creates precedent determining that the Chinese constitute a distinct and non-overlapping category of legal personhood from the Burmese; in effect, that the Chinese are a

distinct racial group unentitled to the same access to personal law that native Burmese enjoy.

While similar problems in defining personal jurisdiction for Muslims and Hindus plagued the British courts of India and Malaya,[53] three factors made the question of who was subject to what forms of British law in Burma additionally complicated. First, there were simply more Buddhists, and a more diverse body of Buddhists, in Burma than in any other colony. While Buddhism was the most populous religion in Ceylon (Sri Lanka), and one might propose that it was the dominant Asian religion in Hong Kong and the Straits Settlements, those populations were both quantitatively smaller and more ethnically homogeneous than in Burma. In contrast, Burma had both a large and diverse population of native Buddhists and increasingly large populations of foreign Buddhists over the course of the colonial era.

Second, and stemming directly out of the large and diverse Buddhist population within Burma, the colonial Burma's courts were largely disinterest in recognizing plurality within Buddhist practices. In line with broader patriarchal preferences among the judiciary, the fact that most Burmese-Chinese pairings consisted of a Chinese man and a Burmese woman, the choice to see Buddhism as a singular and unified religion meant that the courts often recognized Chinese Buddhist legal principles over Burmese Buddhist legal principles. A consequence of this was often materially destructive to Burmese Buddhist women who sought recognition as wives and daughters to pursue claims of inheritance, maintenance, and child custody, among other rights.

Third, there was a lack of clarity regarding questions over where to find Buddhist law. In contradistinction to the well-recorded legal traditions of Islam and, to a lesser extent, Hinduism, British judges struggled to determine the appropriate source of Buddhist law. One potential source was the textual tradition of the Dhammathats, but British judges often found these vague

[53] In re. India, see Derrett 1961; Mallampalli 2010; Newbigin 2013; Sharafi 2014. In re. Malaya and the Straits Settlements, see Hussin 2009; Yahaya 2020.

and contradictory, and many further contended that the Dhammathats were simply a Hindu legal construct given a Buddhist veneer. There was also a popular perspective among the judiciary that religious law ought not come from textual sources, but rather from the customary legal practices of the religious community itself. In situations where custom conflicted with textual sources, the former was typically given preference. This brought with it the challenge of both discovering what arrangements were practiced and determining how broadly a particular arrangement must be recognized before it attained the status of law. That all of these considerations were also brought into play when the courts were forced to find law for Chinese Buddhists only added to the confusion. Not only did the same debates weighing textual sources against customary practices replay themselves, but added to the mix were questions about whether taking custom as the ideal source of law pointed towards normative practices in China or the practices prevalent among the Chinese community in Burma (or even in other colonial contexts).

"Kong Choo Kong is the God I worship. He is a Nat:" Creating 'the Chinese Religion': *Hong Ku and Hock Kung vs Ma Thin* (1881)

In 1873, the death of Iyan Shok, a Chinese migrant domiciled in Burma, sparked an inheritance debate over a house in Moulmein between his daughter and Hong Ku and Hock Kung, two Chinese people who obtained the property in probate the year before. By 1881, Iyan Shok's daughter still held the household, prompting Hong Ku and Hock Kung to sue for their rights to the property. Initially decided in favor of Ma Thin at the district court level in Moulmein, the case was appealed to a special court in Rangoon, where it was heard by a two-judge panel consisting of Chief Justice H.G. Wilkinson and Justice John Jardine. The question before the court hinged on whether or not Iyan Shok was Buddhist, and thus exempted from the Indian Succession Act. If Iyan Shok was found to be Buddhist, his Burmese Buddhist daughter,

Ma Thin, stood to inherit his property. If he is not, the two plaintiffs are instead entitled to it. The court places the burden of proving Iyan Shok is Buddhist upon the defendant, who calls no witnesses to make her case. The plaintiffs, however, produce one witness, Gwin Chan, the son-in-law of Iyan Shok, to speak to the deceased's religious background.

The testimony of Iyan Shok's son-in-law provides a window into the difficulty of placing Chinese migrants in Burma into a single and clear-cut religious category at this time. It begins:

> I was born in China. I am a son-in-law of Iyan Shok. I was of the same religion as he was. I believe in Kong Choo Kong, also called Tsin Yin. He lived on the earth as Gautama did. I don't know who Gautama is. I don't know who Buddha is. I don't know who Kokee is. Kong Choo Kong is the god I worship. I also worship nats. We have pictures of Quanta Kwin in the fire houses. He is a nat. lyan Shok worshipped according to Chinese customs. I never saw him go to Burmese kyaungs or pagodas, Ma Ba is my mother-in-law. She is from Penang and follows the Chinese religion (SJLB 1892: 135)

The clearest statement of Iyan Shok's faith is simply that "Iyan Shok worshipped according to Chinese customs," though this is confounded by the addition that he worshiped nats, Burma's native animist spirits. While Iyan Shok is said not to go to the pagodas – sites of Burmese Buddhist worship – Iyan Shok's funeral brings this into question. The son-in law continues: "The pongyis [Buddhist monks] were invited to the funeral of Iyan Shok… They accompanied the funeral processions. Yellow robes were presented by Ma Ba" (135). The involvement of pongyis could be taken as an indication that Iyan Shok was buried according to Buddhist custom. Invoking this ceremony could be taken as a sign of Iyan Shok's Buddhist faith.

Or not. It could instead be taken as an indication of his wife, Ma Ba's, religious background, one which Iyan Shok might not have shared. Mixing testimony that Iyan Shok did not go to Burmese kyaungs but that the pongyis from those kyaungs came to his funeral leaves us again with no clearer statement than that of Iyan Shok 'worshipp[ing] according to Chinese custom' and his wife 'follow[ing] the Chinese religion.' But again, the relationship 'the Chinese

religion' has with Buddhism is muddled in the testimony. Gwin Chan states:

> The is only one religion in China… Our book of religion is called Choo Chawa… One of the three pictures we worship represents an ancient learned accountant called Quanta Kwin; the traders worship him. The other two pictures are his subordinates… I believe in hell. I do believe in the transmigration of souls (SLJB 1881, 135).

So, what is Iyan Shok's religion? The judge at the district court in Moulmein rules that he practices some form of Buddhism, one that is not essentially different from the Burmese form of Buddhism. He assumes that Kong Choo Kong, the god the witness claims to worship, is the Chinese Buddha. Perhaps more fundamentally, the judge views the belief in the transmigration of souls and the sanctity of animal life as essentially characteristic of Buddhism. Most significant for this case, however, is that the judge seems to appreciate the potential compatibility of multiple religious practices. The lower court judge is quoted in the present case:

> The worship of nats is not inconsistent with the profession of Buddhism… The pongyis were invited to the funeral of the deceased… Even if the deceased were Confusion or Rationalist he might still hold a religious belief in Buddha for both the sects of Fo [佛Buddhism or the Buddha in Chinese] and Tao appear rather to be systems of philosophy than what we understand by the term religion (SLJB 1881, 135).

Whether or not the judge was correct in determining the deceased's Buddhist faith from his belief in spiritual transmigration, the recognition that religious systems in this time and part of the world may not fit cleanly with European anthropological taxonomies is insightful. It points towards contemporary contentions against colonial visions of what makes a body of spiritual practices a 'religion.' That the Moulmein judge's insights were reviewed, and rejected by, the high court clarifies that these colonial jurists were not short of opportunities to reformulate how they conceive of membership in native religious categories to better accord with local contexts. They just chose not to.

As a result, the Moulmein judge's finding that Iyan Shok was Buddhist was overturned by the higher court on lack of evidence. With the burden on the defense to prove that Iyan Shok was Buddhist during his lifetime, a deficiency of positive evidence to clearly establish this as fact

leads the special court to overturn the initial ruling. Indeed the defendant, Ma Thin, daughter of Iyan Shok, is additionally castigated and made to pay the costs of litigation for not knowing whether or not her father is Buddhist.

While the son-in-law, Gwin Chan's, testimony illustrates a richly inhabited religious world, the present court dismisses it as "vague, imperfect, and unlearned." But the problem might not be one of this individual's capacity to understand his own religious background; it might rather lie in the undefined legal space created by people approaching religion as a pragmatic socio-cultural practice rather than a well-thought-out theological decision. The ambiguous religious admixture that emerges from the testimony suggests the potential problems inherent in the court's reliance on clear-cut and categorical distinctions between different religions for the appliance of personal law.

In addition to demonstrating the complexity of the religious worlds that imperial courts were tasked with clarifying, the case of *Hong Ku vs Ma Thin* helps clarify the change in evidentiary standards as an underappreciated impact of the Burma Laws Act. In moving to consider Buddhist law as holding force prima facie rather than for an exempted community, the Burma Laws Act shifted the burden of proving religious belonging and the force of customary practice from the party seeking the application of Buddhist law to the party claiming exemption from it.

"What is the law of succession and inheritance applicable to a Chinese Buddhist?" Making Buddhist Law Customary Law
Fone Lan vs Ma Gyee (1903)

It would be another thirty years after Jardine first broached the question in *Hong Ku* before the courts take back up the question of whether the Chinese in Burma fit the legal description of Buddhists. Notably, the courts did hear cases in the interim that dealt with

questions of the personal law for Chinese migrants in Burma, just that before the 1900s it was accepted that the Chinese were Buddhists whose law was the same as that of any other Buddhist in Burma. The passage of the Burma Laws Act in 1898 would upend the tacit acceptance of Chinese as Burmese Buddhists by prompting new questions about who fit into what legal categories. However, the first case to raise questions about the bounds and limits of these categories under the Burma Laws Act came through an indirect route. This case, *Fone Lan vs Ma Gyee* (2 LBR 1903), would not directly ask the question of who Buddhist law applied to. Instead, it began from a question of what Buddhist law really meant in the first place. In answering this question, the justices of the court would establish a precedent separating Burmese and Chinese Buddhists according to the different kinds of Buddhist law they would enjoy.

The passage of the Burma Laws Act reoriented the way colonial courts viewed the question of where burdens of proof lie in regard to religious background. Section 13 of the Burma Laws Act extended the principles of religious autonomy under which the Indian Succession Act of 1866 had created classes of exemption for Buddhist, Hindus, and Muslims to all disputes of personal and family law. Importantly, rather than legislating that Buddhists, Hindus, and Muslims could be taken as exceptions to a law otherwise applicable to all, the Burma Laws Act made the legal frameworks of these three religious systems the norms to which those not falling into these categories would be excepted.

The case that would bring this question before the court stems from an alleged adoption and the inheritance dispute it would produce. Ah Choung was a Chinese migrant to Burma married to two women, one in China, and another, Ma Gyee, the named defendant in this case, in Burma. He had over the course of his life at least five children, including one natural son by Ma Gyee and three additional children that he adopted with her. The court report suggests that when

Ah Choung died in 1899 his natural son accepted his adopted siblings as co-inheritors, and none of the children disputed that their mother would be the primary administrator of the estate. Both Ma Gyee and the children acknowledged Ah Choung's wife in China as a sharer of the estate. For the most part, Ah Choung's family seems to have organized amicably around the question of inheritance, with one exception: a woman named Fone Lan who claimed to be an adopted daughter of Ah Choung cut out of his estate.

Fone Lan's petition in the case of *Fone Lan vs Ma Gyee* is an appeal against a lower court decision denying her a share in Ah Choung's inheritance. The judge on that court found that as a Chinese man permanently domiciled in Burma, the law applicable to his estate would be Chinese Buddhist law. In her appeal, Fone Lan contests that there is no such thing as Chinese Buddhist law, at least as relates to succession or inheritance, and thus the relevant law for a Chinese Buddhist in Burma is the Burmese Buddhist law as contained in the Dhammathats.

The framework upon which the lower court found in favor of Ma Gyee and her children is notable for two reasons. The first is that the judge presiding over that court explicitly frames the personal law of Chinese Buddhists in Burma as 'Chinese Buddhist law.' This is the first instance I can find in which such a term is used in any of colonial Burma's various legal circulars. However, my initial finding of this term in 1903 does not mean that it was the first time that the courts employed the idea of a 'Chinese Buddhist law:' it is feasible that the lower courts used this term regularly, but that their decisions were never appealed against and so never rose to the occasion of meriting mention in law reports.[54] But that Fone Lan directly frames her appeal against the existence of a Chinese Buddhist law becomes the first time that the judiciary is tasked

[54] There is, however, evidence that the courts did apply Burmese Buddhist law to Chinese family conflicts before this time, I.e. 1897's *Ma Gyan vs Maung Su Wa.*

with creating a ruling on the matter that would set precedent.

The second item of note from the lower court's judgment is that the rules which that judge accepts as forming the Chinese Buddhist law of inheritance are remarkably similar to what would in later cases appear as a Burmese Buddhist antagonist to Chinese Customary Law. Ma Gyee is accepted as a valid wife despite the court's recognition of Ah Choung's first wife in China. Both wives are accepted as equally entitled to share in the inheritance. The adopted children are entitled to inherit without distinction from Ah Choung's natural son. And, what would become most challenging for women contending with the precedent set in this case, Ma Gyee is accepted as the chief administratrix of the estate despite the fact that she has several sons.[55] Each of these - the equal position of the second wife; the acceptance of adopted children; the rights of wives to inherit - would later be contested as markers of a specifically Burmese Buddhist regime of customary law rights that the court could not apply to Chinese Buddhists in Burma. The authority upon which the judge of the lower court accepts this specific route of succession and inheritance as Chinese Buddhist law is unclear. There is mention of various witnesses offering testimony regarding customs of succession in China, but the court report does not reproduce any information about who these witnesses are, what they say about customs in China, or whether the judge of the lower court accepted or rejected the relevance of those pieces of testimony. More likely is that Ah Choung's family simply agreed to share in the inheritance in this way, and the lower court judge accepted their practice as Chinese Buddhist custom on the grounds that they are Chinese and Buddhist.

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[55] Examples of sons challenging their mothers' administration of an estate through Chinese Customary Law include: *Gyan Shi vs Kin Twe* (10 LBR ,1918); *Li Tuck Lon vs Daw Khin* (unreported; see pg. 78, *Phan Tiyok* decision [8 ILR-Rang., 1930]; see also, Conclusion); and *Man Han vs V.R.M.A.L Firm* (AIR-Rang., 1926). For a different take on the same question, see *Lee Lim Ma Hick vs Saw Mah Hone* (2 ILR-Rang., 1924) and *Ma Sein vs Ma Pan Nyun* (1 ILR-Rang., 1924; Chapter 3, p. 150-153), where succession battles between sons and daughters play out over the question of whether their deceased mother truly held the property she administered throughout her life.

Fone Lan's case is heard on appeal by a two judge panel that included the former Secretary to Upper Burma, Sir Herbert Thirkell White, as the Chief Judge, though it was the second judge, Justice Charles Fox, who authored the decision. Fox frames his opinion in this decision directly against the ambiguity that Jardine left about the legal position of Chinese Buddhists in Burma in his judgment on the *Hong Ku* case. Fox approaches the question from a completely different standpoint than Jardine did. Instead of querying the litigants involved about their religious beliefs, about whether they worship Buddhist nat or Chinese figures like Kwan Yin, Fox begins with the premise that the Chinese and Burmese are separate. He finds an analogy to the position of the Chinese in Burma in the Jain and Khoja in India, both of which are recognized as holding separate forms of customary law within Hindu and Islamic law, respectively (2 LBR 1903: 97). Roughly a third of Fox's written judgment is dedicated to this exploration of how the law in India approaches different customary communities of Hindus and Muslims, developing the notion that the Chinese and Burmese in Burma are best made sense of as separate customary communities as well.

There is something of an inversion, though, in how Fox applies the examples of the Jain and Khoja communities in India to the question of customary Buddhist communities in Burma. Whereas the Jain and Khoja are recognized as unique communities owing to their minority status against some mainstream Hindu or Muslim norm, Fox instead approaches Burmese Buddhism as the minority custom that should not represent the whole. He notes:

> Ah Choung appears to have retained and followed Chinese customs of living and worship. Is there anything which compels the Court to apply to his family the rules of the Dhammathats, which are, as far as I am aware, only followed by Burmese Buddhists who forms but a small proportion of the professors of Buddhism throughout the world? In my opinion there is not (2 LBR 1903: 98).

If the flip here - moving from discussing minority religious communities within India to discussing the Burmese Buddhists as a global minority, even though they are the majority within

Burma - it is nevertheless significant. Minoritizing Burmese Buddhism as a local peculiarity created a higher bar for applicants seeking to have their personal law codes recognized in cases involved mixed Buddhists because applicants in such cases would be required to prove that there was an exceptional reason that would in fact compel the court to apply the rules of Burmese Buddhism upon someone that sought to escape it. As will be discussed later, this high bar most frequently fell upon women seeking marital and inheritance rights.

Fox denied Fone Lan's appeal on the grounds that she incapable of showing that she deserved to share in the inheritance of Ah Choung's estate under the rules of Chinese Buddhist law. There is a sense in which his ruling brings Chinese Buddhist law under the protection of the Burma Laws Act in through the back door: in answering the more immediate question of whether Ah Choung is a Burmese Buddhist in the negative, Fox goes on further to say that Ah Choung's law is then Chinese Buddhist law. While this is implicitly the position of Ma Gyee and her children, accepting the validity of Chinese Buddhist law through the negative condition - that is, through rejecting the application of Burmese Buddhist law - Fox introduces this customary code without submitting it to the same scrutiny applied to Burmese Buddhist law. It is unclear whether Chinese Customary Law has any relation to Buddhism; nor is it clear that Ma Gyee's family's agreed upon pattern of succession would match Chinese rules for inheritance. Yet, neither of these questions disqualify the application of Chinese customs to Buddhist families in Burma in the same way that they disqualify claims sought by litigants seeking to apply Burmese Buddhist law to the same cases.

In ruling against Fone Lan, Fox introduced the notion that Burmese Buddhist law is a parochial construct that should only apply to other Buddhists in exceptional circumstances. What would merit such an exceptional circumstance was never directly defined, but would

subsequently gain shape in the form of requiring positive proof that anyone who was not Burmese by birth had fully abandoned their ancestral religion (typically whatever their father was). In establishing for the first time the idea that Chinese Buddhist law is a form of Buddhist law under the Burma Laws Act, *Fone Lan* would go on to be one of the most cited cases in the jurisprudence of mixed Buddhist family law in colonial Burma. In its characterization of Chinese Buddhists in Burma as a group normatively separate from the Burmese, Fone Lan would also establish great barriers for those who either married or were born into families that bridged that divide and dared to pursue their rights in spite of it.

Over the next two decades, the decision in Fone Lan would be cited as precedent in no fewer than nine cases[56] that further litigated questions regarding the position of Chinese Buddhist law in Burma, as well as questions about to whom such law should apply. In a majority of these cases, judges would go on to follow the precedent set by Fone Lan to justify accepting specific Chinese customs as a form of valid Buddhist law in Burma or to exempt those claiming Chinese custom to constitute their personal law from claims laid upon them through Burmese Buddhist law, including by other Chinese migrants, mixed Chinese-Burmese, and Burmese. But there were always questions about whether Fox and White made the right decision in Fone Lan. In contemplating a similar case in 1904, one justice Chitty poked holes in the idea that the judgment in Fone Lan was correct. He questioned whether Ma Gyee's right to inherit should have been based on Chinese Customary Law given that women are barred from holding property in China (*Pai Beng Teng vs Ko Maung and one*, 2 LBR 1904: 265). In others, the finding that

[56] *Thein Shin and E Chi vs Ah Shein* (8 LBR, 1914); *Saw Maung Gyi vs Thu Kha* (8 LBR, 1915); *Ma Pwa vs Yu Lwai and Ma Yin* (8 LBR, 1916); *Kyin Wet vs Ma Gyok* (9 LBR, 1918); *Maung Kwai vs Yeo Choo Yone* (10 LBR, 1919); *Maung Po Maung and one vs Ma Pyit Ya* (1 ILR-Rang., 1923); *Ma Yin Mya vs Tan Yauk Pu* (5 ILR, 1927); *Phan Tiyok and another vs Lim Kyin Kauk and others* (8 ILR-Rang., 1930); and *Tan Ma Shwe Zin and others vs Koo Soo Chong and others* (RLR 1939)

Chinese customary rules of succession and inheritance are secular customs unconnected to Buddhism are used to invalidate the presumption of marriage between Burmese women and Chinese men (*Tun Tha vs Ma Pu* [3 BLT 1910]; *T Wain Shain vs Ma Hnin Hlaing* [4 BLT 1911]*;* both cases discussed further in the next chapter). By the 1920s, the judiciary as a whole seems to have begun to recognize that the finding in Fone Lan created an untenable imbalance between the rights of men and women in mixed Chinese- Burmese partnerships. They may therefore have been primed to find a case that would allow them to create more definite rules.

'A Hole and Corner Matter:'
Cultural Performance, Legal Legibility, and the Brief Burmanization of the Chinese
***Ma Yin Mya and one vs Tan Yauk Pu and* two (1927)**

The courts found the case they were waiting for in 1926, when Justice Maung Ba received a petition for appeal against the judgment of the district court of Pegu. "[B]eing of the opinion that the case involved [was] of great importance and far reaching consequences," Maung Ba referred the case in question to a full bench hearing by the court in Rangoon. The case was that of *Ma Yin Mya vs Tan Yauk Pu* (5 ILR 1927). This case is centered on questions regarding the status of a marriage between a Burmese Buddhist woman (the plaintiff, Ma Yin Mya) and a Chinese Buddhist man (the respondent, Tan Yauk Pu).

The conflict begins when Tan Yauk Pu's wealthy father died intestate in Kyaikto around the year 1913. Nearly a decade later, following the death of his mother in March 1923 and the onset of family quarrels thereafter, Tan Yauk Pu left home and eloped with Ma Yin Mya. The couple went back to live with Ma Yin Mya's family. The court found as fact that the couple was received by Ma Yin Mya's mother and other elders, but "no relations of the boy [sic, Tan Yauk Pu]." The question then became 'what degree of ceremony or communal recognition was required to constitute a legally valid marriage for this couple?' The question hinges on whether

the threshold is set by the typically more elaborate and socially involved Chinese customary practice or the relative simplicity of Burmese customary practice.

In the initial hearing the district court of Pegu, the judge of that court found that the marriage between Ma Yin Mya and Tan Yauk Pu was not valid because no Chinese rites had been performed to solemnize the marriage in accord with Tan Yauk Pu's personal law. The judgment from the district court is cited in the law report:

> The learned District Judge remarked that no particular ceremony was performed at the alleged marriage, that there was no wedding procession, which was customary in some of the Chinese marriages, and that there was no evidence that the couple ever appeared before the public as man and wife. He concluded that the whole affair relating to the alleged marriage was a hole and corner matter (5 ILR 1927: 408).

The relationship is thus dismissed as an affair on the grounds that in the absence of ceremonial rites of marriage the nature of this union cannot be assumed. Underlying this position is an insistence that the mutual intelligibility of Chinese and Burmese custom must be proved rather. The burden for establishing this is placed on the party asserting that the two are part of the same religio-cultural community and should thus fall under the same religious law. The case is decided by a lack of positive proof that the two religio-cultural systems constitute a single and shared thing.

The higher court would overturn this decision on review, ruling that the Burmese dhammathats served as the lex loci contractus for all Buddhist marriages in Burma. This inverts the burden of proof from the party petitioning for recognizing two religions as one to the party petitioning to have their cultural custom recognized as an exception. A. Eggar, government advocate, who was brought into the case as *amicus curie* at the request of the court, refers the matter to the court by raising the following problem:

> It appears to me that if the law applicable to all Chinamen alike is to be applied to those Chinamen who are Buddhists, the enactment requiring Buddhist law to be applied to Buddhist Parties [sic] will become dead letter in the case of Chinese Buddhists, because we shall be administering

> Chinese law as there is no special law governing Chinese Buddhists… In the case of Buddhists there is no Buddhist law for all Buddhists. I should think that the most equitable solution is to apply the lex loci contractus according to the dictum of Sir Charles Fox in the case of Sein Kyi v[s] Ma E (ILR 1927: 418).

The application of the law found in *Sein Kyi vs Ma E* (8 LBR 1916) gives further force to the finding that the dhammathats should be regarded as the lex loci contractus for all Buddhists in the province of Burma. By taking up the notion of lexi loci contractus, *Ma Yin Mya* overturns the line of reasoning, developed in *Fone Lan*, that found Chinese Customary Law held priority in mixed marriages on the grounds that 'the Chinese religion' was unconnected to Buddhism. This position that was taken in *Fone Lan*, then, is regarded as inaccurate and overreaching by the present court. The present court thus raised concerns with the lower court's rulings that Chinese Customary Law should always have force when the man is Chinese. Two reasons are put forward for the court's decision to weaken the position of Chinese Customary Law.

First, the court rules that the recognition of minority customary law cannot interfere with the recognitions provided for in the Burma Laws Act. Justice Rutledge condemns the overextension of Chinese Customary Law by pointing out the negative impact this has on Buddhist women's rights: "The effect of our Court applying Chinese Customary Law to a Chino-Burmese [sic] marriage is to deprive a Burmese woman of practically all rights and in most cases brand her children as illegitimate" (ILR 1927: 419). His reasoning also carries a civilizational critique, in which Chinese law appears abhorrently conservative in comparison to the flexibility of Burmese law:

> [W]hile by reason of a long conservative civilization the Chinese until recently were governed by legal customs which had crystalized several thousand years ago, the Burmans were subject to a law which altered from time to time to meet the changed circumstances of the Burmese people, with the result that in matters of inheritance and property there is no country where the principle of the quality of the sexes has been carried further than in Burma (ILR 1927: 419).

In sum, Rutledge argues that the courts in Burma are mandated to empower the Burmese

Buddhist law of the land and as such must be committed to protecting the special social rights Burmese women hold through this law. The commitment to upholding Buddhist law, as is practiced in Burmese custom, is greater than the court's commitment to recognize every system of customary law that could fall under the rubric of 'Buddhist Law' laid out in section 13(1). The ultimate result of this proposition is the court's clarification that two tests must hold true for other customary law to be recognized. First, "a Chinese Buddhist must prove that he is subject to a custom having force of law in Burma and that that custom is opposed to the provisions of Burmese Buddhist law." And second, that a Chinese Buddhist married to a Burmese Buddhist woman "must show that the application of the custom having force of law will not work injustice to the Burmese Buddhist woman."

The second reason Rutledge offers for dismissing Chinese Buddhist law is that he believes most Chinese in Burma have become Burmanized. Rutledge begins this point by asserting the importance of clarifying the law in cases of Chinese-Burmese interracial marriage because the large number of such unions makes the question of law "acute." Here Rutledge contradicts the observations of other contemporaneous colonial officials who saw the Chinese in Burma as offering a prime example of ethnic self-segregation and non-assimilation. He instead suggests that Chinese assimilation into Burmese society diminishes the claim that Chinese cultural practice should be recognized as customary law among this community:

> [I]t must not be lost sight of that Chinamen have come and settled in Burma in growing numbers since the first occupation of the country. And more than any other race they have inter-married and joined in the social and religious life of the people of the country, so that the third generation so far as blood and manner of life are concerned are much more Burman than Chinese. To apply without enquiry the ancient customary law of China to these people seems unwise and impolitic (ILR 1927: 419).

Surely, Rutledge leaves several questions unanswered here. How is communal assimilation measured? How assimilated must a minority community be before they are subject to Burmese

customary law? Can individuals from an assimilated minority community be exempted if their family has retained ancestral cultural practices. But the sum total of *Ma Yin Mya* is that, while the court reserves the right to apply Chinese Customary Law in certain situations, the new presumption from which cases involving mixed Buddhist families now begins is that foreign Buddhists in Burmese should be considered culturally Burman until proven otherwise.

It is worth note that while the whole bench agrees to this framework, the lone Burmese jurist, Justice Maung Ba, steers away from endorsing Rutledge's argument that the Chinese are becoming Burmanized. While the other two justices on the bench, Das and Brown, simply note their concurrence to Rutledge's opinion, Maung Ba elaborates upon his concurrence. While not outright skeptical of Rutledge on the point of assimilation, he nevertheless notes that the Dhammathats were primarily intended to apply to the Burmans, or Burmese Buddhists.[57] His opinion is chiefly concerned with a felt need to elaborate that Burmese Buddhist law should apply to cases of Chinese-Burmese marriage as a matter of *lex loci contractus*, rather than just the potential assimilation of the Chinese to Burma.

It is not immediately clear why Maung Ba felt the need to elaborate upon his concurrence. It is in every material way similar to Rutledge's opinion. One possibility is that he did doubt that the Chinese either were already or were capable of Burmanizing. I am skeptical of this reading because it would directly contradict a position Maung Ba would more explicitly articulate in a ruling just three years later, in the case of *Phan Tiyok vs Lim Kyin Kauk*, which I take up in the next section. More likely, I believe is that Maung Ba felt that relying on the fact of Chinese Burmanization left too much wiggle room to bad faith actors. By 1927, Maung Ba had been vocally lamenting how the application of Chinese Customary Law negatively affected the

[57] He uses the terms Burmans and Burmese Buddhists interchangeably.

position of Burmese women in family law cases for at least two years. As the judge in a 1925 criminal case, *Ma U vs Mg Kyin Htat* (4 BLJ 1925)), he lamented "the deplorable position of the women in Burma" when he found that he had to invalidate a marriage between a Burmese Buddhist woman and Chinese-Buddhist man on the grounds that no one could prove the man was Buddhist (4 BLJ 1925: 256). He repeats a similar line here, noting in the beginning of his opinion that "as the law now stands it has in some cases worked injustice to the Buddhist women of Burma" (ILR 1927: 420).

"Chinese Buddhists are not Buddhists in the same sense that the Burmese are Buddhist" Race as Religion
Phan Tiyok vs Lim Kyin Kauk (1930)

While *Ma Yin Mya* would establish firm precedent for viewing the Chinese as a part of a broader Burmese Buddhist community rather than a oppositional foreign group, the judgment that court came to would not have as dramatic an effect on the legal landscape for mixed Buddhist families as one might expect. In part, the long lapse between *Fone Lan* and *Mya Yin Mya* would be taken as an impediment to the practicality of the ideas generated in this opinion. It would not take long from the decision in *Ma Yin Mya*, however, before the question of Chinese law in Burma would receive a second review by a full bench at the high court of Rangoon.

In 1930, another full bench hearing with Maung Ba as the only holdover would wholly gut the notion that the Chinese and the Burmese could ever constitute a single legal community. In deciding this case, the justices of the High Court of Rangoon would conduct a systematic review of some two dozen cases which formed the precedent on questions related to the contest between Chinese and Burmese law in the colony.[58] Largely these were other cases that featured

[58] Cases cited in the decision that I've been able to review include *Apana Chanan Chowdry vs Ma Shwe Nu* (4 LBR, 1907); *Chan Pyu vs Saw Sin* (6 ILR-Rang., 1928); *Fone Lan vs Ma Gyee* (2 LBR, 1903); *Gyan Shi vs Kin Twe* (10

mixed Buddhist families in Burma, a majority of which dealt with other Chinese migrants or Chinese-Burmese families, though the court additionally considered a few cases arising from similar conflicts in India as well as a number of business disputes that broach the question of Chinese law. After three decades of largely dismissing the notion that ethnic Chinese could be considered a Burmese Buddhists, the colonial judiciary took particular interest in the arguments put forward in *Phan Tiyok vs Lim Kyin Kauk* and the case was referred to a full-bench hearing of the high court of Rangoon, a panel consisting five justices, four British and one Burmese.

Phan Tiyok vs Lim Kyin Kauk (8 ILR Rang. 1930) centered on an inheritance dispute between the wives and children of a deceased Chinese man named Baw War. During his lifetime, Baw War had married two women: Ma Nu and Ma Hnin Bu, both of whom are simply described as having Chinese fathers. With Ma Nu, who predeceased her husband, Baw War had two daughters, Ma Thein and Ma Lwe, and one son-in-law, Phan Tiyok, who first married Ma Thein and then, upon her death, married her sister, Ma Lwe. With Ma Hnin Bu, Baw War had five children: two sons, Lim Kyin Kauk, the eldest child, and Lim Kyin Swi, the youngest, and three daughters in between, Ma The The, Ma E Zin, and Ma E Kyu.

Following the death of Baw War in 1923, the administration of the family estate was negotiated by Baw War's brother, San Ya, who divided the property roughly equally between the sides of Ma Hnin Bu, along with her children, and the deceased Ma Nu, represented by Phan Tiyok and Ma Lwe. For five years, this arrangement seems to work in relative harmony. Then, in 1928, Ma Hnin Bu brings forward a suit seeking a resettlement of the estate, claiming that the

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LBR, 1918); *Lee Lim Ma Hock vs Saw Ma Hone* (2 ILR-Rang. 1923); *Leong Hone Waing vs Leong Ah Foon* (7 ILR-Rang., 1929); *Ma Pwa vs Yu Lwai and Ma Yin* (8 LBR, 1916); *Ma Sein vs Ma Pan Nyun* (1 ILR-Rang., 1924); *Ma Si and others vs Hoke Hu* (AIR-LB, 1919); *Ma U vs Mg Kyin Htat* (4 BLJ, 1925); *Ma Yait vs Maung Chit Maung* (9 LBR, 1921; NAK PCAP 6/912/3); *Ma Yin Mya vs Tan Yauk Pu* (5 ILR-Rang., 1927); *Man Han vs V.R.M.A.L Firm* (4 ILR-Rang., 1925); *Maung Kwai vs Yeo Choo Yone* (10, LBR, 1919); and *Maung Po Maung vs Ma Pyit Ya* (1 ILR-Rang. 1923). The decision also reports several cases that are unreported in the legal circulars (e.g., *Li Tuck Lon vs Daw Khin* (O.S. Civil Regular 363 of 1921; see also, Conclusion).

settlement brokered by San Ya was only a temporary arrangement, never meant to be permanent, until an equitable division of the estate could be decided. Ma Hnin Bu pursues her claim through the Indian Succession Act, framing Baw War as a Confucian and thus determining that the succession of his estate should be made through British civil law. In accordance with the civil law of the time, rather than divided into two halves, Ma Hnin Bu seeks the estate to be divided into thirds: one-third to be kept by herself, and the other two-thirds shared between all Baw War's surviving children. This would effectively more than quarter the inheritance of Ma Lwe, solidify her autonomy over the estate, and acquire a considerably greater share of the estate for her five children.

