

# Historical Gaps and Non-existent Sources: The Case of the Chaudrie Court in French India

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There is a particular kind of frustration well-known to historians. Sometimes, while reading a primary source or working one's way through an archival collection, folder by folder, box by box, the story coheres. The characters of the past acquire a tangible presence in the mind and on the page, and connections and patterns sharpen into clarity, as details and analysis come together. Suddenly, the trail goes cold. The drama ends before its conclusion. A central actor disappears, never to be located in another source again. The archive does not yield even another speck of information, and a domestic, commercial, criminal, or political event remains unresolved. Worse, sometimes a yawning gap characterizes the archive itself, and a whole series of events and encounters that had been documented before or after this gap are simply missing from the archival sequence. These missing sources and gaps in the archive shape our work just as much as the sources we do cite. For historians, minding the gap means stepping into it.

Consider the case of a young man named Peroumal, who in 1730 was accused of theft and brought before a French-run court called the Chaudrie, a legal forum in which French officials settled disputes among local actors using local legal customs. Peroumal was only fifteen years old at the time, the son of small-scale rice farmers from the Vellala caste. He had moved in European circles from an early age, first delivering rice to French households and then as a domestic servant for French traders. His employer, the French East Indies Company trader M. de La Farelle, had accused him of stealing. Unaccountably,

Acknowledgments: For their insightful suggestions, I thank the anonymous *CSSH* reviewers, and Nancy Christy, Kate Epstein, Bikrum Singh Gill, Julia Gossard, Daniel Hershenzon, Sumathi Ramaswamy, Meghan Roberts, Molly Warsh, LaDale Winling, Laurie Wood, Anya Zilberstein, the participants at the Research Triangle South Asia Seminar, the Early Modern Global History Seminar at Georgetown University, and the Historians Writing Group and the ASPECT seminar at Virginia Tech. I am particularly indebted to Sue Peabody for her generative comments.

one Séchassalachetty Soucourama, an Indian merchant, used his credit and reputation to vouch for Peroumal's mother while she gathered the money to pay back the stolen sum.<sup>1</sup> He also persuaded de La Farelle to withdraw the complaint and release Peroumal from the prison of the Chaudrie. We only know about this event because it is briefly mentioned in the documents generated in 1733, when Peroumal again faced charges of stealing from his employer, another French trader named Nicolas Le Facheur, this time before the Superior Council, the highest court of the French colony of Pondichéry on the Coromandel Coast of India. No records of the Chaudrie from 1730 exist.<sup>2</sup> Indeed, for most of the eighteenth century there are no extant sources produced by the Chaudrie court.

The 1733 accusation produced a lengthy investigation and a case dossier comprised of nineteen separate items—multiple interrogations, witness testimonies, deliberations, and meetings, covering 151 manuscript folios.<sup>3</sup> However, another powerful man intervened on Peroumal's behalf: the Superior Council received a request from no lesser personage than “Imam Sahib, chief minister to the Nawab of Arcot,” asking for Peroumal's release in the name of the Muslim ruler.<sup>4</sup> The Council agreed, showing how clearly the political and commercial calculus trumped the judicial and legal authority claimed by the French Council.<sup>5</sup> Nonetheless, here the historian falls into the gap again, as the archive provides no information on the context or logic of this decision or Peroumal's ultimate fate.

<sup>1</sup> This man's identity is the cause of some scholarly debate. A local merchant referred to as “Soucourama” appears in the French sources in the first half of the eighteenth century. Catherine Manning believes the Soucourama in the French archive is a conflation of multiple people. The “Séchassalachetty Soucourama” who helped Peroumal was likely Sungu Seshachala Chetty, a relative of an important Madras merchant. Catherine Manning, *Fortunes à Faire: The French in Asian Trade, 1719–48* (Aldershot: Variorum, 1996), 136–39.

<sup>2</sup> Archives nationales d'outre-mer, Aix-en-Provence, France (henceforth ANOM), Indes, série M, Procès criminels, dossier 46 (henceforth Inde M/46.) The individual, unbound folios of this and other case dossiers in this archival collection are not paginated, although some sections are itemized, and many are dated. In citing these documents, in order to increase accessibility, I have numbered the loose folios in the order in which they appeared in the dossier when I consulted them and note that number in brackets at the end of each citation. That another scholar or archivist might have shifted the order of folios within the file since I consulted them, rendering these numbers useless, is an apt reminder of the fluid nature of the archive on which this essay reflects. In this instance, the citation is ANOM, Inde M/46, the deposition of Chesalachetty Soucourama, 18 July 1733, 89–91. Subsequent citations will follow this abbreviated format.

<sup>3</sup> ANOM, Inde, M/46.

<sup>4</sup> ANOM, Inde, M/46, item 19 [2].

<sup>5</sup> Much of the older historiography on the Nawabs of Arcot relied on European, and especially English, company records, without problematizing this reliance. See for example Jim Phillips, “A Successor to the Moguls: The Nawab of the Carnatic and the East India Company, 1763–1785,” *International History Review* 7, 3 (1985): 364–89. On the need to utilize the Persian court chronicles, numismatic, and architectural sources in the historiography of Arcot, see H. Munavarjan and T. Shafeeqe Ahmed, “Sources for the Study of Nawab Muhammad Aui Walajahi,” *International Journal of Research in Applied, Natural and Social Sciences* 4, 7 (2016): 25–30. For more on Arcot from local records, see Sanjay Subrahmanyam, *Penumbral Visions: Making Politics in Early Modern South India* (Ann Arbor: University of Michigan Press, 2001).

The archive sheds no light on why a young servant had the Nawab of Arcot's very considerable clout at his disposal.

Peroumal's case points just as clearly to what we do not know as to what is knowable. We do not know what forms of clientship this alleged petty thief had with his powerful patrons, nor how or even if his employers received compensation for their alleged losses, although the reference to allowing Peroumal's mother opportunity to raise funds three years later suggests the first accuser may have received them.

This essay considers the phenomenon of the historical gap and its theoretical and methodological implications for legal history by examining the Chaudrie court and the gaps in its documentation in the eighteenth century and beyond. I examine the Chaudrie's archive, or more precisely its non-existent archive, over a period of roughly sixty years leading up to the 1760s. The Chaudrie was a forum managed by French officials of the *Compagnie des Indes orientales*, aimed at resolving conflict between local litigants, using local legal methods. In the Chaudrie, French traders who served as judges were meant to mete out justice "according to the ways and customs of the country."<sup>6</sup> The Chaudrie was under French control from the very beginning of the eighteenth century until judicial restructuring shuttered it in 1827.<sup>7</sup> However, in the first decades of the eighteenth century, French colonial officials used the Chaudrie in an effort to become part of local legal fora, rather than the other way around. While the court did stake a claim to the right to inflict violence on those who came before it, this right emanated not from the French Crown, as we might expect, but from judges' ability to "nest" the workings of the court within existing modes of resolving disputes in the Tamil region. It is this approach to the law enacted in the Chaudrie in the first half of the eighteenth century which also explains the archival gap in its sources and history.

The fact that the Chaudrie's records of cases heard and decisions rendered begin only in 1766, after its existence under French rule for at least six decades, poses a challenge for historians. The National Archives of India, Puducherry Record Centre holds most of the extant records, which begin with a case in which a widow of a Brahmin man sued for financial support on 31 October 1766. Jean-Claude Bonnan has assembled a vital collection containing roughly 10 percent of the cases beginning in 1766, and historians have begun to plumb this late eighteenth-century documentation.<sup>8</sup> However, the question of "the archive" of the Chaudrie is more complicated for the earlier period.

<sup>6</sup> In the original, "suivant les usages et coutumes du pays," *Bibliothèque nationale française*, *Manuscrits français* 6231, folio 27.

<sup>7</sup> A *tribunal de Première instance* replaced the Chaudrie, making the colonial set-up hew more closely to metropolitan arrangements. Jean-Claude Bonnan, *Jugements de la tribunal de la Chaudrie de Pondichéry 1766–1817* (Pondicherry: Institut française de Pondichéry, Ecole française d'Extrême Orient, 2001), vol. 1, xvii.

<sup>8</sup> *Ibid.*

By considering the Chaudrie court's records, and especially the lack of a formalized archive for the first six decades in which it was under French authority, this study integrates problems that are specific to the study of legal history—questions pertaining to jurisdiction, codification, evidence, and sovereignty—with issues all historians face regarding power and the making of archives. It juxtaposes an account of the specific archival conditions of the Chaudrie and their relation to the broader context of colonial power with an examination of the legal arena of the Chaudrie and its methods of decoupling jurisdiction from sovereignty. As I will show, the Chaudrie's early history makes visible a relationship between law and its archive that is paralleled by approaches to colonial governance in the early modern French Empire.

I argue that the Chaudrie did not generate a state-managed and preserved archive of court records for itself until the 1760s because up to this period the court was an instrument of the state that attempted to deploy jurisdiction, but not in order to claim sovereignty. Much of the scholarship on colonial legal regimes has focused on the law as a tool of sovereignty, but law had other functions in both the Chaudrie and Pondichéry's better-documented court, the Superior Council.<sup>9</sup> The Chaudrie's history reveals that an understanding of the law that largely severs it from sovereignty also severs the relationship between law and its attendant documentary bureaucracy. For law was also a service and a resource, which French newcomers used in a field dense with competing political and commercial interests, to draw a diverse group of agents and practices into its sphere of influence. From its inception to the 1760s the Chaudrie relied strictly on local modes of resolving disputes, particularly mediation by brokers and caste chiefs and collective arbitration. Across the French Empire homogenization remained little more than an aspirational agenda for much of the eighteenth century, due to the distribution of power at the local level, which vested much local authority in the hands of non-French actors. Jurisdictional similarity—such as the existence of Superior Councils in the metropole, the Atlantic, and the Indian Ocean colonies—did not mean judicial uniformity, because of the reliance on local legal cultures, a fact which the Chaudrie reveals with particular clarity.<sup>10</sup> The archive of the Chaudrie came into being as France instituted legal

<sup>9</sup> Lauren Benton's foundational scholarship on colonial legal regimes has elaborated the ability of jurisdictional claims to stand in for and advance sovereignty: *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002); and *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2009). This study builds on this work by suggesting that an interrogation of law's archive provides greater clarity on how the move toward the increasing hegemony of state law unfolded.

