Village Normativities and the Portuguese Imperial Order: The Case of Early Modern Goa

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1 Introduction

Upon visiting the villages of the ‘Old Conquests’ of Goa today—the territories that included Tiswadi, Salcete, and Bardez—it would be clear that they are very different from those of Portugal. Dominated by the Portuguese for 450 years, one could conceivably expect more similarities. Their ‘Indianness’, particularly in what concerns their religious normativity, was reconstructed during the 19th and 20th centuries. However, before the 19th century, the ‘Lusitanization’ of these villages—that is to say, the incorporation of Portuguese-style practices into village life—was more explicit in very specific dimensions, namely the administrative, legal, and religious ones. This chapter addresses some of the dimensions of this process from the perspective of the life and afterlife of a Portuguese imperial document of 1526, the *Foral dos usos e costumes dos Gancares e Lavradores da Ilha de Goa e outras annexas a ella*, better known as *Foral de Mexia*, henceforth referred to as *Foral*.¹

Since the 16th century, Portuguese imperial administrators and, later, scholars have collected a large body of knowledge about Goan normative orders and their cultural differences in relation to the Portuguese normative orders they were familiar with (which included their African dominions). Following this, European travelers, missionaries, and merchants have also registered information about the rules that operated in different parts of Western India, particularly those relating to religion, marriage, hereditary offices, and land. The relationship between these normativities and the Portuguese imperial order, however, still needs further study.

Normativities, as defined by Thomas Duve, are the sets of juridical, religious, social, and economic norms which guide individuals, groups, and peoples in

¹ There are several published versions of this. In this text, I use the version provided by Cunha Rivara in the Fasc. 5, vol. 1 of *Arquivo Portuguez Oriental* (henceforth APO), referred to in the footnotes as *Foral dos usos e costumes*.

their relationships with others and the world.² This chapter focuses on normativities related to the political, administrative, and judicial order of the Goan villages, while acknowledging that their delimitation—nowadays explicit—is difficult to define given the overlaps between those normativities and other spheres of power, like the religious one, for example.

Scholars have argued that many of the political, administrative, and judicial institutions found by the Portuguese in the territories they conquered not only survived imperial conquest, but were also crucial to constructing the imperial order. For these authors the case of Goa was paramount.³ Seized in 1510 from the Sultanate of Bijapur, the preservation of many of the institutions belonging to the previous Muslim dominion was evident. Similarly, the primary forms of administration in the Goan villages—namely the *gaunkaris* (an agrarian association dominated by specific lineages and their members) and the *gaunkars*, that controlled the lands and ritual life in the villages—had also been kept.⁴

The first document to systematically address the organization of the Goan villages was the *Foral* of 1526. This compiled a selection of the “uses and customs” of these villages relating to the rules that governed them, particularly concerning the judicial system as well as uses of land and inheritance. Although the most crucial aim of the *Foral* was to guarantee the tax revenue due to the Portuguese Crown, it also provided a platform of communication between the local villages and the imperial rule by integrating local forms of organization into the imperial order.

Recent scholarship considers the *Foral* an example of the legal and administrative pluralism that characterized the early modern Portuguese imperial order. The *Foral*, in this view, translated the “well-knit economic and legal system based on Hindu jurisprudence”⁵ into the Portuguese rule of Goa. This argument can be found explicitly in the work of António Manuel Hespanha, for example, and was later used by Lauren Benton.⁶ This narrative dates back to the 19th century when, in the context of the municipal reforms that took place in Portugal from 1834, Goan elites reacted against the possibility of transposing those reforms to the Goan villages. Filipe Nery Xavier, one of the major figures

2 Duve, “European Legal History – Concepts, Methods, Challenges”, 57–58; Rocher, *Studies in Hindu Law and Dharmaśāstras*, 83–102.

3 Madeira-Santos, “As Instituições Indígenas no Império Português”, 278–289; Hespanha, *Panorama da História Institucional...*, 39–40; Thomaz, “A estrutura político-administrativa do Estado da Índia”, 228, 237.

4 On the characteristics of this type of agrarian association in the Western Deccan see Guha, “The Political Economy of Village Life”, 83–116.

5 Souza, *Legal Systems in Goa*, vol. 2, 59–60.

6 Hespanha, *Panorama da História Institucional*, 40; Benton, *Law and Colonial Cultures*, 51.

of this movement, presented the *Foral* as the written source of a thousand-year-old form of organization that had not and could not be changed.⁷ Xavier and others—like the Portuguese administrator Cunha Rivara⁸—converged with two British colonial officials, Charles Metcalfe and Thomas Munro. Metcalfe and Munro also defended the immutability of the system operating in the Indian villages, a perception that found echoes in many other texts of the period.⁹ These two lines of reasoning came together in the publication of an English version of the *Foral* by B. H. Baden-Powell, seen since then by Goans involved in politics and agrarian debates¹⁰ as a ‘written constitution’ of the Goan villages.¹¹