Upon his mother's suit, however, Lim Kyin Kauk, the eldest son of Baw War and Ma Hnin, filed a rival suit seeking to supersede his mother's claim and wholly disinherit Ma Nu's side. Alleging that Baw War was a Chinese Buddhist, Lim Kyin Kauk sought to have Baw War's estate succeeded through Chinese Customary Law, which only entitles sons to inherit, lest the deceased leave a will indicating otherwise. As Baw War only had two natural sons, Lim Kyin Kauk and his brother Lim Kyin Swi would share in the whole estate. In keeping with Chinese Customary Law, the brothers would have to provide for their mother up through her death. They would also have to provide for Baw War's daughters until they were married. Since Ma Nu's daughters were already married, this would mean Ma Hnin Bu's side of the family would keep everything, but the two male children would be wholly in control of how these financial assets were used.

Finally, Phan Tiyok and Ma Lwe took out a third suit seeking to bring the case under Burmese Buddhist law as a means of reasserting their position in the estate. Because the Burmese Buddhist law found in the Dhammathats approaches all children and step-children

equally, irrespective of their gender, marital status, or 'natural parentage,' bringing the case under Burmese Buddhist law would be most materially advantageous to Phan Tiyok and Ma Lwe. They would receive a full third of the property. However, given the incontestable fact that the deceased Baw War was ethnically Chinese, the pair would have to fight an uphill battle against hegemonic colonial racial projects and roughly thirty years of case law built up since Fone Lan to have the case to be ruled under Burmese Buddhist law. Their position would require deconstructing colonial understandings of race and religion to argue that religious personal law should be found in accord with a person's cultural practice rather than their ethnic heritage. Effectively, they sought to prove that being a Chinese Buddhist was not mutually exclusive with practicing Burmese Buddhism.

Phan Tiyok and Ma Lwe's argument rested on their ability to detail Baw War's active and intentional commitment to Burmese customary Buddhist practices. A number of earlier cases making similar assertions - that an ethnic Chinese person's participation in Burmese Buddhist religious life means their personal law should be Burmese Buddhist law - had been thrown out if the court suspected the individual in question's religious proclivities were more a product of social factors than personal faith.

Phan Tiyok and Ma Lwe made their case by marshaling evidence of Baw War's cultivation of Burmese customary rites against the defense's simplistic claims that as an ethnically Chinese man, Baw War's religion was already settled. The plaintiffs' side cited five particular practices that could demonstrate that Baw War's commitment to Burmese Buddhism was more than just an immigrant minority's passive participation in the cultural life of the dominant society. First, Baw War carried out shinbyu ceremonies, ordinating his sons as Buddhist novices within the Burmese tradition. Second, Baw War built zayat, or rest stations for

monks, a common form of donation among Burmese Buddhists which, in taking care of the monastic community, builds kammatic merit for the donor. The first two forms of evidence put forward were meant to show that Baw War sponsored specialized Buddhist practices meant to spread the Buddhist teachings. While spreading Buddhist teachings may seem a race neutral proposition, these particular rites were specifically Burmese customs not practiced in China. The significance of Baw War performing such rites is that it demonstrates both that his Buddhist belief is more than simply a desire to maintain Chinese cultural customs and that his Buddhist practice was indeed highly involved in Burmese customary rituals. These two practices helped show that throughout his life Baw War engaged in customary Burmese religious practices not common to Chinese modes of worship.

The next two practices cited further evidence that Baw War was committed to participating in Burmese Buddhist religious through more ordinary forms of veneration. The third thing the plaintiffs showed was that Baw War frequently made offerings to Burmese Buddhist monasteries and would regularly make subscriptions on Burmese Buddhist festival days. Fourth, the plaintiffs showed that Baw War made pilgrimages to Buddhist sites in Mandalay, which is considered the heart of Burmese culture. In contrast to the sponsorship of shinbyu ceremonies and the building of zayat, these two lines of evidence seem designed to suggest that Baw War's practice of Burmese Buddhism extended beyond occasionally participating in major events. Buddhist worship was simply an ordinary part of his life.

The final piece of evidence was that Burmese Buddhist monks were invited to say prayers at Baw War's funeral, seemingly an attempt to show that Baw War not only lived as a Burmese Buddhist, but died as one, too. This line of evidence, too, was tricky for two reasons. First, customary Chinese funerary rites were also performed at Baw War's funeral. An attempt to

prove that Baw War died as a Burmese Buddhist could also underscore that Baw War's Chinese-ness was more than a matter of cultural identity; that it was also an important piece of his personal religious practice, as well. But second, and perhaps more threatening to the plaintiffs' case, is that at this point the courts had shown a strong preference for viewing funerals as evidence of racial identity rather than religious faith.

It is important here to note that this racialized approach to understanding the significance of funerary rites was largely devoid of consistent legal logic. In some cases the presence of Buddhist monks at a funeral was taken as an indication of the surviving family's faith rather than an indication of how the deceased would have viewed themselves. This line of thinking was found to be particularly persuasive in cases involving Chinese and Burmese interracial marriages, where the courts would see the presence of Burmese Buddhist monks at the funeral of a Chinese person as evidence of the widow's religious commitments. In other cases , the practice of Chinese funerary customs was taken as evidence of some special insight into how the deceased understood themselves as much more fundamentally Chinese than they were Burmese. This finding was more commonly adopted in cases where the deceased was of mixed Chinese and Burmese parentage, and the courts had to settle whether their personal law should be Burmese Buddhist law or Chinese Customary Law. The inconsistent application of this necromancical logic - finding that Burmese Buddhist rituals are insufficient proof of religious identity, but Chinese customary rites were sufficient evidence of racial identity - further suggests the colonial court's ideological proclivity towards viewing personhood as much more fundamentally a product of patrilineal heritage than religious faith.

It is unclear from the facts of the case why the Phan Tiyok would emerge as the most significant challenge to the position of Chinese Customary Law in three decades. With the

exception of the zayat building, each line of evidence put forward by the plaintiffs had been tested and dismissed by earlier cases. Perhaps the cumulative weight of putting all five arguments together provided an evidentiary breadth that just could not be ignored by future courts. Or perhaps, twenty-seven years on, the cracks in the foundations of Fone Lan were becoming so apparent that the courts were just waiting for the right case to come along to dismantle this problematic precedent.

Rather than focusing on the simple matter of whether Baw War's estate should be governed by Burmese Buddhist law or Chinese Customary Law, the full-bench found it important to finally and fully clarify whether or not Buddhism, as understood in the Burma Laws Act, was broad enough to incorporate the multiplicity of religious practices that make up the many things that Buddhists around the world may believe. In other words, was the legal exception of Buddhism in Burma solely an exception for Burmese Buddhist customary law? Or could this religious exception make space for Chinese Customary Law, as well? In his judicial commentary on the case, chief justice Heald reflects on his growing opinion that Chinese Buddhism and Burmese Buddhism are so distinct that they could scarcely be considered the same religion. At one point, Heald goes so far as to determine that Chinese Buddhists and Burmese Buddhists "don't even worship the same Buddha" (8 ILR Rang. 1930: 71-2). Allowing Chinese customary practice, which Heald saw unconnected to the religious life of individual Buddhists in China, to reign as Buddhist law in Burma was as out of place as empowering the civic laws of any other country to take precedent over colonial codes, he found.

The case hinged also on an argument of Chinese acculturation in Burma. The advocates for the plaintiffs pushed for the recognition that there was a significant enough difference between Chinese immigrants in Burma and ethnic Chinese born in Burma. Treating all the

Chinese as an unchanging immigrant bloc was a misapplication of justice for those who were, regardless of their ethnic makeup, Burmese. Chinese Customary Law, Mr. Darwood, the advocate for the plaintiffs, argued is "a custom of the Chinese in China, not a custom having the force of law in Burma, adopted by the Chinese in Burma for themselves… therefore it cannot be recognized by the Courts in Burma" (8 ILR-Rang. 1930: 104). In other words, Chinese customary legal norms represent a foreign law to ethnic Chinese born and raised in Burma. Binding this group to the customary codes of a wholly different social and cultural context would be just as great an injustice as it would be if they were ethnically Bamar.

The decision in Phan Tiyok vs Lim Kyin Kauk was meant to finally clarify the position of Chinese Customary Law in colonial Burma. Reviewing fifty years of case law since the ruling of Hoke Ku, Heald, the chief justice of the full bench hearing systematically reviewed dozens of cases that argued for and against the application of Chinese Customary Law to Chinese immigrants, ethnic Chinese born in Burma, mixed race Chinese, and relationships between Chinese and Burmese. Following some sixty pages of historical review, Heald comes to four conclusions that dismantle the jurisprudential infrastructure upon which Chinese Customary Law rested:

1. Chinese Buddhists are not Buddhists in the same sense that the Burmese are Buddhists, and should not be considered Buddhists in regards to section 13 of the Burma Laws Act.

2. There is no such thing as "Chinese Buddhist law," because there is no law that applies only to Chinese Buddhists. "Chinese Customary Law" is thus more akin to a civil law than a religious law, in that it would apply equally to all people in China, regardless of their religious convictions.

3. Aside from specific monastic codes, “Burmese Buddhist law” is also not really Buddhist law, since it derives from customary legal practices that have no relationship to the Buddhist religion.

4. There is no relationship between Chinese Customary Law and Burmese Buddhist law.

In light of these facts, Heald finds, the Indian Succession Act should govern the estates of all Chinese Buddhists, whether they are themselves immigrants from China or born in Burma. As the chief justice, and speaking for the majority of the five judge bench, Heald orders the Full Bench to abide the final decision of the appeal: the case is determined in accord with the British civil law principles of ‘justice, equity, and good conscience.’ The estate is split equally, recognizing the racial separation of Chinese and Burmese Buddhists as legal fact and fully disempowering Chinese Customary Law in Burma.

Or is it quite so clear cut? Despite its grand historical review and the four-to-one super majority in the decision against Lim Kyin Kauk, a closer examination reveals two cracks in the foundations of Heald’s premise. The first crack forms around an apparent uneasiness around the idea of throwing Chinese Customary Law out altogether. In the lone dissent against the majority decision, Justice Otter argues against Heald and the majority on the grounds that nearly fifty years of British jurisprudential work affirms the position of Chinese Customary Law in the Burma Colony. Citing cases up to the late 1920s, Otter proposes that Chinese Customary Law should be considered valid according to the common law principle of stare decisis - or law created by precedent rather than legislative enactment. While Otter’s voice failed to sway his peers in the case in question, the principle of stare decisis would become relevant in the decades after the *Phan Tiyok* decision, as Chinese litigants continued to fight for, and against, customary

law provisions in the courts up through the end of colonialism, and even beyond.

The second crack in Heald's position forms around his presumption of the mutual incompatibility of the Chinese and Burmese. Nearing the end of his seventy page decision, Heald finally allows that presumption of racial segregation upon which he builds his argument might not be so total, observing:

> An exception must of course be made in the case of a Chinese Buddhist who is proved to have abandoned his Chinese Buddhist religion and to have adopted Burmese Buddhism, but so far as I know no such case has yet been established and from my experience of the Chinese in Burma I think that it is unlikely to occur, at any rate, in respect of a Chinese born in China (8 ILR-Rang. 1930: 120).

This position allows for the possibility of considering that determinations of personal law are not solely a matter of racial heritage, but of cultural participation as well. Two other justices signal their support for this line of thinking, including both the lone dissenter, Justice Otter, and the lone Burmese judge, Justice Maung Ba, though with divergent views on the ultimate likelihood of such a case ever happening. Otter, while otherwise in complete disagreement with Heald, signals that the courts must be open to the possibility of viewing ethnic Chinese subjects as Burmese Buddhists. As with Heald, Otter explicitly hypothesizes that this must be exceedingly rare, given his belief that "Chinamen as a whole in this country have never identified with the native Burmese" a statement which he supports given that "they [the Chinese] have always claimed to stand outside the Burmese system of law" (8 ILR-Rang. 1930: 133). Consistent with his dissent against the decision as a whole, Otter articulates a view that whether a Chinese is a Buddhist or a Confucian - and whether a Buddhist is a Chinese or Burmese Buddhist - individual faith must be proved by evidence before the court, rather than simply presumed (8 ILR-Rang. 1930: 126).

Maung Ba, on the other hand, issues an opinion that otherwise mirrors Heald's logic but

for his hard line assumption that the Chinese are unlikely to assimilate in Burma. Maung Ba twice explicitly points out that, from most Buddhists' standpoint, the similarities between Chinese and Burmese Buddhism outweigh the differences, and that there are a number of Chinese who have adopted the Burmese form of Buddhism (8 ILR-Rang. 1930: 137). For these people, the justice believes that applying the Burmese Buddhist law is the most just route, though it should not be forced on those who have not adopted Burmese practices.

The resolution authored in the Phan Tiyok decision would not resolve the contentions that surrounded the application of different forms of Buddhist law to different communities of Buddhists. In the two decades that remained of colonial rule, there would be at least another eighteen cases relitigating similar questions about the applicability of Chinese law in Burma. Some emerged out of questions regarding the limits the Chinese had to bend their own laws. This was, for instance, the essential question in *Leong Ah Foon vs Leong Ah Choy* (AIR-Rang. 1933), which asked if a Chinese person could write a will that violated Chinese Customary Law, since Chinese Buddhists had the power to will property (Justices Page and Das found that they could). Others inquired into the rules and procedures of Chinese law, such as the case of *Ma Kyin Hlaing vs Maung Kyin Swi* (1 RLR 1936), which asked whether Chinese customary marriages required the performance of a whole suite of marital rites to validate a marriage or if a valid marriage could exist without such ceremony (Justice Ba U found in preference of the latter). What the decision in Phan Tiyok did, then, was not resolve questions regarding whether Chinese law is Buddhist law, how to apply Chinese law in particular situations, or how to balance the rights and obligations formulated by Chinese and Burmese legal traditions within a mixed family. Rather, what the Phan Tiyok decision did was clarify that Chinese and Burmese are mutually exclusive categories, and one can only have rights as one insofar as they abandon - or escape - the claims

of the other.

The Afterlife of *Phan Tiyok*:
Tan Ma Shwe Zin and the inconclusive end of Chinese Customary Law

The irresolution of the question 'Is Chinese Buddhist Law valid as Buddhist law in Burma' is evident in the decision, and the confusing afterlife, of *Tan Ma Shwe Zin vs Koo Soo Chong* (RLR 1939). Heard nearly a decade after *Phan Tiyok*, this case centered on a question that had been kicking around the High Court of Rangoon for nearly a decade: how the estate of Khoo Boon Tin, a wealthy but childless man, should be inherited upon his death. In particular, whether the estate of the deceased should be inherited by his sisters-in-law or his nephew. Originally heard as a conflict between Tan Ma Shwe Zin and Tan Ma Ngwe Zin (*Tan Ma Shwe Zin vs Tan Ma Ngwe Zin* AIR-Rang. 1932) - the two sisters of Khoo Boon Tin's wife, Tan Ma Thin - the dispute was originally resolved in reference to a will left by Khoo Boon Tin (deceased in 1906), and a subsequent will left by his wife (Tan Ma Thin, deceased in 1929) that stipulated certain property be made out to charitable causes and the remainder shared equally by Tan Ma Thin's siblings, in accord with provisions of Chinese Customary Law that allow for the creation of wills.

Following the ruling in Tan Ma Shwe Zin vs Tan Ma Ngwe Zin, however, Khoo Boon Tin's nephew Khoo Soo Chong sued claiming to be the rightful heir under the claim that Chinese Customary Law determines that the proper route of succession would go through the male line to the closest male relative, which was him. Khoo Soo Chong's argument was that Tan Ma Thin (Khoo Boon Tin's wife) was not entitled to test property because, as a Chinese woman, she never truly held the property; she was only entitled to use it throughout the remainder of her life and that upon her death it would devolve to the next male heir.

The case eventually reached the Privy Council, the highest court of empire, which in

1939 found in favor of the sisters, dismissing Koo Soo Chong's appeal on the grounds that Chinese Customary Law was inapplicable in Burma because it was not a form of Buddhist law at all. Sir George Rankin, writing for the Council, found that both Khoo Boon Tin and Tan Ma Thin were clearly evidenced to be Chinese Buddhists, but that, because the position that Chinese Customary Law is Buddhist law is so weak, Burmese Buddhist law must be applied to their estate (RLR 1939: 7; 10). Basically reiterating the *lex loci contractus* position arrived at in *Ma Yin Mya* - that the relevant religious law for all Buddhists in Burma is the law of the land, I.e., Burmese Buddhist law - the Privy Council rules that Chinese Customary Law is not valid as Buddhist law in Burma.

But if this ruling seems to accept rather that the Burmese and Chinese are unified body of Buddhists, I contend that it is the exact opposite for two reasons. First, the finding that Burmese Buddhist law applies to Chinese Buddhists offers little more than a rewording of Heald's position in Phan Tiyok that Chinese who abandon their ancestral faith be accepted as Burmese Buddhists. While Chinese Customary Law might no longer be the applicable law for those Chinese who do maintain traditional religious practices - English law would now apply to them - it does nothing to challenge the essential premise that unless the Chinese are wholly assimilated into Burmese society to the point of being unrecognizably Chinese, they are still foreign Buddhists.

Second, the Privy Council's opinion simply wasn't followed. There were at least five more cases reported that made their way to the high court that dealt with the application of Chinese Customary Law in Burma, most of which accepted the continued application of Chinese Customary Law in Burma in the wake of Tan Ma Shwe Zin. Indeed, in a decision authored just the next year, a two judge panel in the case of *Yin Win Lin vs Ma Kyin Sein* (AIR-Rang. 1941)

explicitly asked whether Chinese Customary Law should be thrown out entirely in Burma, answering in the negative. Both substantively and practically, then, the decision in Tan Ma Shwe Zin only reiterated the essentialized juridical distinction between the Chinese and the Burmese as rights bearing subjects.

Conclusion

This chapter has shown how litigation over the question of whether Chinese Customary Laws count as Buddhist law under the Burma Laws Act eventually develops a racial 'common sense' (Haney-Lopez 2006) naturalizing what the courts see as a separation of the Burmese and the Chinese in colonial Burma. The fours cases I have presented in this chapter feature individuals from a variety of backgrounds - migrant Chinese who married indigenous Burmese; ethnic Chinese born in Burma; Burmese-Chinese, including both those who are and who are not Buddhists - who confused the courts. Colonial judges were not able to relate peoples' everyday realities to the rigid categorizations that often proved contradictory, uncertain, or impractical when scrutinized. That the burden of proof often fell upon individuals who asserted variance from the colonial common sense of racial separatism often created insurmountable barriers that rendered the varied realities of mixing invalid in litigants' pursuit of justice.

In this chapter, I have moved through the history of jurisprudence on the intersections and eventual disjunction of Burmese-Chinese Buddhist law chronologically. This chronology should not, however, be taken to signify that there was a linear or evolutionary trajectory in this project. It is not that the courts were guided by an ever better understanding of populations that they ruled over until the point that they could recognize a separation of the Burmese and Chinese that they should have been aware of all along. Rather, I emphasize that viewing the jurisprudence

on Burmese-Chinese Buddhist law chronologically shows the erratic path that the categorical segregation of these two communities took. It was never pre-ordained that these courts would, or should, ultimately determine that the Chinese and Burmese did not share enough of the basic tenants of faith, custom, and culture to share a code of Buddhist law. That the courts did ultimately decide upon this segregation was contested by litigants representing a wide array of subject positions throughout the near six-decade span I cover here. Neither should the chronological orientation of this chapter be read as a suggestion that the verdict in *Phan Tiyok* resolved all the questions involved in the jurisprudence of mixed Buddhist family law conflicts. While the full bench opinion would settle the question of whether Burmese and Chinese Buddhist were the same thing, litigation over how to determine *who* should belong in *which* categories would continue up through into independence. There would be no fewer than twenty-one cases contending the categorizations that colonial judges made after *Phan Tiyok*.[59] And indeed the jurisprudence on the position of Chinese Customary Law in Burma would continue into the independent era, beginning immediately after Burmese independence and up until the waning years of judicial independence in the late 1950s.[60]

Moving from the earliest case regarding the position of 'the Chinese religion' in Burma

[59] *MA Hla Me vs Maung Hla Baw* (8 ILR-Rang 1930); *Ma San and others vs Ma Chit Su and others* (AIR-Rang. 1930; see also Chapter 3); *Ma E Kyee vs Tan Chong Kee* (AIR-Rang. 1933); *Ma Sein Byu and another vs Khoo Soon Thye and others* (11 ILR-Rang. 1933; see also Chapter 6); *Mg Tun Zan vs Mg Tun Zan Gyi* (AIR-Rang. 1934); *Maung Sein Ba vs Maung Kywe and others* (AIR Rang. 1934); *Ma Myaing and others vs Ma Hnin Zan* (AIR-Rang. 1934); *Ma Kyin Hlaing vs Maung Kyin Swi* (1 RLR 1936); *Ma Kyin Mya vs Maung Sit Han* (1 RLR 1937); *Ah Pein vs M.C. Deva and another* (AIR-Rang 1937); *Oon Chan Thwin and another vs Khoo Zun Nee and another* (AIR-Rang. 1938); *Daw E Thin and others vs Maung San Thein* (3 RLR 1938); *Ma tin vs Ko Sein Hone* (Air-Rang. 1939); *Tan Ma Shwe Zin and others vs Khoo Soo Chong and others* (RLR 1939); *Ma Pwa Tin vs Yeo Sein MAung* (AIR-Rang. 1939); *Yin Win Lin and another vs Ma Kyin Sein and others* (AIR-Rang. 1941); *Yup Soon E vs Saw Boon Kyaung* (17 AIR-Rang. 1941); *Ma Aye Mya vs Chew Cheng Guat and others* (AIR-Rang 1941); *Tan Swee Kyu vs Chan Chain Lyan* (RLR 1947).

[60] The earliest independence era case on the jurisprudence of Chinese Customary Law, *Chong Ah Lin cs Daw Thike aka Wong Ma Thike* (1 BLR 1949) is reported on the first anniversary of Burmese independence, on January 4, 1949. The final case I find is in 1956 (*Lim Chin Neo vs Lim Geok Soo* [BLR 1956]), just shortly before the first of what would turn out to be many periods of military rule.

to one of the last major cases in the jurisprudence of Chinese Buddhism in the colony reveals how early ambivalences and pluralist potentialities eventually yield to a more rigid and singularizing inscription of the Burmese and Chinese as unique legal communities. As the remainder of this dissertation works to make clear, the construction of these two identities as separate, perhaps even antagonistic, communities would alter the ways that individuals who bridge these divisions could claim and attain rights. However, this construction did not affect all those who straddled the imagined but legally valid division between these categories equally. As is notable throughout this chapter, and more explicitly analyzed in chapter 4, the jurisprudential segregation of the Chinese and Burmese into divergent regimes of rights would often benefit men, who could through this divergence escape the generally more expansive vision of rights the courts endowed Burmese Buddhist women with.

Chapter 3

Faith Finding and Lineage Tracing:
A Politics of Evidence in Burma's Colonial Courts

Early in the 1938 autobiography of Maurice Collis, former Magistrate of Rangoon (1929-1930), the reader is treated to two stories that juxtapose distinct types of evidence. In the first, Collis' narrates what he says is the only case he remembered during his first year on the bench in Rangoon.[61] The case centers around the sinking of a tug, the *Ngatsein,* early one morning during its route from Moulmein to Rangoon. When the *Ngatsein* sprang a leak, he related, the whole crew required evacuation. While the *Ngatsein*'s fourteen Chittagonian crewmen[62] were able to escape, three others - the ship's Captain Pinnington; its chief engineer, Mr. Phillips; and Phillips' Madrasie servant, Arokiaswamy - were forced to jump instead into the open sea. Arokiaswamy was able to survive aboard a plank, but both Pinnington and Phillips drowned. Later that night, the ship *Shwedagon* comes across Arokiaswamy at the mouth of the Rangoon River, rescuing him after 13 hours afloat. Upon his rescue, Arokiaswamy relates his own account of the sinking, claiming that the lifeboat survivors "heard and saw" the captain calling for rescue but "rowed deliberately away" (1995: 48). On the basis of Arokiaswamy's account, the surviving Chittagonian crew is charged with desertion of their duty and the case falls into Collis' lap.

But Collis rejects Arokiaswamy, reasoning that he has simply "soured" on a crew he holds accountable for his near death and ready to paint them in the worst light. Collis' account of

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[61] Collis was notoriously apathetic towards his judicial work. Throughout most of the early part of his autobiography he describes the boredom of his life and work as a justice in Burma, believing himself to be fated for bigger things that would, he observes retrospectively, come about in the early 1930s. His daughter, who wrote the introduction to the text in 1945, describes her father's constant feeling that he was in the wrong career until he made the switch to writing at the age of 45 (around 1933).

[62] Often described as 'Serang' in the text.

the case - one of the few, he claims, where he did not "know the evidence before it was given and could tell a false case by the answer to the first question" (1995: 46) - describes him as uniquely capable of discerning truth and motive by the tenor of the accounts a witness relays. It is only his preternatural ability to read through testimony to get to the heart of the matter that saves the blameless crew from a harsh sentence.

While this first scene shows how a discerning judge can come to know such intangibilities as faith and criminal intent as legal fact, a second story shows the limits to the ephemera that can count as evidence. This story comes from the moment Sir John Simon arrives in Rangoon to open his commission on the question of Burma's petition for self-government. Collis tells of a town abuzz with anticipation. On February 5th 1929, Collis is invited to a garden party in Simon's honor hosted by a wealthy and well connected Indian-English couple.[63]

Collis mingles amongst the guests, a decidedly "mixed" crowd as he tells it, relating the various opinions on the question at hand: two Indian lawyers think giving Burma self-government is a terrible idea ("the Burmans have nothing like our brains… how are they going to run a modern constitution?"); a European member of the judiciary believes Simon will offer some form of solely symbolic concession that remains far short of handing the Burmese power ("It's the Indians they can't stand, not the present form of government"); a Burman colleague whom Collis leans on for the local scoop tells him that the nationalists have begun to get cold feet ("I hear some of the Burmans have got a fright… they think it's safer to hold hands with the Indians"). Collis walks off dispirited, afraid the commission will walk away unable to gather accurate proof of what he already knows: that the Burmans are a proud people who deserve the separation they seek, and that they can handle it.

[63] In a description portending the ways that colonial justices viewed racial mixing, Collis describes this mixed race couple as "one of Rangoon's characteristic paradoxes.'

By now it is late, and Collis takes umbrage in the cool breeze as he watches a dancer brought in as entertainment. Dressed in the traditional costume of the Mandalay court, Collis sees in her a perfect representation of the national sentiment as he knows it to be:

> She pounced and sang, and though her art was gay and whimsical, behind it was all the national aspiration. For the common people it represented the life which had been taken from them, when their country was conquered, and they pictured a free Burma in terms of such a stage representation. For the Burmese guests at the party the dancer was a symbol which animated their resolution to win Burma for the Burmans (1995: 46).

Noticing Simon and his colleagues for the commission watching the dance, Collis laments their inability to see through the elite representations that he fears will steer them against recommending separation and appreciate the true heart of Burman sentiment that is playing out right before them.

> Sir John and his colleagues were watching the girl dance. As a lawyer he cannot have been accustomed to evidence given this way, but in fact the girl was expressing everything which he had come to Burma to find out (1995: 46).

Collis' explicit appreciation of the gap between these two different kinds of evidence emphasizes the cultivated restraint of a well-trained, modern, western judiciary. Law is strict, and it places high demands on what can count as proof. Judges are not agents in their own right; they are merely the vessels of an objective justice who cannot assert themselves beyond that which can be readily reasoned from evidence of the first order. Dance might distill a truth that witness testimony fails to capture, but the capacity to separate these different kinds of evidence is integral to the judiciary's understanding of itself. It is the hallmark feature through which it projects its legitimacy as an institution.

When it comes to evaluating race and religion, however, the judiciary consistently loses its footing, slipping constantly into frameworks of common sense (Haney-Lopez 2006), waving away what seems to be solid evidence and assuming an omniscience on the truth of racial affiliations. This chapter engages a nascent anthropology of legal evidence to theorize how

Burma's colonial courts made race real by overriding local claims of syncretism and multicultural belonging with frequent assertion of ethnoracial separatism in the colony. Rather than work from testimony and personal claims of self-understanding, the judiciary relies on orientalist legal scholarship and an idealized image of the 'plural society' to maintain its practice of administering a segregated system of law between different Buddhist communities.

As I will more explicitly discuss in chapters 4, 5, and 6 the judiciary's approach to evidence is always highly gendered. While members of Burma's colonial judiciary often appear sympathetic to the plight of Burmese women who lose their Buddhist law status, they nevertheless remain invested in property rights regimes that privilege men's estate holding, particularly in cases where a woman's Burmese-ness comes under question. Judges often dismiss the testimony and personal narratives of foreign and mixed Buddhist women, who largely describe some element of integration within local Burmese communities, in preference of men's claims of maintaining ancestral patriarchal traditions, claims which position their families as thoroughly set apart from Burmese society. This is particularly the case in considering Sino-Burmese and mixed Chinese-Burmese families. As I will discuss in the next chapter, the courts were more ready to accept that an Indian Buddhist might reasonably be considered Burmese than they usually were for Chinese migrants and the Sino-Burmese.

Intimate Evidence, Ephemeral Evidence

Litigation among mixed Buddhist families draws attention to epistemological questions about how one can know another individual's faith in a manner befitting the strict positivist standards of legal evidence. By requiring the courts to adhere, for civil cases, to 'Buddhist law in cases where the parties are Buddhist,' the Burma Laws Act assumes - impractically, it would

turn out - that the religious status of the parties that came before it would be clear and inarguable. The Act's use of the term 'Buddhist' also forced the colonial courts to confront the variety of ways that a person can be said to belong to a particular religion. One might assume that an individual's religion is a matter of their personal beliefs.

From a legal standpoint, however, pegging religious status to personal faith is challenging: how can a court know what someone really believes? You could ask them, but people tend to lie when big money is on the line. Inquiring into the religion that a person was raised in might offer a way around this problem, but that, too, is imperfect: what if different members of the family hold different beliefs; what if a person converts away from the religion they were born into? Likewise, the court could attempt to deduce an individual's belief through some external metric of their own practice: donation records, for instance, or witness testimony about the sites they worship in. But these, too, become confounding when individuals worship in a variety of spaces.

The terms of the Burma Laws Act also forced the courts to consider whether 'being a Buddhist' necessarily referred to actual soteriological practice, at all. Once inducted into a community, practice is not necessarily required for one remaining a part of it. One could ostensibly remain a member of a religious community even when they have lapsed in the commitments expected of their faith (lapsed Catholics are not automatically excommunicated; wine drinking Muslims can still wed under Islamic law) and attendance in religious worship does not immediately convert a newcomer (I would have many more religions than I do if it did). And Buddhism places comparatively lax expectations on those who seek to join into its community of worship: it does not require conversion rituals, nor does it routinely test the orthodoxy of its adherents' beliefs. From the perspective of the British, the boundaries around Buddhism are

additionally blurred because Buddhism does not require easily recognizable matriculation or conversion rituals for those who practice the religion.

Relatedly, and perhaps even most challenging for the courts is that Buddhism, as it is practiced in East and Southeast Asia, does not necessarily demand spiritual fidelity. This final tension is especially prevalent in the cases of mixed Buddhists that I consider in this dissertation. Many of the cases I consider include Chinese who acknowledge their reverence of the Buddha but maintain that they are more centrally adherents of Confucianism or Taoism, or sometimes even simply that they practice the ambiguously titled 'Chinese religion.' Some of the cases I consider feature migrants who acknowledge that they practice Buddhism alongside another religion, but that they only approach one of them as their personal faith. They may say that they are not truly Buddhists but only visit those temples to better assimilate into Burma; or that they *are* truly Buddhist but maintain other spiritual traditions as a way of honoring their ancestors. In assuming that one's religion would be both knowable and singular, the Burma Laws Act fails to clarify whether being Buddhist requires a person to be only and exclusively Buddhist, to be more devoutly Buddhist than they are any other spiritual or religious faith they maintain, or only to practice Buddhism to some degree even that faith is less important to them than another among their menagerie of spiritual practice. All of this would raise problems for a court that perhaps wished to simplistically assume the religious status of an individual based on the beliefs of either their parents or their ethno-racial community.

This ambiguity about what it means to be Buddhist compelled the courts to craft a variety of epistemological approaches for discovering personal faith as valid legal fact. These epistemologies each carried their own presumptions about the nature of religious faith, in general, and more specifically about whether religious status is rooted in one's *personal* faith or

their attachment to a community of worship. In practice, this meant that juridical efforts to find the religious status of those involved in mixed Buddhist litigation also served as a sort of Trojan horse for validating different ideas about how faith relates to identity in ways that dramatically impacted peoples access to legal rights and entitlements.

In this chapter, I document and analyze the jurisprudential contest between divergent epistemological approaches to finding faith and religious status that played out as the Burma Courts tried to answer the question of who counted as a Buddhist under the Burma Laws Act. By framing this as a politics of evidence, I draw attention to the arbitrariness and subjectivity involved in formulating jurisprudential guidance that seeks to represent itself as objective, neutral, even natural or common sense. That is to say, wherever one looks to find another's religion involves a set of assumptions about how to balance personal dispositions against communal norms. And the decision to weigh one or another of these considerations more strongly is inherently political, in that it empowers a judicial agent to authorize their own understanding of what it means to have a religion over those of the colonial subjects whose lives they rule on. That this occurs in the judicial wrangling over what types of evidence can be taken as more or less trustworthy and more or less insightful into the question of an individual's true faith allows this political work to masquerade as simple truth-telling. Closer attention to the varied approaches that the judges seated at Burma's courts take to evidence of religion can thus illuminate the ideologies undergirding their jurisprudential understanding of what religion is and how it relates to other social categories like gender, ethnicity, or race.

There are some productive places to begin a discussion of anthropology's treatment of legal evidence. Here, I draw explicitly on the work of Carolina Kobelinsky (2015) and Alessandra Gribaldo (2019) to address the tension involved in producing evidence in cases that

involve intimate domains. In particular, Kobelinsky and Gribaldo discuss evidence in relation to petitions for asylum on the grounds of sexual orientation and the prosecution of intimate partner violence, respectively. These cases challenge normative approaches to evidence because in taking place in intimate domains their documentation relies on deeply subjective accounts even as courts necessarily attempt to maintain a disposition of unbiased neutrality. As Gribaldo observes, intimate cases invert the typical legal prerogative to strip events of their context and render them as bald fact: "the intimate relationship… constitutes proof of the crime. Not only does the evidence become that of the victim's life experience, caught up in a contingency that cannot be formalized, but the ambiguity of proof, between evidence and persuasion, produces an excess that must be taken up by the law but cannot be processed by it" (2019: 293-294).