<sup>10</sup> On the importance of the colonial Superior Councils in bringing about this shift in the later part of the eighteenth century, see Laurie M. Wood, *Archipelago of Justice: Law in France's Early Modern Empire* (New Haven: Yale University Press, 2020). Wood argues that a "global judicial elite" emerged from a group of mostly military French families in the West Indies. This work importantly shifts the focus from the metropole to the colonies and "decenters Paris" in discussions of French law.

reforms around the empire to create greater legal and bureaucratic conformity. The lack of a documentary record for the Chaudrie before the 1760s is therefore less a limitation than an opportunity to understand its difference from other imperial legal institutions, most importantly the *Conseils Supérieurs*, which existed in Pondichéry and across the early modern French Empire. As Marie Houlemare has shown in important recent work, judicial archives offer insight into the development of French empire, and so does their absence.<sup>11</sup>

The lack of documentation for the Chaudrie's first six decades under French control appears like a puzzle or a mystery if we assume that sovereignty, or at least claims for sovereignty, precede and underlie the creation of legal jurisdiction. But as Shaun McVeigh and Sundhya Pahuja have recently suggested, it is a mistake to assume the sovereign a priori. The claim to pass judgement and settle disputes (jurisdiction) does not emerge from an underlying claim to authority (sovereignty); rather, the causality is often reversed, as it was in the legal arena in Pondichéry in the first half of the eighteenth century. Jurisdiction preceded sovereignty as what they call "a mode of authorization," in effect creating the sovereign as a product of jurisdiction, rather than the other way around.<sup>12</sup> Ilana Feldman has argued that the decision to make limited and restricted claims about governmental authority could be a tactical one, a response to on-the-ground limits to state legitimacy, a situation mirrored in colonial Pondichéry.<sup>13</sup> State-directed archive creation after the 1760s went hand in hand with the claim for sovereignty; but once we see that sovereignty might depend on jurisdiction, as in the earlier example of the Chaudrie, the missing archive becomes an explanation, rather than a problem.

French courts ceded their authority to determine Peroumal's fate on two different occasions, reflecting a French legal regime in which the authority of local actors could exceed the authority of French judges. This form of jurisdictional capaciousness was of a piece with the limits of French control over their colonial project in India. Likewise, a formal, bureaucratized archive did

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The Chaudrie demonstrates that as this French legal elite was constituting itself, French legal actors had only limited capacity to shape local legal regimes. Legal culture was made by non-French actors even in sites of French sovereignty.

<sup>11</sup> Marie Houlemare, "Procedures, Jurisdictions and Records: Building the French Empire in the Early Eighteenth Century," *Journal of Colonialism and Colonial History* 21, 2 (2020). Houlemare has also considered the preservation of these records and suggested that metropolitan aggregation of these documents or their copies was crucial to the creation of a sense of imperial control. Marie Houlemare, "Vers la centralisation des archives coloniales françaises au xviii<sup>e</sup> siècle: Destruction et —conservation des papiers judiciaires," in Maria Pia Donato and Anne Saada, *Rencontres*, eds., *Pratiques d'archives à l'époque moderne* (Paris: Classiques Garnier, 2019), 349–67.

<sup>12</sup> Shaun McVeigh and Sundhya Pahuja, "Rival Jurisdictions: The Promise and Loss of Sovereignty," in Charles Barbour and George Pavlich, eds., *After Sovereignty: On the Question of Political Beginnings* (New York: Routledge, 2009), 99–100. For legal scholars' understanding of sovereignty more generally, see Shaunnagh Dorsett and Shaun McVeigh, *Jurisdiction* (New York: Routledge-Cavendish, 2012).

<sup>13</sup> Ilana Feldman, *Governing Gaza: Bureaucracy, Authority, and the Work of Rule, 1917–1967* (Durham: Duke University Press Books, 2008).

not emerge until the state made an explicit claim to sovereign oversight and control. The unknowable portions of Peroumal's story and the gaps in the archive reflect the broader judicial contexts in which his actions were judged. They serve as metonyms for the shifting nature of relationships between record keeping and governance, between event and record, between case and law, and between jurisdiction and sovereignty.

#### A TYPOLOGY OF HISTORICAL GAPS

How are historians to write an institutional account of an institution, like the Chaudrie, whose archive is characterized by missing, non-existent, or disrupted archives? Over the past two decades or so, historians and other scholars have increasingly examined the limits, boundaries, and parameters that shape archives, and in turn shape the knowledge which historians try to wrest from these archives, particularly state-produced documentary archives.<sup>14</sup> More recent work, especially on enslaved people and specifically women, by Marisa Fuentes, Saidiya Hartman, Sowande' Mustakeem, Sue Peabody, Jessica Marie Johnson, Sophie White, and others has demonstrated that explicitly accounting for the ways archives have bound those represented in them, and limit the stories that can be told using them, can lead to methodological and theoretical innovations and new frameworks for rethinking longstanding debates about agency, power, and the practice of doing history.<sup>15</sup> This body of work could be described as instituting a knowledge crisis of sorts—a very productive crisis, which has encouraged historians to reconsider their approaches to the collected documents that are the bedrock of our practice, and how those documents are constituted as “sources,” “evidence,” and “archives.”<sup>16</sup>

<sup>14</sup> Michel-Rolph Trouillot, Ann Stoler, Natalie Zemon Davis, and Arlette Farge wrote crucial early work in this vein. For an excellent overview of the scholarship constituting the archival turn, too vast to cite here, see Renisa Mawani, “Law’s Archive,” *Annual Review of Law and Social Science* 8 (2012): 337–65. See also Antoinette Burton, *Archive Stories: Facts, Fictions, and the Writing of History* (Durham: Duke University Press, 2005).

<sup>15</sup> Most influential for the development of my thinking on this topic has been Marisa J. Fuentes, *Dispossessed Lives: Enslaved Women, Violence, and the Archive* (Philadelphia: University of Pennsylvania Press, 2016). Saidiya Hartman’s recent work demonstrates the power, beauty, and potential of narrative experimentation in light of archival constraints. Saidiya Hartman, *Wayward Lives, Beautiful Experiments: Intimate Histories of Social Upheaval* (New York: W. W. Norton & Company, 2019). See also Sowande M. Mustakeem, *Slavery at Sea: Terror, Sex, and Sickness in the Middle Passage* (Urbana: University of Illinois Press, 2016); Sue Peabody, *Madeleine’s Children: Family, Freedom, Secrets and Lies in France’s Indian Ocean Colonies, 1750–1850* (Oxford University Press, 2017); Jessica Marie Johnson, *Wicked Flesh: Black Women, Intimacy, and Freedom in the Atlantic World* (Philadelphia: University of Pennsylvania Press, 2020); Sophie White, *Voices of the Enslaved: Love, Labor, and Longing in French Louisiana* (Chapel Hill: Omohundro Institute and University of North Carolina Press, 2019).

<sup>16</sup> On this, see Carlo Ginzburg, “Checking the Evidence: The Judge and the Historian,” *Critical Inquiry* 18, 1 (1991): 79–92; Carlo Ginzburg, “Clues: Roots of a Scientific Paradigm,” *Theory and Society* 7, 3 (1979): 273–88.

This article identifies and addresses three kinds of historical gaps: the physical, the historiographic, and the epistemological. The Chaudrie's non-existent records from its inception to 1766 represent a physical gap. While these records likely never existed, materials that once existed but have disappeared or been destroyed also represent a physical gap. As well as historical actors, archivists who organized and preserved (or did not preserve) the materials may create such a gap.

The second kind of gap, and the one usually given the most attention, is a gap in the scholarship, a historiographic gap. Such gaps exist when the archive contains materials that have been disregarded, usually because they were considered unimportant. Whole fields of scholarship—the histories of indigenous people, the history of women, and in the context of French history until the 1990s, the history of empire and colonialism—have been victim to this kind of historiographic gap. It is a product of neglect; for example, the history of women was long neglected until the flourishing of the field beginning in the 1960s and 1970s.<sup>17</sup>

The third kind of gap, the epistemological, is what the historian and anthropologist Michel-Rolph Trouillot, in his work on Haitian history and its unthinkability, has clarified so influentially: certain kinds of histories disrupt commonly held narratives so profoundly, in a manner so unsettling, that it becomes very difficult to see that a gap even exists.<sup>18</sup> Unlike the neglect that produces the historiographical gap, the epistemological gap stems from unknowability. Trouillot has described the revolt by enslaved people in St. Domingue at the end of the eighteenth century as being a “history of the impossible.” The unthinkable is “that which one cannot conceive within the range of possible alternatives, that which perverts all answers, because it defies the terms under which the questions were phrased.”<sup>19</sup> For example, the history of people of non-binary gender was, for too long, unknowable in the historical scholarship; it was fundamentally invisible to most historians, as the majority was unaware of the category of non-binary identities. Only new structures of thought about gender identity have made clear the fact that such a gap even exists. Epistemological archival gaps might manifest both in how historians utilize available materials and whether documents are even available at all.

Even with historiographic and epistemological gaps, recognition that a gap of any kind exists does not immediately translate to its closing or disappearance. The openness of the gap is precisely what makes it so generative, as historians try to chart its creation, limits, and constitution. As the flourishing of

<sup>17</sup> On this process, see Nupur Chaudhuri, Sherry J. Katz, and Mary Elizabeth Perry, eds., *Contesting Archives: Finding Women in the Sources* (Urbana: University of Illinois Press, 2010).

<sup>18</sup> Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon Press, 1995).

<sup>19</sup> *Ibid.*, 82.



scholarship about colonial Haiti and the Haitian revolution over the past decade demonstrates, the recognition of the gap that once existed can be profoundly productive.<sup>20</sup>

All three kinds of gaps—the physical, the historiographic, and the epistemological—are inevitably linked and can constitute one another and the archives in which they appear in various configurations. And all three kinds of gaps are created by human actors, even if natural occurrences or disasters play a role in shaping them.<sup>21</sup> The history of French India in the eighteenth century is replete with all three kinds of historical gaps. To begin with the physical gaps, these entered the archive even as it was created: throughout the eighteenth century, colonial administrators in Pondichéry regularly claimed that orders from the metropole took too long to arrive in India for them to comply. The recurring complaint by colonial officials about missing information is a reminder that archival gaps are experienced (or in this case, strategically deployed) by contemporaneous historical actors.

