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### Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772-1947 (Studies in Legal History)

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## Book Reviews

*Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947 (Studies in Legal History)*. MITRA SHARAFI. Cambridge. Cambridge University Press. 2014. xxiii + 343. Hardback. £65. ISBN 978 1 107 04797 6.

The Parsis have had a distinctive role in legal history. Originally coming from Persia with their Zoroastrian beliefs, they adapted to the ways of British India with notable success. Concentrated in Bombay, the community was neither hostile nor marginalized. The minority expressed itself by engaging closely with evolving state institutions to the extent that it became almost a part of them. As the author of this study points out, this did not make the Parsis unique, 'but because the pattern was so strong, clear, and early, Parsi legal culture occupied a special place in the British Empire's traffic between law and community' (316).

By the start of the twentieth century a senior clerk in a Parsi law firm could write that, they 'are the life and soul of litigation in Bombay and in one shape or the other are connected with the majority of suits in [the] High Court' (98). The Parsis made up just six per cent of the population of Bombay and between a third and half of all lawyers, and roughly one-sixth of the High Court judges. Their vigorous use of the law had developed over the previous century. The explanation for their particular interest in the law is intricate. Parsis often made good traders and businessmen, with some of them becoming rich even by international standards. But curiously enough there were times when young members of the group found it difficult to engage in this sort of economic activity and they set about developing other skills, not least in learning to speak English fluently. They took to law with enthusiasm.

Nineteenth century India provided a wide range of opportunities for lawyers, both indigenous and European. There were serious examples of racial prejudice in some courts, but this was limited in its range in comparison to those parts of the empire with substantial numbers of European settlers in a position to assert a monopoly over legal work. In British Columbia would-be lawyers of indigenous and Asian origin were barred from practising until 1949. In Australia the first aboriginal lawyer was admitted to practice in 1976. By contrast, a Parsi in India, Dinshah F. Mulla, was appointed to the Judicial Committee of the Privy Council before either of these dates. As in almost every other aspect of imperial experience, the sub-continent was different.

The Parsis therefore provide a striking setting for a legal historian, and Mitra Sharafi has taken full advantage of this. She has turned to a formidable array of sources in official documents, private correspondence, journals, law reports and personal records, and she has an eye for the telling example. We are reminded that G.F. Watts' fresco of world law-givers in the Great Hall of Lincoln's Inn includes the ancient Persian prophet Zarathustra – a Victorian nod in the direction of recognizing the importance of the Parsi tradition.

Beneath the level of lively anecdotes and the success of individual lawyers there was structural change. Panchayats were councils of elders that existed in many religions, castes and village communities. In effect they were an alternative system of dispute resolution adjudicating social and religious disputes. By the 1820s and 1830s those used by the Parsis were in decline and being eclipsed by increasing use of the British courts. By the mid-nineteenth century the role of the panchayats was usually limited to controlling charities and their property. The elders in charge of the panchayats now occasionally suffered the indignity of having their role subjected to litigation. Courts were taking on a dominant role in Parsi life.

As the number of lawyers grew they were not slow to exert their influence. Joining with influential Parsi merchants and politicians, they played an increasingly active role in local government, engineering tax exemptions and reforms such as the Parsi Marriage and Divorce Act of 1865. The Parsi matrimonial courts used a jury of Parsis and a judge from the colonial courts. This sort of arrangement had a wider resonance: 'Having different rules for different communities meant that, by the late colonial period, legally savvy colonized elites could lobby for change affecting their own community more easily than they would have been able to in a purely territorial legal system' (89). The active Parsi Law Association could call on a wide range of legal skills, including those required for drafting new proposals. There could also at times be a darker side to this sort of work, as when measures were taken to minimize the opportunity for marriage with non-Parsis.

Against this background of professional self-assertion the author explores the creation of Parsi personal law. This requires sophisticated work on the part of the historian because the enterprise wound its way through references to ancient laws, which in fact had little influence even when they could be found, and English laws in the form of cases and Westminster statutes, and modern views within the local community. The result was neither Zoroastrian nor English. For example, the community was alarmed when an eldest son of a deceased father managed to use the English rule of primogeniture to his personal advantage. This encouraged vigorous intervention and the development of distinctive modern Parsi laws for intestate succession. Rules such as these in turn could be the subject of further dispute and, in conjunction with changes to the law relating to wills, it made for an extensive area of case law. It might be added that the litigation also served as a foundation for a number of notably successful careers for Parsi lawyers.

Over time law-making became a vehicle for the expression of collective identity. But it was not always going to be the identity of the whole Parsi community. 'In matrimonial law, the powers and privileges of Parsi husbands and fathers were crystallised and reconfigured in ways that sustained certain kinds of control over wives and children' (165). Taken as a whole the reforms gave a large amount of power to the male head of the family. Nor is this surprising, since 'the makers of Parsi matrimonial law were almost entirely male, socially and economically privileged, and Bombay-based, particularly as the colonial period wore on' (166). The author sets out in detail the roles of the judge and jury in the chief matrimonial court and this has implications for her views of the significance of law in imperial life. Imperial law was not, Sharafi argues, largely confined to matters of commerce and crime as so many

historians have suggested. The link between trusts and religious issues surfaces again and again in the life and litigation of Indian communities. 'The colonial legal system also reached right into the heart of the Indian home and family through the personal law system' (235): the family was not beyond the reach of the colonial state. In short, 'Below sporadic expressions of nonintervention from the upper administration lay a legal system that was comprehensive in scope' (235).

Certain areas of Parsi engagement with the law demand and get special attention because of the way they dominated litigation and professional life. Religious trusts, libel and group membership were topics which could produce litigation year after year. The intensity of the work served to make the community's law more rather than less distinctive. It is as if they could not resist resorting to law over questions such as: who could be a Parsee? Over time this gave them increased autonomy within the legal system. Paradoxically it was almost as if they were left to themselves at the same time as they became so active in public life and the legal profession. In the words of the author, 'Parsi law emerged out of colonial culture clash, not from the ruins of Persepolis. The Bombay patriarchs who built Parsi legal infrastructure drew on their own aspirational visions of group life' (313). The consequences of their work took on its own force: over decades they made law and the law also made them through making explicit their distinctive qualities. 'The more Parsi values shaped law through the work of Parsi lobbyists, judges, and litigants, the more Parsis sought legal solutions for their social problems, including core intragroup ones' (316).

In 1883 the distinguished member of the group, Sir Jamsetjee Jeejeebhoy, in considering the creation of Parsi matrimonial courts observed that 'the Government of India evinced a wise and benign consideration for the special position of the Parsee community in India' (193). The resultant degree of autonomy was put to extensive use. In revealing clear outlines to this formidably intricate story of legal change involving a social group, a legal profession, statutory reform and very extensive case law within an imperial framework the author has achieved something remarkable. A community and its laws are explained.

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*The River Pollution Dilemma in Victorian England: Nuisance Laws versus Economic Efficiency.* LESLIE ROSENTHAL. Aldershot. Ashgate. 2014. xiii + 274 (including index). Hardback. £75. ISBN 978 1 4094 4182 3.

In this important monograph principally addressed to the consequences of Victorian-era sewage pollution litigation, Leslie Rosenthal works consciously within two complementary scholarly traditions. One is law and economics, and in particular