Both Kobelinsky and Gribaldo demonstrate how this inversion places the most onerous documentary burden upon those seeking justice through the law, though both authors locate this burden in different places. For Gribaldo, the burden lies in affective *persuasion*. The challenge for plaintiffs in her work lies in requirement for survivors of domestic abuse to convince the court that the charges they allege are real, that they are not being made frivolously, and that they do not have an ulterior motive in making these charges. But for many, the emotional entanglements between intimate abusers and the abused produces a wavering that challenges the court's expectations of how abused victims should act: survivors fail to leave their abusers; they file charges and then retract them; they backtrack on their testimony; they often don't want to see their partner sent to prison. As Gribaldo argues, "the Italian case shows that the burden of producing evidence and the burden of persuasion come together in a relationship of profound contradiction" (2019: 292).

In Kobelisky's rendering, the burden of documentation lies in *performance*. As she

demonstrates, the French courts expect those claiming asylum owing to the persecution of their sexual orientation to document the legitimacy of their claim by performing both the reality of their claimed sexuality and their fear of enduring violence because of it. In proving themselves to be "legitimate asylum seekers," claimants must also be "exemplary victims:" they are "expected to show signs of distress and behave like victims;" they are expected to "'perform' their lack of agency and depression" (Kobelisky 2015: 343; see also Malkki 1996). The performative demands placed on asylum seekers create life changing events out of the slightest acts: Kobelisky notes how an unexpected smile can dismantle an asylum claim by convincing a judge that the applicant does not truly fear for their life. Further, these cultural expectations reinscribe a heteronormative imagining of what queer subjects look like, do, and how they both feel about their sexuality and relate to a broader non-queer society. The claimant who does not in some way appear timid, fearful, or to bear shame for their sexuality risks causing the court to doubt either that they really are queer or that they were made to suffer for their queerness back home.

Taking Gribaldo and Kobelinsky as a starting point, I locate, in this chapter, a space between the burdens of persuasion and performance that mixed Buddhist litigants must contend with to enact the claims they put forward. As I will show, litigants seeking to challenge the court's racial inscription of them come up against a wall of legal ethnology that attaches law to culture and fixes culture in place. These renderings both define the rights of Chinese litigants according to customs documented by European observers in China. To a certain extent, Gribaldo's and Kobelinsky's ideas map well onto the politics of evidence that I consider: litigants variously attempt to access these laws or escape their application by persuading the courts of the truth of the identities that they claim, a process that often involves a skeptical court critically considering litigants' performances of ethnic authenticity to gauge whether these are

"legitimate" rights seekers. In all three scenarios, litigants contend with the hegemony of normative expectations, whether that be the presumption that an abused woman should leave her boyfriend, that an asylum seeker should appear legibly gay within the imaginary of a heteronormative court, or that the children of a migrant Chinese man would be raised with more affinity for their father's ancestry than the place of their birth.

But my departure from Kobelinsky and Gribaldo becomes more apparent when we consider the difference between proving events - abuse, persecution - and proving either inaccessible categories, like faith, or constructed categories, like race. Documenting the various claims that were accepted by the judiciary as legitimate, truthful, or knowable and those that were rejected as transient, fallacious, and too ambiguous for the rigors of an evidence based system of law allows me to direly addressing the evidence upon which the legal fiction of racial personhood was founded in colonial Burma. This documentation creates a bridge between the empirical and theoretical dimensions of my concept of 'religious racialization.' Saying that 'race is a social construct' is by now commonplace and accepted within anthropology and related social sciences. But too often, in my opinion, discussions within the anthropology of race simply accept that fictitious construction as a historical given without considering what ideological building blocks went into constructing this edifice. This chapter is my attempt to draw a clearer connection between the imaginative categories that the judiciary used to organize differential access to particular rights and privileges and the material processes that contributed to the articulation of these categorical constructs. Understanding the evidence that made race appear a reality empowers the critique of racial constructs by showing the errant code of an otherwise hidden algorithm.

In addition, approaching the evidence used to inscribe these sociolegal categories as an

object of analysis allows me to theorize how law exacerbates the divide between colonial assumptions of communities divided by racialized distinction and local experiences of multiethnic ambition. I aim here to demonstrate how the positivist frameworks of colonial evidentiary standards compel identities to singular to be legible, a demand that invisibilizes the realities of mixing. That is, I intend to show through this chapter how taking a more explicit look at the evidentiary frameworks through which the judiciary accepts or rejections evidence of religious personhood clarifies the material foundations upon which the abstractions of race are both articulated as natural categories and empowered to convey distinct regimes of rights upon their bearers.

Ian Haney-Lopez's masterful *White by Law* offers a model for studying how courts found evidence of race in these unstable waters. His work focuses on American citizenship racial prerequisite cases in the late 18th and early 19th centuries. As he shows, the United States' historic limitation of citizenship to whites provoked uncertainty when larger numbers of people began migrating to the country from regions outside of western Europe. America's courts began to face questions like 'Do [South Asian] Indians count as Arayan?'; and 'Are Burmese migrants British?' While black-letter textual interpretations of citizenship legislation would suggest that these questions should be answered in the affirmative, America's judges by and large agreed that it made no sense to countenance these persons as white: however technically they might fit into the meaning of the word, it was clear that Burmese, Indians, Mexicans, Puerto Ricans, and others were not 'white.' Using the framework of 'judicial common sense,' Haney-Lopez illustrates how whiteness exists at the intersection of social acceptance and judicial discretion.

Still, this only further begs the question of what anyone, from judicial agents to ordinary people, is 'seeing' to 'know' the race of another. Often, perhaps even the vast majority of the

time, race *is* apprehended in visual signals of skin tone or other bodily markers.[64] But other factors come into play, as well. In Haney-Lopez's telling, the 'common sense' of racial placements is that race comes to us through ancestral inheritance. This might be uneven - social interpretations of rules of hypodescent determine which ancestors we can inherit race from and which we do not - but race is generally at least imagined to derive from some intrinsic historic connection. There remains the question, though, of how we socially apprehend those histories. The answer is that we rely on any number of culturally relevant cues to place people. Things like language or accent, particular forms of dress, customary acts or taboos, and even kinship patterns can be read as evidence of one's distance from a racialized social norm.

How does Haney-Lopez's framework of 'common sense' apply to the question of religious racialization and the status of foreign migrants in relation to the complexities of mixed-Buddhist law in colonial Burma? As I showed in chapter one, the Burma Laws Act's protection of religious law as the relevant personal law in civil disputes among Buddhists offered divergent sets of legal privileges to those who could claim them.[65] To acquire these privileges through the courts in a dyadic legal contest one had to prove a number of affiliations. They had to show each of the following: 1. They were Buddhist; 2. They were the right kind of Buddhist (I.e., Burmese Buddhist; Chinese Buddhist; Shan Buddhist) for the particular rights they claimed; 3. That the

[64] In recent years the term 'visible minority' has emerged as a partial substitute for race. In my understanding, the term emerges out of Canadian legal and higher ed discourses, but has gradually trickled into popular American social justice vernaculars, as well. The advantage of 'visible minority' over terms like race or ethnicity is that the term acknowledges both how 'passing' complicates simplistic assumptions about the social experience of even members of the same marginalized groups when people hold different phenotypic proximity to whiteness, though the focus on 'visibility' also necessarily restricts who is considered in discussions of equity and justice, as not all minoritized identities are socially located as readily as those that can be immediately 'read' from upon the body. See also, Henry 2015.

[65] Or, depending on one's position and perspective, either foreclosed the pursuit of certain privileges or imposed disadvantageous rules upon those who could not escape certain identity categories. For conceptual clarity, however, I will speak about this in the positive in setting this dynamic up.

person they invoked in their suit was also the same sort of Buddhist that they were; 4. That the rights they claimed were either religiously proscribed or sufficiently customary that they affected religious practice. In addition to these four, litigants in some would have additionally have to demonstrate that 5. The rights which they sought did not interfere with the rights of another.[66]

As I theorized in the introduction to this dissertation, the British courts relied on epistemologies of blood, belief, and behavior to place people within this constellation of rights-deserving subjects. In this chapter, I will describe the evidence that the courts used to conduct this racio-religious epistemology. I identify two distinct types of social evidence, the first of which roughly correspond to the racial ontologies of 'belief' and 'behavior' while the second corresponds to 'blood.'

I term the first form of social evidence 'faith finding.' Faith finding involves the judiciary's attempt to discover a person's religious beliefs as legal fact. The judiciary engages in faith finding in a variety of ways. For instance, if a person is alive, they may ask test questions designed to see if a person has a theological understanding of the religion they claim to subscribe to. If the person in question is dead (for instance, if a family is litigating an estate after the death of their patriarch) they may interrogate people about their past worship habits; for both the living and the dead, they may ask about what types of religious iconography or paraphernalia they keep or kept at their home. Invariably, the tools of discovery available to the judiciary prove incapable of establishing religious faith as a positive and documentable fact, leading the judges to rely on a second form of social evidence that centered on observed behaviors.

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[66] This last condition would generally only apply to conflicts between spouses, especially in cases of marriage between Chinese men and Burmese women, though this condition would only apply the ruling in the 1918 case of *Gyan Shi vs Kin Twe* (10 LBR 1918), and was only unevenly applied even after this the rule was created.

The slippage involved in moving from spiritual to social practice occurs both consciously and unconsciously. Sometimes, a judge will explicitly posit that a person's behavior is a better guide to the categorization of religious personhood than their beliefs; other times, like if a judge asks what temple an individual visits, a judge might believe that they are to be inquiring about spiritual practices when they are actually asking instead about social behavior. This frequent slippage between spiritual and social practices supports my rationale for combining these modes of discovery as a single type of evidence. Attempting to understand a person's qualification for Burmese versus Chinese Customary Law as knowable through social behavior roughly corresponds to accepting these as ethnic categories, since people are in a sense more free to choose their affiliations, though in that people are still compelled into singularized categories that determine access to differentiated regimes of rights, this is still a highly racialized construction.

I term the second type of social evidence 'lineage tracing.' Lineage tracing involves the judiciary's attempt to cut through the messiness of socio-cultural life and just categorize people through ancestry. Lineage tracing is usually how the judiciary resolves ambiguities in categorizing mixed-Buddhist families; since most mixed-Buddhist families resident in the ambiguous position of the both/and, lineage traces effectively becomes the most reliable form of evidence for adjudicating these cases. But that the colonial judiciary sees lineage tracing as the most simple and objective way to place people into racio-religious categories, it is a mistake to treat it as either simple or objective. First, lineage tracing is not a self-proving phenomenon. Families rarely need to prove how they trace their ancestral lineage back to China (as these cases usually go, for reasons that will become obvious later). In effect, the judiciary relies on similarly social evidence to trace people's ancestry, but because the idea of a bloodline is more tangible

than one's faith, narratives about migration, even generations past, typically appear more objective than self-declaration of religious belief. Second, for mixed persons, whose ancestral lines inherently point in two different directions, it is not how tracing one or another bloodline conveys a more accurate or authentic religious category. Reflecting the broader patriarchal biases of the court, the judiciary typically accepts that the father's bloodline conveys one's religious personality, but that this should be the case necessarily emerges through the judiciary's subjective impressions of what makes good law rather than a local understanding of how one's parentage binds one more to their current community versus an ancestral homeland.

Examining the evidence that colonial courts used to categorize and grant rights to their subjects is important because it shows how the social fiction of race attains legal reality. This so to say 'legalization' of race becomes the process through which racial privileges are made material: it very literally affects things like the fiscal stability of divorced women; the care of adopted minors; and the establishment of generational wealth. And, in the 'legalization' of a separation of native and foreign Buddhists, it not only creates divergent channels for material well-being between these groups, but also develops a new social language for articulating belonging in relation to religious identity. Further, deconstructing the evidentiary grounding of the courts' racial categorizations helps clarify what exactly 'race' or any of its near synonyms mean to these colonial systems. Litigation compels the colonial state to spell out what they mean by the unstable abstractions they use to describe foreignness as a function of 'race,' 'ethnicity,' 'nationality,' 'religion,' and any other number of terms. Examining how, for example, the courts could find Indian Buddhists counts as Burmese while few mixed-Sino-Burmese do Buddhist can tell us something important about how the colonial state articulated its ideas of ethno-racial separatism that were so critical to the maintenance of colonial rule.

Faith Finding

The process of faith finding is most apparent in cases when the courts take up the question of whether Chinese Buddhists migrants could convert to the Burmese form of Buddhism. The courts readily accepted as a general principle that subjects were freely entitled to convert to different religions. However, because one can practice Burmese Buddhism without undergoing rites of conversion, the courts struggled to determine how to evaluate conversion claims. As a result, rather than locating conversion in specific moments of religious induction, the courts sought out evidence of what we might call a cultural conversion. These are moments where a person, in a sense, simply begins to act like the judges might expect a person of a given religion to act like: perhaps attendance at a Burmese temple, or the incantation of Burmese suttas, or the use of a Burmese name would indicate that a person born an Zerbadi Muslim or Chinese Confucian is rather Burmese Buddhist. In the cases of *Pai Beng Teng vs Ko Maung* (2 LBR 1904) and *Ma San vs Ma Chit Su* (AIR-Rang. 1930), for instance, the courts require far less scrutiny of Burmese Buddhists who marry Chinese Buddhists specifically, often assuming that the fact of their marriage indicates they have taken up 'the Chinese religion'

In what follows I document how the courts of colonial Burma established evidence of cultural conversion via 'faith finding' through two examples, one in which cultural conversion is taken as proven and the other in which it is denied. It is worth noting that these two examples are somewhat anomalous, as the courts did not readily accept arguments that social behavior evidences cultural conversion. While similar claims are fairly common throughout the record of mixed Buddhist litigation, they were much more likely to be denied than affirmed. These exceptional cases merit consideration in my documentation of faith finding because they better demonstrate the internal workings of this epistemological process: in cases where claims of

cultural-cum-religious conversion were denied, judicial opinions were often short, declarative, and offered little justification.[67]

Anticipating arguments that I will make in chapters 4 and 5, despite the contradictory outcomes the cases I describe in this section come to, I locate a throughline in the empowerment of patriarchal property rights. This explanation, as straightforward as it is cynical, aligns with the overall patterns I identify in tracing the epistemological fluctuations in the colonial court's legal reasoning: the judiciary is simply more willing to accept whichever argument is most aligned with patriarchal control, whether over estates, families, or anything else, and bend backwards to figure out how to justify such arguments post facto. My comparison of divergent judgments made by a single justice, Justice Heald, on two gendered cases involving questions of cultural conversion illustrates this suggestion.

Ma Sein

The first case, the 1924 case of *Ma Sein vs Ma Pan Nyun and two* (1 ILR-Rang. 1924), involves an inheritance dispute amongst the children of a mixed marriage. Sit Shan, a Chinese man, and Ma Myit, a Burmese woman, married in 1881 and had four children together, Ma Sein, Sit Paung, Sit Don, and Ma Pan Nyun. Sit Shan subsequently married a second wife, a Chinese woman named Kyin Ya, with whom he had a third son, Pwin Lip (who goes unnamed in the suit), whom Ma Myit recognized as equals in their family. Sit Shan died intestate in 1902, leaving two-thirds of the estate on Ma Myit's side and one-third on Kyin Ya's side. Through the

[67] I suspect that cases in which claims of cultural conversion are denied operate through the epistemological processes of 'lineage tracing,' which I attend to in the next section, though this is inherently specious in that these perfunctory judgments offer little empirical grounding through which such a claim might be supported.

remainder of her life, Ma Myit would manage that two-third share of husband's estate, which, upon her death, raised an troubling question about the estate's legal ontology: was the estate a Chinese Buddhist estate or a Burmese Buddhist estate? Ordinarily, whether their mother or father was the first to pass, Burmese Buddhist heirs would share an estate equally.

But this case was troubled by Sit Shan's Chinese-ness. If Sit Shan's personal law was Chinese Customary Law, neither his daughters nor his widows would inherit out of his estate; only his sons would. Ma Sein, initially cut out of the partition of her parent's estate, sued for her fair share arguing that as her mother was a Burmese Buddhist who was the last owner the estate after Sit Shan's death, the estate should be recognized as belonging to Ma Myit rather than Sit Shan and devolve in accord with Burmese Buddhist rather than Chinese Customary Law. Ma Sein's right to her father's estate hinged on the question of whether her mother ever truly controlled or only momentarily managed her own estate.

Typically, such a question would be resolved by determining the appropriate balance of rights, gauging how to fit a widow's right to inherit in accord with her person law against her deceased husband's right to devolve property in accord with his personal law. Yet, on appeal, the decision of a two judge panel, authored by Justice Heald and concurred with by Lentaigne, found that there was no reason to consider Burmese Buddhist law in the case. In their view, even though Ma Myit was born a Burmese Buddhist, she effectively became Chinese over the long course of her marriage. Importantly, Heald finds that Ma Myit's cultural conversion to Chinese-ness was a matter of "fact rather than one of law" (1 ILR-Rang. 1924: 97)

The evidence that Heald heard, and accepted, that convinced him of the validity of what is in effect a racial conversion principally related to the Ma Myit's continued adherence to Chinese cultural norms following Sit Shan's death. He reports that Ma Myit:

> mourned for him [Sit Shan] for the period of three years prescribed by Chinese custom, and she

> put her children, as well as herself, into the mourning dress which is customary among Chinese and not Burmese. She did not marry again, the second marriage of widows, though permitted, being regarded as disreputable by the Chinese. She sent both her sons to China to be educated. She married one of her two daughters to a Chinaman and she refused her consent to appellant's marrying a Burman. When she died she was buried in the Chinese cemetery in a grave of Chinese pattern and with the usual Chinese monument, although her husband had to be buried in a Burmese cemetery because there was no Chinese cemetery in existence in Pyapon [a town in present day Ayeyarwaddy district, in the southern delta region] at the time that he died there (1 ILR-Rang. 1924: 97).

While acknowledging the trouble with extrapolating personal religious belonging from mourning rites and funerary practices - by this point, the courts had engaged in a near twenty year debate over whether death rituals reflect what the living want for themselves or are doing to fulfill the wishes of the deceased - Heald nevertheless accepts that the preponderance of evidence shows that "after her husband's death, she [Ma Myit] still attached herself to the Chinese community, [and] that she regarded herself practically as a Chinese woman" (1 ILR-Rang. 1924: 98). On the basis of this interpretation of Ma Myit's self-identification as Chinese, Heald determines that, as a Chinese Buddhist, Ma Myit's personal law must be Chinese Customary Law. As a result of this finding, Heald accepts that, as a Chinese widow, Ma Myit never in the nearly twenty years of her widowhood actually possessed any property of her own. The entire estate was always already inherited by her sons to the exclusion of herself and her daughters; throughout the remainder of her life, Ma Myit was simply the manager rather than the owner of the estate (1 ILR-Rang. 1924: 96).

But if the court's verdict finds that Ma Myit so fully acculturated to the Chinese community that she became Chinese herself, Ma Myit nevertheless defies a number of normative expectations of Chinese widows. Reading between the lines of this finding suggests two persuasive, though perhaps speculative, points of contention against the court's simplistic assumptions of what it means for Ma Myit to have abandoned Burmese-ness to become a Chinese woman. The first point of disjuncture lie in the authority with which Ma Myit held

power over an estate that the court assumes was never really hers. While the court report does not describe the ages of the four children of Ma Myit and Sit Shan, the dates of his marriages and death would put them somewhere between 5 to 20 years old at the age of Sit Shan's death, and 25 to 40 years old at the time of Ma Myit's death. While a disenfranchised widow might be expected to manager her sons' estate for them until they came of age, it would be exceedingly rare at this time for a man over 20 to remain, in his mother's eyes, a child in need of continued managerial assistance. This suggests that for at least five and possibly as many as twenty years, Ma Myit did continue to exert control over a family estate that her adult male children would nominally own. The court's reliance on Ma Myit's role in determining her daughters' marriages stands out in a similar way. While the court tries to divine Ma Myit's religious identity from her divergent attitudes towards Chinese and Burmese suitors - apparently never considering the personal qualities of either suitor beyond their race - that Ma Myit, rather than either son, is the protagonist of her daughters' marriage decision underscores her matriarchal power.

Second, given all these visible ways that we can witness Ma Myit's exerting power and control, it is exceptional that there is no family squabble over the estate until after her death. Even by the point that this suit was first filed, in 1921, it was a fairly well-established practice for sons in a mixed Chinese-Burmese household to sue their mothers for control of the family estate after the death of their fathers, arguing that Chinese Customary Laws of succession exclude widows to the interest of surviving sons. That Ma Myit maintained, and that her sons accepted, the level of control over the estate that we can still see visible in the cracks between Heald's commentary suggests the variety of ways that this family did not in fact act like the prototypical Chinese family that the court holds them to be.

One final point worth emphasizing in this story is that Heald's written opinion on the

case suggests that his decision centers on the 'fact' of Ma Myit's cultural conversion to Chinese-ness, rather than a religious conversion to Chinese Buddhism. While on the one hand this focus shifts the conversation away from the idea that personal faith determines one's personal law - the nominal justification for empowering Buddhist law in the first place - it is also entirely consistent with the courts reluctance to accept arguments that validate religious conversions absent the performance of some form of ritual marking that transition.

Ba Aung

Heald was also involved in a second case centering on the question of social conversion, the 1930 appeal of *Ma San vs Ma Chit Su*, though the main opinion of the opinion was written by another judge, Justice Otter. In the 1930 appeal of Ma San V Ma Chit Su. While largely heard on grounds of a religious conversion, rather than a cultural conversion, the case further underlines how the most consistent element in the court's juridical reasoning is their privileging of patriarchal power over family estates. At dispute in the Ma San case is whether a deceased man's estate should go to his blood relatives or his surviving descendants. Ma Chit Su, a Burmese Buddhist, was the third and final wife of Maung Ba Aung, whose father was Chinese and mother was Burmese. Together with Ba Aung's three surviving children - one by each of his first two wives, and the third by Ma Chit Su - Chit Su successfully took over the administration of Ba Aung's estate upon his death. Believing themselves to be the rightful heir to their brother's property, Ba Aung's two siblings - his sister Ma San, and an unnamed brother - filed suit arguing that they deserve a half share of Ba Aung's estate under Chinese law.

In prefacing his verdict on the case, Justice Otter asserts that the court's a priori assumption must be to draw Ba Aung's religious law from his father's side. "It is admitted," he

writes "that Maung Ba Aung's father was of pure Chinese blood, but his mother was a Burmese woman… The respondents [Ma Chit Su's side] asserted, however, that he was a Burmese Buddhist, but in view of the admitted nationality of the father of Maung Ba Aung, we think that the onus was upon them to establish this contention" (AIR-Rang. 1930: 219). Otter then proceeds to review the testimony offered to show how Ba Aung may have placed himself between these categories over the course of his life. For their part, Ma Chit Su's side offers a combination of social (behavioral) and religious (belief based) evidence to support the idea that Ba Aung was a Burmese Buddhist. We hear that Ba Aung: dressed as a Burman; "*shinbyued*" his sons (meaning he sponsored their Buddhist novitiation in a Burmese specific tradition), and was *shinbyued* himself at a young age; visited pagodas and *zayats* (which are Burmese specific rest shelters associated with Theravadan Buddhist ideas about offering charity to pilgrims, traveling monks, and the weary); sent a period of time as a novice Burmese Buddhist monk; and traded under his Burmese name rather than his Chinese name (AIR-Rang. 1930: 219-220).

On the other side, the appellants (Ma San's side), relies solely on religious (belief based) evidence to argue that Ba Aung is Chinese. He kept a Chinese altar in his home and made offerings of rice to images of Buddha in his own home;[68] visited his parents' grave once a year and the Chinese temple twice a year (and was additionally considered an elder at the Chinese temple, though it is unclear if he took up any specific roles or responsibilities in this regard or whether conversely this was simply a matter of social esteem); and finally, upon his death, Ba Aung was given a Chinese funeral where he was buried in a "Chinese shaped coffin" (AIR-Rang. 1930: 220).

[68] This latter point is for some reason taken as evidence of Chinese religious practices, though the practice itself seems more in line with Burmese Buddhist practices. The apparent reason that it is assumed to evidence Chinese-ness is that the witness offering testimony about this detail was a witness for the appellants.

Weighing Ba Aung's Chinese-ness against his Burmese-ness, Otter ultimately determines that the respondents failed to meet the obligations of proof that their argument required. It is important to note, however, that Otter's verdict is not a total denial that Ba Aung was Burmese. Several times over the course of his verdict, Otter observes that Ba Aung "became to some extent Burmese," or "was perhaps as much a Burman as a Chinaman" (AIR-Rang. 1930: 220). Rather, he ultimately reaches his verdict by reasoning that, against the court's presumption that Ba Aung is Chinese through paternal inheritance, the respondent's failed to prove that Ba Aung gave up being Chinese to become fully Burmese. "The evidence seems to point to the fact that at all materials times he [Ba Aung] must be said to have been a Chinese Buddhist;" "we are not satisfied," he writes on behalf of the court "that the deceased abandoned his father's form of religion" (AIR-Rang. 1930: 220). While Ba Aung might be half-Burmese by blood, married to a Burmese woman, have in his work and social life fully integrated into Burmese society, and subscribed to the normative Burmese frameworks of fulfilling good Buddhist acts, that Ba Aung retains any connection to his father's ancestry is taken as reason enough to deny his connection to the land of his birth, a verdict which risks severing the rights of his wife and children to claim their own rights over Ba Aung's life's work.[69]

In concurring with Otter's opinion, Heald actually goes out of his way to step further than Otter in denying Ba Aung's Burmese-ness. In a one paragraph concurrence that is otherwise solely occupied with a discussion on how to levy court fees between the two sides, Heald begins "I agree that Ba Aung or How Htain Shu [Ba Aung's Chinese name, which is never used by Otter] was a Chinese Buddhist and not a Burmese Buddhist" (AIR-Rang. 1930: 221). While the scarcity of Heald's presence in the judgment may seem to warrant caution against reading too

[69] Ma San's side eventually does lose their appeal on other grounds.

much into his words here, his statement is actually notable for how much he wrote in his concurrence. Typically, unless a concurring judge has a significant point of departure from the opinion of the authoring judge, they simply signal their assent with the two words "I concur." Though perhaps less revealing than the other cases, in which Heald personally authored the texts of the judgments his wording at the top of his text conveys an explicit desire to frame Ba Aung as Chinese, clarifying Otter's ambivalence over the ways Ba Aung may have blurred the categories of Chinese/Burmese, and native/foreign.

In sum, taking Heald's divergent interpretations over different cases asserting the legitimacy of 'cultural conversions' we can see that the throughline in his volte-face centers on a commitment to preserving patriarchal inheritance. While easily accepting in the case of *Ma Sein vs Ma Pan Nyun* that a wife would become so fully part of her husband's family that she abandons her religion and her personal law along with it, he simplistically dismisses the idea that something similar might happen when a man joins a Burmese Buddhist family. Along with this, Heald denies the pluralist possibilities to which witness testimonies constantly allude. Throughout each case, witnesses assert that Chinese migrants and their mixed-race descendants are not just joining Burmese families, but participating in the religious, cultural, and social life of their Burmese neighbors, adopting dominant Burmese customs of dress, language, ritual and more as a matter of course. While Heald accepts that the annual performance of filial duties proves that people of Chinese descent are bound to their ancestors in some forms of racial metaphysics, he denies the much more frequent everyday and unremarkable ways those same people tie themselves to Burma, whether or not they are as much of Burmese ancestry than they are Chinese.

Lineage Tracing

Whereas legal ethnology and faith finding are both explanatory frameworks that create evidence through documentation and interpretation, lineage tracing, the third framework that I consider in this chapter, often appears as tacit presumption. Rather than an ideology that needs to make itself known to make itself powerful, lineage tracing most frequently presents itself as that shadowy silence we might call hegemony. As the assumed framework through which one's self, and thus one's personal law, would rightly flow, in a majority of cases I consider, lineage tracing is only apparent when we pause to pull uncontested claims out from the pro forma declaration by which they are documented. Consider the following as representative samples:

> Ma Shwe Nu sues Ma Shwe Hmu, Pha Thet Hnan, and Obornor Charun Chowdry for the enforcement of a right to pre-emption with respect to certain property. Her father was a Chinaman named Ahaing… In the present case the Buddhist law would not be the Buddhist law of Burma but the Buddhist law of China that is applied to the estate of Chinese Buddhists in China, as Ahaing would be a Chinese Buddhist and not a Burman Buddhist (*Apana Charan Chowdry vs Shwe Nu*, 4 LBR 1907).
>
> The respondent's father is Chinese and his mother a Talaing [Mon]. The Magistrate dismissed the petitioner's application [for maintenance] because there was no marriage ceremony as is required by Chinese Buddhist Law (*Ma Shein vs Kim Sein*, 8 LBR 1915).
>
> [W]e have no hesitation in finding that it was not proved that Tan Khwan Hong was a Burmese Buddhist. He was admittedly the son of a Chinese, [and] he followed the mode of life and the customs ordinarily followed by the Chinese… so far as he was a Buddhist he was a Chinese Buddhist and not a Burmese Buddhist (*Ma E Kyee vs Tan Chong Kee and others*, AIR 1930).

Each of these examples clarifies, either explicitly or through elision, that one's racio-religious status derives from their father. Moreover, this presumption only becomes known through the act of judicial documentation. There is no need to explain why, for instance with Ma Shein, her Chinese father conveys his personal law unto her while her indigenous mother does not. It is simply assumed by the court that as a given and uncontestable fact that one would trace their family line, and therefore the source of their personal law, through their father.

That lineage tracing so typically operates through presumption rather than deduction positions this framework of evidence as something of an antecedent to the other two frameworks

that I consider in this chapter. It is almost more an 'anti-evidence,' not only in that it requires little more than declaration to establish but also in that it functions as something of a trump card capable of smashing more carefully considered types of evidence, especially that of faith finding which often serves as its direct antecedent. There is some consonance, here, between my location of lineage tracing as a framework of evidence that does not require proof and Ian Haney-Lopez's discussion of the American courts' naturalization of whiteness as a matter of 'common knowledge,' or 'common sense.' As he notes, when in the early 20th century the scientific evidence of racial difference began to crumble, the foundations upon which courts located 'Whiteness' shifted away from specialist knowledge and began accepting lay understanding as the predominant location of racial meaning (2006: 4-7, 45-47). Rather than shoring up the social and political nature of racial ideologies, locating race in common knowledge of racial difference only further reinscribes its significance. Haney-Lopez critiques the

> treat[ment of] questions of race as matters of common sense, an approach that naturalized race by insisting it is part of the reality in which we find ourselves, something observed and easily known to all, and not constructed and dependent on the human knower… [In doing so] the court locate[s] race in the familiar and readily observed realm of nature (2006: 115).

If it seems counterintuitive that the erosion of scientific authority for the existence of race ends up strengthening the presumed validity of the concept as a natural category, it is important to consider how power operates in hegemonic fields by hiding its very operation.

Many cases, however, suggest that the power of lineage tracing did not only hold sway in the courts when it operated in the hegemonic space of white noise, affecting decisions by disappearing into the invisible mist of assumption. These cases both involve appeals that overturn lower court decisions that, as judges on the higher court find, incorrectly categorized mixed litigants as Burmese Buddhist on the basis of their social behavior.

An example of a case which explicitly draws on lineage tracing comes from the 1910

case *Maung Tun Tha (alias Wong Kin) vs Ma Pu* (3 BLT 1910), wherein the court, represented by Justice Parlett, is asked to reconsider a lower court decision that validated a marriage between the named litigants. The available details suggest a great deal of social distance between the pair: at the time that their relationship began, Maung Tun Tha was a wealthy 53 year old mill owner, while Ma Pu was a 15 year old girl growing up with parents that the court only describes as "very poor folk" (3 BLT 1910). To the extent that was any rites designating the relationship as a marriage, they were of the informal sort of recognitions accepted as validating a marriage under Burmese custom: Maung Tun Tha sent word to Ma Pu's family that he was interested in their daughter; there were visitations between the families; Maung Tun Tha offered Ma Pu's family a furnished home; and the pair went off together, cohabitating as a couple for some four and a half years. If perhaps near the minimum of accepted evidence for the courts to consider a marriage to be valid under Burmese Buddhist Law, it is certainly sufficient, as was pronounced by the First Additional Magistrate of Rangoon in November 1909.

Barely two weeks later, the case was reversed on appeal by Justice Parlett, who agreed that while the relationship met the sufficient conditions of a marriage for the Burmese, the magistrate was in error in applying Burmese Buddhist law where it did not belong. In reviewing the decision, Parlett notes that:

> The grounds on which the Magistrate considered applicant a Burmese Buddhist are that he is commonly known by a Burmese name; that he worships at pagodas, pays reverence to Buddhist monk, and keeps fast days at Burmese monasteries; and that he built a Buddhist monastery and dedicated it according to the ritual observed by Burmese Buddhists in such cases (3 BLT 1910: 68).

If this all amounts to ample evidence of faith finding variety, Parlett contends it all amounts to nothing if Maung Tun Tha is even partially Chinese:

> It is a matter of common knowledge and experience that Chinamen long resident or born in this country adopt a Burmese name. As regards the other points, they indicated that [Maung Tun Tha] is a Buddhist, as he admits he is, but there is nothing to show that the practices he followed differ from those followed by all Chinese Buddhists… much less that they are the

> peculiar characteristics of Burmese Buddhists (3 BLT 1910: 68).

What I find revelatory here about the power that lineage tracing holds over other types of evidence is not that it validates the notion that a Chinese or mixed-Chinese Buddhist in Burma can participate in Burmese styles of worship without in a sense losing their Chinese-ness or foregoing their access to Chinese Customary Law. Rather it is the relative imbalance between the burdens of proof required of lineage tracing and faith finding, respectively. By this point in time, it would be well-known to the judiciary and to Justice Parlett himself that there are specific referents that specifically mark Buddhist practice as Chinese, as well as specific non- (or extra-) Buddhist practices that are also uniquely Chinese. There is no expectation that Maung Tun Tha would need to prove that he practices a form of Buddhism or other Chinese religious practices that, while sufficiently consonant with Burmese Buddhism that he can engage in those practices without losing his personal religious law, nevertheless do affirmatively show that he is a Chinese Buddhist for the purposes of the question of marriage. All that is required is that Maung Tun Tha - Wong Kin - be Chinese at all, as Ma Pu unfortunately acknowledges that he is. Parlett concludes:

> "The Magistrate's finding [that Maung Tun Tha is a Burmese Buddhist] is moreover, in direct defiance of the sworn testimony of respondent and her witnesses, her mother and brother-in-law. The last named says applicant is a Chinaman, the other two say he is a Chinese half caste and there is not the smallest doubt that he is. // I find that he is a Chinese Buddhist." (3 BLT 1910: 68).