Natural and man-made physical gaps proliferated in the archive of French colonialism in India, and especially the bureaucratic archive created by employees of the Compagnie des Indes, in the nineteenth and twentieth centuries. Clerks copied huge swaths of documents and the originals of many archival series disappeared. In 1916 a typhoon that struck Pondichéry ruined many documents held in the city archives.<sup>22</sup> At mid-twentieth century, following Indian independence, most of the materials from Pondichéry's archives were moved to Paris. However, most of the extant original records of the Chaudrie court as well as some others remained in what today is the Puducherry Record Centre of the National Archives of India. This created a permanent split in an archive that had been conceived very differently.<sup>23</sup> In the 1990s the archive of French India was removed from the Archives nationales in Paris to what are now

<sup>20</sup> Scholarship on colonial Haiti has grown tremendously since the 1990s, in what can be seen as an explicit or implicit response to Trouillot's call to end the "silencing" of the Haitian past. For an overview, see Alyssa Goldstein Sepinwall, "Beyond 'The Black Jacobins': Haitian Revolutionary Historiography Comes of Age," *Journal of Haitian Studies* 23, 1 (2017): 4–34.

<sup>21</sup> As Mike Davis has demonstrated, natural disasters are themselves, more often than not, at least man-shaped if not man-made; *Late Victorian Holocausts: El Niño Famines and the Making of the Third World* (London: Verso, 2001).

<sup>22</sup> Included were the originals of the many volumes of the diary of the commercial broker Ananda Ranga Pillai, a painstaking account of his daily life over roughly thirty years. Only a portion of the Tamil text survives, in copies Edouard Ariel transcribed in the nineteenth century that are held today at the BNF in Paris. Today historians draw on the English translation undertaken by British Orientalists and Tamil scholars from Madras in the late nineteenth and early twentieth centuries. Ananda Ranga Pillai, *The Private Diary of Ananda Ranga Pillai, Dubash to Joseph François Dupleix, Knight of the Order of St. Michael, and Governor of Pondichery. A Record of Matters Political, Historical, Social, and Personal, from 1736 to 1761*, 12 vols. (Madras: Printed by the Superintendent Government Press, 1904).

<sup>23</sup> This account focuses on documents written on paper, as in the French tradition. The history of Tamil documents written on palm leaves, some of which can still be found today in the collections of ANOM in Aix-en-Provence, is a crucial parallel one. On scribal practices in the Tamil region, see



the Archives nationales d'outre-mer (ANOM) in Aix-en-Provence, as part of a national reckoning with the history of French Empire, when the archives of all French colonies were collected under one roof. The process of physical gap-making continues apace to this day: a few years ago, the archivists at ANOM made the decision to withdraw from open circulation the reports sent by colonial administrators in India from 1649 to 1835 due to their state of preservation.<sup>24</sup>

The historiographical gap into which the history of French India falls is an issue which is central for any scholar working on this neglected history. The marginalization of French India in the literatures of both France and South Asia is largely relative to other imperial formations.<sup>25</sup> This history has the potential to illuminate global processes of commercial, political, and legal transformations in the French Empire.<sup>26</sup> Yet much of its significance remains unknown because, in contrast to the political and cultural behemoth of the British Raj on the one hand, and the violence and trauma of independence movements in the twentieth century, most notably in Algeria, the tiny, “failed” colonies of French India are considered unimportant.

Finally, the epistemological gap manifests itself in an inability to even consider the French project in South Asia as a colonial one, relegating it to “mere” merchant capitalism, and effectively erasing it from the colonial history of France and South Asia. The epistemic challenge French India poses emerges from the fact that this was a colonial and colonizing effort that did not initially pose hegemony as its aim, thereby complicating commonly held conceptions about the forms and aims of imperial and colonial projects.

While the history of French India may have a particularly large number of gaps of all three types, a whole or complete archive cannot ever exist. An archive without gaps would be the equivalent of Borges’s map of the empire the size of the entire empire: a delusion of exactitude and absolute representation which only calls attention to the limits of knowledge.<sup>27</sup> Leslie Harris has noted that the idea of archival silences acts to implicitly posit the existence of a “perfect archive.”<sup>28</sup> All archives, even those that appear especially cohesive and

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Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial South India* (Chicago: University of Chicago Press, 2012). More generally, a fascinating discussion of how places create an archive through the interplay between material traces and historical consciousness is William J. Turkel, *The Archive of Place: Unearthing the Pasts of the Chilcotin Plateau* (Vancouver: University of British Columbia Press, 2008).

<sup>24</sup> ANOM, Fonds ministériels, Correspondance à l’arrivée, sous-série c<sup>2</sup>.

<sup>25</sup> The term is borrowed from Ann Laura Stoler, Carole McGranahan, and Peter C. Perdue, *Imperial Formations* (Santa Fe: School for Advanced Research Press, 2007).

<sup>26</sup> Danna Agmon, *A Colonial Affair: Commerce, Conversion, and Scandal in French India* (Ithaca: Cornell University Press, 2017), 5.

<sup>27</sup> The reference here is to the (very) short story “On Exactitude in Science,” written by Jorge Luis Borges in 1946, in his *Collected Fictions*, Andrew Hurley, trans. (New York: Penguin Books, 1999), 325.

<sup>28</sup> Leslie M. Harris, “Imperfect Archives and the Historical Imagination,” *Public Historian* 36, 1 (2014): 77–80.

complete, such as court records, must be examined in light of the gaps they contain, obscure, or create.

The history of the Chaudrie can similarly be examined in light of the gaps it contains, and how these gaps structure what we know and do not know about the Chaudrie. The physical gap might appear, at first glance, to be the most straightforward one. We know little about the early iterations of this court because records prior to 1766 have not survived, perhaps due to the fact they were kept on palm leaves, perhaps because litigants brought necessary documents in and out of the court as needed to pursue their cases, or perhaps because cases in the Chaudrie were not documented at all.<sup>29</sup> Yet there is nothing straightforward about this gap: political, ideological, and bureaucratic beliefs about the value of the court's work and the importance of the litigants and their conflicts informed decisions to either refrain from keeping records or not to safeguard and preserve them. Decision may also have been made in accordance with local scribal custom, or to fulfill a desire of litigants to keep their own records rather than surrender them to a French official. The result in any case precludes a full account of the Chaudrie's early years.

The historiographic gap is also on full display in regards the Chaudrie, about which very little has been published.<sup>30</sup> This is clearly linked to the physical gap of the non-existent sources, as well as to the material fact that most of the extant Chaudrie sources, held in the archive in Puducherry, are on darkened paper, rendering them less legible. Likewise, while the history of French India has been marginalized, the Chaudrie has been marginalized within what scholarship exists on the subject relative to the Superior Council. And the kind of institution the Chaudrie was, with its combination of French merchant councilors reliant on local custom, a forum which took on the shape of local institutions but was integrated into the world of the Sovereign Councils, does not fit neatly within the two central narratives of colonial legal history: either the transition toward abstract rule of law and European hegemony, or the narrative of legal pluralism, which allows litigants choice among discernible, separate legal units.

As for the epistemological gap—the unthinkability of an event, institution, or an archive—here we have to return once again to the physical gap, the missing sources from at least the late seventeenth century to 1766. The French East Indies Company was a very document-producing kind of operation, yet it did not produce an archive for what may well have been thousands of cases, perhaps conceiving of them as not deserving of an archive. A history of the workings of the court during this period must battle against the reality that the court was not deemed worthy of documenting in the eighteenth century, and as a result, remains difficult to understand in the twenty-first century as well. What the

<sup>29</sup> This latter hypothesis is presented in Bonnan, *Jugements*, vol. 1, xii.

<sup>30</sup> This is being remedied by work being currently carried out by Gauri Parashar and Anna Dönecke.

Chaudrie clearly demonstrates is that physical, historiographic, and epistemological gaps continually constitute each other.

#### FRAGMENTED AND MISSING LEGAL ARCHIVES

For scholars of colonial and imperial projects, bureaucratic archives directed by the state have long been a central concern. Historians and anthropologists alike have called for an examination of bureaucratic records in all their materiality, not merely as receptacles of information to be extracted.<sup>31</sup> This literature has demonstrated the importance of reckoning with the fact that documents are not neutral transmitters of information, but artifacts that require their readers to interrogate the circumstances of their production, the form of their representation and mediation of the world from which they emerge, and the politics and tactics of their use.<sup>32</sup>

Somewhat counterintuitively, I argue that the insights brought to bear on the study of documents as artifacts of the cultural and political contexts of their creation also apply to documents that are lost or never existed.<sup>33</sup> That is, the absence of documents is just as constitutive of institutions as extant practices and materials. If writing is implicated in relations of domination, as Brinkley Messick has argued, then so is the lack of writing.<sup>34</sup> While documents “are constitutive of bureaucratic rules, ideologies, knowledge, practices, subjectivities, objects, outcomes, and even the organizations themselves,” the same is true for documents that a bureaucratic institution failed to create or allowed to be lost.<sup>35</sup> Much like representations of things are material, representations of non-things are material as well. In other words, the representation of documentary gaps in the archive has its own material, political, and social history.

The relationship between bureaucratic documents and the development of both state power and systems of law has been of interest to social theorists dating back to Max Weber. Nevertheless, as Renisa Mawani has noted in a lucid account of the archival turn and its import for legal scholars, legal studies is yet to center this archival reckoning.<sup>36</sup> But recent transformations in this field have been

<sup>31</sup> A review of this literature is in Matthew S. Hull, “Documents and Bureaucracy,” *Annual Review of Anthropology* 41, 1 (2012): 251–67.

<sup>32</sup> *Ibid.*, 253. Webb Keane has referred to this process as “undoing the sign’s withdrawal from its worlds”; “Semiotics and the Social Analysis of Material Things,” *LAC Language and Communication* 23, 3–4 (2003): 409–25, 411.

<sup>33</sup> Matthew Hull has argued that documents and their makers constitute these artifacts as “invisible,” in *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (Berkeley: University of California Press, 2012), 12.

