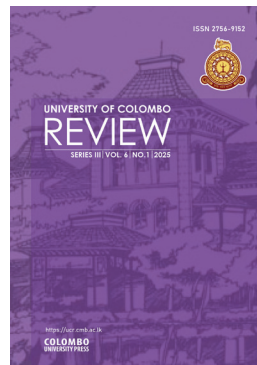


DOI: <https://doi.org/10.4038/ucr.v6i1.226>

University of Colombo Review (Series III),
Vol.6, No.1, 2025



Review of Nadeera Rupesinghe, *Lawmaking in Dutch Sri Lanka: Navigating Pluralities in a Colonial Society* (Tambapanni Academic Publishers 2024)

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Nadeera Rupesinghe's *Lawmaking in Dutch Sri Lanka: Navigating Pluralities in a Colonial Society* is essential reading for legal scholars and lawyers who grapple with Roman Dutch Law and its many influences. As a legal scholar and lawyer, and not a historian, I am in no position to review this work from a historical perspective. But the value and triumph of this book are evidenced by the very fact that it stimulated, fascinated and provoked thought in a legal scholar and lawyer.

I will not attempt to summarise the book in detail. The book comprises an introduction, conclusion, and six chapters. The substantive chapters cover the following topics: the Landraad (or the Land Council) under the Dutch, the development of oath-taking before giving evidence, and the development and recognition of land rights and inheritance rights before the Landraad. The chapters are presented in a coherent sequence that helps readers navigate the institutions of lawmaking and application of legal rules during a fascinating era in Sri Lanka's colonial history, i.e., when Sri Lanka was under Dutch rule. Throughout the book, the author presents illuminating narratives about actual litigants and the institutional actors who tried their cases. She compellingly brings these characters to life in telling not only their individual stories but a broader story about Sri Lankan law.

I wish to offer three observations about the book in the hope that it will encourage legal scholars and lawyers to critically engage its central thesis. The first is about why this book matters to both the legal academy and profession. The history of the law is not only a matter of understanding the origins of legal rules. History is fundamental to the formation and interpretation of the legal rule itself. Those working in common law jurisdictions understand the importance of history when they deal with legal precedent – where a judgment on a particular issue binds future courts that deal with the same issue. On the interpretation of statutes, scholars and lawyers explore legislative intent by referring to historical records, such as the Hansard. History is not just a discipline that enriches our understanding of the law. It is, in many ways a generative part of the law.

The interrelationship between history and law is precisely why this book is of enormous value to the legal academy and profession. The value of its substance is only enhanced by its form and style. Rupesinghe succeeds in illustrating a strange but slightly familiar universe in an entirely comprehensible manner to a non-historical readership. The book is written in a manner that is accessible to the legal scholar and practitioner; it also invites critical reflection and introspection rarely seen in historical works on the law.

Scholars are often tempted to write to very specific academic communities. Too much of academia is siloed and somewhat inhospitable to those outside the discipline of the author. But Rupesinghe's book is an overture across disciplines that not merely establishes a bridge between lawyer and historian but reminds the lawyer of how much the law depends on history. The discussions in chapter one on the formation of the Landraad and its impact on the development of the law on succession was particularly captivating. It challenged certain assumptions I entertained about the nature of the Roman Dutch Law in Sri Lanka. Students of the law in Sri Lanka are often taught that the Roman Dutch Law was externally enforced and became the common law of the country with little to no interaction with the local normative order. Yet Rupesinghe challenges readers to rethink the approach of seeing legal norms in a binary – as competing for application to a particular issue – and move towards a deeper understanding of how legal normative orders actually interacted and influenced each other. The book essentially offers an empirically grounded account of legal pluralism at work. This account is ground-breaking in terms of how we ought to understand the Roman Dutch Law in Sri Lanka. For this reason, I would recommend that every law school in the country have this book in its library, and every course on legal systems include this book among its required reading.

My second observation is that early in the book, the reader is alerted to the possible debate on whether Sinhalese customary norms constituted law. Rupesinghe compellingly proceeds on the basis that these norms had the ingredients of law and could be considered legal norms. The book's thesis that legal pluralism is evident in the Landraad rests on the presumption that the local normative order in fact contained legal norms. This presumption, however, raises a very interesting question about the concept of law, and I imagine legal theorists who read this book will find it hard to resist this question.

What is law and what features need to be present in a norm for it to constitute a legal norm? A sound theoretical frame of reference is needed to answer such questions. For instance, might we use HLA Hart's widely cited rule of recognition (Hart, 2012) to assess whether these local norms constituted law? The rule of recognition arises when officials accept a norm as imposing binding duties, conferring powers on officials, and resolving doubts and disagreements within the community.

For the Dutch authorities, it seemed clear that the local normative order had a legal character and that is perhaps why – as Rupesinghe explains – these authorities sought to accommodate and negotiate with these norms. In some sense, the Galle Landraad offers insights into whether local norms had this character of law. We might ponder of course whether such norms were legal norms *before* being applied in the Landraad, or whether they acquired a legal character because they were applied in the Landraad. Either way, the Landraad was undoubtedly a crucial vehicle for lawmaking in Sri Lanka.

Rupesinghe's work is, therefore, bound to attract legal theorists who are interested in assessing these local norms against a frame of reference that determines which norms are in fact legal norms. Few scholars will be equipped to access and analyse colonial records in the manner Rupesinghe has done. Therefore, this book stands to be a notable resource for such scholars.

My final observation is about the stage this book sets for future scholarship on Dutch law-making in Sri Lanka. The book drills down into the Galle Landraad by looking at a hundred cases during a period of about one and a half years. Although the title of the book might be framed generally, the book is upfront about the limits of its scope and acknowledges that it is drawing insights from a fairly small sample of cases from a particular maritime province and is focusing on the interaction between Sinhalese customary norms and Dutch legal norms. Rupesinghe paints a vivid picture of this very specific universe and is cautious in avoiding any overstatements about how representative this universe might be of Dutch law-making in general. Despite such caution, the reader is invited to consider whether the Galle Landraad can offer critical insights about Dutch law-making in general.

To this extent, the book generates a number of questions for future scholarship that Rupesinghe and others might embark on. How does the pluralism observed in the records of the Galle Landraad between May 1778 and December 1779 compare with other periods of that same institution? How do these developments compare with developments in other maritime territories occupied by the Dutch, such as Colombo and Jaffna? How does the interaction between Sinhalese customary norms and Dutch legal norms compare with the interaction between Tamil and Muslim customary norms and Dutch legal norms? In essence, how does the experience of Sinhalese litigants compare with the experience of Tamils and Moors?

Sound scholarship is not only about presenting new answers to old questions. It is also about generating new questions with which future scholarship will invariably grapple. On that account, Rupesinghe's book is a pathbreaking success, as she has reached a point that no one before has reached. Her book will hopefully inspire future generations of scholars to continue on the journey and venture even further.

Conflict of Interest

The author has no conflict of interest to declare.

References

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