Parlett's finding is inaccurate on both empirical and interpretive grounds. Though there is admittedly some unclarity regarding what exactly the magistrate means with descriptions like 'paying reverence to Buddhist monks' and 'keeping fast days at Buddhist monasteries,' both of these were at the time (and are now) common modes of describing social and spiritual practices that are normative amongst Burmese Buddhists. While ritual fasting is practiced throughout the Buddhist world, and while I would find it difficult to deny that most Buddhists revere monks in

at least a general way, the acts that the magistrate describes specifically index a form of Burmese practice in contradistinction to modes of worship in either Chinese Buddhism or other Chinese religious practices. It is further evident that Tun Tha engages in Burmese Buddhism from the magistrates literal description of Tun Tha dedicating the monastery he had commissioned "according to the ritual observed by Burmese Buddhists." These oversights are indicative of the colonial court's common sense acceptance that there is a de facto racialized distinction between the Burmese and Chinese that Parlett ultimately relies on little more than the fact of Tun Tha's Chinese 'half caste'-ness to absolve the man of his obligations to his teen bride.

Conclusion

How does one prove their faith? Is it simply a matter of personal belief; or does it require some degree of participation in a community of believers? How does a court determine the veracity of a person's beliefs? Does it lie in what they say, or what they do? Or is self-disclosure too unreliable? Can a court determine what one subject's religion is based on the word of another? Reflecting Gribaldo and Kobelinsky, religious faith is certainly intimate - but is it a fact in the same way as an assault or one's sexual orientation? The judicial agents of colonial Burma seemed to believe that it was. As demonstrated in this and the last chapter, however, their effort to find faith as fact simultaneously relied on and constructed a vision of religion as binary, singular, and mutually exclusive in a cultural context where overlap and engagement were the standard.

My methodological decision in this chapter to approach evidence as a source for understanding politics draws on anthropology's long tradition of seeking out the political in underappreciated places. Moving away from the assumption that politics is an exclusively

electoral project allows us to appreciate the social transformations wrought through self-proclaimed apolitical domains like law. My interest in this chapter on approaching jurisprudential discourse and decisions on the utility, reliability, and acceptability of various kinds of evidence seeks to open the aperture on what we consider political still further so that we might better recognize how asymmetries in the capacity to validate one's own sense of veracity as Truth also constitutes a political domain.

In this chapter, I have shown how the courts created the evidence that allowed them to place people in either of these racio-religious categories. Both chapters suggest how, at every stage in the development of jurisprudence on mixed Buddhist families, imperial agents remained either blind or apathetic to overwhelming evidence of hybridity. Complicated forms of self-identity were dismissed as either insignificant, anomalous, or unimportant. In denying the personal relations that developed among migrants and natives, the unique cultural standpoint of mixed-race persons, and the intertwinement of communities of diverse religious practice, these jurisprudential logics developed monadic and exclusionary visions of personhood.

While my discussion heretofore has emphasized the inherent unknowability - or at least unprovability - of religious faith, it has also emphasized that it is often not faith but that determines one's religious status before the courts. It is rather - sometimes - social behavior or - more often - one's paternal ancestry. That is, while the colonial courts regularly proclaimed their intent to base religious status on what people believed, the courts fell back on ontologies of blood or behavior when this became either inconclusive, inconvenient, or impossible. In the next two chapters, I focus more explicitly on this social mixing - and the consequences of the courts' denial of its existence.

Chapter 4

Navigating Multiplicity:
Maung Ohn Ghine, Wun Pain Wain, and Buddhist Ethnicities

One warm Saturday morning in November 2019, I woke at daybreak to wander Yangon's streets looking for photographs, as I often did on unscheduled mornings. I strode south and east through the morning light, past my usual haunts in Bahan and Tamwe, looking for roads yet untraveled. With little catching my eye, I moved briskly, covering a few miles in an hour and a half or so before stopping for tea and *behhtaminkyaw* - fried rice with beans - somewhere in Pazundaung, just outside where the city's sprawl begins to conform into a tight downtown grid. It was around 80 degrees, but cool in the shade.

As often happened I walked around with a large camera slung across my chest, the man who ran the teashop eventually asked me if I was a photographer. I told him, no, not really, that I'm in Burma doing research for my degree, and looking for pictures to show people back home. He pointed down the tracks to a jeep parked some 10 meters away, and instructed me to get to work. 'It's very old,' he said 'people will want to see it. It's from the Japanese.' I complied, wanting to make a good impression and figuring I could keep up some chatter and count the exchange as my daily Burmese language homework.

Is this your car?

No. It's very old. It doesn't run, so we let the kids play on it.

Why doesn't somebody take it away?

I don't know. It's very old. Your friends will find it interesting.

I shot it for a few minutes, wondering how an abandoned jeep avoided rusting out so

many monsoons before I noticed the altar nearby. At first glance, it seemed unremarkable, exactly the same as the dozens I'd seen walking though the city. It was a three-sided box atop a single-pegged pedestal about three feet high, framed by a simple if carefully carved fringe along the side that it opened out onto an overhanging platform crowded with fresh flowers and fruit occluding the one difference between this and all the other urban altars I'd seen before: instead of a picture of a Buddha set against the rear wall, the frame held an image of Ganesh.

Uncle, I asked, *What is this*, *a natzin or a payazin*?

My new interlocutor looked carefully over it, considering the question: is this a God or a god?

Hmmm, he started*, I think it's a payazin*. *It's a Hindu Medaw*. A God.

I thought only Buddhists made payazin? I replied.

Hindus do, too, he said.

Do you maintain it, uncle?

No, he said, nodding towards a house nearby, *they do.*

Are they Hindu, I asked, thinking it was obvious they were until he said,

No, they're Buddhist. And gesturing all around us, *We all are in this neighborhood*.

I asked why Buddhists would maintain a payazin for a Hindu Medaw, and he replied that he didn't know, but they've been doing it for thirty years. Then he pointed out another altar nearby raised slightly higher than the first. It held another familiar face, the Burmese figure Bo Bo Gyi. *The Buddhist Bo Bo Gyi protects the Hindu payazin, and together they protect the people here.*

Ahh, I said, hoping to impress upon him my comprehension of the dynamics of spiritual guardianship. I asked if I could meet the people who put up the shrine, but they weren't home. I sat down to take a few notes on the encounter, paid for my food, thanked the man and left, trying for another mile or two before the heat came into full effect.

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Initially overlooked among the swirl of new things I was experiencing in those early days of research, I began rethinking this encounter in the summer of 2022 when I came across the 1921 case of *Ma Yait vs Maung Chit Maung* (11 LBR 1921) among the Privy Council files held in London's National Archives at Kew (NAK). The case, only that year released from a one hundred year embargo, centers on a contest between a mother and son over the administration of the estate of the late U, or Maung, Ohn Ghine.[70] U Ohn Ghine, a wealthy and well-to-do businessman, describes himself as a third generation Kalai, an endogamous community of mixed Indian and Burmese parentage. Upon his death in 1911, U Ohn Ghine's mixedness created questions about his religion that proved inconclusive enough to wind its way out of Burma and up through to the highest court of the empire. Flipping through the transcripts of witness depositions, I was brought back to my breakfast encounter three years earlier when I came across details of U Ohn Ghine's home altar, which featured a devotional image of the Buddha seated above another devotional image of Ganesh.

[70] This man's full personal name is Ohn Ghine. Both U ('uncle') and Maung ('younger brother') are prefixes appended to Burmese men names, which indicate the social stature of the speaker viz-a-viz the person they are naming. While Ohn Ghine's age and prominence should ostensibly mark him as 'U' Ohn Ghine, he is typically referred to as 'Maung' Ohn Ghine throughout the text of the judicial opinion. There is perhaps unexplored territory here to analyze here regarding this alien court's strict, even domineering, adherence to hierarchies of address, but such an analysis falls outside the scope of this present study. Throughout the text that follows, I typically refer to Ohn Ghine with the honorific 'U,' though retain the original addresses used when quoting from various texts.

This was neither an obscure detail nor a random reference; rather, details of U Ohn Ghine's home altar came up over and over again as lawyers sought to determine the relationship between U Ohn Ghine and the spiritual figures in question. Was U Ohn Ghine a Buddhist or a Hindu? Which image did he more highly venerate? Was one an indicator of a spiritual belief and the other simply a cultural ornament? If so, which was which: Did he view Ganesh as his god, and maintain a Buddha to assimilate in Burma; or was Buddha his god and Ganesh a signal of his ancestry?

While I initially dismissed it in my search for materials specifically on the Chinese-Burmese families, I kept mentally circling back to the transcripts in the case over U Ohn Ghine's estate. Beyond simply the valuable details regarding majority-minority communal interactions and individuals' identity claims preserved in the deposition records, I felt the broader struggle over how to place Ohn Ghine within the categories available to the litigants and litigators alike showed something important about the processes of self-fashioning among mixed Buddhists in this era.

U Ohn Ghine's case stuck a chord with me because of how it hearkened both backwards and forward in time. In addition to reminding me of my chance encounter in Pazundaung, it also brought me back when I first came across the descriptions of Gwin Chan and the deceased Iyan Shoke in the 1881 case of *Hoke Ku and Hock Kung vs Ma Thin* (discussed in Chapter 2) the year before. There, too, the simultaneous preservation of ancestral traditions alongside assimilation into Burmese religious among migrant Chinese Buddhists confounded a European court that sought to compel complex entanglements of belonging into binarized declarations of cultural allegiance. There, too, the spatial arrangement of hierarchies of worship became a contentious question that sought to find the true faiths of people whose faiths were not mutually exclusive.

Stretching, in these three encounters, from 1881 to 2019, these vignettes struck me as suggestive of the ways that Buddhism's duality - its higher and lower planes -accommodates ambiguity in ways that challenge the Burma Laws Act's strict delineations of religio-legal categories.

This chapter is my effort to work through how these ambiguous dynamics assimilation and preservation complicate our understanding of the interplay between religion and ethnicity, in Burma and more broadly. In this chapter, I ask what were the grounds upon which courts accepted non-indigenous claims to Burmese Buddhism? Under what conditions did the courts accept such claims? And what were the limits of the courts' acceptance of such claims? More broadly, I explore through these questions what it means to consider the difference between native Burmese and foreign Asian Buddhists as a difference of ethnicity, before asking, in the next chapter, what it means to consider this a difference of race.

I organize my efforts in this present chapter through a reading of two cases in which the colonial judiciary seeks to untangle Gordian knots of ethnoreligious identity against "the archival grain," to put a turn on Stoler's phrase (2010; see also Introduction, pgs 28-30). These two cases, that of the aforementioned U ('Maung') Ohn Ghine and a subsequent case regarding the Sino-Burmese man Wun Pain Wain, are the only two cases I have yet to find in which the colonial judiciary accepts mixed- and non-indigenous men as Burmese Buddhists.

Putting these two cases into contact with each other illuminates multiple dynamics at play in the litigation of mixed Buddhists: how patriarchal ideas about national belonging structures the legal position of foreign men; how hegemonic British ideas about normative Asian cultural values and familial patterns invisibilizes both mixed-race partnerships and attempts at assimilation. In this chapter, I am particularly interested in divergent attitudes towards multiplicity. I document the difference between litigant - who see no issue with venerating

multiple deities, practicing the rites and rituals of multiple religions, and both maintaining ancestral traditions and adopting new ones, and the courts - who approach such this heterogeneity as a problem to be solved lest the courts clog with irresolvable questions of what laws to apply.

Defining Race Against Ethnicity in Burma

To review a point laid out in the introduction, my questions about multiplicity respond in particular to discussions over how open the signifier 'Burman' was to non-Burmese. Stephen Campbell and Elliott Prasse-Freeman offer some of the most thoughtful work on this idea by re-evaluating Matthew Walton's influential 2013 article on 'the wages of Burman-ness." As Campbell and Prasse-Freeman, following the work of Nemoto (2000), show, the idea of 'dobama' ['we-burma'] within the anti-colonial Burmese nationalist movement suggests how ethnic inclusion in early 20th century Burma was more a function of political solidarity than of socio-cultural 'fit' (Campbell and Prasse-Freeman 2021).

But beyond recognizing the historic fluidity of 'bama-ness' in Burma, there remains the question of whether we consider the term bama as ethnic, racial, or national category. There has been little interest in Burma studies scholarship in actually working this question out; we often operate under an assumption of what these terms mean rather than spell them out. For instance, in their section titled 'The Historical Fluidity of Ethnicity in Myanmar," Prasse-Freeman and Campbell discuss the relation between being *dobama* (a nationalist or patriotic Burmese) and the indigenous concept of *amyo*, which they describe as "the untranslatable term that is closest to race" (2021: 183) and which others position as 'nation' (or perhaps 'nationality;' Candier 2019). The pair do not explain why they find 'race' the most proximate term for *amyo*; nor do others.

Candier, for example, simply points out that over the course of the 19th century *lumyo* became progressively more and more associated with ideas common origin (2019: 348). Her choice to use 'nation' for *amyo* seems to come wholly from the way that the term was translated in 19th century treaties and colonial dictionaries. Indeed, projects on Burmese articulations of belonging are rife with terminological slippage, employing strategic ambiguities at certain points (Campbell and Prasse-Freeman open their discussion of ethnic fluidity with the line "Ethnic and racial categories are in every case social-political constructs: [2022: 181]) and uncritically changing the terms of discussion at others, speaking variously of Burmese and other identities as an ethnic, racial, and national category without attempting a definition of any of these terms. The closest we can get to a definition is to infer that ethnicity is fluid and race is fixed from their question:

> When did 'burman [sic] go from signifying an ethnically fluid, class inflected, and anti-colonialist identity to what it is today: not only a much more racialised term but one that has been cleaved internally, the constituents carved off and excised? In other words, if according to the Dobama's imagination, 'Bama' was inclusive of what today we think of as Burman and other *taingyintha* [တိုင်းရင်းသား, which they translate variously "ratified races" and "national races"], then why and at what point did that *Bama* identity narrow, excluding Myanmar's national races [*taingyintha*] that *Bama* came to be defined against (2022: 185).

Though it is a useful heuristic to conceive - as I myself do here - of ethnicity as fluid in contradistinction to race as fixed, it is a mistake to approach discussions of ethno-racial regimes assuming clean and clear historic transitions from one to the other. To be fair, the pair acknowledge that racial reification is an always-incomplete process that does not fully capture "the diversity of everyday experiences" (2021: 190). But even here, the implication is that the dynamic is one of transition rather than recognizing the simultaneity and non-contradicting mutuality of ethnic and racial regimes.

Part of the problem, I anticipate, is that our collective disinterest, in Burma studies (and perhaps Southeast Asian area studies more broadly), in defining what we mean when we say race versus ethnicity leads us to use the terms as free-floating ideological signifiers rather than

specific socio-ontological structures. There is not, for instance, any reason, in Campbell and Prasse-Freeman's formulation, that the reification of identity as a vehicle for labor antagonisms would necessitate moving from the term ethnicity to race: one could ostensibly theorize that ethnicity is as capable of signaling the reification of the types of labor-stratified social antagonisms they focus on as the term race is. Its use, it seems, emerges from their desire to connect to a particular Americanist tradition - that of Black Studies, in general, and more particularly Cedric Robinson's (2020 [1983]) theory of racial capitalism.[71] But this work, I contend, remains incomplete until we fully reckon with how the transition from one national, or continental, context to another affects the meanings and valences of the terms adopted from that tradition.

I raise this as an issue not because I dispute the value of Campbell and Prasse- Freeman's contribution, but exactly because I believe it *is* valuable and is therefore worth taking the specificity of the terms we use seriously. Sharing, then, with Campbell and Prasse-Freeman a recognition of the value that Black Studies and critical race theory holds for understanding the racialization of minority subjectivities in Burmese history, I take up the work of theorizing what it means to speak of race *as race* in Burmese history in the next chapter.

Before we get there, however, I want to take up the work of documenting the forms of social plurality that lead me to characterize mixed-Buddhists as ethnic. It is important to recognize the varied ways that Burman-ness remained open to non-bama bodies because this fact demands that we come to terms with the multiple ways that solidarities can exist beyond labor -

[71] In *Black Marxism*, Robinson describes the development of capitalism as an overhaul of European feudalism that required new racial ideologies to normalize first intra-European and subsequently global hierarchies of domination. He maintains that European feudalism operated through 'racialist' social orders that structured the internal organization of Europeans, and that the subsequent development of capitalism could only occur through the further solidification of these racialist principles of organization. The term 'racial capitalism,' then, refers to ways that the development, organization, and expansion of both capitalist society and social ideology necessarily operated through race.

and, as I will take up in the next chapter, the multiple ways that racial privilege can likewise consolidate outside of labor, as well. Between this and the next chapter (chapter 5) I seek to problematize the notion that there exists a historical transition - even an incomplete one - from ethnicity to race, and instead explore how the two co-articulate to facilitate (social) belonging and (political, legal) dispossession simultaneously. Documenting confrontations over the legal viability of multiplicity in rights claims offers an illuminating site for studying the tension between speaking of difference in Burma as a function of race or ethnicity.

Analyzing mixed Buddhist families, partnerships, or communities from the perspective of ethnicity puts the focus on how cultural difference is accommodated within a community that nevertheless sees itself as sharing something essential. That is, viewing Buddhist mixings as evidence of 'mixed ethnic' partnerships suggests how distinct kinds of Buddhists that are unified as Buddhists even in the process of 'mixing' together. It is easy to appreciate the difference between, for example, Burmese Buddhist normative Chinese Buddhist marital practices that emphasize the important role of ritual in creating a marital bond and normative Burmese Buddhist practices that accept communal recognition as the ultimate arbiter of marital legitimacy. Similarly, while it might take more time for an outside observer to fully appreciate, one could recognize cultural distinctions between Burmese Buddhists maintaining a *natzin* to an indigenous guardian spirit and a Kalai Buddhist hosting a *natzin* - or perhaps a *payazin*? [72] - where they worship Ganesh as an ancestral deity rather than as a capital-G 'God.'

That such cultural differences go beyond religious faith further suggests that the

[72] A *natzin* would be an altar to a *nat*, a lesser spiritual figure, whereas a *payazin* would be an alter to a major deity (typically Buddha, though variations of the term *paya* are used to refer to the major deities of other religions). In English, I use the linguistic constructions of capital-G God and lower case-g god to signify these distinctions, even as I recognize how this form of marking only imperfectly translates both Buddhist soteriology and Burmese language constructs. See also Chapter 1, pgs 53-54 for more on Burma's *nats*.

differences implicit in the process of 'mixing' are differences of an ethnic (rather than racial) variety, as well. As I document in the last chapter, Burma's colonial courts did not limit their categorizations of litigants into religious law statuses based on faith but on socio-cultural markers. Often, the courts accepted arguments about styles of dress, modes of naming and address, or even attitudes towards gender as evidence of ethnic self-styling. While the work around of using cultural markers rather than personal faith to place litigants into discrete legal categories may have emerged in part owing the challenges of finding out what an individual truly believed - it is easier to see the clothes on their back than the true extent of their heart's belief - it is also apparent that the courts saw cultural norms and religious faith as explicitly linked.

That it was common for judges to approach Buddhism as a form of culture, rather than simply personal faith, further gives credence to my interpretation that the Buddhist mixings we observe here are a form of ethnic mixing. By 'culture,' I mean that judges linked Buddhism to a variety of practices that signal communal affiliation rather than spiritual practice: for instance, the use of a Burmese name, wearing Burmese dress, or even an individual's social affiliations. As I argue in this chapter, analyzing Buddhism as a marker of ethnicity illuminates two important dynamics that viewing religion through the lens of race might erase. First, theories of ethnicity posit that ethnic identity is an essentially relational formation, which is not so readily accepted when discussing 'race.' Chinese Buddhists may accept that what makes them like other Chinese Buddhists with whom they have no personal relationship is a common language, a common reverence for Confucius, or a common understanding of why widows would mourn for three months before remarrying; just as importantly, what makes Chinese Buddhists different from Burmese Buddhists is that their Burmese counterparts lack either the skills, understandings, or attitudes to relate to these essential components of what makes a Buddhist in general a Chinese

Buddhist in particular. Using culture as a marker of where the lines of distinction are drawn both articulates what forms of distinction were important for the people drawing them and acknowledges how particular individuals may simultaneously fit into multiple categories.

Second, approaching religion as ethnicity more readily allows us to recognize movement between categories. Taking the example above, if Chinese language, reverence for Confucius, and an particular mourning rites is accepted as what makes one Chinese viz-a-viz Burmese Buddhists, then a Burmese Buddhist like Ma Myit, who we met last chapter in the case of *Ma Sein vs Ma Pan Nyun*, who learns the language, develops an appreciation for Confucius, and takes on Chinese mourning rituals, might be accepted by both the courts and, more importantly, the Chinese community at large as having become Chinese. Theories of race generally suggest that race is always imagined as somatic, biologic, or otherwise read from or foisted upon the body in some essential and fixed way that does not allow for such transitioning. Between some degree of natural proximity and cultural skill one might 'pass' as another race a time, but this is inherently deceptive and risks collapsing at any moment.

Maung Ohn Ghine and the Question of the Kalai

If one hallmark of ethnicity is its potential plurality, then the efforts of two Kalai woman to achieve recognition as a Buddhists offers a strong case for viewing mixed-Buddhists in colonial Burma through the lens of ethnicity. Ma Yait and Ma Noo (or Ma Nu) were the wife and daughter respectively of a prominent and wealthy man named U ('Maung') Ohn Ghine. U Ohn Ghine and Ma Yait had eight children together, five sons and three daughters. Nearing the end of his life and seeking to care for his wife and daughters after he was gone, U Ohn Ghine set up in 1908 a Deed of Settlement that after he died Ma Yait and his two daughters, ('Ma') Noo and

Mya, would administer his estate. The settlement provided for the care of all of his children and any children that his immediate heirs may have until they reached the age of 20, but specified that this was only to apply to his 'legitimate heirs,' a wording that sought to cut out the pair's prodigal son, Maung Chit Maung.

Upon Ohn Ghine's eventual death in 1911, Chit Maung, aggrieved of his disinheritance, sued for the nullification of Ohn Ghine's Deed of Settlement on the grounds that his family were Indian Hindus, and thus could neither disinherit a son nor provide for the care of yet unborn children. The contest Chit Maung's suit began, the case of *Maung Chit Maung vs Ma Yait*, centered on the question of whether and on what grounds Ohn Ghine was a Hindu, and if not what law should apply to his estate. Confusions over Ohn Ghine's 'race' and religion generated significant enough uncertainty to eventually kick this case up for consideration by the Privy Council in London, the empire's highest court.

At issue was the question of how exactly the 'Kalai' fit into the available categories of race and religion. The Kalai (ကလယ်; also 'Kale' or 'Kalay')[73] were a community of descendants of mixed Indian and Burmese parents. While tracing the Kalai through history is complicated by an eventual broader use of 'Kalai' to refer to the Tamil more generally, in the early 20th century the Kalai distinguished themselves fully from Tamil and other Indian migrants, at least among the Kalai community of Rangoon. The community seems to have formed around a preference for marital endogamy; for at least three generations, since the earliest large scale migrations of Indians into Burma, the mixed children of Indian and Burmese

[73] Importantly, this is not 'Kala' or 'Kalar,' a derogatory term for Indian and other South Asians in Burma. While 'Kalar' was a common vernacular term for Indians in the colonial era, it is today seen as a slur, even as something akin to 'Burma's N-word.'

parents married other mixed children rather than either ‘pure’ Burmese or Indians. But other than this marital pattern, the Kalai otherwise largely socially and culturally integrated with the Burmese, even appearing at times hostile to the Indian community.

While conceding that his father was not an orthodox Hindu, Chit Maung worked to show that his father nevertheless did maintain a number of Hindu practices. He kept an image of Ganesh at home, went to the Hindu temples annually, and even identified himself as a Hindu on occasion. Chit Maung pressed his claim through the idea that his father *did* practice both Hinduism and Buddhism, and that where the conflict between these two categories comes to the fore, the family’s Indian ancestry should outweigh its contemporary social practice in deciding where they ‘really’ belong.

As the current administratrix of the estate, Ma Yait and Noo seemingly held the more advantageous position in the trial. Technically, to win out over Chit Maung, the pair did not have to affirmatively prove that Ohn Ghine was a Buddhist, only that he was not Hindu. However, Ohn Ghine’s unorthodox Hindu affiliations combined with the court’s predisposition towards accepting that religious status is a matter of paternal inheritance to put the women in the same position that most religious litigation cases end up: with the Buddhist parties facing the challenging task of affirmatively proving that a person belonged to a religion with no conversion rites.

That this trial reached the Privy Council is important, as it means that the case’s extensive record of depositions are preserved. Witness deposition and the accompanying judicial commentary suggest how this case was taken as offering some insight into broader questions about how new cultural communities would be taken as fitting into the narrow religious frameworks articulated in the Burma Laws Act. In admitting the case for a hearing in the Privy

Council, W.H. Upjohn and Warwick Draper summarize the broader significance of Chit Maung's petition:

> It was held that the said Maung Ohn Ghine came of a Hindu stock and that neither he nor his forefathers had ever given up Hinduism. It was also held that being a member of the Kale [sic] Community which was a Hindu Community he was *prima facie* a Hindu… It was also held that *it is no function of the Civil Courts to determine question of orthodoxy* and that the term Hindu was properly applicable to people like the Kales [sic] *who in spite of Buddhist leanings are of Hindu stock and worship the Hindu gods and have never renounced the Hindu faith of their fathers*" (*emphasis added*; NAK files PCAP 6/912/3: 1.10).

And, in framing what larger issues are at play in this seemingly minor succession battle, Viscount Haldane of the Privy Council details that the case forces the courts to consider when and how colonial disruptions might provoke new forms of identity:

> Ohn Ghine was not born a Hindu unless the Kalai Community generally is Hindu, and this raises a question of much more difficulty than that which arises in the case of a single individual… In the instance of a community the question must always be whether there has been continuity of character… Contact with other religions may well have evolved sects which have discarded many characteristics of orthodox Hinduism, and have adopted ideas and rites which are popularly supposed to belong to other systems. Continuity may not in such cases have been destroyed; but there is a limit to such processes. Continuity may be so broken that the new sect is outside the original pale… There may have been introduced usages which constitute a departure from the principles of the [Hindu] Shastras so great that the community which has adopted them must be taken to have lost the character of being one in which Hindu religion governs" (PCAP 6/912/3: 6.5).

In other words, this case is not simply about who should inherit of Ohn Ghine's estate, but rather how does a new community emerge out of the various changes wrought under colonialism. Clearly both the experience of migration and the introduction of migrants into a colonized lands create a massive source for new social and cultural experiences. The challenge for the courts, then, is how to determine when enough 'newness' has entered a community so as to break them from the 'original pale' sufficiently to warrant recognizing them as a distinct entity from their ancestral community.

Yet, while the courts might require definitional clarity and discretely bounded categories, the testimonial record preserved in this case suggests that the court's subjects did not see

themselves as so rigorously bounded. While Ohn Ghine and others do affirmatively identify as Kalai, they also see themselves as wholly part of other communities. In her deposition, Ma Yait places her husband thusly:

> My husband was a Kalai… [He] dressed like a Burma. I and my children are similarly dressed. [His] mode of living was like a Burman. He professed both Hindu and Buddhist Religion. He built a Hindu temple in Phayre Street… About 15 or 20 years ago I went to the Hindu temple twice a year with my husband when our turn came to go with offerings. My husband built Buddhist *kyaungs* [temples], worshipped at the Pagoda and observed the [Buddhist] precepts… My husband kept a *pongyi* [Buddhist monk] as a chaplain to perform sabbath ceremonies… My husband built *kyaungs* and *zayat* [Buddhist resting places], worshipped at the Pagoda and kept sabbath. He also did *shunbyus* [Burmese specific novitiation ceremonies] of other children. My husband ate together with Kalai, Burmans, and Europeans" (PCAP 6/912/3: 2.35).

Her description shows a man who sees no contradiction between his simultaneous belonging to multiple religious and cultural communities. Nor does anyone else, it seems. Ohn Ghine is an active sponsor of both Hindu and Buddhist temples, as well as broader community projects like building *zayat,* a Buddhist thing, and making regular offerings at the Hindu temple. His role sponsoring *shinbyu* ceremonies for Burman children in his community is especially telling in this regard. Later in the trial, Maung Chit Maung's side makes a big deal about Ohn Ghine choosing to not *shinbyu* his own children, claiming that it shows he never really saw himself as Buddhist. The argument seems particularly persuasive to the Europeans on the court, who conceptually pigeon-hole this as the closest thing they can find to a conversion rite, even in spite of the testimony of monks and others that the *shinbyu* ceremony, while a significant life marker, is in no way a requirement for all Buddhist male. That Ohn Ghine was a frequent sponsor of other boys' *shinbyus* within his community thus marks him as both a social leader of and wholly integrated into the Burman community.

It is in the cross-examination of Ma Yait, however, that we see something of not only the inaccuracy but perhaps even the local incomprehensibility of the types of binarized identities that the court seeks as the basis of personal religious rights claims. When pressed to specify where

exactly Ohn Ghine and the broader Kalai community fit within the accepted norms of race and religion, Ma Yait vacillates. Over multiple days of testimony, Ma Yait offers contradictory responses:

> Q: Who told you [that] you were Kalai?
> A: I knew I was a Kalai from my parents. I believed what my parents told me and I have ever since called myself a Kalai. Sometimes I called myself a Hindu when asked… I have never told anyone I was a Hindu. I may have on some occasions said I was a Hindu when asked… I am not a Burman and neither was U Ohn Gaing [sic]. He was a Kalai because he was the offspring of a union between a Hindu and a Burman… [*referring to an earlier deposition*] The counsel said he did not understand what a Kalai was so I said I was a Hindu…
>
> [*later*] I don't say that my husband was a Buddhist… At the present time I profess the Buddhist Religion as well as the Kalai Religion. I am called Kalai but I profess Buddhist. I also worship the Maha-pain-nai… Maha-pain-nai is a nat.//Ganesh, the elephant god, is what I call Maha-pain-nai… I cannot say that I am a pure Buddhist. I am a Buddhist and profess Buddhism, I worship both. I also worship at the Kali temple [a Hindu temple]. I have seen Buddhists come to both the temples to worship. (PCAP 6/912/3: 2.37, 39)

Ma Yait's combination of cultural and religious practices, and her inability to conclusively assert where she should fit into the Burman, Hindu, Buddhist matrix, confounds the court's attempt to simplify Kalai religious practice. Later, the defense side tries to pin her to a singular religious framework by pointing out that she swore her testimony on the *kyanza,* meaning that she took a Buddhist oath. But even here, Ma Yait's plurality obscures the boundaries between faiths:

> At the time that application [for the letters of administration of the estate] was made I knew what my husband was not a Hindu… I came to Court and swore the affidavit but I don't remember before whom it was. I took the Hindu Oath. I have sworn on the Burmese Kyansa once before I applied for letters of administration… In a criminal case in which one Po Lu cheated me of gold I also swore on the Burmese Kyansa. In my daughter's case I was affirmed as a Hindu… I think I swore that affidavit as a Hindu. I don't know whether I described myself in that affidavit as a Hindu by religion and by nationality (PCAP 6/912/3: 2.41-2).

That Ma Yait resists being reduced to a singular identity - she is neither Hindu nor Buddhist, but both - points in part towards a difference in expectations of spiritual fidelity between European Christian and Burmese worldviews. Ma Yait approaches her religious practice with a combination of piety for what she was taught as ancestral traditions and a willingness to make full use of the varied religious offerings available in a place like Burma. She will pray to Ganesh as well as Buddha; visit all the religious institutions available in her community; and swear on

whichever religion's oaths she is asked to because she is in a sense equally part of them all. It is only when the court force her on the issue that she is willing to outright declare herself as part of one religion to the exclusion of another, and even then she vacillates between various identities. Tellingly, one of the final questions the defense council asks - a question demanded of all the Kalai witnesses deposed - is whether 'Kalai' is a Burmese or Indian (presumably Tamil) word, and if 'Kalai' simply means 'Hindu' in Burmese. Seemingly confused about the question, Ma Yait underscores the essential Burmese-ness of the Kalai in her terse response: "Kalai is a Burmese word" (PCAP 6/912/3: 2.45).[74]

While Ma Yait's lengthy testimony offers the clearest view of how the Kalai blur the lines between Hindu/Buddhist, Indian/Burmese, and mixing and 'purity,' it's important to underscore the ways other witness depositions match her descriptions. Ma Nu, Ma Yait's daughter and co-defendant, describes the mixing of Burmese Buddhist and Hindu customs at her wedding, declaring that she "was married according to Kalai rites" (PCAP 6/912/3: 2.57). Ohn Ghine's main Buddhist preceptor observes that many 'Hindus' came to worship at his temple as well as the famous Shwedagon Pagoda. "I would not object to Hindus giving charity," he says, continuing: "I don't know whether On Gaing [sic] knew his own religion, but he did whatever I taught him," reasoning "that is why I knew he was a Buddhist. [But] if U On Gaing swore he was a Hindu I could not contradict him" (PCAP 6/912/3: 2.81).