<sup>34</sup> Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1992), 2.

<sup>35</sup> Hull, “Documents and Bureaucracy,” 253. On how bureaucracy enables the state to enter the lives of ordinary men and women, often in a violent fashion, see Akhil Gupta, *Red Tape: Bureaucracy, Structural Violence, and Poverty in India* (Durham: Duke University Press, 2012).

<sup>36</sup> Mawani, “Law’s Archive.”

driven by the examination of legal history through the insights of the archival turn and the epistemological questions concerning archival gaps.<sup>37</sup> Given bureaucratic documents' ability to bolster claims of state sovereignty, the lack of such documents can reveal instances where this sovereignty is tenuous or contested.<sup>38</sup> The anthropologist Veena Das has posited that states foster a "paradox of illegibility," one characterized by the fact that "it is in the realm of illegibility, infelicity, and excuses that one sees how the state is reincarnated in new forms."<sup>39</sup> In Das's account, such reincarnation of the state, its claims to sovereignty, and its laws, takes place in written forms, in documents of the state.<sup>40</sup> But the paradox of illegibility holds just as true for nonexistent documents, sources that reveal the shape of the state or an institution by virtue of their very absence. Whether the signs and representation of state authority exist or not, it is the instability and slippery nature of signs and representation that enable "the possibilities of a gap between a rule and its performance."<sup>41</sup>

More broadly, the function of law in colonial contexts, and the general relationship between law and colonialism, has much occupied scholars since the 1990s. This scholarship has placed three questions at its center: first, the ability of colonized subjects to act as litigants; second, the prevalence of legal arrangements characterized by "legal pluralism"; and third, the distinction between law and custom in colonial courts and in imperial ideology. A history of the Chaudrie and its missing archive contributes to all three debates by considering how colonial legal systems could claim jurisdiction in a manner decoupled from sovereignty, and by critically examining the archive of law and law's reliance on documentary archives.<sup>42</sup>

<sup>37</sup> Historians of law, especially in colonial contexts, have detailed the creation of legal archives. Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru* (Durham: Duke University Press, 2010); Bianca Premo, *The Enlightenment on Trial: Ordinary Litigants and Colonialism in the Spanish Empire* (New York: Oxford University Press, 2017); Ángel Rama, *The Lettered City* (Durham: Duke University Press, 1996).

<sup>38</sup> On paperwork's importance in the formation of the law, see Ben Kafka, "Paperwork: The State of the Discipline," *Book History* 12, 1 (2009): 344–45. Kafka draws on the insights of Cornelia Vismann, *Files: Law and Media Technology*, Geoffrey Winthrop-Young, trans. (Stanford: Stanford University Press, 2008); Bruno Latour, *La fabrique du droit: Une ethnographie du Conseil d'Etat* (Paris: Editions La Découverte, 2004). For a recent discussion of legal documents that were appropriated and transformed in the colonial context of British rule in Western India in order to unearth "the everyday materiality of law," see Elizabeth Lhost, "Writing Law at the Edge of Empire: Evidence from the Qazis of Bharuch (1799–1864)," *Itinerario* 42, 2 (2018): 256–78, 259.

<sup>39</sup> Veena Das, "The Signature of the State: The Paradox of Illegibility," in Veena Das and Deborah Poole, eds., *Anthropology in the Margins of the State* (Santa Fe: School for Advanced Research Press, 2004), 227.

<sup>40</sup> Responding to the challenge of illegibility, Bhavani Raman has suggested that the verification or forgery of documents became arenas where colonial governments could make impossible claims of "perfect recordation"; "The Duplicity of Paper: Counterfeit, Discretion, and Bureaucratic Authority in Early Colonial Madras," *Comparative Studies in Society and History* 54, 2 (2012): 229–50, 231.

<sup>41</sup> Das, "Signature of the State," 227.

<sup>42</sup> Central to the scholarship on sovereignty and jurisdiction in colonial legal history is Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge; New York: Cambridge University Press, 2009). Work that complicates the relationship

A growing body of work on indigenous claims-making in colonial courts has insightfully revealed how colonized litigants used colonial law to their advantage, and have done so from the very inception of colonial legal systems.<sup>43</sup> Examples include showing how enslaved people in St. Domingue drew on the Code noir to bolster their claims of subjecthood vis-à-vis the French Crown, as Malick Ghachem has done; or in revealing how illiterate litigants produced a law-centric culture in the Iberian Empire, as in Bianca Premo's recent work.<sup>44</sup> The Chaudrie's history is especially intriguing in relation to this body of work, given its institutional imperative to provide a forum and justice not only to local litigants, but according to "the custom of the country."

As for legal pluralism, legal hybridity, "legal polyjuralism," and legal diversity—these have all been productive analytic frameworks for considering the coming together of different systems of resolving disputes, particularly in the colonial context.<sup>45</sup> In the context of Indian Ocean scholarship, Islamic and British legal regimes have recently drawn attention, and scholars have collectively demonstrated that law across the region was plural and mobile.<sup>46</sup> As a result, colonial legal historians have increasingly recognized the need to consider what Nandini Chatterjee and Lakshmi Subramanian have termed "alternative, non-dominant legal visions and the sources of their reasoning" in imperial contexts.<sup>47</sup>

In South Asia more specifically, scholars have acknowledged the extent to which a tapestry of jurisdictions and legal practices was very much the

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between sovereignty and jurisdiction nevertheless tends to posit that "the two have always been intertwined." Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788–1836* (Cambridge: Harvard University Press, 2010), 2.

<sup>43</sup> Saliha Belmessous, ed., *Native Claims: Indigenous Law against Empire, 1500–1920* (Oxford: Oxford University Press, 2011), 3.

<sup>44</sup> Malick W. Ghachem, *The Old Regime and the Haitian Revolution* (Cambridge: Cambridge University Press, 2012); Premo, *Enlightenment on Trial*. See also Yanna Yannakakis, "Beyond Jurisdictions: Native Agency in the Making of Colonial Legal Cultures. A Review Essay," *Comparative Studies in Society and History* 57, 4 (2015): 1070–82.

<sup>45</sup> Lauren A. Benton and Richard Jeffrey Ross, eds., *Legal Pluralism and Empires, 1500–1850* (New York: NYU Press, 2013); Gijs Kruijtzter and Thomas Ertl, *Law Addressing Diversity: Pre-modern Europe and India in Comparison (13th–18th Centuries)* (Berlin: Walter de Gruyter, 2017); Séan Patrick Donlan and Dirk Heirbaut, eds., *The Laws' Many Bodies: Studies in Legal Hybridity and Jurisdictional Complexity, c1600–1900* (Berlin: Duncker & Humblot, 2015).

<sup>46</sup> Fahad Ahmad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780–1950* (Cambridge: Cambridge University Press, 2017); Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947*, repr. (Cambridge: Cambridge University Press, 2016); Gagan D. S. Sood, "Sovereign Justice in Precolonial Maritime Asia: The Case of the Mayor's Court of Bombay, 1726–1798," *Itinerario* 37, 2 (2013): 46–72; Julia Stephens, *Governing Islam: Law, Empire, and Secularism in Modern South Asia*, repr. (Cambridge: Cambridge University Press, 2018); Elizabeth Kolsky, "Codification and the Rule of Colonial Difference: Criminal Procedure in British India," *Law and History Review* 23, 3 (2005): 631–83.

<sup>47</sup> Nandini Chatterjee and Lakshmi Subramanian, "Law and the Spaces of Empire: Introduction to the Special Issue," *Journal of Colonialism and Colonial History* 15, 1 (2014).

norm.<sup>48</sup> Important work on law and the state in colonial India has unearthed the strongly political nature of judicial practices and institutions in the context of the British Raj, in which reliance on supposedly traditional moral claims furthered the commercial and political hold of the British on Indian agrarian society.<sup>49</sup> Other scholars have objected to the presentation of the judiciary as an external force imposed on locals by the colonial state and its agenda.<sup>50</sup> Sumit Guha has noted that legal diversity relied on a willingness on the part of officials to turn a blind eye of sorts to persistent local structures.<sup>51</sup> Yet the case of the Chaudrie is most emphatically not one of “tacit non-interference,” but a much more active and deliberate integration of local fora of dispute resolution into the formal judicial structure and vice versa.

In Pondichéry, with the capital-hungry French East Indies Company continually struggling to maintain its tenuous hold on the colony, judicial efforts were largely aimed at maintaining the status quo, not at creating new hierarchies. Neils Brimnes notes that while judicial uniformity increased in the nineteenth century in French India, in the eighteenth century both colonial authority in general and its legal and judicial applications were much more ambiguous and multivalent.<sup>52</sup> As Lauren Benton and Richard J. Ross suggest, the “ism” of legal pluralism denaturalizes what was a widely accepted and unremarkable legal plurality of the early modern colonial world, and the distinction between state law and custom elides the extent to which state law was itself plural.<sup>53</sup> In fact, the “problem” of legal pluralism, which has tended to pit jurists and legal scholars against humanists and social scientists in a debate about where law is located and what counts as law, seems like yet another iteration of the debate about law versus custom, in that the division

<sup>48</sup> On legal diversity in Western India, see Sumit Guha, “The Qazi, the Dharmadhikari, and the Judge: Political Authority and Legal Diversity in Pre-Modern India,” in Gijs Kruijtzter and Thomas Ertl, eds., *Law Addressing Diversity: Premodern Europe and India in Comparison (13th–18th Centuries)* (Berlin: Walter de Gruyter, 2016); Farhat Hasan, *State and Locality in Mughal India: Power Relations in Western India, c. 1572–1730* (New Delhi: Foundation Books, 2006).

<sup>49</sup> David Washbrook, “Law, State and Agrarian Society in Colonial India,” *Modern Asian Studies* 15, 3 (1981): 649–721. In a later work, Washbrook revised his analysis on the process of “traditionalizing,” noting the role of indigenous agents in this process: “Economic Depression and the Making of ‘Traditional’ Society in Colonial India 1820–1855,” *Transactions of the Royal Historical Society* 3 (1993): 237–63. This revision is noted in Niels Brimnes, “Beyond Colonial Law: Indigenous Litigation and the Contestation of Property in the Mayor’s Court in Late Eighteenth-Century Madras,” *Modern Asian Studies* 37, 3 (2003): 513–50, 517.

<sup>50</sup> Nicholas B. Dirks, “From Little King to Landlord: Property, Law, and the Gift under the Madras Permanent Settlement,” *Comparative Studies in Society and History* 28, 2 (1986): 307–33. Brimnes reviews this debate, in “Beyond Colonial Law.”

<sup>51</sup> Guha, “Qazi,” 97.

<sup>52</sup> Brimnes, “Beyond Colonial Law,” 518.

<sup>53</sup> Benton and Ross, *Legal Pluralism*, 4.

posited by scholars seems to be not much of a problem at all in various historical contexts.<sup>54</sup>

Colonizing actors (and their histories) tended to create a split between the formalized law of empire and “customary” law of their indigenous subjects. In the case of French India in the eighteenth century, the separation between the Chaudrie and the Superior Court bolstered this analytical distinction between “law” and “custom.”<sup>55</sup> The Pondichéry Sovereign Council and the Chaudrie would appear, at first glance, to fall along the lines that divide formalized law from custom, and the materials they drew on—imported French legal codes (the Criminal Ordinance of 1670 and the Coutume de Paris in the Superior Council) and various modes of resolving disputes in the Tamil region (such as reliance on opinions by caste chiefs and village councils in the Chaudrie) would seem to make the distinction between “Parisian code” and “local custom” a meaningful one. Yet legal historians have long called into question the distinction between law and custom, in a body of work which owes much to Clifford Geertz. And of course, as Geertz would remind us, the distinction between law and custom (or between rule and case) is itself a product of cultural meaning-making.<sup>56</sup> Everything we know about these two legal institutions suggests that the Chaudrie was a colonial, global, and in many ways a metropolitan institution given its staffing by French traders as judges and a diverse group of litigants, as was the Superior Council decidedly a part of the local landscape, with local power brokers providing arbitration and mediation for cases heard by the Council.

#### THE WORKINGS OF THE PONDICHÉRY CHAUDRIE

Given the intersecting physical, historiographic, and epistemological gap affecting the Chaudrie’s archive, trying to trace the documentary and judicial practices related to cases heard in the Chaudrie before 1766 is no simple matter. Theorizing about the gaps themselves is all well and good, but historians still need to say something about a thing that existed. In such cases historians have used a variety of methodological approaches. The first would borrow a methodology from

<sup>54</sup> This disciplinary divide is demonstrated by a comparison of Donlan and Heirbaut, *The Laws’ Many Bodies*, exemplifying legal scholars’ approach, and Kruijtzter and Ertl, *Law Addressing Diversity* as an example of that of humanists and social scientists.

<sup>55</sup> As Alain Wijffels points out, the existence of written legal codes in France should not mislead us into believing there was a cohesive legal realm directed by these codes: “Ancien Régime France: Legal Particularism under the Absolute Monarchy,” in Seán Patrick Donlan and Dirk Heirbaut, eds., *The Laws’ Many Bodies: Studies in Legal Hybridity and Jurisdictional Complexity, c1600–1900* (Berlin: Duncker & Humblot, 2015), 107.

<sup>56</sup> Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1985), 208. There is also an interesting parallel between this strand of anthropological work and critiques of so-called “gap studies,” in which legal scholars in the 1960s and 1970s, working from an assumption of law’s rationality, attempted to identify “gaps” between laws on the books and law in practice. Jon B. Gould and Scott Barclay, “Mind the Gap: The Place of Gap Studies in Sociological Scholarship,” *Annual Review of Law and Social Science* 8, 1 (2012): 323–35.



ethnohistorians and “backstream,” using later practices to hypothesize about a less knowable past.<sup>57</sup> The Chaudrie’s extensive sources from the 1760s onward make this possible: with some judicious guesswork and imaginative hypothesizing, we can use these sources to suggest what practices might have remained constant from the earlier period to the later one.

A second approach is to look for traces, to archivally cross-reference the shadows of our phantom Chaudrie sources, looking for instances where fleeting, passing mentions of the early Chaudrie appear in cases heard by other courts, in letters sent by missionaries and by Compagnie des Indes officials, or in accounts by other residents or travelers through Pondichéry.<sup>58</sup> By reading in what might be described as a margin-centered approach, we can learn a fair amount from sources in which the Chaudrie appears only momentarily.

We can also learn much about the workings of the Chaudrie by placing it in its institutional and regional contexts. The existence of the Chaudrie court in Pondichéry aligned with long-established legal traditions of dispute resolution in the subcontinent, and South India more specifically. Throughout the region, legal practices were carried out through arbitration at the caste group and village level for local disputes and at various regional assemblies in cases demanding a higher authority or jurisdiction.<sup>59</sup> In its reliance on arbitration and other local forms of knowledge, the Chaudrie was both an adaptation of pre-existing South Indian institutions such as village *panchayats*, and a forum that resonated with metropolitan French traditions of arbitration, and therefore a site that drew on both well-established and novel judicial modes in its integration of such local knowledge within the French colonial legal system.<sup>60</sup> The Chaudrie’s reliance on vernacular knowledge systems—some oral, some documented on palm leaf

<sup>57</sup> For a discussion of backstreaming, and an example of its uses in an early modern French colonial context, see Emma Anderson, *The Betrayal of Faith: The Tragic Journey of a Colonial Native Convert* (Cambridge: Harvard University Press, 2007).

<sup>58</sup> In a discussion of women as subjects of historical writing, Antoinette Burton writes, “The histories that have resulted from ‘researching around’... remain fragmentary, elusive, and unsatisfactory in the best possible sense.” “‘Small Stories’ and the Promise of New Narratives,” in Nupur Chaudhuri, Sherry J. Katz, and Mary Elizabeth Perry, eds., *Contesting Archives: Finding Women in the Sources* (Urbana: University of Illinois Press, 2010), x. Her point that such work cannot adequately be described as “recovery” or as “triumph” guides this research.

<sup>59</sup> Burton Stein, *Peasant State and Society in Medieval South India* (Delhi: Oxford University Press India, 1994); J. Duncan M. Derrett, *Religion, Law and the State in India* (New York: Oxford University Press, 1999); Donald R. Davis, “Intermediate Realms of Law: Corporate Groups and Rulers in Medieval India,” *Journal of the Economic and Social History of the Orient* 48, 1 (2005): 92–117.

<sup>60</sup> On arbitration in France, see Jeremy Hayhoe, “L’arbitre, intermédiaire de justice en Bourgogne vers la fin du XVIIIe siècle,” in Claire Dolan, ed., *Entre justice et justiciables: les auxiliaires de la justice du Moyen Âge au XXe siècle* (Québec: Presses de l’Université Laval, 2005). Using the example of Burgundy in the late eighteenth century, Hayhoe demonstrates that arbitration was not an extrajudicial strategy, but was fully integrated into the Ancien Régime’s judicial system. See also Zoë A. Schneider, *The King’s Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670–1740* (Rochester: University of Rochester Press, 2008).

and mostly lost today—explains how what appears as a gap when examined through the colonial archive was in fact densely filled with material of various sorts and media in the eighteenth century.

The terms *choultry*, *chawaadi*, *chaudrie*, or *chaudhuri* had multiple meanings in Telugu, Tamil, and Sanskrit, referring to a resting place for travelers, a meeting point, a space in which to carry out public business, or the office or role of a chief of a community or a locality.<sup>61</sup> The over-determination of the word hints at the richness of roles the institution and the actors associated with it could fill. *Choultries* or *chaudries*, in addition to their association with legal resolution and the settling of disputes, particularly among merchants, could also be sites of meeting, rest, lodging, and the distribution of relief and charity.<sup>62</sup>

In English-ruled Madras there was an equivalent institution to the Pondichéry Chaudrie, known in the Anglo-Indian archives as the Choultry, in existence until 1800.<sup>63</sup> The Madras Choultry carried out duties similar to those of the Pondichéry Chaudrie, and mention of the institution from 1678 notes that it met twice a week and would “do the common justice of the town as usuall, and do take care that the Scriven of the choultry do duly Register all Sentences in Portuguez as formerly....”<sup>64</sup> Before 1680, the Madras Choultry records were kept in Portuguese, and after that in English. In Madras in the first half of the seventeenth century, the judges were Brahmins, and only later in the century did Englishmen begin to fill these roles.<sup>65</sup> In the French colony, itself only established at the end of the seventeenth century, Frenchmen were the judges from the very start, indicating that perhaps the English institution served as a model.

Evidence shows that the Chaudrie court operated in Pondichéry before the early days of French settlement in the late seventeenth century, and certainly before the 1701 creation of the Superior Council. This is verified by a reference made in 1719 in the French judicial record to judgments passed by the Chaudrie

<sup>61</sup> The Hobson-Jobson Anglo-Indian Glossary’s entry for “Choultry” defines it as “Peculiar to S. India, and of doubtful etymology; ... A hall, a shed, or a simple *loggia*, used by travelers as a resting-place, and also intended for the transaction of public business. A building of this kind seems to have formed the early courthouse. Henry Yule, A. C. Burnell, and Kate Teltcher, *Hobson-Jobson: The Definitive Glossary of British India* (Oxford: Oxford University Press, 2013), 211. On the word’s etymology, see also Bonnan, *Jugements*, vol. 1, ix–x. In the context of European colonies in India, the linkage of the term to judicial use seems well-established.

<sup>62</sup> T. Chenthamarai Selvi, “Choultries in the Madras Presidency with Special Reference to Tirunelveli District,” *Proceedings of the Indian History Congress* 64 (2003): 1390–99.

<sup>63</sup> On the Madras Choultry, see Radhika Seshan, *Trade and Politics on the Coromandel Coast: Seventeenth and Early Eighteenth Centuries* (Delhi: Primus Books, 2012); Mattison Mines, “Courts of Law and Styles of Self in Eighteenth-Century Madras: From Hybrid to Colonial Self,” *Modern Asian Studies* 35, 1 (2001): 33–74; Brimnes, “Beyond Colonial Law.”

<sup>64</sup> Cited in Seshan, *Trade and Politics*, 92.