Even other Kalai who argue that they should be considered wholly Buddhist and emphatically deny that they are Hindu in any way whatsoever largely reaffirm the blurriness

[74] Later on we get a more comprehensive answer from Ohn Ghine's main spiritual advisor, the Buddhist monk Sayadaw U Kawthanla, which is tellingly confusing: "A Hindu is called 'Hindu' in Burmese. There is no Burmese word for it. I have heard of the word 'Kalai.' I don't know that Kalai means Hindu, but I know that a Kalai is a Kalai. A Kalai is a kind of a Kala [Indian, or South Asian]. There are Punjabi Kalas, Hindu Kalas, Mogul Kalas, and Kalai Kalas. I don't know where the Kalai Kalas came from" (PCAP 6/912/3: 2.81).

between the communities. Take the deposition of police inspector Maung Po Myint: "I am a Kalai by race and a Buddhist by religion," he begins. Later he declares that "Kalais cannot partake in any Hindu ceremony at home. They cannot do so as they are Burmans," and reiterates "In all respects I consider myself the same as a Burman Buddhist. I have one religion only - Buddhism. Other Kalais are also like me. I have not heard of a Kalai who has two religions." Even so, he later observes that he does attend Hindu temples, but refrains from the spiritual work that would in his mind affiliate him as a Hindu:

> I have seen Brahmins come to the 'Maha-pain-nai' [Ganesh] temple and pay homage. I pay homage [there] in the Burmese fashion and the Brahmins do so in their own fashion… I have seen the 'hom' ceremony at the Kyuak-pauk-nat temple in Edward Street. This temple is known to the Kalas as the Kali temple. IO have been to the Kali temple but have not made the 'hom' ceremony there. I don't *Shiko* [bow] to the *paya* [god] at the Kali Temple. I simply go there to pray for freedom from harm and evil, which is not the same as praying to God. My going to [both] temples formed no part of my religion" (PCAP 6/912/3: 2.85).

In laying out their case, Ma Yait's defense team calls fifteen witnesses, eight of whom identify as Kalai themselves, who testify both to Maung Ohn Ghine's personal affiliations and those of the broader Kalai community. Of these fifteen, Maung Po Myint is the only one who maintains such a militant opposition between the Kalai and Hindu community, and even he largely reaffirms the types of social and even spiritual pluralism that makes the Kalai who they are.

In the end, the Privy Council sides with Ma Yait, rejecting the notion that Maung Ohn Ghine's paternal line along makes him a legal Hindu. Finding that Maung Chit Maung was unable to sufficiently prove that his father was a Hindu under the meaning of the Burma Laws Act, the council rules that the provisions of the Indian Succession Act apply - which means allowing succession to proceed as directed by Maung Ohn Ghine's will - and demanding Maung Chit Maung pay all costs of the appeals.

Wun Pain Wain's Leaning Away from 'the Community of His Birth'

The 1916 case of *Ma Pwa vs Yu Lwai and Ma Yin* (8 LBR 1916) offers a second example where the courts seem to accept a more ethnicized form of self-identification to factor into the determination of one's religious law standing. The case centers on Yu Lwai's effort to inherit out of the estate of his adoptive father, Wun Pain Wain.

As the details of the case show, Wun Pain Wain was the son of a Chinese migrant who came to Burma sometime in the early 19th century, where he settled permanently. Wun Pain Wain's father, Wun Shan Shoke, married in Burma to a woman named Ma Po. Justice Fox, who authored the final judgment of this case for himself and Justice Parlett, briefly observes that it is unknown whether Wun Pain Wain's father married a Burmese woman or a Chinese woman, but seems to dismiss the notion that her ancestry would affect the case in any material way (8 LBR 1916: 406). In Burma, as Wun Pain Wain's siblings testify, the family continued to live as Chinese in at least all outward manners: "[The] children were brought up to follow Chinese customs: funerals of members of the family have been according to rites observed by the Chinese. The members who have given evidence profess to be Chinese Buddhist" (8 LBR 1916: 406).

At some point in the late 1880s or early 1890s, Wun Pain Wain married his first wife, Ma Phee. The pair went childless for a number of years until 1896, when they adopted a daughter, Ma Yin, the second defendant of the case (who also goes by the name Ma Nhah). Ma Phee was 31 years old when the pair adopted Yin, a factor the court considers as a possible motivating factor for the pair's decision to adopt. That Ma Yin's birth parents appear to be "purely Burmese" is considered by the court to be "remarkable," given that the testimony of Wun Pain Wain's family asserts that he "held himself out as a Chinaman" (8 LBR 1916: 407). Another

decade passes until around 1905. By then Ma Phee is 41 and Wun Pain Wain, according to his family testimony, has become concerned with his family line dying out, a grave cultural horror for a traditionalist Chinese like Wun Pain Wain. (Wun age is never affirmatively stated, but judge Fox's written opinion alludes to him being some years older than Ma Phee).

Needing a son to carry on his name, Wun Pain Wain and Ma Phee adopt Wun Pain Wain's brother's young son, Yu Lwai, then 4 years old, in 1906. Wun Pain Wain's brother, Wun Pain Khain, and his wife, Ma Ma, had other children, and they were in any case much poorer and less capable of providing financially for the boy than Wun Pain Wain and Ma Phee. The decision to adopt a nephew as one's own is taken to be a culturally salient mode for childless Chinese to maintain their filial duties to continue the family line, a finding that Fox accepts as documented in Parker's authoritative account *Comparative Chinese Family Law*, a frequent reference work on Chinese Customary Law in the Burmese courts. While formally adopted by Wun Pain Wain and Ma Phee, Yu Lwai nevertheless continues to live with his birth parents, until the boy is sent off to board for school the next year, an expense paid for by Wun Pain Wain. Later that same year, 1907, Ma Phee dies. Yu Lwai is recalled for the funeral, where he, at age 7, took on ritual mourning duties that would normally fall upon a son. Two years later, in 1909 Wun Pain Wain would remarry Ma Pwa, the plaintiff of the current case, before dying four years later, in 1913.

The case *of Ma Pwa vs Yu Lwai* stems from disagreements about who was the rightful heir of Wun Pain Wain's estate following his death. Ma Pwa contends that she should retain control of the estate as his widow. Wun Pain Wain's surviving family, however, contend that only male heirs can inherit under Chinese Customary Law. Yu Lwai, being ten years old at the death of Wun Pain Wain and only thirteen by the conclusion of the case, has the case against his step-mother brought forward on his behalf by his aunt, Ma Me, the sister of his biological father

Pain Khain and his adoptive father Wun Pain Wain. As Ma Me puts forward, Yu Lwai is the only legitimate heir according to Chinese Customary Law. As a Chinese man who is also a devout Buddhist, Chinese Customary Law would be the relevant family law code for determining Wun Pain Wain's estate. In Chinese Customary Law, as Yu Lwai's side argues, inheriting sons might hold some obligation to care for a widow - depending on factors such as if she is their mother or a full wife or only a concubine - and, in the instance of one's sons being minors, a widow might administer the estate on behalf of her children until they reach the age of majority, but they would not inherit the estate outright. Ma Yin, Wun Pain Wain and Ma Phee's first adopted Burmese daughter is listed as a co-defendant. (Though her interest is not wholly explained - presumably, she would be entitled to some degree of maintenance payment from the estate until she is married herself).

In reviewing the case, Judge Fox, the chief justice, pronounces that the case hinges on one central question: whether or not Yu Lwai was the adopted son of Wun Pain Wain (1916: 405). Because Yu Lwai was adopted according to Chinese customary rites, Fox believes the rest of the case flows from this central tension: if Yu Lwai was adopted, it would signal that Wun Pain Wain was both legally cognizable as a Chinese Buddhist whose relevant law under the terms of the Burma Laws Act is Chinese Customary Law *and* that Yu Lwai was a legitimate heir under this legal structure; if Yu Lwai is *not adopted,* then the case is moot. Here again, the daughter Ma Yin only appears as an afterthought. It is unclear how the dismissal of Yu Lwai's case would affect Ma Yin, who is attached to it.

Disentangling the question of Yu Lwai's adoption forces Fox to consider a number of issues, including Wun Pain Wain's religion, Chinese customs of adoption (and whether those adoption customs are related to Chinese religious practices), and the actual facts of the alleged

adoption, including the defense's capacity to prove the adoption did in fact take place. While accepting, on the authority of colonial authorities in China, the possibility of avuncular adoption in Chinese custom, and that these adoption practices are sufficiently connected to religious ideas regarding the veneration of ancestors that they should be protected as part and parcel of the rights that Chinese Buddhists in Burma hold, Fox avers on the questions of fact wrapped up in the case. He finds it puzzling, first, that Yu Lwai was not, following his alleged adoption, entered into Wun Pain Wain's genealogical register (8 LBR 1916: 408). Additionally suspicious is the amount of time that Yu Lwai continued to spend with his birth parents after his adoption. While "this absence in change of the boy's surroundings and bringing up is… accounted for by his being only [five] years old at the time… [it] does not adequately account for a husband and wife anxious to adopt a son leaving the child after the adoption with its [sic] natural parents" (8 LBR 1916: 408). Indeed, Fox is disturbed to find that the only positive documentation of Yu Lwai's alleged adoption are Wun Pain Wain's sponsorship of the boy's school fees and the roles that Yu Lwai took on at the funerals of Wun Pain Wain and Ma Phee, circumstances explainable by Wun Pain Khaing's poverty and Wun Pain Wain's lack of a son to perform the mourning rites.

Most suspicious to justice Fox, however, is the strange fact that Wun Pain Wain and Ma Phee chose to adopt a daughter - a Burmese daughter at that - so much earlier than they would have adopted a son. Fox goes on at length:

> Adoption of children by childless married couples would appear to be more prevalent in China than in Burma even. The dying out of a family appears to be regarded as disastrous… Adoption is resorted to prevent these calamities, and the most frequent case is the adoption of a nephew by a childless uncle… The adoption of females would not with certainty avoid the calamity of the family in the paternal line dying out, for on marriage a woman becomes a member of the family of her husband and severs connection with the family of her father. I*f Wun Pain Wain was strongly imbued with the traditions and feelings of his father's race,* one would certainly have expected him to have adopted the plaintiff who is the second son of his elder brother. It is remarkable however that his first adoption was of a girl, and that *it was clothed with a prominent characteristic of one form of adoption amongst Burmese, namely a declaration that the child should have rights to inheritance. This points to Wun Pain Wain not being so strongly imbued with the necessity of having as a son as the ordinary Chinese married man is said to be*" (*emphasis added*; 8 LBR 1916: 407).

Upon further remarking on the fact that Wun Pain Khaing would have had other sons for Wun Pain Wain to adopt in 1896, Fox concludes that the couple's choice to instead adopt Ma Yin suggests something more fundamental about how Wun Pain Wain aligns himself in relation to Burma viz-a-viz his Chinese heritage: "[Ma Yin's] parents' names seem purely Burmese. It Is remarkable that one who held himself out as a Chinaman should adopt the child of pure Burmese parents. *This again tends to show that Wun Pain Wain had leanings towards the customs of the country in which he was born and bred*" (*emphasis added,* 8 LBR 1916: 407). Fox's finding of the fact of Wun Pain Wain's preference for adopting a daughter and disinterest towards the continuation of his family line is taken as evidence of his inclination to hold himself as more Burmese than Chinese. This, then, appears to Fox "to lead forcefully to the conclusion that the story of the adoption of the plaintiff is an invention" (8 LBR 1916: 409). In other words, Fox relies on a behavioral interpretation of Wun Pain Wain's personhood to accept the man as Burmese.

Or, at least, as *not Chinese,* or as *not Chinese under the meanings of the Burma Laws Act*, or as *insufficiently Chinese Buddhist to qualify his personal law as Buddhist law*. That the burden of proof in the case is oriented toward the question of Yu Lwai's adoption, rather than the exact religious categorization of Wun Pain Wain, allows Fox to leave the question of Wun Pain Wain's ethno-racial personhood ambiguous. But the case is nevertheless significant in that it shows how, at least in these peculiar circumstances, the British courts do accept that a person's socio-cultural affiliations can affect the determination of their personal law.

Here, Wun Pain Wain's socio-cultural flexibility and ultimately his capacity for what we might see as 'self-definition' suggest that colonial legal distinctions between Asian communities are best understood through the lens of ethnicity. It is telling that Wun Pain Wain is not entirely

'Burmanized.' He buried his wife according to Chinese rites, and is so buried, too, when he subsequently passes on; he was raised 'to follow Chinese customs,' and witness testimony suggests that he has continued to follow them into adulthood; testimony further suggests that he does follow Chinese religious practices, including the veneration of ancestors and the incorporation of Tao and Confucian elements into Buddhist worship.

While it might not be easy to affirmatively find what Wun Pain Wain's religion is, it is clear that he has not, to use the courts' preferred framework for it, 'abandoned his ancestral religion.' Yet even so, Wun Pain Wain is not bound by what the court expects of him as a Chinese man. He and his wife can adopt a Burmese daughter, leave his estate to his second wife, and allow his ancestral line to die out with him as its last descendant - a scenario painted as the greatest horror for the typical Chinese man by the court's experts on China - without any remorse. While I'm being a bit facetious in treating Fox's unilateral determination that Wun Pain Wain leans towards 'the country in which he was born and bred' over 'the traditions and feelings of his father's race' as a form of ethnic self-definition - this is, after all, Fox's definition, rather than Wun Pain Wain's – it is nevertheless significant that the court would strive to consider how the man might consider himself rather than just reducing him to his ancestry.

Yet even so, it is important to observe the limitations of this line of thinking. First, Fox's consideration of how Wun Pain Wain may have held himself in regard to his ancestry is not a uniform standard across the colony's judiciary. Indeed, the framing of this case on appeal as *Ma Pwa vs Yu Lwai* shows that the judgment of the lower court initially ruled in favor of Yu Lwai's side. Given the scant record of evidence that Wun Pain Wain did adopt Yu Lwai, and the direction of Fox's refutation of the lower court's opinion, we're left with the suggestion that the lower court accepted this claim on the basis of how it might expect a normal Chinese man to feel

about the prospect of dying without a son.

That the judgment of this appeal is found in a legal circular suggests two things: first, that there is something anomalous about this case and its judgment that marks it as important for the rest of the colonial courts to understand; and, second, that there are likely many more cases where a ruling like that in the original judgment of the lower court was made and never appealed. Regarding the first of these, we can deduce from the judicial summary that the important point that justice Fox sought to circulate through the colony's courts is that "adoption of children by childless married couples is of common occurrence in China, but care must be taken than an alleged adoption is properly proved" (8 LBR 1916: 405). While this doesn't assert that the lower courts should consider whether an individual of Chinese ancestry holds themselves out at as more Chinese or Burmese before determining the fact of their alleged adoption, it does suggest that Fox finds that the lower courts are not sufficiently meeting the evidentiary burden of some number of cases involving Chinese adoptions.

It is also important to point out, at the conclusion of my discussion on the case of *Ma Pwa vs Yu Lwai*, that as much as I believe it is valuable to consider how the case suggests that the lens of ethnicity is useful for understanding how colonial courts contemplated the distinctions of and boundaries around different Asian groups, the case also suggests the so to say 'natural limits' of this lens, as well. Fox's court does not actually validate the notion that Chinese migrants and their descendants can 'become Burmese' - even when those descendants might be of mixed-Burmese ancestry, as well. Again, the particular framework involved in this case - that it was about proving the fact of an adoption rather than the possibility of ethnic pluralism - might be the most relevant factor for making Fox amenable to the idea that an individual's legal personhood could be determined by more than a simplistic reduction of their blood line.

Conclusion

Stoler, in 'Along the Archival Grain,' reminds us that "'minor' histories should not be mistaken as trivial ones," justifying her decision to devote her book to the relatively small population of or mixed-Indo-Europeans by noting that the anxieties generated around this group allow her to "identify a symptomatic space in the craft of governance" (2010: 7). If Maung Ohn Ghine and Wun Pain Wain represent the numerically minor number of foreign Buddhists that won recognition as Burmese Buddhist, they are nevertheless major in their capacity to reveal the limits of a colonial projection of legal types that was never very sure what it meant to be 'Buddhist' in the first place.

But that these figures achieved an otherwise unthinkable outcome should not be taken to indicate that the pluralist social engagements that facilitated their boundary crossing were rare. Indeed, there is increasing recognition their behaviors were rather mundane. It is significant that not only were both foreign-born and second-generation non-indigenous Buddhists - as well as people of other faiths - more regularly incorporated into Burmese social life than was previously imagined, but that such social engagement did not require these people to forsake their ancestral identities in joining some melting pot vision of ethnic assimilation (c.f., Li 2017).

That the courts accepted Ohn Gain and Wun Pain Waing as Burmese Buddhists had as much to do with where the burden of proof lie in their respective cases than in anything unique to these persons, per se: both cases were brought by parties that sought to bring them into the singular jurisdictional fold of Hindu and Chinese Customary Law, respectively, which were claims easily refuted by the extent of evidence about each man's engagement with Burmese

Buddhism and Burman society more broadly. That many foreign Buddhists like Ohn Ghine and Wun Pain Wain held these pluralist dispositions advantaged whoever was the respondent in a case because the plaintiff could not prove the categorical singularity required to challenge the presumption that their personal religious law derived from their patriline. But this, then, also suggests another peculiar thing about cases involving foreign Buddhists, one that is perhaps indicated even by how I am how compelled to write about them in this dissertation: that, even for those who are of part Burman heritage or of the second- or third- generation born in Burma, their foreignness is generally presumed while their local belonging must be proved.

Returning to the tripartite of ethnoracial legal ontologies that I describe in this dissertation, it is clear that the courts presume religious categorization flows from blood, but that some individuals can successfully challenge this predisposition through assertions of both belief and behavior. In the case regarding Ohn Ghine estate, Ma Yait and her allies are able to show that her husband's beliefs are at least sufficiently Buddhist that the court cannot accept Ohn Ghine as a Hindu, even if the logic of patrilineal inheritance would suggest that is where he most appropriately fits. Wun Pain Wain, on the other hand, is accepted as a Burmese Buddhist not because of any evidence of his religious practices, but rather because his adoption of a Burmese girl is taken to refute a cultural disposition towards both racial purity and patriarchal preference that is definitive of what it means to be Chinese.

This chapter has documented how the British courts in colonial Burma accept that it is, strictly speaking, *possible* for people to create community and understand themselves beyond what is preordained by some ancestral destiny. Yet it remains that the various justices of Burma's courts would view this as an anomalous thing. More common is that the courts typically take for granted that people are bound to their community of birth, a finding that suggests the

value of approaching colonial distinctions as a racialized legal legacy, as I take up in the next chapter.

Chapter 5

Religious Impositions and Racial Property Status: San Hla, Ma Sonna, and Raced Foreignness

In August 2020, a moment of minor virality spread across Burmese Facebook when the military-aligned Union Solidarity and Development Party ran an election ad celebrating their chairman's fortieth wedding anniversary. The advertisement was written as an announcement from the chairman himself, U Than Htay, to the USDP Women's Committee, which the Women's Committee paid to boost throughout Facebook. The ad caught public attention because U Than Htay's declaration of unconditional love for his wife was accompanied with his boast of the pair's pure Burman heritage, that their three children only married other indigenous national races, and that, owing to their lack of foreign blood, nobody in the family had a pointy nose, blue eyes, dark skin, or curly hair.

The post, which has since been deleted, drew over three thousand reactions that show the mixed-feeling Burmese netizens hold towards mixing itself. A majority of respondents mocked the post, reacting with the 'haha' button, sardonic gifs, and comments like that of one user who wrote "Whatever, what use is indigenous purity anyway?" Others expressed skepticism with the claim, especially given the relationship between Than Htay's daughter and her Shan husband, a partnership which, while one of multi-ethnic Burmese indigeneity, brings them quite close to China's doorstep. One user writing in this vein implored Than Htay to get a DNA test. And others, just happy to see a candidate show off a family like this, wrote simple notes of support, like one user who wrote "How proud, a real family of the Union [of the Republic of Myanmar]."

Than Htay's post follows in a long history of military figures trafficking in tropes of purity to promote their bonafides as the guarantors of national sovereignty. Military leaders like

Ne Win, himself of partially Chinese ancestry, have scapegoated those deemed insufficiently indigenous for most of Myanmar history as an independent nation, and proclamations of ethnic purity are usually taken as an implicit castigation of Aung San Suu Kyi, the then head of state who had married the late British historian, Michael Aris. And the comments were hardly new for Than Htay, whose main electoral platform was 'protecting the Burmese people from being wiped off the earth,' a stance he showcased through his long-standing support for the discriminatory Race and Religion Laws his party passed in 2015.

But when in early October then-president U Win Myint promoted a fun and colorful anagram of the word 'DEMOCRACY' to show voters what this still nascent political structure means to him, it became clear that the relationship between political participation and a certain understanding of national heritage was just as prevalent among the nation's liberal vanguard. Between refrains about the need for D-Discipline and the struggle for E-Equity, President Win Myint explains that democracy requires the participation of C-'Citizens in good standing' (နိုင်ငံသားကောင်ပီသခြင်း) and R-'Religious devotion' (ဘာသာတရားကိုင်းရှိုင်းခြင်း). While Win Myint's post does not indicate a particular religion associated with good citizens, the well-known Buddhist devotions of NLD leaders like Win Myint and Aung San Suu Kyi, as well as the NLD's refusal to run Muslim candidates, underscores the prevalence of Buddhist nationalism in even ostensibly liberal political figures.

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The genesis of this chapter began in an effort to contextualize the historic ascription of the Chinese as permanent foreigners, as forever 'Guest Citizens,' within the Burmese nation, an effort that began with me trying to find what rights were available to the Chinese in colonial Burma. Recognizing how those practicing Chinese forms of Buddhist worship became racialized

as 'the Chinese' entails recognizing how the interplay between rights claims and judicial authority create new ideas about migration, social belonging, and community. Uncovering through this history how colonial ways of seeing often locked mixed families in internecine fights over who they 'really' were, shows that this was the wrong question. Understanding the racialization of the Chinese in Burma is not about understanding what rights were available to Chinese migrants and their children and when; rather, it is about understanding what were the rights, recognitions, and legal privileges that imagined 'the Chinese' as a people separate, separable, and opposed to the Burmese.

I begin this chapter with these scenes from Myanmar's election, then, because they illustrate the continued relevance of a tripartite ontology of racial belonging in Myanmar, in which Than Htay's Bamar-inflected ideal of multiethnic indigeneity and xenophobic fear of foreign mixing co-articulate, rather than contradict, his political rival's call for political participation rooted in religious devotion. Reading Than Htay's xenophobic boast alongside even Win Myint's insistence that a religious citizenry is integral to the functioning of a democracy points towards the enduring legacy of an unsettled idea about whether the true core of what it means to part of the Myanmar nation lie in one's ancestral connection to that land mass or one's cultivation of a religious practice that transcends it.

For some, perhaps even the majority, of Burmese, the tension between these two referents - ethnonational versus religious articulations of indigeneity - are not apparent because they find themselves validated by both of its terms: they are both *taingyintha*[75] and part of the Buddhist mainstream. For others, being alienated from both categories of belonging – rendered *both* foreign *and* non-Buddhist – means that the tension between these two poles is perhaps esoteric:

[75] Indigenous ethnic groups, or 'national races.' See again, Chapter 1 pages 53-56 and ft. 7 and 8 same chapter.

the question of whether the Rohingya are victims of genocidal violence because they are considered foreign by race or by faith is unanswerable because of how these categories intersection in producing their dispossession. But there remain many who sit awkwardly between these dual terms of belonging. For those who are foreign Buddhists - or indigenous Muslims, for that matter - the question of whether it is indigeneity or religion that makes one essentially 'Burmese' is foundational to the rights they hold in the country of their birth. The tension between indigeneity and religion as the arbiter of rights in Myanmar points towards the enduring legacy of race's function as a 'property right' in Myanmar.

By referring to race as a property right, I draw on Cheryl Harris' contemplation of race in terms of the enforcement of expectations of a hegemonic group to control the terms of social and political participation (1993: 1713-5; 1757-1766). In contrast to ahistoric projections of Burmese-ness and Buddhism as existentially co-dependent, I locate the origins of this contemporary conflation in the historic collapsing of pluralist potentialities discussed in the last chapter into a binarized and singular structure of identity and belonging. In this chapter, I trace this collapsing through stories of failed litigious challenges to the patriarchal 'blood-based' epistemologies of racio-religious placement brought by migrant Chinese and Burmese-Chinese women in the early 20th century. I argue that viewing the historic processes by which the British colonial courts in Burma enforced a binarized division of native and foreign Buddhist law as a social and material property right available to men illuminates how religion becomes a racialized category marking legitimate national belonging.

This chapter will unfold in three parts. I begin by arguing for the applicability of theories of race, specifically rooted in the tradition of critical race theory, to the articulation of intra-Asian distinction in colonial situations.

Second, I proceed to consider how recognizing race as court-enforced property right clarifies the terms through which colonial subjects become cognizable as legal subjects through two examples.

Third, I conclude by way of elaborating why it is important to recognize how 'property,' as both material and metaphysical marker of personal status, is only achievable for colonial subjects through submission to the colonial legal fiction of racial singularity. In short, I argue that it is through the jurisprudential denial of the capacity to bear rights outside of a racialized religious framework, as a mixed, multiplex, or secular person, that empowers an imagined vision of foreign Asians like the Chinese as separate, separable, and opposed to the Burmese people.

Considering 'Race as Property Status' in Burma

Heretofore, scholarship on Southeast Asia has refrained from fully considering the significance of race - *as race* - in both the construction of intra-Asian difference and the marginalization of the 'Asian racial other.' There are a number of reasons that considerations of race have been limited to the racialized binary of European colonizer and Asian colonized. Foremost is that colonial power operated by restricting access to categories of authority and domination to those determined to be white, a process that results in the simultaneous categorical lumping and social denigration of all those held out from this status. Contemporary developments in critical race theory illuminate both the promise and the peril of approaching race as a dyadic construction of domination.

The general approach to race in Southeast Asia as implicitly and inherently a relationship of colonizer/colonized anticipates the insights of contemporary philosophers of race like Kalpana Seshadri, who provokes "*There is only one race… and it is white*" (2020). In this view, race is

only *race* insofar as we divide the world up between those whose "neutrality" "promises wholeness" and grants them "sovereign humanness" (2020: 301) - that is, those who are granted whiteness - and those whose remove from that promise of full humanity renders them incomplete, 'dehumanized' or 'animalized' to different degrees (2020: 302). For Seshadri, racial identity is inherently perverse: for whites, attachment to whiteness can only facilitate one's own social sovereignty through the full subordination of a racial other; while for non-white groups, race "is an ideological imposition that first and foremost enforces a monolithic definition of humanness" (2020).

But, though this is in explicit opposition to her point, I believe Seshadri's articulation of race as exclusively whiteness can actually help us define race *outside* of whiteness in Southeast Asia. As I interpret her work, Seshadri's point is two-fold. First, that race is not synecdoche for the various forms of difference that we might see it operate through; rather is it a specific ideological construction of 'the human,' born in the anti-naturalist philosophies of the European enlightenment, that abstracts our species from the world to facilitate a fantasy by which humans can exist autonomously outside of it. In other words, the existence of this class of 'raced' humans necessitates a corollary racialization of 'nonhumans' whose entire existence functions solely to maintain that fantasy of whiteness.

Second, that racial attachment is therefore a specieist fantasy that inflicts violence upon those who, raced as non-white but seeking that sovereign humanness that a racialized world can only facilitate through racial belonging, nevertheless align with this search for race (2020: 300-1). In other words, racial attachment is inherently violent: for whites, it inflicts violence upon others by subordinating those who cannot access whiteness to a marked inhumanity; for nonwhites, it inflicts violence upon the self by ceding the conditions of full humanity to those imagined by

whiteness, foreclosing other routes to human-being that might actually be possible through "ways of being in community with other animals, plants, and non-human environment" that are denied under whiteness (2020: 303).

The work of Seshadri and others writing in the vein of 'critical whiteness studies' (Applebaum 2016; Delgado and Stefancic [eds] 1997; Nayak 2007) is evocative for their illumination of the perverse ideologies through which colonial dominations operated, and of the ways these colonial legacies live on in the contemporary. But putting whiteness into practice always entails material compromises to this idealized abstraction. These 'evolutions' of whiteness - ethnonationist in the first regard; classed in the second - were compromises made in both settler and non-settler contexts to secure sufficiently broad support for particular regimes of whiteness that the colonizing elite could continue to socially and politically dominate and economically exploit non-white societies, even though these regimes only offered marginal benefits to the non-elite whites through which colonial rule was most directly facilitated.

Scholarship on race and colonialism acknowledges this in its elucidation of the shifting grounds of whiteness, whether that is posited as the enlargement of whiteness to include previously discounted groups like Italians, European Catholics, and even some Hispanics groups like anti- communist Cuban (Current 2008; Waterson 2008; Zeitz 2011), or by granting legal recognition of poor and otherwise marginalized Europeans as white (Brown 2013; Buck 2003; Painter 2011; Thompson 2022).[76]

However, this creates a conceptual problem: if whiteness is a privileged subjectivity that is nevertheless capable of accommodating (or excluding) new bodies in response to changing conditions, what makes whiteness 'whiteness?' In other words, if whiteness is such a historically

[76] See also Hartigan 1999, 2005; Wray 2006 for further discussions on the complicated intersection of race and class among poor whites.

mutable construct, a question arises as to where the stable core of this category lies. While it is heuristically useful to answer that whiteness exists in the privilege it confers (McIntosh 1989; Schooley, Lee, and Spanierman 2019), this only begs the question of how an abstract category confers either material or psychosocial effects. More useful, I find, are legally oriented critical race theorists, who spell out what exactly whiteness offers to those who achieve its recognition. While limiting considerations of race to the space of law overlooks the intangible ways that race does produce social effects, these limitations also keep the concept from floating off into space, where, unmoored from any conceptual anchor, it can be pulled down to any passing celestial body with sufficient gravitational pull to make use of it.

It is thus in positioning race as a binary construct of sovereign power, rather than a mode of identifying who has access to that power, that Seshadri reflects an important point made by lawyer and critical race theorist Cheryl Harris, who writes about whiteness as a property right (1993; 2020). While whiteness has mutated over the long period of its existence - adapting to different historical circumstances, legal privileges, and even qualifications of membership into the category of whiteness - the core element that has connected whiteness from precolonial America into the post-civil rights era is the capacity for those that are accepted as white to positively assert their race as a property status through, for instance, claims of reputational interest (1993: 1734-6), exclusions from the national body (1993: 1744-5), and contentions over affirmative action (1993: 1766-77). It is this property status - which, though accessed through social interpretations of the body, is not itself inherent to the body, a fact witnessed in the mutating qualifications of whiteness over time - that whiteness is historically founded upon, and which continues to socially, politically, and culturally channel both material gain and immaterial privilege through whiteness in the contemporary.

Approaching race as a 'property status,' then, offers a conceptual anchor that not only connects divergent global histories of race, but also cultivates new insights that materially ground the racialization of non-white colonized groups in privileged legal recognitions. Returning to Cheryl Harris' theorization of 'whiteness as property' in the American context, we are reminded that whiteness exists on two plains: "as valued social identity" that legal institutions will protect from various forms of defamation (1993: 1758); and "through the reification of expectations in the continued right of white dominated institutions to control the legal meaning of group identity" (1993: 1761). As my discussion in this chapter will show, we can see both of these functions of race as property status at play in the history of mixed-Chinese Buddhist litigation in colonial Burma, though with an important twist. In the American case, whiteness is defended from threats on the outside, whether that be attempts by non-whites to access social benefits or legal protections available in whiteness (Harris 1993, sections II-III) or a changing social world that does not privilege whiteness as it used to (Harris 1993, section IV). In the example of colonial Burma, the categorical wholeness of Chineseness as racial property status is protected from threats on the inside, namely daughters and wives that seek recognition as Burmese.

It is in reading Seshadri and Harris together that I take my cues for writing about intra-Asian distinctions as race in colonial Burma - or at least for using race to clarify the shortcomings of simplistically treating intra-Asian distinction as ethnicity. Through judicial interpretations of the meaning of 'Buddhist,' alongside litigant combat over how to be Buddhist, access to particular constructions of Buddhist-ness begins to structure differential entitlements to rights. Moreover, this legal entitlement - or to use Harris' words, this 'property status' - offers more than just access to advantageous succession rights or marital statuses; it also marks social

legitimacy, indigeneity, true, unconditional, native belonging - or what Seshadri might call 'sovereign humanness.' And though this 'sovereign humanness' is *not* unqualified during the colonial period - the domineering presence of white Europeans over both native and migrant Burmese subject is but one reason 'Buddhist-ness' is only imperfectly analogous to whiteness - this concept does, I believe, help illuminate some of the power that Buddhist nativism takes on in the postcolony.

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But how does this work outside of the Americas? Asking whether the tenants of critical race theory are applicable outside of American history creates the challenge of translating terms between contexts, as I raise in considering Campbell and Prasse-Freeman's work in the last chapter. I draw on the work of transdisciplinary legal scholar Brenna Bhandar to consider this question.

In her 2018 book *Colonial Lives of Property*, Brenna Bhandar applies Harris' formulation of race as property right to different colonial contexts, namely Palestine, British Columbia, and South Australia. For Bhandar, this entails approaching the relationship between race and property from the inverse angle; that is, rather than considering how race conveys property, she considers how property law produces racial subjectivity. This turn, slight as it might be, helps illustrate that approaching property law as a relational contract of resource access can provoke new insights on colonial racial regimes outside of the American black-white/subjugation-domination binary.

Particularly helpful for my thinking of Chinese as a racialized property status in colonial Burma is Bhandar's discussion of how the juridical status of 'the Indian' in British Columbia emerges out of a coarticulation of identity and property relations, a "juridical knot" that she

terms “the identity-property nexus” (2018: 150). As Bhandar documents, structures of settler-colonial territorialization of indigenous lands gradually shifted from dispossession through violent physical conflict to dispossession through legal design over the course of the 19th century. This paradigm shift required the creation of new legal categories for both indigenous people and indigenous lands, which were achieved by a variety of laws, including the 1868 Act… for the Management of Indian and Ordinance Lands, the 1876 Act to Amend and Consolidate Laws Respecting Indians, and the 1886 Indian Act.

The sum total of this legislative matrix was the designation of Native lands as places removed from white society and the broader marker economy and the designation of “Indians” as the exclusive persons who held the right to reside on those lands. Importantly, though, the Indian Act by which Indian status was defined limited the conferral of that status to “any male person of Indian blood,” their children, and their wives. By designating native women as a dependent class, necessarily attached to a man as either wife or child for recognition as ‘Indian,’ this legal machination facilitates erosion of the relationship between the indigenous and their land, paving the way for privatization.