<sup>65</sup> Bonnan, *Jugements*, vol. 1, viii. On indigenous responses to the introduction of English law in Madras in the late seventeenth and early eighteenth centuries, see Kanakalatha Mukund, *The View from Below: Indigenous Society, Temples, and the Early Colonial State in Tamilnadu, 1700–1835* (New Delhi: Orient Longman, 2005), ch. 3.

dating back to 1 October 1699.<sup>66</sup> Pondichéry was divided into a “Black Town” and a “White Town,” and the Chaudrie, unlike the Superior Council court which met in the French East Indies Company’s waterfront offices, was in “Black Town,” opposite Pondichéry’s central market. The location of the Chaudrie in the town reflected the ways in which this institution connected Pondichéry to the surrounding region; as Joy Varkey has pointed out, the Chaudrie was situated at the intersection of roads from Madras, Cuddalore, and Villenour and the main road from Pondichéry’s waterfront fort.<sup>67</sup> Dutch plans for the city dating from the last decade of the seventeenth century also make note of a tribunal situated next to the market.<sup>68</sup> While the Chaudrie appears in French-drawn maps as early as 1702, the cartographic evidence replicates the same documentary lacuna as the court’s records. Like the court’s written archives, the first map that contains detailed information about the interior of the Chaudrie dates to 1766.<sup>69</sup>

French officials heard cases there each Monday and Friday morning, with the services of interpreters, and decisions were made “according to the customs of the country.” This body of law was therefore an additional source of authority to the imported French codes that governed judicial decisions made in the Superior Council—the *Coutume de Paris* for civil matters and the Criminal Ordinance of 1670 in criminal ones. The traders who served as judges in both the Conseil and in the Chaudrie had no formal legal training, and in the Chaudrie they relied on local intermediaries for their accounts of what constituted the “customs of the country.” A Company employee, M. de Chalonge, resolved disputes with the help of an interpreter as early as 1701, shortly after the town was returned to French control after a period of Dutch occupation. In 1701 the French Governor, François Martin described M. de Chalonge’s work in the Chaudrie as happening “in the place where justice is dispensed,” suggesting that the French assumed control over an already existing judicial site.<sup>70</sup>

The earliest mention of the Chaudrie in the Superior Council’s official records dates to 1703, when the Councilors referred to a judgment by the Chaudrie earlier that year.<sup>71</sup> In 1707, the Superior Council appointed a Councilor to fill an empty seat on the Chaudrie, describing the Chaudrie’s mission as “to

<sup>66</sup> Gnanou Diagou, *Arrêts du Conseil supérieur de Pondichéry* (Pondichéry; Paris: Bibliothèque publique; Librairie E. Leroux, 1935), supplement to vol. 8, 120–21.

<sup>67</sup> Joy Varkey, “Administering Justice: The Choultry Court in the French Settlement of Pondicherry,” *Proceedings of the Indian History Congress* 75 (2014): 505–10, 506.

<sup>68</sup> Jean Deloche, *Le vieux Pondichéry (1673–1824): revisité d’après les plans anciens* (Pondichéry: Institut français de Pondichéry; Paris: École française d’Extrême-Orient, 2005), fig. 5.

<sup>69</sup> The 1702 map is by Le Fer, and can be seen in *ibid.*, fig. 10. The 1766 map, by Bourcet, is reproduced in *ibid.*, fig. 27. It is held at ANOM, *Dépot des fortifications des colonies, Indes*, 33 B 154. The 1766 map was drawn up in the context of rebuilding the town after the English siege of 1761 and its return to French control in 1765.

<sup>70</sup> ANOM FM C<sup>2</sup>/66 f. 9 verso.

<sup>71</sup> Bonnan, *Jugements*, vol. 1, 3.

provide justice for the [local] inhabitants of Pondichéry.”<sup>72</sup> Other brief mentions in the Superior Council records, which usually referenced staffing decisions, include this on 24 November 1713: “Sieurs Cuperly, Dulaurans and Bongré [all Company traders who also served on the Council] will in the future serve every Monday and Friday on the seat of the Chaudrie, in order to judge there all matters that demand quickness.” Thus, we can conclude that the Superior Council considered hasty resolution a priority for the Chaudrie.<sup>73</sup>

At some point the Chaudrie must have fallen into disrepair, since a 1728 Council decree notes that a “place where justice is dispensed to blacks [*noirs* in the original, meaning Indians], in the grand bazaar, popularly called the chaudry, has for a long time been in ruins.” In order to provide a place to accommodate the scribes and store merchandise and a prison, the Council ordered the construction of a new building, also located in the central market.<sup>74</sup> This cost the significant sum of 1,000 pagodas (5,250 livres tournois).<sup>75</sup> A Père Louis drew up the plans.<sup>76</sup>

Such Council notes indicate a *second du commerce*, an employee of the Company, presided, and the Chaudrie also had two *assesseurs*, chosen among the *conseillers*, *sous-marchands*, and *commis*. The *second du commerce* also supervised the *nainard*, the Indian charged with policing, and his *pions*.<sup>77</sup> Ananda Ranga Pillai’s diary provides more about the Chaudrie’s Tamil employees. A commercial broker, employed by the French, Pillai made numerous references to the Chaudrie in his diary, often when recounting proclamations and their disseminations by the Superior Council. For example, of a decision about currency from 1739: “Four copies of the notice were drawn up in French, Telugu, and Tamil.... It was also proclaimed by the [Chaudrie] court accountant Wandiwash Rangappan who, accompanied by a drummer, read and explained the rule in the different quarters of the town.”<sup>78</sup> Unlike the French sources, Pillai’s diary typically mentions the court’s Tamil employees by name, thereby giving clues as to their social affiliations.<sup>79</sup>

The Council’s references and Pillai’s indicate the early Chaudrie imposed six types of punishments: afflictions, such as the mutilation of ears; slavery in the Mascarenes islands (limited term or in perpetuity); making amends to the injured

<sup>72</sup> Diagou, *Arrêts du Conseil*, supplement to vol. 8, 35.

<sup>73</sup> *Procès-verbaux des délibérations du Conseil Supérieur de Pondichéry* (Pondichéry: Société de l’Histoire de l’Inde Française, 1913), vol. 1, 129.

<sup>74</sup> *Ibid.*, vol. 2, 205.

<sup>75</sup> Marcel Thomas, *Le Conseil Supérieur de Pondichéry, 1702–1820: Essai Sur Les Institutions Judiciaires de l’Inde Française* (Paris: l’auteur, 1953), 104–5.

<sup>76</sup> Deloche, *Le vieux Pondichéry*, 62.

<sup>77</sup> Thomas, *Conseil Supérieur*, 106.

<sup>78</sup> Pillai, *Private Diary*, vol. 1, 101. Here we learn that employment in the court bestowed other official duties, such as the dissemination of official information.

<sup>79</sup> Upon the occasion of the appointment of a new accountant to the court, in 1742, Ananda Ranga Pillai named all four serving in the role. They were Azhaga Pillai, Appatambi, Wandiwash Ranga Pillai, and Muruga Pillai. *Ibid.*, 188.

parties; confiscation of goods; banishment from French territories; and lashes of the whip.<sup>80</sup> There is evidence to suggest that local residents considered these punishments, as well as those of the Superior Council, to be extreme and excessive. For example, when the caste chiefs requested the Council turn over a Brahmin man accused of forging financial accounts on palm leaf in 1725, they commuted his death sentence to exclusion from his caste, confiscation of his goods, and banishment from Pondichéry.<sup>81</sup> If French punishments were indeed more severe, the question arises of how such punishment might affect the Chaudrie's success in drawing local actors into the French sphere of influence. It reveals a tension between imperial French desire for greater political, judicial, and religious authority, often driven by metropolitan directives, and the limits to the exercise of such authority. This dynamic was demonstrated when French judges decided on a sentence and then obviated their sentence and ceded the decision elsewhere.<sup>82</sup>

Some French officials also argued for the pragmatic need for milder punishments. A high-ranking French official, Mahé de La Bourdonnais, implied in a letter that the Chaudrie was dispensing excessively harsh judgments toward Indian defendants and called on the Company Directors in Paris to constrain them from "mutilating or ruining" the locals.<sup>83</sup> Chaudrie judges appear to have abused their power throughout the eighteenth century, and a letter the French King wrote to the new Governor and Naval Commissioner in India in 1776 described accusations against former Chaudrie judges of both bias against and excessive brutality toward local residents.<sup>84</sup>

#### THE CHAUDRIE AND THE SUPERIOR COUNCIL

Although the original decree creating the Superior Council's court in 1701 makes no mention of a relationship to the Chaudrie, the connection between the two courts unfolded in various dimensions in the ensuing decades. The Superior Council served as a court of appeals for decisions made in the Chaudrie, sometimes very quickly: the Council reviewed an August 1703 decision in a

<sup>80</sup> ANOM FM F<sup>3</sup>/239, folio 45.

<sup>81</sup> ANOM, Inde M/25.

<sup>82</sup> In a very similar dynamic, the French colonial government tried and failed for several decades to limit the public practice of Hindu religion in the streets of Pondichéry, with metronomic swings between decrees banning such practices, and quick reversals of these decrees in the face of labor strikes by weavers. See Danna Agmon, "Striking Pondichéry: Religious Disputes and French Authority in an Indian Colony of the Ancien Régime," *French Historical Studies* 37, 3 (2014): 437–67.

<sup>83</sup> Cited in Thomas, *Conseil Supérieur*, 104.