This points to one final piece essential to this analysis: that of gender. Theories of race and racialization, including those centered on Southeast Asia, have long articulated the importance of considering the intertwining of racial constructions and gender. Over thirty years ago, Ann Stoler, for one, argued on the basis of research from French Indochina and the Dutch East Indies that “the political etymology of colonizer and colonized was gender and class specific,” and that the categories of colonizer and colonized were “secured through notions of racial difference constructed in gender[ed] terms” (1989: 651). More recently, and regarding Burma in specific, Chie Ikeya has shown how “in Burma in the 1920s and 1930s, a woman’s

spousal choice was intimately tied to her political and 'national' affiliations and served as an index for measuring her patriotism" (2013: 140). And while Ikeya, writing about the cosmopolitan modernity of Burmese women in the early 19th century, uses the framework of 'nation' to interpret how discourses of miscegenation fit into contemporaneous anti-colonial struggles, I see her work connecting to Burmese imaginations of race, as I use the term, as well. She notes that "*kabya* (ကဗျာ, mixed) men and women undermined the fundamental premise on

which the potency of Burmese nationalist movements came to rest: the existence of a stable and 'easily identifiable' community of *bama* [Burman-Burmese] people bounded by 'one blood, one soul'" (2013: 141; see also, Ikeya 2005; Mazumder 2014; Roberts 2016: 12, 152; Walton 2020: 82-88). In other words, the presence of *kabya* threaten the notion that *bama*-ness could be the sort of bounded and singular category that warrants exclusive identification and carries particular privileges - a form of category that I position in the realm of law and Ikeya positions in a socio-political movement.

My experience reading through legal circulars and court reports for this dissertation confirms that the question of how people fit into the racial categories of Chinese and Burmese is never far removed from questions of how women fit into the roles of wives, widows, and daughters. Indeed, as will become clear in the next section, the strict divisions that the British courts enforce between Chinese and Burmese Buddhists is often a consequence of rulings that protect patriarchal property rights which are channeled through claims of racio-religious distinction as the only frameworks for colonial subjects to press rights claims under the terms of the Burma Laws Act.

In the following section I juxtapose two cases involving questions over the applicability of Chinese Customary Law in mixed Chinese-Burmese families to develop my argument that the

colonial court's reliance on a patriarchal and racialized vision of where property rights are vested enforced a binarized division of native and foreign Buddhist law. I take these cases as illustrative of the two-way relationship between the judiciary's investment in protecting property as an exclusively patriarchal domain and the conceptual collapsing of mixed families into a singular racial legal category. The first case involves a Burmese woman, Pwa Me, attempting to sue her Chinese-Burmese partner, San Hla, for maintenance payments after he allegedly abandoned her. The case turns on the question of whether San Hla, who generally practices Burmese forms of Buddhism, counts as a Burmese Buddhist or a Chinese Buddhist. I take San Hla's capacity to escape Pwa Me's maintenance suit as a Chinese Buddhist as an instance of the court protecting his patriarchal property right in Chinese-ness, despite his own Burmese worship, his mixed ancestry as Burmese, and Pwa Me's assertion of her right to the protections of Burmese Buddhist law.

The second case regards a suit over a remarried widow's estate. This case involves the uncommon partnership of Chinese woman, Ma Sonna, who remarried a Shan Burmese man after the death of her first husband, who was also Chinese. Following Ma Sonna's death there begins a battle over ownership of her estate between Sonna's daughter by her first marriage, Ma Pyit Ya, and her widower, Maung Po Maung. While the case is ultimately decided in favor of Ma Pyit Ya, that this decision comes by way of the court's reasoning that a married woman cannot legally own property under Chinese Customary Law suggests that even this putative feminist victory comes about through the further legitimation of Chinese-ness as an inherently patriarchal property status.

San Hla's Escape from Custom

One case that illustrates how personal law property status is conveyed through a

racialized property status is the 1914 case of *Pwa Me vs San Hla, alias Leong Foke Shu* (7 LBR 1914). The case was summarily dismissed with only a short judicial opinion authored, so details of the case are scarce, though telling. What we know is that Pwa Me was a Burmese Buddhist who cohabitated with the defendant, San Hla, the son of a Chinese father and Shan mother, for at least six years. During the time of their cohabitation, the pair had two children together (though one died young), but never held a marriage ceremony. When San Hla eventually left Pwa Me, she brought forward an order under criminal code section 488 alleging abandonment and seeking maintenance payments for her and her surviving child. That the pair cohabitated, had children together, and that San Hla eventually left are all accepted by both parties. The question confronting the court is whether or not the couple were legally married. If so, San Hla is liable for maintenance; if not, he holds no fiscal obligation to Pwa Me. The answer to the question hinges on whether cohabitation for a lengthy period of time is accepted as sufficient to establish a marriage.

By 1914, it was well-established even without undergoing marriage rites, lengthy cohabitation creates a presumption of marriage in Burmese Buddhist customary law. The prosecution representing Pwa Me subsequently shows that San Hla is a committed Burmese Buddhist: he frequently visited Burmese *pongyis;* performed Burmese Buddhist ceremonies upon the death of his child; and was a prominent member of a local Society for the Promotion of Buddhism. There is further testimony that San Hla underwent Burmese novitiation (*shinbyu*) as a boy, but the court considers this impossible to prove. Witnesses on San Hla's side claim that he has always followed "Chinese forms of worship," which the judge, Justice Twomey, readily accepts, though he does not detail what exactly these witnesses testified in his written opinion.

Twomey ultimately dismisses Pwa Me's petition, finding that she has failed to show that

San Hla has "converted" to the Burmese form of Buddhism. He cites as precedent another case, *Maung Tun Tha vs Ma Pu*, from five years earlier, quoting at length the written judgment of that case, authored by Justice Parlett: "It is a matter of common knowledge and experience that Chinamen long resident or born in this country adopt a Burmese name… there is nothing to show that the practices he followed differ from those followed by all Chinese Buddhists, whether in Burma or elsewhere" (7 LBR 1914: 271). Of course, in the present case (and indeed, in the original case Twomey is here quoting from), the Burmese Buddhist litigant *has* in fact shown that the practices that San Hla follows are specific to Burmese Buddhism; they are not followed by Chinese Buddhists in China. That other Chinese in Burma also follow Burmese Buddhist practices is taken as evidence that the two communities - the Chinese and Burmese - can share the same religious practices while still remaining distinct from one another. The substance of this distinction - whether they are ethno-racially distinct, as Chinese and Burmese; or religiously distinct, as Chinese Buddhists and Burmese Buddhists - is neither explicated nor, it seems to judge Twomey, important. The fact of that the Chinese and Burmese are distinct is common enough sense in his mind.

Of course, the naturalization of Chinese and Burmese difference becomes more curious when we remember that, in addition to practicing Buddhism in the Burmese way, San Hla is actually of mixed parentage himself, his mother being Shan.[77] That his Chinese-ness would be automatically taken as the most relevant for determining the man's legal identity here shows the operation of a principle of hypo- - or really, hyper - descent here. Or more specifically, and to use the frameworks I establish in this thesis, Twomey accepts the dominance of finding Chinese

[77] Recall from Chapter 1 that while the Shan are not ethnically *Burman*, they are treated in colonial law as *Burmese* Buddhists, see pgs 51-55.

personhood through the logic of lineage tracing, the blood-based approach to legal categorization that I identify in chapter 3.

This blood-based framework accepts that religious personhood is inherently a matter of paternal inheritance. Here, Twomey accepts the relevance of Chinese custom as a right San Hla holds through his father. Further, Twomey also accepts that San Hla's paternal right outweigh the rights Pwa Me would otherwise hold as a wife through Burmese Buddhist law. He writes: "As I find that San Hla is a Chinese Buddhist it is clear that the validity of the marriage alleged in this case must depend on the customary law applicable to Chinese Buddhists" (7 LBR 1914: 271). Twomey notes that for the court to accept San Hla - or any person of Chinese paternity - as Burmese Buddhist, the fact of his Chinese-ness would require positive proof of "conver[sion] to the Burmese form of Buddhism" (7 LBR 1914: 270), a standard that is largely impossible to prove to the court's expectation given the lack of conversion rituals in Burmese Buddhism. And even so, Twomey speculates that religious personhood perhaps should just be a simple matter of paternal inheritance: "Even if [San Hla's] conversion [to Burmese Buddhism] had been proved I doubt whether it would follow that San Hla should be held amenable to the customs by which the marriages of Burmese Buddhists are regulated" (7 LBR 1914: 271). Observing that "it is admitted that there was not even the semblance of a marriage according to Chinese custom" - as established in "Parker's work on Chinese Family law" - Twomey dismisses the case without considering whether the two should be considered married by Burmese Buddhist standards (7 LBR 1914: 271-2).

The case of *Pwa Me vs San Hla* is important for understanding the racialized nature of mixed-Buddhist law conflicts for two reasons. The first is that Twomey's judgment in the case forms a lasting precedent validating as common sense the notion that even when Chinese, or the

mixed descendants of Chinese migrants, assimilate into Burmese society, they will remain inherently distinct from the Burmese. The summary of Twomey's verdict clarifies that "A Chinaman or semi-Chinaman [*sic*] may adopt many Burmese Buddhist customs, yet remain a Chinese Buddhist" (7 LBR 1914: 270).

The second reason the case is important is that it connects to a broader narrative about how imperialism imperiled Buddhism. Historically, the subject of inter-marriages was a rallying point for early Burmese nationalist movements. However, these movements explicitly discussed inter-marriage as a function of the ways the British failed to protect Buddhist women in inter*religious* relationships. Organizations such as the Young Men's Buddhist Association built followings by capitalizing on narratives about foreign men, primarily Muslims, abusing Burma's lax customary marital rites to take in and then abandon Burmese women. These narratives typically cast Muslims in the role of the villainous abusers of trusting and welcoming Buddhists, at times even developing into widely circulated conspiracies about Islamic plots of world domination through miscegenation.

While nationalist narratives about plotting Muslims may have been overblown, the case of *Ma Pwa vs San Hla* illustrates how the British judiciary's privileging of paternal legal legacy did construct Chinese-ness as a 'property status' which could be relied upon to escape maintenance obligations to one's erstwhile family. San Hla's legal strategy here was not unique. In the decade before and after *Ma Pwa vs San Hla*,[78] similar defenses were used to either whole or partial success in at least five other cases[79] regarding similar marital disputes that were

[78] Refer back to chapter 2 for the history of jurisprudence here, especially the introduction of Chinese Customary Law by *Fone Lan vs Ma Gyee* in 1903 and the complications of it by *Phan Tiyok V Tan Yauk Pu* in 1927.

[79] *Tun Tha vs Ma Pu* (1916); *Thein Shin & E Chit vs Ah Shein* (1914); *Ma Shein vs Kim Sein* (1915); *Sein Kyi vs Ma E* (1916); and *Ma U vs Maung Kyin Htat* (1925).

described in high court appeals.

I want to be careful here that in laying out this argument, I do not create a false equivalency of legalized racial privilege between Chinese migrant subjects of colonial governance and the racial domination of colonizing Europeans. In describing San Hla's escape from the obligations to Ma Pwa that Burmese Buddhist law would impose upon him as a racialized 'property status' available to Chinese men, I am not suggesting that Chineseness was a racial privilege on the same footing as whiteness. Nor am I insisting that the logic through which racial categorizations are created works the same in intra-Asian racializations as it does between white/non-white racializations, whether Burma, in Southeast Asia more broadly, or anywhere else in the world. What I am suggesting is that the judiciary's routine rejection of the efforts of mixed-Burmese subjects, typically women, to claim the heredity rights ostensibly protected by the framework of the Burma Laws Act can only make sense if we recognize that the judiciary viewed legal status through the binarized and exclusivizing logic of race. I am not, then, describing a particularly Burmese, or Chinese, way of understanding the self and the other and the particular cultural understandings of difference and differentiation that are wrapped up in this worldview. Rather, I am describing an imperial project of legal rationality, wherein personhood is reduced to its most elemental bits so as to be made amenable to ever more simplistic categorization.

That this is *not* the 'native' worldview is visible in the ways we see society ordinarily function, when neither maintenance payments nor the fiscal windfalls of inheritance are on the line. This is what I showed in the last chapter by reading through the lines of legal circulars to describe how people like Ohn Ghine and Wun Pain Wain and others skirt seamlessly between different parts of their identities - embracing both Ganesh and the Buddha, or opting to raise a

daughter without exclusive concern for the family line while still venerating one's ancestors. But people act differently when high stakes come into play. In the case of San Hla we can still read between the lines to see a man who moves from Chinese worlds to Burmese ones, neither aspect of his self excluding him from access to the others. He can be both part of *thathana* organizations, visit *pongyi* along with the Burmese, and worship in the Chinese model. We can also see, however, that the categorical exclusions at play in the colonial courts create a powerful incentive for San Hla to express his Chinese-ness as a totalizing singularity, aligning himself with the predisposition of the courts to view identity through a lens of mutual exclusions and in so doing reinforcing that colonial prerogative ever further.

Ma Sonna and the Implicit Racialization of Chinese Women

One of the only cases that I have found where the question arises of the position of Chinese women marrying Burmese men is the 1923 case of *Maung Po Maung and one vs Ma Pyit Ya* (1 ILR-Rang. 1923). The case emerges out of a dispute over the estate of a Chinese Buddhist woman, Ma Sonna, who took two husbands in succession. Sonna first married a Chinese man, who goes unnamed, with whom she had a daughter, the respondent in the current case, Ma Pyit Ya, around 1910. Following the death of her first husband, Sonna married Maung Po Maung, a man who is ethnically Shan but considered as a Burmese Buddhist in the terms of the court (again, see pages 54-56 for the position of non-Burman minorities as 'Burmese'). With Maung Po Maung, Ma Sonna had a second daughter, who is listed as a co-appellant but goes unnamed. Following Ma Sonna's death sometime in the late 1910s or early in 1920, Maung Po Maung engaged in arbitration wherein he entered into an oral agreement with Ma Pyit Ya (presumably through her guardian) that divided the estate between the two. Maung Po Maung

applied to have this oral agreement filed in court, but when this application was denied (for unspecified reasons) he filed suit in the District Court of Bago to settle the estate. In the Court of First Instance at Bago, Ma Sonna's estate was divided into three parcels of equal value wherein each one-third parcel would be owned by a different heir: one by Maung Po Maung, one by the daughter of Maung Po Maung and Ma Sonna, and one by Ma Pyit Ya. Upon this division, Maung Po Maung filed a further appeal to the High Court, to which Ma Pyit Ya (through her guardian) filed a cross objection seeking the entire estate on the grounds that Maung Po Maung and Ma Sonna were not married.

The central dispute in the litigation is whether Ma Sonna is a Chinese Buddhist or a Burmese Buddhist. Maung Po Maung's side, argued by the Burmese lawyer Ba Si, is that the pair wed through their lengthy cohabitation, a form of customary marriage recognized by Burmese Buddhists, and through her marriage to him as a (Shan) Burman Buddhist, Ma Sonna became a Burman Buddhist herself. For Ma Pyit Ya, the British lawyer Robert Giles argues that the standard of accepting Burmese customary marriage through evidence of lengthy cohabitation should be thrown out in instances of interracial marriage as it would establish an impossible precedent that would also affect mixed Burman marriages with Hindus and Muslims. Ba Si, in reply, argues that the enshrinement of Chinese Customary Law is untenable in Burma, given the higher status of women in Burma relative to China: "The Chinese Customary Law refers to conditions in China. Women are held in low regard there. Here they are almost like Burmans" (1 ILR-Rang. 1923: 165), offering a secondary rationale for accepting Ma Sonna as a Burmese Buddhist.

This case departs from normative patterns of Chinese-Burmese Buddhist litigation in a number of important ways. Unlike the majority of cases over the position of Chinese Customary

Law in Burma, which involve considered questions of a man's racio-religious status, the authored judgment scarcely considers the how Ma Sonna's social, cultural, or religious life would impact her personal law status. Usually, the written judgments offer some sense of the evidence involved in determining whether a person was a Chinese or Burmese Buddhist: where they worshiped, what religious rites they received as children and adults, and how they described themselves to others, for instance. Here, the sole evidence acknowledged is that Ma Sonna did not, during her marriage to her first husband, deviate from his assumed religion:

> It was common ground that Ma Sonna's previous husband was a Chinaman [sic] who followed the Buddhist religion as practiced by Chinamen [sic], and that Ma Sonna was a Chinese woman who, at any rate while she was married to her Chinese husband, followed the same religion (1 ILR-Rang. 1923: 166).

This is the extent to which we hear how Ma Sonna may have considered her religious status. The unstated assumption is that her personal religious status would simply follow that of her husband. Implicit here, as well, is the idea that a woman's personal law status is not an independent possession, but one derived from the men in her life, whether her father or her husband.

Indeed, the basic argument that Maung Po Maung's side advances is that upon her marriage to Maung Po Maung, Ma Sonna effectively converted to Burmese Buddhism. Ba Si states: "[Ma Sonna's] second husband is a Burman Buddhist and by marriage with him the wife became a Burman Buddhist" (1 ILR-Rang. 1923: 163). Note that this is not a claim of evidentiary deduction; Ba Si is not saying that a marriage between a Burman Buddhist and a Chinese Buddhist can only be valid if one of them converts to the other's form of Buddhism. Rather, he is saying that the fact of the pair's marriage serves as evidence of Ma Sonna's conversion because her religious status does not exist independent of her husband. As laid out by Ba Si, this argument is rejected. Heald, the authoring judge in the case, finds that an alleged

conversion must be affirmatively proven, rather than assumed to flow through marriage. But in baldly accepting that Ma Sonna is a priori a Chinese Buddhist, whether owing to her father's or her first husband's heritage rather than any effort to establish evidence of her religious personhood, the court accepts the basic premise that women lack an independent racio-religious personhood.

In accepting Ma Sonna as a Chinese Buddhist, Heald also effectively declares her incapable of independent property ownership. Giles, for Ma Pyit Ya, argues that as a Chinese Buddhist cannot independently administer her first husband's estate. He begins:

> Ma Sonna's estate… must be divided according to Chinese Buddhist law. But what was her estate? The estate of her deceased husband was not her estate; the child of the marriage would be entitled to the whole of the father's estate subject to the widow's right of maintenance. The widow could not make any profit out of it (1 ILR-Rang. 1923: 163).

On the authority of Chinese law works by the colonial agents Jernigan and Alabaster, Heald determines that according to Chinese Customary Law "when a man dies his property… is equally divided among all his sons, that daughters succeed only when there are no sons, and that the widow succeeds only when there are neither sons nor daughters. If there are sons or daughters… the property vests not in [the widow] but in the children" (1 ILR-Rang. 1923: 168). "Ma Sonna," he continues "was not entitled to any share of the property left by her Chinese husband" (1 ILR-Rang. 1923: 169). In other words, Heald accepts that Chinese Customary Law views widows not as autonomous possessors of their own financial tools, but as mere conduits through which patriarchal possessions are temporarily stalled until they can be taken over by more capable parties, preferably sons but certainly daughters in favor of any other men a widow might subsequently marry.

There are a few observations worth making here that clarify how an ostensible legal victory for Ma Pyit Ya comes about only through a broader project that reduces mixed Buddhist

women's standing as independent litigants in the courts. The first is that, even as it occurs postmortem, the court's thorough dispossession of Ma Sonna of her whole estate is only possible if we recognize how the court validates race as a patriarchal property status. That Ma Sonna's first husband has his estate protected first from his wife and second by another man is a racialized privilege available to him as a Chinese man. Long gone, he can rest in peace knowing that the courts will see to it that his lifetime of work will not go towards providing for anyone but his own heir.

Second, in so validating a patriarchal interpretation of Chinese succession rules, the court also validates contemporaneous narratives about how Buddhists necessarily suffer in the legal gaps created by intermarriage. While the circulation of such narratives in the early 20th century generally pondered the case of a Burmese Buddhist woman abandoned by a foreign (typically Muslim) man, here we see Maung Po Maung and his daughter as the injured parties. Upon determining that Ma Sonna was a Chinese Buddhist and that therefore her first husband's estate falls entirely to Ma Pyit Ya, Heald moves on to describe how he believes the property in question should devolve. We are treated to two full pages inventorying moveable and immoveable property, largely real estate: a house with a detached garden, three tracts of paddy land, an iron safe and almirah, land in Bwetkyi East Kwin Sabachon Circle, the title to a tract in Kali North Kwin Pyuntaza East Circle, etc. While Heald does not describe either side's current living situation, we are given the impression that Ma Sonna's main home, which she shared with both her first husband and Maung Po Maung, is granted to Ma Pyit Ya, effectively dispossessing Po Maung and his daughter in favor of a ten-year-old (1 ILR-Rang. 1923: 172-3).

And here, too, we see something that feels very unfair to Ma Pyit Ya, who has otherwise done quite well, materially speaking, in this suit. In so determining that Chinese women hold

nothing of their own, that their property is fully owned by their husbands, we see Ma Pyit Ya dispossessed of her mother. Indeed, other than some marginal tracts and a piece of paddy land inexplicably put in her name, it seems that the only thing the court determines Ma Sonna held as her own was her jewelry, all of which would now go to Maung Po Maung. While Heald notes that there may be exceptions in the case of any piece which was promised to Ma Pyit Ya by her mother during her lifetime, he does not note that there was any such promise, just that it remains theoretically plausible. In determining that Ma Pyit Ya holds everything, now, as a product of her paternal descent, Heald also denies that there could be any material connection between a mother and her daughter under Chinese custom.

Conclusion

Drawing on Cheryl Harris' insights on how whiteness operates as property, this chapter has argued that approaching mixed Buddhists through the concept of race illuminates the stakes at play in colonial distinctions of Asian populations in ways that remain hidden in both Marxist approaches to race-as-stratified- labor (Campbell and Prasse-Freeman 2021) and critiques of race as a west/rest relationship. To reiterate, in understanding race - *as race* - in Southeast Asia, means turning our attention to two things: the work that courts do to vest and enforce divergent property status regimens in different subjects; and the processes through which both the courts and other subjects, such as litigants, patrol access to these subject categories. In distinction from ethnicity, race emerges out of the court's enforcement of both who has access to which racial categories and the specific rights that are facilitated or denied through those categories.

Returning to the terms used by Harris and Bhandar, I argue that recognizing race as status-property clarifies how the Burma Laws Act's organization of rights through the exclusive

juridical categories of ‘Chinese-’ and ‘Burmese Buddhist’ dispossesses those that in fitting into both have a place in neither. If the last chapter showed the connections forged across these putative opposite categories, here we see the price paid by that those who lived in this inbetweenness paid when real property is on the line and the ambiguities of intimacy, mixing, and self-definition are eschewed for the clarifying singularity of race.

Though in the colonial Burmese context race is not read upon the body, as most discussions of race in contradistinction to ethnicity in American contexts presume (and, as we saw in this chapter’s introductory vignette, racial distinction in contemporary Burma is often voiced), the judicial ascription of Chinese-ness nevertheless discloses a biologized imagination of racial heredity. Here we see the limits of approaching intra-Asian distinctions as ethnicity when we enter the space of colonial law. To use the epistemological frameworks I establish in this thesis, I argue that competing interpretations of belief and behavior compel the courts to define religious personhood through patriarchal blood. This emerges as a substantive privilege for those who are granted recognition as Chinese men, whatever their actual ancestry may be. The courts’ protection of their Chinese-ness as a property-status dispels competing claims that Burmese-ness places on their inheritances and estates through claims advanced by their sisters, wives, and mothers.

In this chapter, I have shown that a process of religious racialization constructs an idea of Chinese-ness as a particular patriarchal property status that erects hard boundaries around those who live in the in-between. I have illustrated in this chapter that Burma’s colonial courts largely validated Chinese- ness as a property status available to men and inescapable for women. That is, the operation of religious racialization generally subverts women’s assertions of their own rights claims. But women did not simply accept the remediation of their rights without a fight. The next

chapter considers how mixed Buddhist women litigants sought to assert competing visions of property status in the colonial courts.

Chapter 6

Heeding the Counterclaim: Understanding Litigation as an Act of Citizenship

The British did not decide what it meant to be Buddhist - or Chinese, Burmese, 'Kalai,' or anything else for that matter - in a vacuum. They responded to claims put forward by colonial subjects who were both actors in their own right and authors *of* their own rights.[80] And while, as the last chapter showed, I am critical of the imperial preference for colonial ethnographic documentation over subject claims of self-determination, that colonized actors did over the entire period of foreign rule argue against the courts demanding recognition of who they believed themselves to be and how they wanted to be seen is significant and deserves recognition.

When I began working through legal circulars looking for cases involving Sino-Burmese Buddhists I imagined my research was interrogating questions of Chinese belonging in Burma. What did the historical record show about Chinese religious practices in Burma? What did it say about the social worlds of Chinese-Burmese families? Did it portend the eventual repudiation of the Chinese as 'Guest Citizens,' or could it otherwise lay out a case against that narrative? For a long time, I was looking at what I read as evidence for a question people weren't asking; I was looking for proof of fraud, of lies, of bias, of moments where I could make a clear statement about whether something was definitively Chinese or Burmese or something totally new that I discovered and could lay a scholarly claim upon to pitch myself as a genuine, qualified academic. I wasn't paying attention to how people saw themselves; I wasn't listening to what people were actually saying; in short, I wasn't taking people seriously.

[80] Indeed, while this is true wherever one looks, the structural performance of litigation really underscores this point; judicial opinions on who counts as what type of person only exist as post facto reflections on the claims that various subjects are actively advancing.

At a certain point I realized that my dissertation would be very boring if it were simply a rectification of judicial error. Finding something like 'the court determined that this person was Chinese but they should have seen that he was Burmese,' or 'the court's refusal to recognize adopted shows that they routinely denied Chinese migrants' legitimacy as Buddhists in Burma' takes the easy out of showing that colonialism was a rapacious system that denied people their humanity - something that's certainly true and worth reminding the world of, but fairly well-covered terrain by this point in academic theory. It would come too late to affect substantial justice for those who were wronged. Worse, in seating myself in the judge's throne and granting myself the authority to even just imaginatively adjudicate people's lives, rights, their identities, I would be taking the mantle of colonialism upon myself. I began to reread transcripts and circulars and judicial opinions and all these materials my dissertation is based on with a view to sit and actually reckon with the claims people put forward. I gave up on parsing through witness statements and judicial opinions to find where exactly were the moments of disconnect; I lost interest in scrutinizing litigants for clear instances of fraud and manipulation. When I stopped trying to play the cop, I began to recognize that treating people's legal claims as some sort of performance of authenticity blinded me to what people were actually doing when they went to court: challenging a system that denied the wholeness of their humanity, their 'sovereign humanness' (Seshadri 2020).

Section 13 of the Burma Laws Act required people to be legibly Buddhist, Hindu, or Muslim under standards set by the colonial power to claim rights they felt they were owed. This legal framework compelled people to place themselves into simplistic and discrete categories of identity that may have had no practical relevance for them until the moment they entered the courtroom. People worked to show how their beliefs, their actions, and their ancestry entitled

them to the rights and recognitions of the identities they claimed. It is unquestionable that the legal frameworks designed to organize rights by religion established rigid boundaries around who could access the legal rights or privileges of different religions. It is also true that this combination of rights and boundaries empowered claims of singularized personhood and ethnic homogeneity as most simple and assured way to access rights that the courts would protect. As I strive to demonstrate in the previous chapters, the legal frameworks by which the British practiced law in Burma created a normative expectation that people would stay in their racial lanes, so to speak, and imposed costly burdens on those who drifted outside of them.

But if the British courts created this assumption of racial homogeneity as a legally onerous, normative expectation, it never achieved hegemony, at least not in the Gramscian sense of the term. People consistently pushed back against the simplicity that the British optimistically imagined they would find. The sheer volume of cases that contest the racio-religious typologies the courts operate through attests to the vigorous resistance with which litigants challenged the categories thrust upon them. From the earliest moments that migrants arrived in Burma, they made meaningful connections and maintained complex networks of community. People actively fought against having those connections discounted, dismissed, or denied by a European conception of personhood that could not handle the pluralities that defined their lives.

When I began to recognize what it meant that over seven decades, up until the final days of colonialism, dozens of litigants pushed back against the establishment of a precedent that would once and for all determine what kind of Buddhists ‘foreigners’ in Burma could be, I began to recognize, too, that these people weren’t just pushing for payouts. They were pushing a mechanical system to recognize them the way that they wanted to be seen. And I see, in these efforts, a form of citizenship at play.

The fact of colonial subjugation makes describing litigation efforts as a practice of citizenship an awkward proposition. It is perhaps oxymoronic to speak of *citizenship* under colonial conditions: the colored colonized were not citizens on equal standing with their white overlords, but subjects living under alien rule; how can this truly be citizenship if it is not founded upon sovereignty and self-determination? But citizenship is neither inherently generated from political status nor simplistically reductive to some calculus of political power. Those who are said to possess citizenship might be denied its substantive offerings. Those who are denied the protections that state recognition might offer can still generate power through other channels. Further, recognizing practices of citizenship under conditions where it is formally denied is important because in and of itself citizenship is neither a guarantor of political rights nor a panacea for social domination. Citizenship-like practices under conditions of imperial subjecthood raise questions about the foundations of citizenship in post-colonial societies. It is therefore valuable to ask questions like, How do colonial contexts shape practices of citizenship? How do colonial agents idealize the transformations of personhood their imperial endeavors bring to their new subjects? And, how do colonial socio-political structures limit the liberating potential of a structure of citizenship upon which imperial projects legitimate their right to rule?

On Law, Citizenship, and Colonial Subjecthood

In this chapter, I seek to forge new connections between anthropologies of citizenship and political and legal anthropology by reading the claims made by mixed Buddhist women in particular as "acts of citizenship," or 'events through which subjects constitute their own citizenship' (Isin and Nielsen 2008; Isin 2008). I adapt Mamood Mamdani's distinction between citizens and subjects to the context of colonial Burma and further adopt Balibar's location of

citizenship as membership in a political community to clarify what I mean by speaking of a 'citizenship' under colonial conditions.

Since the early 1990s, anthropologies of citizenship have placed great emphasis on the concept of 'cultural citizenship.' Pioneered by Renato Rosaldo (1994a, 1994b) and Aihwa Ong (1996), cultural citizenship emphasizes the multiplicity of ways that citizenship can be experienced as a corrective to the presumption that citizenship is both solely and automatically a state granted legal status. Per Rosaldo, cultural citizenship is the "right to be different… with respect to the norms of the dominant national community without compromising one's right to belong" (1994b: 57). Ong challenges Rosaldo's unilateral vision by emphasizing how the work of fitting into the nation as a citizen - even one who successfully asserts their rights to difference - does a reciprocal work upon the culturally-claiming citizen: citizenship is a "cultural process of 'subjectification,'" she writes; and the "often ambivalent and contested relations [one forms] with the state and its hegemonic forms… [both] establish the criteria of belonging" and produce new cultural practices and beliefs through this dialogic interaction (1996: 737-8).

Their differences aside, Rosaldo and Ong's shared project of shifting discussions of citizenship away from the question of formal status and into the field of social processes and subjective effects remains influential within anthropology. Scholars working in this domain have since applied the concept of cultural citizenship to a variety of social space, introducing concepts like hydraulic (Anand 2017) or water (Paerregaard et al 2016) citizenships, sexual citizenship (Castle 2008), biological citizenship (Nguyen 2010; Petryna 2004; also, Ticktin 2006), and in a similar domain biocultural [Creary 2018] and cosmetic [Jarrin 2017] citizenships, among others. What all of these share is the location of citizenship in a process of becoming, which either implicitly or explicitly centers the individual as the citizen-in-formation.

Isin and Nielsen challenge this focus in proposing to look instead to the acts through which "subjects constitute themselves as citizens" (2008: 2). Rather than prioritizing the state or a hegemonic national culture as the producer of some normative ideal of citizenship to which subjects either evade or acquiesce, Isin and Nielsen orient us towards those moments where particular acts

> disrupt habitus, create new possibilities, claim rights and impose obligations in emotionally charged tones; pose their claims in enduring and creative expressions; and, most of all, are the actual moments that shift established practices, status, and order (2008: 10).

Further, Isin and Nielsen suggest that approaching citizenship through 'acts' offers a useful lens to consider how difference is imagined, articulated, and empowered. They note that "when acts of citizenship produce strangers aliens and outcasts, they emerge not as beings already defined but as active and reactive ways of being with others" (2008: 7).

It should be said that anthropologists do do the work of turning towards points of resistance and rupture that Isin and Nielsen call for. For instance, Holston's study of insurgent 'autocitizenship' (Holston 2008) and Lazar's interest in rebel citizenship (2008) both center the active restructuring of an idealized way of being citizens that worked dispossession upon the urban poor in their accounts of Brazil and Bolivia, respectively. But in foregrounding the 'act' over the 'process' of citizenship, Isin and Nielsen also ask us ignore for a moment the ways that citizenships *mold* subjects - or subjects auto-mold themselves - and instead take seriously the particular *objectives* that such acts call for, and the imagined futures that are embedded in these ethical visions.

It is in line with this call that I conceive of mixed Buddhist women's litigation in this chapter as 'acts of citizenship.' I ask 'what are the social arrangements that litigants seek to create through litigation,' 'what is the basis upon which they assert their right to create those arrangements,' and 'what are the 'active and reactive' ways that these litigants seek to be an

other within the racialized legal space of colonial Burma?' To answer these questions, I further approach the meaning of citizenship and community through the work of Mamood Mamdani and Etienne Balibar, and it is to them that I now turn.

*****

In the mid-1990s, Mamood Mamdani reframed debates within the anthropology of citizenship by asking not *what* the varied rights that citizens versus subjects bear, but rather from whence each derive their relative rights. Mamdani sees the critical difference between citizen and subject in the political community each of these statuses positions their bearer within: subjects hold rights through membership in a tribe, while citizens hold rights through membership in a nation (2018: 293). This position emerges from his interest in British structures of indirect rule in South Africa and Uganda. Rather than investing the financial and manpower that would be required to subordinate these entire territories to direct British oversight, the British established a system of native authority for rural areas whereby local chieftains were deputized to administer customary law for all members of their tribe. Tribal members, who bore specific rights according to the cultural custom of the tribe in question, were subjects of their chieftain, who was empowered to rule idiosyncratically and administer personal justice. This system of rule contrasts to the urban areas that the British directly administered. In urban areas, the British established a bureaucratic judiciary with jurisdiction over citizens (which was a racially exclusive status available only to whites). This judiciary, marked as the modern antagonist to the anciency of the native authorities, ruled in accord with the impersonal and universal aspirations of civil law.

Mamdani's formulation of subjecthood and citizenship positions these statuses along three axes: the type of community that one belongs to (respectively, subjecthood is belonging to

a cultural community, while citizenship is belonging to a political community); the source of law's substance (ancient codes versus modern legislation); and both the figure and the disposition of law's administrator (personal chief versus impersonal bureaucrat). The processes by which the British judiciary in Burma administered Buddhist law through the Burma Laws Act fits imperfectly into Mamdani's definition. While both the community and the source of law marks Buddhists as subjects, that it is an ostensibly impersonal and objective civil judiciary that administers the law would ostensibly position them as citizens.

It is in contesting their exclusion from the first two axes of Mamdani's formulation of citizenship - the nature of the community through which they bear rights; and the source of their law's substance - that I want to consider the litigation of mixed Buddhist women in colonial Burma as acts of citizenship. Unlike the immigrant Asian litigants Ian Haney-Lopez considers in his analysis of the American context, these women are not suing for citizenship in the strict sense that they contest their exclusion from the category of whiteness and seek its redefinition so that they can be placed within it. Rather they are effectively suing to force the court to acknowledge that being Asian and Buddhist is compatible with the imagined ideals of modernity in which citizenship is rooted. This effort involves, first, attempts to reconceptualize the terms through which they are conceived of as members of a community to assert that they part of a political rather than cultural community. Second, it involves an attempt to reframe their source of law as Buddhists to prove that Asian legal traditions are just as compatible with the modernist demands of citizenship as European law is.

Describing political status under colonialism through the discourse of citizenship risks projecting an unwarranted optimism about the substantive rights available to those who were racially excluded from the status of the citizen. If the basic premise of citizenship is that it marks

one's equal belonging in a community of their own definition, it is perhaps more appropriate to engage the term 'subject,' which both indexes the restricted rights available to the non-citizen colonials and colonized alike and marks the unilateral power the empire held in defining this political status. But if we take citizenship seriously as the 'right to have rights' then we must be open to seeing how rights are generated *from those who are denied them*. The simplistic binary that citizenship means having rights and subjecthood means having none portrays the extension of rights as a magnanimous gift from the powerful, obfuscating the legal and political concessions that colonial subjects took through their own struggle. If we accept that for neither the citizen nor the subject it is the term itself that facilitates their relative privileges and disadvantages, the question then becomes where we locate the critical disjuncture of the two.

Indeed, both anthropology and political philosophy (among other disciplines) question the simplicity of the citizen non-citizen binary. Particularly troubling for this dichotomy is the figure of the citizen who is legally recognized as such but lacks some (or even all) of the rights that constitute that status, a figure that philosophical anthropologist Etiene Balibar terms 'the nominal citizen.' Voting rights are often seen as a clarifying example of the nominal citizen (i.e., Pfeifer 2020). That the philosophic foundation of citizenship lie in the ideal of self-government suggests that the capacity to choose one's government is the most fundamental signifier of this status. But many citizens face restrictions in exercising this right, whether by limitations on their capacity to exercise this right (i.e., the denial of suffrage to felons), an inability to access it (i.e., individuals' whose work, family, or other commitments make it impossible to cast a ballot), or because suffrage is not considered a universal right of citizenship (i.e., the historic exclusion of all but property owning white men in the US). By disproving the lie that political rights automatically derive from citizenship status, then, the figure of the nominal citizen compels us to

reconsider this formulation: either the state is not the guarantor of citizenship; or the political rights through which citizenship is experienced are not generated through the state. Read pessimistically,[81] interpreting this disjuncture as evidence of the former calls well-warranted attention to the role that the state has often played in restricting rather than generating citizenship and its attendant rights.

But a more optimistic interpretation would instead call attention to what Balibar points to as the 'revolutionary' or 'insurrectionary' potential of a citizenship that is enacted through communities of political practice, rather than simply granted by the state. As Balibar sees it, it is the community rather than the state that determines who belongs within the folds of citizenship. In this reading, the state is neither the guarantor nor the arbiter of citizenship; rather it is only a vehicle through which a self-constituting community of citizens organizes the work of living together. This point warrants some caution. If characterizing the self-constituting nature of citizenship-through-community as revolutionary sounds hokey in all the ways that uncritically emancipatory political rhetoric can become vapid self-congratulation, then I will point out that this communal formulation of citizenship is not inherently a better guarantor of autonomy and freedom than a constitutional definition of it. Under this rubric, a self-constituting community of white ethno-nationalist chauvinists can determine that only men of European ancestry warrant recognition as citizens. The important differentiation is not that a particular construction of citizenship as derived from the state or from the community is inherently more expansive than the other; rather the critical difference is whether either of these foundations of citizenship facilitates more or less space for politics than the other. If Balibar is right in positing that communal constructions of citizenship are more open, then the question of what citizenship

[81] See for instance Ortner 2016 re. the trend towards 'dark anthropology' since the 1980s.

means depends on what those within the community of citizens engage each other to work towards: an expansion of that community, or a retraction of it.

I lay this point out in order to frame a central contention I make in viewing mixed Buddhist women's litigation efforts as a practice of citizenship: the litigants I describe in this chapter are not only petitioning the state to recognize them as the people they claim to be; they are mobilizing their community's recognition of them as members to demand that recognition. They organize witnesses who vouch for them, speaking back to the colonial state in showing that these ostensible non-citizens really do meet all the criteria of belonging that the colonial state demands for all of the varieties of ways that the colonial state is capable of recognizing Burmese Buddhists. Witnesses testify that litigants attend the right temples, organize donations for the right charitable causes, conduct the right rites, join the right social organizations, wear the right clothes, eat the right food with the right people, and in so many other ways just do the right work to warrant their recognition as Burmese Buddhists. That they also might engage other spiritual, cultural, or social commitments - say by maintaining ancestral Confucian or Hindu practices, or also participating in ethnically specific social organizations - does not discount them from belonging to a Burmese Buddhist community, and it should not then discount them from access to the rights warranted Burmese Buddhists. In working towards this recognition, I see the work these litigants are doing as a struggle to shift the terms of what it means to be a Burmese Buddhist from a colonial vision of ethno-religious being towards a matter of one's socio-political commitment to their community whether that be at the scale of their neighborhood or their nation.

Reading the record of mixed Buddhist women's claims to Burmese Buddhist law through Mamdani's historical insights and Balibar's philosophical provocation offers a view into an

unappreciated site in the struggle for belonging among Burma's interstitial non-citizens.[82] These are not exactly nominal citizens as Balibar defines them: they are not recognized citizens who are nevertheless unable to mobilize that status towards their goal; they are subject non-citizens who *are* able to mobilize their networks towards their goals. That they do not, for the most part, ultimately succeed in achieving that recognition renders this project ambiguous. I say this because the denial of their desired status is not produced by a unilateral decision of the state to deny them any recognition at all but rather through a conjuncture between the state and the competing litigant to recognize them as something else. In a sense, rather than being denied citizenship at all, they are being granted a form of citizenship that is not of their own choosing, an imposition occasioned by the success of a competing regime of (racio-religious) citizenship.

I therefore seek in this chapter to bring anthropologies of citizenship and law together in approaching the rights claims advanced in mixed Buddhist family law conflicts as political action. In specific, I document in this chapter the efforts of a variety of women who render themselves as Burmese in different ways to assert their rights to Burmese Buddhist law. The litigants I consider include native born Bamar Burmese women, foreign migrants, and women of mixed ancestry born in Burma. In this chapter, I will show how women asserting their qualification as Burmese Buddhists contest the terms of their colonial subjecthood in two ways. First, they challenge the court's prevailing definition of Burmese-ness as an ethnonational status available only to indigenous subjects. When mixed and non-Burmese women, whether born in Burma or abroad, assert that their personal law is Burmese Buddhist law, they advance a claim of

[82] Or to use the terms of the Burmese state, those who would become 'guest citizens' (ဧည့်နိုင်ငံသား, *ayenaingngantha*) under Burma's 1982 citizenship law. While the official translation of the term is 'Associate Citizen,' I prefer the term 'guest citizen' to reflect the ethno-nationalist connotations of the term ဧည့် *aye*, 'guest,' which explicitly positions those holding this status as external interlopers.

local belonging that demands the colonial state recognize their connections to Burma viz-a-viz their connections to Burmese culture, society, and religion. This is a direct affront to the 'plural society' imagined by the most influential Orientalist intellectuals working to shape colonial policy at the time. In attempting to frame what it means to be Burmese as a social, or even political, commitment these women attack the Eurocentric notion that a simplistic calculation of birth and ancestry are definitive of where and among whom one belongs.

Second, women's assertion of their right to Burmese Buddhist law in mixed Buddhist partnerships challenges a general patriarchal resolve through which the judiciary organizes the court as a vehicle for the preservation of estate property rather than the facilitation of subject's rights. In a majority of the cases I consider, women press the court to recognize them as Burmese Buddhist because the alternative source of law, whether civil or another form of Buddhist law, would dispossess them. In generally siding with arguments that either define women through their father's or husband's ancestry or view men's legal claims as superseding those of women, the judiciary evinces its commitment to preserving patriarchal control over large undivided estates over its commitment to protecting the ostensible rights of its subjects. Nevertheless, and despite their low success rate of those advancing such claims, women who challenge this norm advance an alternative vision of law wherein the state take seriously its commitment to justice for women rather than sell them out for the preservation of patriarchal capital. Through their litigation women contest the terms of their membership within the colonial polity, demanding the judiciary abide by the conditions that the empire set as the terms of its domination. In advancing their claims as Burmese Buddhists, these women seek to bind the British courts to the terms of the Burma Laws Act. Read in light of the prior point, I interpret this as an effort to compel the colony to conduct itself in accord with the laws through which it is constituted rather than

through the arbitrary racial and gendered prerogatives of those holding its offices.

A few points regarding my methodological decisions are warranted before I begin. Legal practice is a narrow but revelatory forum through which to illuminate both the potentials and limitations of citizenship under the constraints of colonialism. In any society, 'lawfare,'[83] or the engagement of social conflict through legal structures, can be expensive, time consuming, and esoteric, requiring the mastery of opaque language or other specialized skills. The fiscal, social, and personal costs of lawfare can be especially onerous under rigorous bureaucracies. The costs associated with the pursuit of courtroom justice often mean that the formal legal practices documented in the records of colonial bureaucracies only capture a fraction of the sum of total legal practices that might be happening in a society. Such documentation is therefore also subject to a selection bias, where the legal intrigues of elites who have the means to pursue their conflicts through this costly forum are more visible than those of the rest of society. As such, I urge caution against uncritical extrapolation from the empirical materials I draw on in this chapter. The practices documented here may not be universally available to all sectors of colonial Burmese society; nor may they be perfect representations of elite citizenship practices elsewhere.

Still, an advantage of studying citizenship processes through litigation is that court documents offer insight into the internal deliberations of otherwise inaccessible colonizing minds. Colonial states produced masses of bureaucratic legal documents for the purposes of making their projects of domination more effective, more internally coherent, and more externally justifiable. Importantly, in the case of legal documents, these records also reveal the imperial logics through which ephemeral social practice is translated into cultural, ethnic, or

[83] Carlson and Yeomans 1975; For Anthropological uses of the term, see Comaroff 2001, 2018; Telle 2018. For further exploration of the terms use in legal studies, see Scharf and Pagano 2010; Scharf and Anderson 2010. For a discussion of the relevant concept of 'SLAPP suits,' see Canan 1989; Kosseff and Shafer 2022.. For the use of the concept of lawfare in military contexts, see Dunlap Jr. 2008, 2017.

religious significance, as well as what types of practices or the opinions of what types of social actors are privileged in these imperial frameworks. Through careful attention to the imperial perspectives and prerogatives revealed in such documents, historical legal ethnography offers a methodology capable of 'studying up' (Nader 1972; see also Abrams 1988; Gershon 2011) an empire that is otherwise typically opaque and inaccessible.

Citizenship and the Question of Communal Recognition

Two separate cases suggest how mixed Buddhist women and Burmese Buddhist women in mixed partnerships could deploy claims to Burmese-ness against patriarchal claims over them. As documented in prior chapters, that the courts would recognize such claims was not always a given; the courts generally deferred to 'blood-based' epistemology for categorizing anyone with foreign roots, particularly the Chinese. That in some cases, like the ones detailed here, women were able to resist men's claims over them through the courts I believe reflects their capacity to frame these petitions in terms of citizenship rights, rather than reflecting any modern or liberal wisdom of those courts. Perhaps most tellingly in this regard, in neither case do the authoring judges seem to actually validate the notion that women *should* have rights claims that win out over men's, only that in each of these specific cases the men wholly fail to give the courts sufficient evidence that they should have the rights they claim. The two cases took somewhat different routes, with the first of these hinging on technical legal arguments and the other on the litigant's capacity to mobilize a broad community to support her claims. These cases are the 1908-9 case of T. Wain Shain V Ma Hnin Hlaing and the 1915 case of *Saw Maung Gyi vs Thu Kha*. Both of these cases feature Buddhist women, mixed Chinese-Burmese and Burmese respectively, who establish witness testimony from representatives of both Chinese and Burmese

communities that help them defeat men's attempts to sue them to restore their conjugal rights over the women in question as wives.

The earlier case, *T. Wain Shain vs Ma Hnin Hlaing* (4 BLT 1911), comes out of the Chief Court of Lower Burma in Rangoon. T. Wain Shain was born in China in 1887 before emigrating to Burma at the age of 8, where he lived in the southern delta town of Bassein (Pathein), first with his uncle and, following his uncle's death, with the family of Ma Hnin Hlaing, a girl only described as being Burmese Buddhist and three years older than T. Wain Shain. It's unclear whether there was any prior connection between T. Wain Shain and Ma Hnin Hlaing's family - Ma Hnin Hlaing's mother, Ma Nyun, was married at the time to a Chinese man, Ah Lim, though whether this man was Ma Hnin Hlaing's father or bore any direct relation to T. Wain Shain is never stated; T. Wain Shain is described as a cousin of Ma Hnin Hlaing, but it is unclear whether this connotes a blood relation or simply reflects the family's adoption of the boy. Sometime around 1902, Ma Hnin Hlaing, then 18 years old, "misconducted herself with another man and became pregnant" (4 BLT 1911: 125). This fact apparently caused Hnin Hlaing's mother and sister great concern, because upon learning of Hnin Hlaing's pregnancy the pair conspired to force a marriage between Ma Hnin Hlaing and T. Wain Shain. While T. Wain Shain, then only 15, initially rejects their proposal, they eventually wear the boy down and he agrees to the marriage, though it is implied that he does not at the time know that Hnin Hlaing is pregnant.

There is a revelatory gap between the court report's documentation of the cajoling required to get T. Wain Shain on board with the marriage and the comparative silence on how Hnin Hlaing felt about the matter. The court seems to presume that Hnin Hlaing would simply accept her mother's plan to marry her off to cover up the shame of her pregnancy. It is only in minor details - that Hnin Hlaing was guarded in a room by her mother's husband before the

wedding; that Hnin Hlaing's mother claimed the girl was planning to elope with a Burman, possibly the father of the child, to convince T. Wain Shain to marry the girl - that we gather some idea that Hnin Hlaing may have been repulsed by the idea of marrying him. Given this inauspicious start, it is perhaps not surprising that the pair do not last long together. Following their marriage, they lived together for a few months before T. Wain Shain is sent off to school in Rangoon and Ma Hnin Hlaing remains in Bassein to have her child.[84]

When, four years later, T. Wain Shain returns to Bassein he finds that Ma Hnin Hlaing no longer wants anything to do with him, a slight that he attempts to remedy by suing her for the restitution of his conjugal rights. Surprisingly, given both T. Wain Shain's status as a Chinese immigrant and Hnin Hlaing's family's at least partially Chinese background,[85] Parlett largely frames the case as a question of whether a valid marriage was contracted under Burmese Buddhist law: he brings up the question of whether the pair's marriage could have been considered valid under Chinese law but dismisses the notion out of hand and contemplates whether the marriage might be considered valid under Burmese Buddhist law when it becomes clear that there was nothing even remotely resembling a traditional marriage under Chinese custom. Though the informality of the alleged marriage may have allowed Parlett to quickly dismiss the idea that a marriage had been contracted under the rituals required by Chinese Customary Law, his willingness to so readily consider the customary marriage rites of Burmese Buddhism valid and binding upon either of the parities sits starkly against the ultimately failed efforts that were often required of Burmese Buddhist women seeking to have those same rites recognized when men they believed were their husbands walked out on them. Parlett hears from

[84] The judge notes in the opinion that the child is no longer with Ma Hnin Hlaing, having either died or been given away shortly after birth.

[85] Again, it is not entirely clear that the family is Chinese, but the court operates under the assumption that they are.

both Hnin Hlaing - who says she never intended to marry T. Wain Shain - and her mother, Ma Nyun - who admits that she forced her daughter into the arrangement - and yet still considers every means by which this could have been considered a valid marriage.

Parlett ultimately dismisses the suit, declaring that no marriage between the two had taken place and that there is therefore no conjugal rite to restore to T. Wain Shain. But even in the case's dismissal, Parlett's approach is telling in its willingness to consider multiple ways in which the court might recognize the marriage, a point of marked contrast from how Burmese Buddhist women seeking rights of maintenance and succession had their marriages to Chinese Buddhist men so routinely invalidated even when the court acknowledges that their marriage would have been considered valid under Burmese Buddhist legal frameworks. Whereas a reasonable interpretation of Burmese Buddhist law would likely support Hnin Hlaing's escape T. Wain Shain's conjugal claims by accepting her freedom to divorce at will, it is rather because Parlett finds that "[he is] unable to hold that even according to the somewhat lax method of contracting marriages among Burmese Buddhists a marriage would have been contracted" (4 BLT 1911: 126) that Hnin Hlaing finds her freedom.

The 1915 case of *Saw Maung Gyi vs Thu Kha* (8 LBR 1915) winds up in a similar place through a radically different route. This case offers the rare example of a Burmese Buddhist woman succeeding in getting the court to recognize the validity of a marriage that her partner, a Chinese man whose religious status is unclear, seeks escape from. She is able to challenge her partner's attempt to invalidate their marriage only owing to testimonial support from both Chinese and Burmese witnesses.

The details of the case are not entirely clear. Justice Young, the judge authoring the text of the report, never offers a direct narrative of the dispute. Nonetheless, it is possible to infer a

basic outline of the dispute from details strewn throughout the text. It appears that Saw Maung Gyi and Thu Kha had an ongoing relationship that was widely known to their community. The pair had one child together outside of marriage. Thu Kha became pregnant again, during which time she was living with her parents. It is unclear whether the pair were living together before this, but Saw Maung Gyi acknowledges that he had "deserted" Thu Kha and needed to "come to a reconciliation with [her parents]" at this time (8 LBR 1915: 210). Either during the course of this pregnancy or shortly after the birth of the second child, Saw Maung Gyi visited Thu Kha's parents accompanied by three people by the names of Gwan Taik, U Taik, and Ma Thein Gywe.[86] All three testify that during this visit Saw Maung Gyi asked Thu Kha's parents for their consent to marry their daughter and that Thu Kha's parents consented to this union.

Again, Saw Maung Gyi offers conflicting testimony of this event: he first declares that he never went to Thu Kha's parents home with these people; he subsequently admits that he did go with them to the home but never went inside to speak to the parents. Saw Maung Gyi also offers conflicting characterizations of his relationship with Thu Kha, declaring at different times that he was not willing to marry her, that he married her as a 'minor wife' only, and that the pair had been married but should now be considered divorced owing to him abandoning her for three years (8 LBR 1915: 210-211). Rather than try to find where the truth lie in Saw Maung Gyi's testimony - Young dismisses him as "a person that will take up any position that he considers will suit him without regard for the truth" (8 LBR 1915: 211). Young finds it sufficient to take Gwan Taik's word for it, finding that Gwan Taik "occupies a respectable position" which allows Young to "believe his indignant assertion that we would not have been party to any other kind of

[86] There is conflicting evidence that others may have been present as well, though all agree that at least these three were there.

application" (8 LBR 1915: 211).[87]

Though Young ultimately relies on Occam's razor in determining that there was both a proposal and an elopement, in the Burmese custom at least, the more critical question for him to decide is whether the rites consecrating Saw Maung Gyi and Thu Kha's marriage were binding upon a Chinese man. Both before and after this case, there existed among the judiciary a perception that Chinese marital rites were formal, specific, and extensive, while the Burmese traditions were lax, casual, and could take a variety of forms. The disconnection that they saw between Chinese Customary Law marriages and the marital rites among the Burmese placed a high bar for proving that a relationship between Chinese and Burmese people counted as marriage. To this end, the court hears testimony for witnesses from both sides attesting to the validity of just this type of elopement.

For Young, at least, the overwhelming support of the Chinese community on this matter is convincing. He notes that it is the "almost unanimous consensus of opinion not only amongst the Chin[ese men] called by the wife, but also amongst the Chin[ese men] called by the husband that the marriage is valid" (8 LBR 1915: 209). Notably, in contrast to the prevalent opinion of among the judiciary that the Chinese and Burmese maintained wholly separate traditions, many of the witnesses attest that this is a generally accepted practice among the Chinese more broadly. For instance, Young reflects on several pieces of testimony, including: the second witness's description that "the custom in [Burma] for a runaway couple is that after a little time the girl is brought back to her parents and if these consent to the union the marriage becomes legal;" the third witness for the plaintiff, who speaks more broadly, noting that "in case of an elopement

[87] This seemingly refers to anything other than a "regular union," referring to Saw Maung Gyi's claim that Thu Kha was only a minor wife.

amongst Chinese Buddhists[,] when the girl is brought back to her parents and [they] consent to the union it will be recognize even if no other ceremony is performed;" and the fourth witness for Saw Maung Gyi, who likewise notes simply that "in Burma if a young Chin[ese man] elopes with a Burmese girl, if the parents on both sides of consent the marriage becomes valid (8 LBR 1915: 209). Yet, even with this overwhelming testimonial support, Justice Young conducts an exhaustive search for precedent in litigation and textual sources on Chinese custom to validate the marriage.

'The Best Interest of the Child:' Multicultural Wisdoms and the Defeat of Strict Law

The next case I consider in this chapter dramatically intertwines questions of race, religion, and citizenship with the spectral presence of necromancy and the chaotic aftermath of World War Two. The conflict at the center of the case of *Tan Swee Kyu vs Chan Chain Lyan* (RLR 1947) unfolded over a decade before finally being decided on December 11, 1947, less than a month before Burma became an independent nation. The case, one of few to be decided by a Burmese justice, Justice U Thein Maung, is also the only case I have come across in which a mother and her daughter struggle over the custody of their children/younger siblings.

The details of the case are as follows. Chan Chain Lyan is Buddhist of partial Chinese descent[88] who was married to a man named Tan Khoon Lay,[89] who died in March 1937. Before Tan Khoon Lay's death, Chan Chain Lyan had by him seven children: Tan Kyin Leong, the eldest son; Tan Swee Kyu, the eldest daughter; Tan Swee Kwan; Tan Kyin Kee; Tan Swee Bee;

[88] She is variously described as a Chinese Buddhist and a Sino-Burman Buddhist, though her exact parentage is not described.

[89] Based on his clan name and those of his children, Tan Khoon Lay is presumably Chinese, though he is not directly described as such.

Tan Swee Eng; and Tan Kyin Tyoung. The youngest of these, Tan Kyin Tyoung and Tan Swee End, were only three and four years old, respectively, at the time of their father's death. These two are the still-minor children over whose custody the case centers. Beginning a year following Tan Khoon Lay's death, Chan Chain Lyan, the matriarch, began to gift some of the property of her estate to her adult children in a manner suggesting that she sought through these gifts to resolve any financial or caretaking obligations she made have still felt to her children. In 1938, she gave her eldest son, Tan Kyin Leong, 10,000 Rupees in what she terms an 'a-pyat' - a "cutting" or "severance" - asking him to use it for his wedding and signaling that it meant he should no longer ask him for money thereafter. In 1941, she granted her paddy lands, a home in Rangoon, and a piece of land just outside Rangoon to her other six children. The next years seem to get lost to the turmoil of the war, during which Burma was occupied by Japan and subsequently retaken by the British. Whatever wealth they may have had, the few details recounted in the decision - the children's malnutrition; their poor state of education - suggest that the family endured some hardship during this period.

In or around July 1945, the mother, Chan Chain Lyan, married a man named Teo Kyin Swee, in whose home she moves into with her two minor children. The new partner, Teo Kyin Swee, is given only fragmentary description in Thein Maung's decision. We are told that he is divorced, nine years younger than Chan Chain Lyan, and a necromancer. To this last point we are given the Burmese term 'natsaya' (နတ်ဆရာ) and told that "he has admittedly brought

innumerable images of *nats* (spirits) to her [Chan Chain Lyan's) house and [has] been treating patients with charmed water and with the assistance of the *nats*" (RLR 1947: 110; parenthetical clarifications are from the original text, while bracketed additions are my own). It is thus unclear how to interpret Teo Kyin Swee's alleged practice of necromancy, especially in regards to

whether his practices are the sort of mundane spiritualism that is at least tacitly accepted in Burmese society or of a more hidden occultic 'dark magic' vibe.[90] But, though what exactly Teo Kyin Swee is doing is unclear, that he is a *natsaya* appears as a point of both contention and concern. While there is no documentation of anything more nefarious than these unorthodox treatments, both judge Thein Maung and Chan Chain Lyan's minor and adult children seem unnerved by the practices going on in the house, bringing it up frequently.

Whatever concern Teo Kyin Swee's necromancy may have caused, it is allegations of more material neglect that drew scrutiny to Chan Chain Lyan's remarriage. Roughly three months after she moved into Teo Kyin Swee's home with her two minor children, both Tan Kyin Tyoung and Tan Swee Eng, then 11 and 12 years old, ran away to go live with Tan Swee Kyu, their oldest sister claiming that they could no longer live in with their mother and her necromancer. The children alleged that they were ill-treated by Teo Kyin Swee, and that their mother neglected them and cared only for her new husband. Tan Swee Eng, the daughter, testified that "[Chan Chain Lyan] would not give us treatment when we were ill; she would not apply medicine to our sores; she would not look after our teeth when we got teeth trouble and she would leave us alone without caring for us" (RLR 1947: 111), claims which Justice Thein Maung finds additional support for in the testimony of the other siblings and neighbors (RLR 1947: 120-122). In June 1946, just about nine months after the children ran away, Tan Swee Kyu applied for a certificate of guardianship for her two siblings, which became the present suit against Chan Chain Lyan when he mother objected to the application.

Further complicating the matter, Chan Chain Lyan claims that Tan Swee Eng and Tan

[90] For more on the supernatural powers of heterodox Buddhist cults, see, for instance Collins 2014; Foxeus 2014, 2017; Rozenberg 2015.

Kyin Tyoung took 80,000 Rupees worth of cash and jewels from her home when they left. The allegation of thievery generated some dispute not only because it is unclear what exactly was taken and their potential value, but also because it raises the question as to whether that property was rightfully Chan Chain Lyan's or her children's under the family's relevant inheritance law, which is itself also unclear.

In his judgment on the case, Justice Thein Maung considers how to balance a variety of competing interests, both among litigants and sources of law. On the one hand, he is bound by the Burma Laws Act to draw upon the relevant religious law, in this case Chinese Customary Law, for disputes related to family matters such as this, including in this case both the proper route for the succession of Teo Khoon Lay's estate and guardianship of the surviving minor children. One the other hand, he is bound by the Guardian and Wards Act to consider the welfare of the minor children as the primary point of determining their best guardian. In text, this act requires that the court regard "the age, sex, and religion of the minor," alongside "the character and a capacity pf the proposed guardian and his nearness of kin to the minor, the wishes if any of any deceased parent and any existing or previous relations of the proposed guardian with the minor or his or her property" (RLR 1947: 119). But Thein Maung also observes that a long record of case law on the matter gives him the flexibility to consider the child's welfare more broadly. He sums the relevant up precedent as a question of "with whom will they [the minor] be happy? Who is the most likely to contribute to their well-being and look after their health and comfort?" He continues:

> Indeed the question of true welfare of the minor is of such paramount consideration that the recognized rights of guardianship under the law to which the minor is subject must… be assigned a relatively subordinate position… [but] propinquity must yield to fitness… the fundamental point to be considered is what is for the welfare of the particular minor? (RLR 1947: 119-120).

While Thein Maung does not explicitly frame the issue as such, there is a sense that he views the

issue of the children's guardianship as something outside of a normal family law - as an issue, therefore, that he need not be beholden to Chinese Customary Law to formulate his ruling. Where Justice Thein Maung's decision becomes most interesting, however, is where he turns to find the best source of guidance for determining the children's guardianship. When issues of civil law cannot be resolved, for Asian litigants, in accord with religious law, the standard practice is for the judge to make a ruling in accord with "justice, equity, and good- conscious," a framework that typically means using English law. Thein Maung, however, instead reviews a combination of rulings that address the position of children's custody following a parent's remarriage from the perspective of Burmese Buddhist, Islamic ["Mohamedan"], and Hindu law (RLR 1947: 122-23), finding, in these precedents ample support for the idea that a parent's right to custody over their children can be displaced upon a sibling when the parent enters a new family. In determining that the circumstances in the present case match well with these precedents, Thein Maung concludes that allowing Tan Swee Kyu to take the place of her mother in caring for the children is well established in Burmese culture (RLR 1947: 122-5).

To be sure, Thein Maung is not determining custody of the two minor children upon an amalgamation of religious law alone. He carefully documents the care and concern Tan Swee Kyu provide to her youngest siblings, as well as the various allegations of abuse and neglect they suffered under Chan Chain Lyan. To this, he finds a demonstrable record of communal testimony that supports Tan Swee Kyu's position: aunts and uncles on both her father's and mother's sides of the family attest to their support for the children remaining with Tan Swee Kyu; two neighbors testify that she sought them out to tutor the children, as schools have still not reopened after the war; multiple doctors testify to both the poor condition of health that the children were in when Tan Swee Kyu first brought them in after showing up at her door and the much

improved state of health they are in now; the lone point against Tan Swee Kyu's qualifications seems to be that she is married, which her mother says makes it an inappropriate home for her minor daughter, and that Tan Swee Kyu her own child, with whom her siblings sometimes quarrel, but she has nevertheless lined up some dozen or so witnesses willing to testify that hers would be the best home for the children to grow up in. The breadth of support that Tan Swee Kyu mobilizes in support of her petition for custody appear to me evidence of her capability to generate some of the power of recognition that citizenship ostensibly grants out of the networks of belonging in which she is imbricated, if not out of the position she holds under her personal religious law, per se.

Still, I find in Thein Maung's use of this multi-religious precedent a statement of Tan Swee Kyu's own variegated citizenship, for she frames herself not as deserving of rights or recognition owing to her personal religious status but as a good sister, a committed caregiver, and, perhaps most simply, as a person just making a good point. Thein Maung is not ignorant of Chinese Customary Law here, nor of its potential applicability to the case: he contemplates its potential applicability to the question of whether the runaway children owned the property they were alleged to have stolen under Chinese inheritance structures and, in this question, seems to accept that Chinese Customary Law would be the family's relevant religious law. But he does not see Chinese Customary Law as relevant to *this case*, or perhaps even to this family at all. He avers on the question of who the disputed property rightly belongs to, but accepts that Chan Chain Lyan can own property, despite past precedent denying Chinese widows this right; he rejects out of hand the eldest brother's suggestion that he could take care of the children, even if that might be the most likely route of guardianship under Chinese Customary Law. In finding that Tan Swee Kyu is the most competent guardian, Justice Thein Maung navigates around a

great deal of precedent, authored by the pens of British judges, that strictly and blindly applies Chinese Customary Law to anyone even remotely interpolated as Chinese, no matter how long they've been in Burma, no matter how much they protest their Chineseness. In finding in Tan Swee Kyu's favor owing to the force of her person rather than the religion that is forced upon her, I read his decision as bowing to what Isin and Nielsen might term an act of her citizenship ([eds] 2008).

An Updated Custom?: Ma Sein Byu and the New Chinese Code

One final example of women's attempts to assert new forms of citizenship through litigation comes somewhat at the expense of the general argument I foreground in this chapter. This case, a succession suit over the estate of a Chinese Buddhist who took a Burmese Buddhist as his second wife, suggests Buddhist women in mixed families also attempted to use their difference from Burmese-ness to stake out feminist rights claims.

The case in question is the 1933 civil suit of *Ma Sein Byu vs Khoo Soon Thye* (11 ILR-Rang. 1933), which revolves around the estate of Khoo Jin Tue. The court recorder describes Khoo Jin Tue as a wealthy Chinese Buddhist who was about 60 years old when he died in 1931, putting his birth somewhere around 1870. While the location of Jin Tue's birth is never stated,[91] court records clarify that he was not born in Burma but rather "brought here at an early age" by his Fokanese father. Jin Tue was nevertheless a naturalized British subject domiciled in Burma; for all intents and purposes, it appears that Rangoon was the only home he had ever known. Sometime around the turn of the century, Jin Tue married Khaw Joo Hong, a Chinese woman from Malaysia who subsequently relocated to Rangoon with her new husband. The pair had six

[91] There is an oblique reference to him having emigrated from China (1933: 316), but that this is not more fully detailed leads me to gives me some degree of skepticism.

children, four sons and two daughters, but seem to have had many challenges in their marriage, occasioned, in their children's telling, by Jin Tue's overcommitment to his work. For long periods of time, the pair did not live together, including a six-year stretch from 1915 to 1921 during which Joo Hong had returned to live in Malaysia. When she returned to Rangoon, her son testifies, the pair were no longer on speaking terms, excepting discussions on important matters. In his narration, the pair only saw each other three times over the final five years of his father's life, including a deathbed visit.

Whatever the source of the pair's unhappiness may have been, in the years after Joo Hong's return to Malaysia Jin Tue took in a new partner, the plaintiff in the current case Ma Sein Byu. Ma Sein Byu herself is given scant attention in the recorded judgment, described only as "a Burmese Buddhist who claims to have been married to Khoo Jin Tue 14 years before his death" (11 ILR-Rang. 1933: 315). Sein Byu is joined in her suit by her and Jin Tue's daughter, who goes unnamed. While the fact of Sein Byu and Jin Tue's relationship is accepted as a matter of fact, the nature of their relationship is subjected to judicial scrutiny. J. Leach, the presiding justice over the case, questioned whether Sein Byu could really be considered a wife under the form of Chinese Customary Law that has heretofore been accepted in the Burmese courts. "Under Chinese Customary Law," he writes

> [A] Chin[ese man] may only have one chief wife, but he may have a number of secondary wives or concubines. A concubine in Chinese Customary Law is not a casual mistress, but has a recognized legal status… The defendants [Khoo Jin Tue's heirs by Khaw Joo Hong] concede that concubinage as known in China is recognized by the Chinese domiciled in Burma and that under Chinese Customary Law a concubine is entitled to maintenance out of the estate of a person with whom she has contracted such a union (11 ILR-Rang. 1933: 315).