<sup>84</sup> The letter, containing instructions to Bellcombe and Chevreau, is held at ANOM FM A/20, folios 57–81. The issues with Chaudrie judges are mentioned on folio 64. On the role of violence in enabling, maintaining, and bolstering colonial rule in India, see Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law*, repr. (Cambridge: Cambridge University Press, 2011).

contractual dispute in September.<sup>85</sup> Almost every judge who served on the Chaudrie was simultaneously a Councilor on the Superior Council. When the Council decreed orders it wanted distributed widely, it might order that “the present order be published... in the Chaudrie and in the whole town, so that no one could claim to be ignorant of it.”<sup>86</sup>

Document preservation was assiduous in the Superior Council. Cases heard by the *conseil supérieur* were documented on paper and stored in the Compagnie des Indes’ offices in India, and later in archives in France. Some of these materials were published in print, while others became the subject of detailed finding aids produced by historians and archivists.<sup>87</sup> The 1701 royal decree creating the Superior Council today exists in multiple printed accounts, online, and in the manuscript archives in multiple locations.<sup>88</sup>

While the Chaudrie was meant to hear mostly civil disputes concerning locals, no bright line distinguished Superior Council cases from those that began in the Chaudrie. Occasionally Indians gained direct entrance to the Council, as in a 1702 case involving two Indian merchants, one from Madras and one from Pondichéry.<sup>89</sup> The Council considered relevant palm leaf accounts and had them translated into French.<sup>90</sup>

Peroumal’s employers were not the only French to seek redress in the Chaudrie. The records of the 1733 Superior Council case of Peroumal briefly mention the Chaudrie more than a dozen times. Together they reveal much of the workings of this judicial institution. First, Tamil interpreters who were “sworn scribes of the chaudrie, who understand and speak both the Malabar [Tamil] and French language, and who took an oath to faithfully interpret” the proceedings, might serve the Council, as in this case.<sup>91</sup> Likewise although Nicholas Le Faucheur filed suit in the Superior Council, when he called in the police to arrest Peroumal they marched him over to the Chaudrie for detention.<sup>92</sup>

One of the men who took Peroumal to detention in the Chaudrie gave a deposition that provides a glimpse into the social world of these employees: he was a thirty-two-year-old native of Pondichéry, of the so-called Pariah caste, a

<sup>85</sup> Diagou, *Arrêts du Conseil*, supplement to vol. 8, 24.

<sup>86</sup> *Procès-verbaux*, vol. 1, 117.

<sup>87</sup> On the preservation work of French India’s archive, see Danna Agmon, “Failure on Display: The Meaning of Eighteenth-Century French India in Twentieth-Century Colonial Administration and Historiography,” *Journal of Modern History* 91 (2019): 1–35.

<sup>88</sup> Diagou, *Arrêts du Conseil*, supplement to vol. 8, 6–12.

<sup>89</sup> On European company courts as a site for the negotiation of merchants’ relationship with each other and with the colonial state, using an example from Surat, see Lakshmi Subramanian, “A Trial in Transition: Courts, Merchants and Identities in Western India, circa 1800,” *Indian Economic & Social History Review* 41, 3 (2016): 269–92.

<sup>90</sup> Diagou, *Arrêts du Conseil*, supplement to vol. 8, 12.

<sup>91</sup> ANOM, Inde, M/46, [78–79].

<sup>92</sup> ANOM, Inde, M/46 testimony of 18 July 1733 [81, 84, 90].

practitioner of the local religion, and deposed in Tamil.<sup>93</sup> Three of the guards of the Chaudrie gave depositions, and their answers to the formulaic preliminary questions reveal that all had moved to Pondichéry from the surrounding countryside.<sup>94</sup> The list of questions prepared in advance for Peroumal's interrogation makes several references to the Chaudrie.<sup>95</sup> For example, he was asked to confirm that he had been brought to the Chaudrie before this instance under accusation of theft and he confirmed and described the outcome of that case.

The handful of sentences among the many dozen pages of the case dossier from the 1733 case reveals how the work of local people blurred the boundaries between what had been conceived of as separate institutions, the Superior Council and the Chaudrie, one "French" and one "local." Likewise, the description of the earlier case when Peroumal's employer brought him before the Chaudrie indicates that French residents of the town saw it as a resource upon which they could draw. The detailed questions about Peroumal's prior arrests in the Chaudrie suggest that some records of those proceedings existed at that time to which French councilors had access, either directly or through interpreters, thereby allowing them to recreate Peroumal's criminal history.

The fact that all three guards who testified were born outside Pondichéry suggests it was not unusual for Indian migrants to find their way into the French orbit through work in the Chaudrie. That the outcome of both of the cases against Peroumal depended on powerful local actors indicates that such men were able to direct decisions in both courts. This supports a broader argument about French colonial law in India: local modes of dispute resolution and legal knowledge were nested in French colonial courts, with the explicit agreement of French administrators, and the courts in turn were nested within the realm of legal authority and sovereignty of both Mughal rulers and even wealthy local merchants.

#### LOCAL LEGAL KNOWLEDGE

Legal culture in Pondichéry relied on the knowledge and intervention of three local groups that all supported the weaving of the French judicial system itself into regional judicial practices. These were the village councils, or *panchayats*, who settled disputes at the village level; the caste heads and influential merchants who negotiated trade and urban policies with the French East Indies Company; and the interpreters who made possible almost all commercial and legal exchanges in the colony.<sup>96</sup> All three institutions played a crucial

<sup>93</sup> ANOM, Inde, M/46, testimony of 19 July 1733 [99].

<sup>94</sup> *Ibid.*, [102–4].

<sup>95</sup> ANOM, Inde, M/46, item 6 [46–69].

<sup>96</sup> Joseph Minattur, *Justice in Pondicherry (1701–1968)* (Bombay: N. M. Tripathi Private Ltd., 1973), 145–46. On the village councils, or *panchayats*, which filled judicial roles in precolonial and colonial India, see K. Gnanambal, *Religious Institutions and Caste Panchayats in South India*



role in the work of the Chaudrie, though references in both the court's own archive and other sources are usually fleeting. Collectively, they introduced French judges to the contours of the legal world they attempted to recreate or at least mimic, as they promised to deliver in the Chaudrie decisions that relied on the "customs of the country."

Ascertaining what French judges understood to be the legal "customs of the country" is difficult, since no efforts to collect or codify legal custom occurred until late in the eighteenth century.<sup>97</sup> The documentation of the *Chambre de consultation* in Pondichéry, composed of eight Indians charged with providing legal advice, which began in 1778, provides much of what we know. Julie Marquet has recently provided the first in-depth scholarly examination of its successor, the *Comité consultatif de jurisprudence indienne*, a committee of Indian experts of law in Pondichéry that was created in the 1820s to assist French officials in their judicial decision making.<sup>98</sup> French colonial judges eventually began making explicit attempts to codify and disseminate their understanding of Hindu law, for example the 1856 volume compiled by a judge in Chandernagore and later *procureur général* in Pondichéry.<sup>99</sup> Indeed, such legal codification was common in both the French and English colonial projects in India in the late eighteenth century and much of the nineteenth century.<sup>100</sup>

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(Calcutta: Government of India, Anthropological Survey of India, 1976); Marc Galanter and Upen-dra Baxi, "Panchayat Justice: An Indian Experiment in Legal Access," in Marc Galanter and Rajeev Dhavan, eds., *Law and Society in Modern India* (New York: Oxford University Press, 1989); James Alan Jaffe, *Ironies of Colonial Governance: Law, Custom and Justice in Colonial India* (Cambridge: Cambridge University Press, 2015). As Jaffe notes, the term *panchayat* has indeterminant meaning and has been used to identify a dizzying array of institutions, including "village councils, municipal councils, conciliation boards, arbitration boards, judicial panels of judicial assessors, juries, committees, representative assemblies, and democratic governing bodies"; *Ironies*, 2. Jaffe locates the nineteenth century as the period in which *panchayats* became central to British legal imaginary of India, but it was already playing this role in Pondichéry in the eighteenth century. On caste heads' and wealthy merchants' role in the governance of colonial cities in South India, see Mukund, *View from Below*; Niels Brimnes, *Constructing the Colonial Encounter: Right and Left Hand Castes in Early Colonial South India* (Richmond, Surrey: Curzon, 1999); Susan Neild-Basu, "The Dubashes of Madras," *Modern Asian Studies* 18, 1 (1984): 1–31. The scholarship on interpreters in colonial contexts is too vast to survey here; for a discussion, see Agmon, *Colonial Affair*, 73–92.

<sup>97</sup> In a review of Bonnan's publication of Chaudrie sources, Ludo Rocher has referred to an attempt by French officials to create a compendium of Indian law on 28 November 1735, citing this as an effort that far predates Warren Hasting's effort to do the same in 1772 as part of the "Plan for the administration of justice" in British India. However, Rocher is mistaken; the French Council's decree calling for this project actually dates to 25 November 1835. Ludo Rocher, review of *Review of Jugements du tribunal de la Chaudrie de Pondichéry, 1766–1817*, by Jean-Claude Bonnan, *Journal of the American Oriental Society* 122, 1 (2002): 185.

<sup>98</sup> Julie Marquet, "Droit, coutumes et justice coloniale: Les affaires de caste dans les Établissements français de l'Inde, 1816–1870," PhD diss., Université Paris Diderot, 2018.

<sup>99</sup> Francois Nicolas Laude, *Manuel de droit indou et de législation civile et criminelle applicable dans les Établissements français de l'Inde* (Pondichéry: E.-V. Gêruzet, imprimeur, 1856).

<sup>100</sup> On the British efforts at codification for use in court, see Guha, "Qazi," 111; and Kolsky, "Codification." Examples of French legal codification projects in this period are Pierre-François-Régis Dessalles and Bernard Vonglis, *Les annales du Conseil souverain de la Martinique* (Paris:

While earlier understandings by French judges about local legal practices remain opaque, we can recover the three central mechanisms they used to learn of these practices: legally informed language interpretation, arbitration, and expert witness testimonies. Judges relied on local interpreters and scribes, who both translated the proceedings and, according to a French administrator who disapproved, influenced decisions. Mahé de La Bourdonnais deplored the reliance on interpreters at the Chaudrie, writing in a letter that “the Malabar scribes who serve as interpreters ... give an explanation so that matters are resolved in the way they wish.” This manipulation, he wrote, leads to miscarriages of justice, which in turn “disgusts the Indians” under French rule.<sup>101</sup>

French observers of arbitration saw it in a more positive light. Reliance on local arbitration was incorporated into the French conceptualization of the Chaudrie from the very beginning, and was part of a broader ideology of the Compagnie des Indes’ commitment to bolstering an existing status quo.<sup>102</sup> The first French Governor in Pondichéry, François Martin, wrote a letter to the Directors of the Company in 1701 about the legal system in the new colony that championed the practice: “When differences occur among the gentiles [non-Christians], who have laws and customs that are different from our own, we oblige the two parties to name arbitrators for each side, and we then make a decision based on their reports. We don’t find it necessary to establish jurisdiction in all its forms at this early stage, we can still leave things as they are, and thus open the way to attract people to Pondichéry.”<sup>103</sup> This suggested the French took a very open-ended and pragmatic approach to jurisdiction and by extension to reconceptualizing sovereignty involvement in the Chaudrie. This position was one that clearly developed in India in response to local conditions and in opposition to metropolitan plans, since the charter Louis XIV gave to the Compagnie des Indes in 1664 ordered the use of the “laws and ordinances of our kingdom in France” to settle disputes.<sup>104</sup> It was also of a piece

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L'Harmattan, 1786); *Le Code Noir, ou, Recueil des réglemens rendus jusqu'à présent concernant le gouvernement, l'administration de la justice, la police, la discipline & le commerce des nègres dans les colonies françoises, et les conseils & compagnies établis à ce sujet* (Paris: Chez L. F. Prault., 1788); Médéric Louis Élie Moreau de Saint-Méry, *Description topographique et politique de la partie espagnole de l'isle Saint-Domingue, avec des observations générales sur le climat, la population, les productions ... de cette colonie* (Philadelphie: Imprimé & fe trouve chez l'auteur, Imprimeur-Libraire, 1796); Auguste de La Barre de Nanteuil, *Législation de l'île Bourbon: répertoire raisonné des lois, ordonnances ... en vigueur dans cette colonie* (Paris: Impr. de J.-B. Gros, 1844). My thanks to Sue Peabody for bringing much of this work to my attention.

<sup>101</sup> Quoted in Thomas, *Conseil Supérieur*, 104.

<sup>102</sup> On the commercial ideology of maintaining the status quo, see Agmon, *Colonial Affair*.

<sup>103</sup> ANOM, FM C<sup>2</sup>/66 folios 9v–10.

<sup>104</sup> Louis XIV, *Déclarations du Roy: l'une, portant établissement d'une Compagnie pour le commerce des Indes Orientales ... Registrées en la Cour de Parlement le 1er septembre 1664, en la Chambre des Comptes le 11 dudit mois et an, et en la Cour des Aydes le 22 ensuivant, 1664, sec. XXIII*, <https://gallica.bnf.fr/ark:/12148/btv1b8620873r> (last accessed 22 Apr. 2021).

with the legal strategies deployed in other European colonies in India, as Leonard Hodges' recent work on arbitration in the English court in Bombay has revealed.<sup>105</sup>

French Chaudrie judges also called upon community leaders and caste chiefs to provide social and religious contexts for disputes heard in the Chaudrie, thereby replicating under French auspices the model of dispute resolution by village councils. The bulk of the evidence about the testimonies of caste chiefs appears in the post-1766 records of the Chaudrie. But the frequency with which such appearances occur as a matter of course, from the earliest records available, suggesting it was long-established. For example, in an inheritance dispute heard in 1766, no fewer than twenty-one caste chiefs were brought into the court to testify, and asked to provide their opinions in writing, so that the court would "know once and for all the usages, mores and customs of the Malabars."<sup>106</sup> Reliance on the opinions of caste chiefs occurred not only when the litigants were what we would today gloss as Hindu, but also for local Christians who came before the court. For example, the judge invited the opinion of a visiting caste chief from St. Thomé with knowledge of the litigants and several "principal malabars of various castes" who happened to be sitting in the audience that day, to opine on local usage regarding betrothal in a case concerning a Christian woman jilted by her fiancé.<sup>107</sup> The records of an inheritance dispute that came before the court in 1771 indicate the Chaudrie judge relied on the opinions of the caste chiefs to render his decision.<sup>108</sup>

If the exact content of the customs' interpretation, arbitration, and expert witness testimony introduced into the French court structure remains elusive in the archive, it is perhaps a feature of the very shaky grasp French judges in the Chaudrie themselves had of these practices. The nonexistent archive frustrates the historian's desire to determine exactly what French judges knew and believed of local law. The approach utilized here, of reading the history of the Chaudrie through and across adjacent sources, is unsatisfying, since it brings to forefront the limits of historical knowledge. Identifying these limits and the inability of our methodologies to overcome them returns us to the concept of gaps, how they have been formed in the archive of French India in general, and in the Chaudrie specifically.

<sup>105</sup> On arbitration in the English court in Bombay, see Leonard Hodges, "Between Litigation and Arbitration: Administering Legal Pluralism in Eighteenth-Century Bombay," *Itinerario* 42, 3 (2018): 490–515. I have also found reliance on local arbitration, carried out by commercial brokers, to be important in criminal cases heard in Pondichéry by the Superior Council, the ostensibly French legal forum in the town.

<sup>106</sup> Bonnan, *Jugements*, vol. 1, 4–5. I thank Timothy Lubin for bringing this case to my attention.

<sup>107</sup> *Ibid.*, 20–21.

<sup>108</sup> *Ibid.*, 29–30.

## CONCLUSION

Passing, fleeting mentions of the Chaudrie in sources produced by other colonial institutions allow us to discover some of the court's procedures and its approach toward jurisdiction and local legal knowledge, and hypothesize about others. But even as we reach toward what can be unearthed, as I have done here, thinking about the history of the Chaudrie under the French necessarily entails thinking about absence, in multiple registers: the actual sources that did or did not exist, and the legal practices plaintiffs brought into the court that were only faintly visible in the extant French judicial archive, which is nevertheless the main archive in which the Pondichéry Chaudrie can be glimpsed. Grappling with archival gaps must inevitably lead to an admission of at least partial defeat. Ultimately, the gaps are always larger than the knowledge, even when we pretend otherwise. The creation of any archive entails an ongoing and inevitable process of erasure, regardless of the archive's pretensions of coherence of representation.<sup>109</sup>

The most unknowable portion of the Chaudrie's early history is also perhaps the most intriguing. The paucity of sources from the Chaudrie's early days forces us to acknowledge that two bodies of knowledge maintain only a ghostly presence in the archive: the beliefs of French judges about local modes of dispute resolution, and the legal practices of local Tamil judicial personnel, the mediated basis of the judges' knowledge. Much like the French judges' knowledge of local legal practice was surely patchy and mediated, so is our ability to unearth the workings of the court. But if gaps of various kinds characterize the archive of the Chaudrie, this is all too fitting: as an institution, the Chaudrie under French rule was explicitly engaged in creating gaps, attempting as it did with its reliance on French judges, Tamil scribes, caste chiefs, and arbitrators to leave clear seams and even holes between French jurisdiction and existing power structures.

The Chaudrie's archive is replete with phantom sources. We can compare them to phantom limbs, the sensation of amputated body parts.<sup>110</sup> The physician Silas Weir Mitchell was the first to name phantom limbs as such, describing the sensation of amputated body parts as "a constant or inconstant phantom of the missing member, a sensory ghost of that much of himself." He was the first to demonstrate that phantom limbs reflected the same brain patterns as actual limbs. As the neurologist Oliver Sachs notes, missing limbs are "phantom, indeed, but real, effectual, and certain."<sup>111</sup> This is how we should also think about phantom

<sup>109</sup> Conversations with Anya Zilberstein clarified this point.

<sup>110</sup> My thinking on the connection between phantom sources and phantom limbs was influenced by Oliver Sacks' writing on phantom limbs, in *A Leg to Stand On* (New York: Touchstone, 1998); and *Hallucinations* (Waterville: Vintage, 2013).

<sup>111</sup> Erna Otten and Oliver Sacks, "Phantom Limbs," exchange in *New York Review of Books*, 30 Jan. 1992, <http://www.nybooks.com/articles/1992/01/30/phantom-limbs/> (last accessed 22 Apr. 2021).

sources, severed by archival and bureaucratic decisions, but nevertheless there in an immaterial but real way.

In her study of free Black women in the eighteenth century, Jessica Marie Johnson has suggested the framework of “null value” to grapple with these women’s place in imperial archives. “Instead of pausing at imperial silence or accepting it at face value,” she writes, “surfacing silence in the empirical, imperial archive as having a value—a null value—imbues absence with disruption and possibility.”<sup>112</sup> Documents also generate and produce social relations in institutions and states, as Matthew Hull has noted, “not only directly as instruments of control but also as vehicles of imagination.”<sup>113</sup> The null value of the archive or the ability of nonexistent documents to constitute social relations are two different ways to think about what I term here phantom sources. Legal archives are an artifact of the state and those who come in contact with it, but so too are missing archives. In their non-presence they reveal the state’s historical development, priorities, and tactics.

The metaphor of a phantom source highlights the reality of absence in archival choices, archival lacuna, and archival power inequalities. Chasing phantom sources makes us admit not only the limits to our knowledge, but also brings forth a texture of the colonial past which is smoothed over by our very natural tendency to work with sources that exist. The phantom source, by its very absence, teaches us about the body of the archive as a whole.

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<sup>112</sup> Johnson, *Wicked Flesh*, 134–35.

<sup>113</sup> Hull, “Documents and Bureaucracy,” 260.

**Abstract:** This article develops a typology of historical and archival gaps—physical, historiographical, and epistemological—to consider how non-existent sources are central to understanding colonial law and governance. It does so by examining the institutional and archival history of a court known as the Chaudrie in the French colony of Pondichéry in India in the eighteenth century, and integrating problems that are specific to the study of legal history—questions pertaining to jurisdiction, codification, evidence, and sovereignty—with issues all historians face regarding power and the making of archives. Under French rule, Pondichéry was home to multiple judicial institutions, administered by officials of the French East Indies Company. These included the Chaudrie court, which existed at least from 1700 to 1827 as a forum where French judges were meant to dispense justice according to local Tamil modes of dispute resolution. However, records of this court prior to 1766 have not survived. By drawing on both contemporaneous mentions of the Chaudrie and later accounts of its workings, this study centers missing or phantom sources, severed from the body of the archive by political, judicial, and bureaucratic decisions. It argues that the Chaudrie was a court where jurisdiction was decoupled from sovereignty, and this was the reason it did not generate a state-managed and preserved archive of court records for itself until the 1760s. The Chaudrie's early history makes visible a relationship between law and its archive that is paralleled by approaches to colonial governance in early modern French Empire.

**Key words:** France, India, law, colonialism, empire, archives, sovereignty, jurisdiction, Pondichéry, Chaudrie