Upon the death of Khoo Jin Tue, Sein Byu's unclear legal status - whether she is a wife or a concubine - becomes a source of lawsuit fueling disagreement between this expectant widow and her possible step-children.

If at first glance, this case appears to follow the typical outline of disputes over

succession rules for mixed marriages, the case becomes interesting from the angle of citizenship when Sein Byu makes a radical reversal of the expected plot. Pursuing her share of the estate by claiming to be a valid wife under Burmese Buddhist law would require the court to accept both that a wife's religious status determines the religious law jurisdiction of a man's estate and that the casual marriage customs of Burmese Buddhists are binding upon men who are not Burmese Buddhists. As I've established in previous chapter, the British court has little sympathy for either of these propositions. Instead, Sein Byu asserts that the relevant law in this case *is indeed* Chinese Buddhist law, *but* that Chinese Buddhist law have changed since the courts in Burma last considered them. Sein Byu asserts that the relevant codes for determining what is Chinese custom should not be the European exegeses on Chinese law that the courts typically rely on. Rather, they should be the legal codes of the Chinese as they have written their laws for themselves.

The crux of Sein Byu's argument is that the Republic of China, the government of the newly formed civic nation that formed after the fall of the Qing Dynasty in 1912, had established a series of legal reforms related to the status of women and wives. Between 1929 and 1931, the government made radical changes to customary law that abolished the system of concubinage, granting women the right to hold property independently, and entitling wives to inherit their husband's property (rather than only being entitled to maintenance out of their sons', or in certain circumstances daughters', inheritance). Sein Byu argues that because the final of these reforms, which relates directly to laws of succession, was implemented two months before Jin Tue's death in May 1931, the relevant version of Chinese Customary Law that existed upon Jin Tue's death was this new iteration of it, under which she should be considered a wife and inherit as a woman newly capable of holding property.

The court duly rejects Sein Byu's argument. Leach, the judge presiding over the case, offers two distinct rationales why in his published opinion. First, he draws a distinction between a national government's proclamations and a people's "ancestral worship" - basically, a reiteration of the distinction between law and custom (11 ILR-Rang. 1933: 316). To support his point, Leach draws on two witness statements, one from the legal advisor to the Chinese government in Rangoon and the other from a prominent member of the Chinese community in Rangoon who recently returned from a trip to China, testifying for the plaintiff and the defendant respectively. The sum of both of these arguments, Leach finds, is that at that moment in time the Republican government of China is too weak to put its radical reforms into effect beyond some of the larger cities and "is not in a position to enforce [these laws] in the more distance provinces," which suggests to him that "the public is opposed to the code" (11 ILR-Rang. 1933: 316). From this observation, Leach feels entitled to pronounce that "So long as ancestral worship continues and marriages outside the clan exist the public will be opposed to The Code ['The Civil Code of the Republic of China']… The Code is not the embodiment of Chinese Customary Law" (11 ILR-Rang. 1933: 316).

The second rationale Leach offers as to why China's new code of civil law does not establish a right for Chinese Buddhist women in Burma, or the Burmese widows of Chinese Buddhist men, to inherit is that the civil government's reforms in Nanking would not carry over to Chinese living outside of the Republican government's rule. "The personal law of Khoo Jin Tue," Leach articulates "was the customary law which existed in China at the time of his emigration. *He brought his personal law with him* and having left China and settled permanently in Burma he would not be affected by changes made by statute in China after he left" (*emphasis added,* 11 ILR-Rang. 1933: 316-7). Leach articulates a view that personal law, or customary law,

is necessarily attached to the conditions of one's birth. Whereas civil law can change through legislation to respond to new and changing conditions, personal law originates from something ancient and is thus forever fixed.

In the space between these two points, we see a different type of the double bind that anthropologists usually focus on in critiquing how state recognition of customary law places upon people whose rights are made contingent upon their obeisance to 'tradition.' Legal anthropologists have long documented how the positivist legal epistemologies that bureaucratic states rely on to prove the existence of customary rights and validate particular individuals' and groups' qualification for those rights are in conflict with the ways that most social groups actually relate to culture, custom, and tradition as locally responsive and thus constantly changing practices. This burden of proof compels people to continuously 'perform' tradition to prove themselves deserving of certain entitlements. As Barry Morris has written, "indigenous identity and culture must put itself through a trial and demonstrate its members' authenticity by proving that their existence has remained largely consistent and continuous with a traditional past" (2003: 140; see also Clifford 1988). Further, this heightened burden of proof creates a minefield of legal cognizability that those seeking to create rights outside of the strictures of a normatively defined civil law regime must navigate lest they be again dispossessed.

For Sein Byu, and the broader Chinese Buddhist community in Burma, the perils associated with custom drive in the opposite direction. Instead of necessarily maintaining particular signals of maintaining ancient customs or preserving some other signpost to cultural tradition to maintain their rights, an attempted escape from custom proves impossible. Indeed, it appears that the initial impulse to work out the succession arrangements in accordance with the Republic of China's new civil law code emerged from the family of Khoo Jin Tue. Leach notes

that at one point “the heirs agreed amongst themselves to partition the estate in accordance with the [new] Code [of the Republic of China]” (11 ILR-Rang. 1933: 317). That this agreement eventually fell apart perhaps proves to Leach that the Code is not, as he says, “the embodiment of Chinese Customary Law,” but it does suggest that the Chinese community in Burma is more modern in their search for contemporary solutions to contemporary problems than either he or the broader judiciary accepts that they could be.

Conclusion - Citizenship at the Margins of Community and Subjecthood

While my discussion in the first four chapters of this dissertation brings into view the racialized imaginaries that structure access to certain rights and entitlements for mixed Buddhist litigants, this concluding chapter contends that litigants fighting through those barriers for the protections, opportunities, and recognitions they sought in the law were enacting practices of citizenship. In taking seriously the claims advanced by women litigants pressing against the hegemonic patriarchal ideologies and prerogatives that structure colonial jurisprudence, I work in this chapter to bring together anthropologies of law and citizenship, two theoretical traditions that have curiously little engagement despite clear overlaps. I seek to bring these two literatures together by applying the frameworks of citizen/subject distinction developed by Mamood Mamdani and a political vision of citizenship from Etienne Balibar to practices of litigation, a subject to which the anthropology of citizenship has largely ceded to legal anthropology.

As I have demonstrated, mixed Buddhist women litigants were disadvantaged by a jurisprudence that generally denied them access to Burmese Buddhist law, which offered more social protections and material awards than the courts’ conservative interpretations of Chinese Customary Law. However, while rare, some women were able to successfully compel the court

to recognize them as Burmese Buddhists. Affirming their social standing as members of Burmese society required these litigants to mobilize broad communities of support, including representatives of both Chinese and Burmese communities, to attest to their local belonging. For Ma Hnin Hlaing, this required establishing proof of the compelled nature of her marriage to effectively annul T. Wain Shain's claims of ownership over her. For Thu Kha, this required her to find members of the Chinese community to attest to the social commitments men make in conducting local marriages, directly rebutting the judiciary's general though acontextual assumption that the Chinese do not engage in Burmese style marriages. For Tan Swee Kyu, this required demonstrating Burmese forms of good motherhood to take custody over her siblings against her mother's more conservative assertions of Chinese family patterns.

I also consider in this chapter another instance in which a woman litigant is unsuccessful in petitioning the court. In this case, Ma Sein Byu is unable to overturn the court's static and time-bound conception of Chinese Customary Law to accommodate newly emergent legal formations in China, that site to which the fate of Chinese law in Burma is inexorably tethered. Ma Sein Byu's case is valuable even as it goes against the general tenor of my argument - that mixed Buddhist women were able to channel the ties of their social bonds to Burmese society to challenge the imposition of alien law upon them - because it reiterates the limits faced by those challenging the essentially racialized understanding of the Chinese in colonial Burma held by the colony's jurists. To return to Mamdani's formulation of citizenship versus subjecthood, we can say that while the first three cases suggest the jurists were willing to consider that mixed litigants might bear different rights depending on whether they were members of a cultural (Chinese) or political (Burmese) community, they were not willing to consider that the Chinese as a community were nevertheless subjects entitled to ancient law, not citizens deserving of modern

and more egalitarian codes. While the examples of Hnin, Hlaing, Thu Kha, and Tan Swee Kyu suggest that citizenship, found in acts if not status, can thrive in unlikely places, Ma Sein Byu's failed efforts reiterate that even cultural citizenship under colonialism is a precarious proposition for the racialized subjects of empire.

Conclusion

Lee Ah Yain's Alternative:
or, on the risk of foregone conclusions

There is one final historical thread hinting towards alternative conceptions of Sino-Burmese differentiation and religious citizenship that I believe is worth recovering in this discussion. This case, *Li Tuck Lon V Daw Khin* from 1921, differs from each of the 67 other cases I reviewed for this dissertation in two ways: it is the only case I have found that was resolved through an arbitrated settlement rather than a contest of litigation; and it is the only case in which a mixed person, Lee Ah Yain, born and raised in Burma is tasked with figuring out what law applies to a mixed family in conflict. Perhaps exactly because it was an arbitrated settlement, this case was never reported in any of the law reports or legal circulars. It was, however, extensively discussed and relied upon in the case of Phan *Tiyok vs Lim Kyin Kauk* (8 ILR-Rang. 1930, and it is from that discussion that I base my own description of the case, a process of recovery that, unfortunately, means that there remains much left to the imagination.

From what we are able to work out from the description in *Phan Tiyok* (8 ILR-Rang. 1930: 78-81), the case revolved around the estate of a deceased man, Li Foke Shain, who had in his life been married to the defendant in the case, Daw Khin. The description given by Justice Heald, the chief author of the opinion on *Phan Tiyok* in which this recollection takes place, suggests that both Daw Khin and her husband were both mixed Chinese-Burmese Buddhists: Heald takes some pains to recount that Li Foke Shain's father was Chinese and that his mother also had a Chinese father, which I take to signify that his maternal grandmother was Burmese; he clarifies that Daw Khin, too, "was also the daughter of a Chinese father" (8 ILR-Rang. 1930: 1930: 78). While Daw Khin identified herself to the court as a Chinese Buddhist, she took

control of her husband's estate upon his passing through the Indian Succession Act by reason that her husband was Confucian. By denying that Li Foke Shain was a Buddhist like her, Daw Khin effectively steps around Chinese Customary Law and has the estate ruled through the provisions of the Indian Succession Act, which devolves the property more similarly to how Burmese Buddhist law would treat the estate.

After Daw Khin took control of the estate, Li Foke Shine's son, Li Tuck Lon, sued to take it over, alleging that his father was both a Chinese Confucian and a Buddhist. In 1921, when the case emerged, the racial position of a Chinese Buddhist in Burma, would mean that one's property would be conveyed in accord with Chinese Customary Law by which only male heirs would be entitled to possess the estate.[92] For whatever reason, Li Tuck Lon's suit would not be heard in court. Soon after it was filed, it was referred to Lee Ah Yain to arbitrate between the sides.

In his notes, as reviewed by Heald, Lee Ah Yain seems to approach the case just as any British justice of the court would. He finds that Li Foke Shain was devout in his worship of the goddess Kwan Yin during his life, even taking up the responsibility of serving as treasurer and one of the trustees of the Kwan Yin Temple in Rangoon. "'There can be no doubt,'" he says "'that Li Foke Shain was a Chinese Buddhist by religion… Therefore the law applicable to the estate of Li Foke Shain, deceased, is the Chinese Buddhist law'" (8 ILR-Rang. 1930: 79). And according to Chinese Buddhist law, as it is found in Alabaster's Notes and Commentaries, and accepted as good law in Burma through a case titled *Kyin Wet vs Ma Gyok* (9 LBR 1918), Lee finds that sons are treated as the exclusive heirs to an estate; widows and unmarried daughters

[92] Heald's description never clarifies whether Li Tuck Lon is his son by Daw Khin or another; Heald's description does not otherwise attest to another competing set of heirs, but Heald does note that some 'other children' are also named in the suit alongside Daw Khin.

are entitled only to maintenance and, if unmarried, dowry payments.

But here is where Lee diverges from the British judges. Ordinarily, if a court determined that an estate fell under the rules of Chinese Customary Law, women would be recognized only as dependents; the sons would take the whole estate with an order to properly provide for their mother and their unmarried sisters until they wed. Lee, however, sees no reason the women cannot inherit unto themselves. Rather than making Daw Khin and her daughters dependent upon their sons and brothers for their care, Lee finds that "it will be just and equitable if I allow the widow and the three unmarried daughters each one-half of the estate," deciding that "the whole of the estate be divided into five shares, the three sons to take one share each, and the widow and the three unmarried daughters to take one-half share each" (8 ILR-Rang. 1930: 80). In this decision, Lee basically affects a compromise between the sides. In effect, he accepts Daw Khin's claim for widows' ownership of property under the Indian Succession Act while agreeing to the overweighted priority of men's inheritance in Chinese custom.

The sparse details available in Heald's only partial rendering of this unreported case leave me leery of overdetermining the significance of this case. It is also far from the wholesale endorsement of ethnic multiplicity and women's empowerment that could make for a dramatic conclusion to this research: it is unclear whether the family in question saw themselves as part of a broader Burmese community in Rangoon at all; the women in the case still only receive half of what their sons and brothers did. Still, I latch onto this reference by way of concluding this dissertation because it speaks to the varied possibilities that remain hidden from the legislative record. It speaks to how conflicts of law, religion, and identity may have been more commonly resolved outside of the combative dynamics that courtrooms compelled.

Indeed, the reference to Lee's arbitration is not wholly out of place. Burma's law reports

preserve scattered mentions of foreign Buddhists, their descendants, and the indigenes they make their lives with turning to local elders, monks, and others in the community to mediate the mundane problems they face in the effort to build a life. Often, these mediations seek the intervention of a council of Burmese elders rather than a singular figure like Lee Ah Yain. This was the case when Ma Gyan sought recompense from her husband's abuse back in 1897 (*Ma Gyan vs Maung Su Wa*, 2 UBR 1897), even though both of them were Chinese. That the pair agreed to settle their dispute in line with a prescription of their Burman elders' to split their property in line with the Dhammathats would do her little good when her husband brought the matter to the British, who offered their own interpretation of the Dhammathats, but the suit preserves a sense of the multiplexity that may have pervaded local Buddhist legalisms on the eve of the Burma Laws Act. It preserves, too, a sense of the gendered prerogatives that may have been possible if the British did not insist on tethering their interpretations of Burmese law to the black letter proscriptions of ancient codes and instead sought to understand how communities made use of those codes for themselves.

The frameworks that I discuss in this dissertation -- the ways they make it very difficult to be recognized, and attain rights, as more than part of one's self -- are colonial. They emerge out of a taxonomizing impulse to fit people into particular categories. Both the legal system itself and the jurisprudential trajectories of different cases are rhetorically constructed through a projected objectivity which frames judicial power as a product of pure logic, dispassionate reasoning, and civilizing projects, masking both the structures of violence they create and the violence of the imperial war machine that backs it. In discussing race, whether in the past or the present, whether in Southeast Asia or elsewhere, it is important to pay attention to the ways that, while race is often imagined and empowered as a biologizing typology, creating difference by

designating divergent bodies, power operates through race by defining, and thus creating justifications for, what the state can do to what kinds of people. In other words, it is important to frame colonial constructs of race with an eye towards how racial power operates by defining what types of people get what types of laws.

An effort to confront those categories, then, might begin with a description of those racio-legal frameworks - as I hope to have achieved in this dissertation - but it will never be complete without offering a way outside of them. The scatterings I offer in this conclusion by their nature elusive, offering little upon which to build the type of grand claims I traffic in throughout this dissertation. But they are on my mind as I draw this dissertation to a close because they offer a peak into what was possible outside of the colonial machine. They offer a glimpse of both how people could be both Chinese, and Burmese, and Buddhist in equal measure, without any parts of that equation excluding any other. They offer a reminder that justice did not only come through law, nor were courtrooms the only ways to resolve conflicts that broke out between people from different cultures. They remind us, in other words, that there were always other ways.

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1881 Hong Ku and Hock Kung V Ma Thin. *Selected Judgments of Lower Burma*, 135.

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1915 Ma Shein V Kim Sein (aka Saw Chan Sein). *8 Lower Burma Rulings*, 225.

1915 Saw Maung Gyi V Thu Kha. *8 Lower Burma Rulings*, 208.

1916 Sein Kyi V Ma E/Ma E V Sein Kyi. *8 Lower Burma Rulings*, 399.

1916 Ma Pwa V Yu Lwai and Ma Yin (aka Ma Nhah). *8 Lower Burma Rulings*, 404.

1918 Kyin Wet V Ma Gyok and four minors. *9 Lower Burma Rulings*, 179.

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1865 Indian Succession Act

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1898 Burma Laws Act

Appendix:

Cases involving mixed Buddhists in colonial Burma

The following cases are listed chronologically according to the date the judicial opinion was published. They follow the format: volume-title-year-page. Usually, the legal circulars cited are titled only by *either* volume or year. For instance, *Ma Gyan vs Maung Su Wa* was decided on May 3, 1897 and was published in 2 UBR, or Upper Burma Rulings, volume 2, which covers the years 1892-1901 and was published in the year 1902. The case *Ma Shwe Thit vs Maung Kyin and another* was decided on July 5, 1918, and published in AIR-LB 1919, or the 1919 volume of the Lower Burma edition of the All India Reporter, so the year that the case was decided does not match the year that the reference was published.

Abbreviations:

AIR-LB: All India Reporter, Lower Burma

AIR-Rang.: All India Reporter, Rangoon Series

BLJ: Burma Law Journal

BLT: Burma Law Times

IC: Indian Cases

ILR-Rang.: Indian Law Reports, Rangoon

LBR: Lower Burma Rulings

NAK: National Archives, Kew (United Kingdom)

RLR: Rangoon Law Reports

SJLB: Selected Judgements of Lower Burma, 1872-1892

UBR: Upper Burma Rulings

Title	Case Number	Date Decided	Original Jurisdiction	Citation	Issues	Judge	Applicant Atty	Respondant Atty
Hong Ku and Hock Kung vs Ma Thin		1881	Moulmein	SJLB, p. 135	Succession	Wilkinson and Jardine	Dawson	Gillbanks
Ma Tin vs Doop Raj Barna		1894		1 Chan Toon, p. 370	Marriage, Succession			
Ma Gyan vs Maung Su Wa	Appeal No. 21 of 1897	May 3, 1897	Upper Burma	2 UBR, p. 28	Division of Property, Divorce	Burgess	Hirjee	Shwinhoe
Narana Chetty vs Sit Kauk	Civil Second Appeal No. 257 of 1900	December 3, 1900	Upper Burma	2 UBR, p. 276	Marriage, Property Sale	White	Lütter	Pillay
Ma Thi vs Shwe Hlwa	Civil Miscellaneous No. 13 of 1902	July 14, 1902	Lower Burma	1 LBR, p. 284	Adoption, Succession	White (CJ) and Fox		
Fone Lan vs Ma Gyee	Appeal No. 50 of 1902	April 6, 1903	Lower Burma	2 LBR, p. 95	Adoption, Succession	White (CJ) and Fox	VanSomeren and Fagan	
Pai Beng Teng vs Ko Maung (and one)	Civil Regular No. 177 of 1903	February 22, 1904	Rangoon	2 LBR, p. 261	Conversion, Marriage, Succession	Chitty	Cowasjee and Yain	Hamlyn
Maung Cho and two vs Ma Chaw and two	Special Civil 2nd Appeal No. 70 of 1906	October 22, 1906	Tavoy	4 LBR, p. 183	Trust of religious institution	Hartnoll	Lentaigne	Pennell
Apana Chanan Chowdry vs Shwe Nu	Civil 2nd Appeal No. 25 of 1907	July 4, 1907	Lower Burma	4 LBR, p. 124	Land sales, Succession	Hartnoll	Pennell	Lentaigne
Ma Pe and Kyu Kin vs Ma Thein Yin	Civil Miscesllaneous Appeal No. 110 of 1906	February 3, 1908	Lower Burma	4 LBR, p. 287	Succession	Fox and Irwin	Lambert	Agabeg
Mi Shwe Ma vs Mi Me (and 10) (*see also* ***Mi Me (and 10) vs Mi Shwe Ma****, 1912*)	Civil Appeal Case No. 126 of 1909	October 11, 1909	Magwe	1 UBR 1910-1913, p. 114	Marriage, Polygamy and status of wives, Succession	Shaw	Pillay	Agabeg and Willes
Tun Tha vs Ma Pu	Revision No. 376B of 1909	December 17, 1909	Lower Burma	3 BLT, p. 67	Marriage	Parlett	Ah Yain	Sealy
T Wain Shain vs Ma Hnin Hlaing	Special Civil 2nd appeal No. 281 of 1908	September 2, 1909	Lower Burma	4 BLT, p. 124	Marriage	Parlett	Higinbotham	Dantra

Mi Me (and 10) vs Mi Shwe Ma (*see also* ***Mi Shwe Ma vs Mi Me (and 10)*** *1909*)	Privy Council Judgment No. 9 of 1912	January 25, 1912	Upper Burma	1 UBR 1910-1913, p. 111-; NAK files PCAP 6/573/1	Marriage	Macnaghten, Robson, Edge, and Ali (Privy Council)		
Pwa Me vs San Hla (aka Leong Foke Shu)	Revision No. 376B of 1913	January 30, 1914	Lower Burma	7, LBR, p. 270	Divorce, Maintenance	Twomey	Wiltshire	Dawson
Thein Shin & E Chi vs Ah Shein (aka Hoke Shein) by his next friend Ma Toe	Civil 1st Appeal No. 3 of 1913	May 19, 1914	Lower Burma	8, LBR, p. 222	Marriage, Succession	Twomey and Parlett	Burjorjee	Ormiston
Ma Shein vs Kim Sein (aka Saw Chan Sein)	Revision No. 261B of 1915	November 29, 1915	Lower Burma	8, LBR, p. 225	Divorce, Maintenance	Ormond	Sutherland	A.J. Maung Gyi
Saw Maung Gyi vs Thu Kha	Civil 2nd Appeal No 155 of 1914	May 20, 1915	Lower Burma	8, LBR, p. 208	Marriage	Young	Dawson	May Oung
Sein Kyi vs Ma E/Ma E V Sein Kyi	Civil 1st Appeal No. 20 of 1915/Civil First Appeal No. 37 of 1915	January 10, 1916	Lower Burma	8, LBR, p. 399	Marriage	Fox and Parlett	Cowasjee	Lentaigne
Ma Pwa vs Yu Lwai and Ma Yin (aka Ma Nhah)	Civil 1st Appeal No. 117 of 1914	January 17, 1916	Lower Burma	8, LBR, p. 404	Adoption, Succession	Fox and Parlett	Clifton	Cowasjee and Bonnnerji
Kyin Wet vs Ma Gyok (and four minors)	Civil 1st Appeal No. 68 of 1916	January 10, 1918	Lower Burma	9, LBR, p. 179	Adoption, Succession	Twomey and Ormond	Burjorji	Ba Shin
Ma Shwe Thit vs Maung Kyin (and another)	Second Appeal No. 16 of 1918	July 5, 1918	Lower Burma	AIR-LB 1919, p. 68	Succession	Maung Kin	Patker	Ba U
Gyan Shi vs Kin Twe	Civil Miscellaneous Appeal No. 69 of 1917	Februrary 5, 1918	Lower Burma	10, LBR, p. 23	Adoption, Marriage, Succession	Twomey and Ormond	Das	Chari
Maung Kwai (minor, by Maung Ba Maung) vs Yeo Choo Yone (aka Ma Choo Yone)	Civil Miscellaneous Appeal No. 17 of 1919	November 19, 1919	Hanthawaddy	10, LBR, p. 159	Wills	Twomey and Robinson	Rahman	Ah Yain
Ma Si and others vs Hoke Hu	Special Second Appeal No. 65 of 1919	December 10, 1919	Lower Burma	AIR-LB 1919, p. 15	Alienation, Guardianship, Property Sale	Twomey and Robinson	Ginwala	Villa

Ma Twe vs Lwe Hain	Revision No. 332B of 1919	December 12, 1919	Lower Burma	AIR-LB 1919, p. 14	Marriage	Robinson	Sin Hla Aung	Thein Maung
Cheang Thye Phin vs Tan Ah Loy	AC 369			(unlocated)				
Khoo Haing Sein and three vs Khoo Peing How and three (*see also,* ***Maung Dwe and others vs Khoo Haung Shein and others*** *1924*)	Civil 1st Appeal No. 221 of 1920	January 30, 1922	Tavoy	1, BLJ, p. 56	Polygamy and status of wives, Succession	Pratt and Duckworth	Das	May Oung
Ma Yait vs Maung Chit Maung (and appeal)	Privy Council Appeals Nos 146 and 147; Civil Regular No. 404 of 1913 and Civil 1st Appeals No. 64 and 65 of 1915	August 1, 1921	Lower Burma	11, LBR, p. 155; NAK files PCAP 6/912/3	Succession, Wills	Haldane, Atkinson, Phillimore, and Edge (Privy Council)		
Li Tuck Lon vs Daw Khin	O.S. Civil Regular 363 of 1921			*Unreported, citied in 8 ILR-Rang*, p. 78	Succession	Yain (*arbitrated*)		
Maung Po Maung and one vs Ma Pyit Ya	Appeal No. 192 of 1921	April 4, 1923	Pegu	1, ILR-Rang, p. 161	Marriage, Succession	Heald and Lentaigne	Ba Si	Giles
Lee Lim Ma Hock vs Saw Mah Hone and three	Civ First Appeal No. 134 of 1922	October 16, 1923	Insein	2, ILR-Rang., p. 4	Adoption, Property sale, Succession	Heald and Lentaigne	Burjorjee	Ah Yain
Bon Kwi vs Ma Kye Yon	/unreported/ Civ First Appeal No. 82 of 1922			*Unreported, citied in 8 ILR-Rang,* p. 80				
Ma Sein vs Ma Pan Nyun and two	Appeal No 93 of 1921	January 21, 1924	Pyapon	1, ILR-Rang, p. 94	Polygamy and status of wives, Sucession	Heald and Lentaigne	Burjorjee	Giles and Ormiston
Saw Kyaik Kee vs Saw Ngwe Sit	Civ First Appeal No. 265 of 1924			*Unreported, citied in 8 ILR-Rang*, p. 81	Adoption, Succession			

Maung Dwe and others vs Khoo Haung Shein and others (*see also* ***Khoo Haing Sein and three vs Khoo Peing How and three****, 1920*)	Privy Council Appeal No. 84 of 1923; Judgment No. 72 of 1924	October 21, 1924	Tavoy	3, ILR-Rang., p. 29; NAK files PCAP 6/1014/3		Dunedin, Carson, Edge (Privy Council)		
Kyon Hoe Tsee vs Kyon Wong Si and another	Civil Miscellaneous Appeal No. 57 of 1924	September 18, 1925	Rangoon	96, IC p. 762	Marriage, Polygamy and status of wives, Succession	Godfrey and Doyle	Paget	Cawasjee
Ma U vs Mg Kyin Htat	Criminal Revision No. 664-B of 1925	September 10, 1925	Rangoon	4, BLJ, p. 255	Divorce, Maintenance, Marriage	Maung Ba	Kyaw Htoon	Foung
Swa Lay Teong vs Yeo Boon Lay	Criminal Miscellaneous Application No. 26 of 1925	October 13, 1925	Rangoon	4, BLJ, p. 269	Adoption, Guardianship	Brown	(Judge)	Paul
Khoo Hooi Leong vs Khoo Hean Kwee	AC 529			(unlocated)				
Man Han vs V.R.M.A.L. Firm	Letters Patent Appeal No. 55 of 1926	April 6, 1927	Rangoon	AIR-Rang 1926, p. 176; 5, ILR-Rang., p. 443	Divorce, Property ownership	Heald and Cunliffe	Aiyangar and Halker	Janab Ali
Ma Yin Mya and one vs Tan Yauk Pu and two	Civil Reference No. 1 of 1927, Civil Revision No. 55 of 1926	March 31, 1927	Pegu	5, ILR, p. 406	Marriage	Rutledge, Das, Maung Ba, and Brown*; and Eggar, government advocate, amicus curiae at request of court*	Kyaw Zan	Shanmugam
Ma Pan Nyun vs Maung Sit Phaung and others	First Appeal No. 9 of 1928	June 7, 1928	Pyapon	AIR-Rang 1928, p. 315	***Pan Nyun, 1924*** *, above*	Das	Kyaw Din	Po Han
Chan Pyu vs Saw Sin and others	Appeal No. 87 of 1928	July 4, 1928	Rangoon	6, ILR-Rang., p. 623	Adoption, Wills	Pratt and Cunliffe	Kyaw Din	Leach

Leong Hone Waing vs Leong Ah Foon and others	Civil First Appeal No. 245 of 1928	June 13, 1929	Amherst	7, ILR-Rang., p. 720	Succession, Wills	Chari and Brown	Moore and Burjorjee	Sutherland, Cowasjee, and Kyaw Zan
Phan Tiyok and another vs Lim Kyin Kauk and others	Civil Reference No. 8 of 1930	January 7, 1930	Amherst	8, ILR-Rang., p. 57	Succession	Heald, Chari, Otter, Maung Ba, and Brown	Kyaw Din, Maung Kun, and	Cowasij, Leach, and Po Han
Ma San and others vs Ma Chit Su and others	First Appeal No. 213 of 1928	March 17, 1930	Insein	AIR-Rang 1930, p. 218	Succession	Heald and Otter	Leach	K.C. Bose
Ma E Kyee vs Tan Chong Kee and others	Civil Miscellaneous Appeals No. 142 and 146 of 1929	April 1, 1930	Rangoon	AIR-Rang. 1930, p. 192-	Marriage, Succession, Wills	Heald and Sen	Darwood	Leach
Tan Ma Shwe Zin vs Tan Ma Ngwe Zin and others	First appeal No. 128 of 1931	January 14, 1932	Rangoon	AIR-Rang. 1932, p. 59	Succession, Wills	Page and Cunliffe	Jeejeebhoy	Eunoose and Mootham
Tan Ma Shwe Zin vs Tan Ma Ngwe Zin and others	Civil Misc. Application No. 39 of 1932	June 22, 1932	Rangoon	AIR-Rang. 1932, p. 189	Appeal to Privy Council, *see* ***Tan Ma Shwe Zin V***	Page and Brown	Anklesaria, and Jeejeebhoy	McDonnell, Clifton, and Hartnoll
Leong Ah Foon vs Leong Ah Choy	First Appeal No. 165 of 1932	May 17, 1933	Amherst	AIR-Rang. 1933, p. 255	Adoption, Succession	Page and Das	Sutherland	Darwood
Ma Sein Byu and another vs Khoo Soon Thye and others	Civil Regular Suit No. 306 of 1933	June 2, 1933	Rangoon	9 ILR-Rang. p. 310; AIR-Rang. 1933, p. 313	Marriage, Polygamy and status of wives, Succession	Leach	Krishnasawmy and Leong	Jeejeebhoy
Ma Myaing and others vs Ma Hnin Zan	Second Appeal No. 31 of 1934	May 8, 1934	Amherst	AIR-Rang. 1934, p. 219	Succession	Dunkley	Maung	Eunoose
Ma Hnin Zan and others vs Ma Myaing	Letters Patent Appeal No. 2 of 1935	July 19, 1935	Rangoon	AIR-Rang. 1935, p. 31	Succession	Page and Mya Bu	Eunoose	Maung
Ma Kyin Hlaing vs Maung Kyin Swi	Revision No. 281B of 1936	August 14, 1936	Kawa	1, RLR, p. 90	Maintenance, Marriage	Ba U	Aung Cheint	Saw Tun Teik
Ma Kyin Mya vs Maung Sit Han	Revision No. 737B of 1936	January 26, 1937	Nyaunglebin	1, RLR, p. 103	Maintenance, Marriage	Spargo	Guha	Ba Han
Ah Pein vs M.C. Deva and another	Special Second Appeal No. 12 of 1937	June 16, 1937	Mandalay	AIR-Rang 1937, p. 543	Marriage, Wills	Mosely	Sanyal	Christoper
Oon Chan Thwin vs Khoo Zun Nee	First Appeal No. 114 of 1937	January 4, 1938	Tavoy	AIR-Rang. 1938, p. 254	Gift of property, Succession	Mosely and Dunkley	Hay	Kyaw Din and Khoo
Daw E Thin and others vs Maung San Thein	Appeal No. 90 of 1938	December 6, 1938	Amherst	3, RLR, p. 258	Marriage, Succession	Mya Bu and Mackney	Ba Han	Khin Maung Gyi

Ma Tin vs Ko Sein Hone and others	First Appeal No. 135 of 1938	April 5, 1939	Myaungmya	AIR-Rang. 1939, p. 291	Divorce, Marriage	Mya Bu and Moseley	Rajagopaul	Hay
Tan Ma Shwe Zin and others vs Koo Soo Chong and others	Privy Council Appeal No. 48 of 1938	June 22, 1939	Rangoon	RLR 1939 p. 548; NAK file PCAP 6/1465/6	Succession	(Privy Council) Russell, Ranjin, and Jayakar		
Ma Pwa Tin vs Yeo Seing Maung	Civil Reference No. 3 of 1938	August 22, 1939		AIR-Rang. 1939, p. 74	Succession			
Yin Win Lin and other vs Ma Kyin Sein and others	First Appeal No. 67 of 1939	May 1, 1940	Myingyan	AIR-Rang. 1941, p. 66	Polygamy and status of wives, Property sale, Succession	Mya Bu and Mosely	Hay and Chan Htoon	Ba Han
Yup Soon E vs Saw Boon Kyaung	First Appeal No. 69 of 194	February 6, 1941	Rangoon	17, AIR-Rang, p. 241	Wills	Roberts and Dunkley	Ba Han	Maung and Darwood
Ma Aye Mya vs Chew Cheng Guat and others	First Appeal No. 6 of 1941	June 11, 1941	Insein	AIR-Rang. 1941, p. 334	Adoption, Succession	Roberts (CJ) and Dunkley	Wellington	N.P. Bhattacharya and U Ba Sein
Tan Swee Kyu vs Chan Chain Lyan	Civil Miscellaneous No. 50 of 1946	December 11, 1947	Rangoon	RLR 1947, p. 107	Guardianship, Maintenance	Thein Maung	Basu	Tun Maung