In contrast with this narrative, the *Foral* has also been considered only “a small inroad” to assessing the system that operated in the Goan villages.¹² Other authors stress the biased nature of the *Foral*, as it reflected the interests of imperial rulers as well as those of the local elites that constituted the *gaunkaris*. Moreover, they refer to this document as a ‘construction’ rather than a ‘description’. This argument can be found not only in the work of Carlos Renato Gonçalves Pereira, Paul Axelroad and Michelle Fuerch, Teotónio de Souza, and Sanjay Subrahmanyam,¹³ but also in two unpublished PhD dissertations and two recent articles which have been fundamental in rethinking this issue. In his thesis, for example, Remy Dias argues that the Portuguese imperial presence stimulated an internal reorganization of the Goan villages, particularly concerning the uses of land, thus impacting the economic power inside the village. For Dias, this process started in the 16th century, with the *Foral*, and intensified during the 18th century. Later, Manuel de Magalhães called attention to other narratives about the origins of the Goan elites that questioned those presented in the *Foral*, defending the predominantly imperial character

7 Xavier, *Collecção de Bandos, e Outras Diferentes Providencias*, 3 vols., *passim*; Xavier, *Bosquejo Histórico das Comunidades das Aldeias*, 3 vols. 1903–1907, *passim*; Xavier, Jr., *Collecção das Leis Peculiares das Comunidades Agrícolas das Aldeas*, *passim*. On that, see also Pinto, “The Foral in the History of Comunidades”, 191–192.

8 Rivara (ed.), “Foral dos usos e costumes dos Gancares e Lavradores da Ilha de Goa e outras annexas a ella”. On this, see Dias, *A Socio-Economic History of Goa*, 12–18.

9 Inden, *Imagining India*, chapter 4.

10 See Kosambi, “The village communities in the Old Conquests”, 63–78.

11 Baden-Powell, “The Villages of Goa in the Early Sixteenth Century”, 261–291.

12 Souza, *Legal Systems in Goa*, vol. 2, 59–60.

13 Pereira, *História da Administração da Justiça*, vol. 1, 59–60. Axelroad and Fuerch, “Portuguese Orientalism”, 439–476; Axelroad, “Living on the edge”, 553–580; Souza, *Medieval Goa*, chapter 2; Subrahmanyam, “O romântico, o oriental e o exótico”, 29–43. See also Viegas, *As Políticas Portuguesas na Índia*.

of the document.¹⁴ More recently, Rochelle Pinto argued that the *Foral* accommodated the “needs of the sovereign” to “the socio-ecological conditions in the region where they were distributed”, making it a hybrid document. Catarina Madeira-Santos has likewise stressed the changes in the local order entailed by the writing of the *Foral*. This author considered it as not merely a register of the local rights, but an expression of an imperial customary law, since the local rights had changed when integrated into an imperial framework.¹⁵ The *Foral*, as the first mapping of Goan village order, is, nevertheless, an unavoidable source for those who intend to gain a deeper understanding of the Goan village normativities. While this scholarship confirms that the *Foral* is, in fact, “a small inroad” to assessing this order, it has not yet said much about its nature.¹⁶

To better understand the relationship between the villages’ normativities and the Portuguese imperial order, sections two and three of this chapter focus on the context of the *Foral*’s production, the contributions from local elites, and the *Foral* as the first mapping of the Goan villages’ order. The following questions thus arise: To what extent does the *Foral* allow us to assess the local order? How does it describe the local uses and customs? What were the interferences and distortions introduced to local normativities by imperial power through the *Foral*? And did it contribute to the construction of the normativities that operated in Goan villages from 1526 onward? To contribute toward answering these questions, section four provides a short inquiry into the multinormativity of the Goan order at the time of the Portuguese arrival as well as its past roots.

Following this, the subsequent sections focus on the uses of the *Foral* and its persistence in changing historical contexts.¹⁷ Assuming that the *Foral* was a description of the local political, administrative, and judicial order, how much was it used during the early modern period? Section five focuses on what happened in the territories annexed 15 years after the completion of this document, and whether it fully applied to them. The final section deals with the role

14 Dias, *A Socio-Economic History of Goa*, 24–25; Magalhães, *Pequenos Reis e Grandes Honras*, 44–46, 238.

15 Pinto, “The Foral in the History of the Comunidades”, 185–212; Madeira-Santos, 282.

16 In his PhD dissertation, Manuel de Magalhães (*Pequenos Reis e Grandes Honras*) argues that the village order replicated, on a micro level, the logics of kingship. Therefore, the head of the village, the main *gaunkar*, had the authority of and behaved like a “little king”—a thesis that is hard to accept. In the villages under analysis in this essay, seldom are there references to a “main *gaunkar*”. Instead, the reference to *gaunkars* (in plural) is often found pointing toward a collective rule of the village.

17 On the afterlife of the *Foral*, see Fernandes, “Invoking the Ghost of Mexia”, 9–25.

of the *Foral* in a Christianized Goa, when the equivalence between *generatio* (birth) and *regeneratio* (baptism) transformed the locals into a-kind-of-Portuguese who therefore submitted to Portuguese law. This leads again to the term 'Lusitanization', which was a *top-down* model and ideal that remained, however, permanently incomplete. Its counterpart, always present, was the indigenization of the Portuguese imperial rule, already expressed in the *Foral*, many other documents, and many practices, as this chapter also demonstrates.

Before proceeding, some theoretical and methodological issues require attention. The first refers to the almost complete lack of a local written archive for studying the Goan normative order at the time of the arrival of the Portuguese. Besides the European sources, Goan written sources are scarce and archaeological and epigraphic sources are limited when compared with other parts of India, allowing little more than an impression of Goa's past before the Portuguese presence. A 'regional' approach to the history of Goa (i.e., observing these territories as part of a vaster region, the West Konkan, that shared some institutions and historical processes) can be useful to overcome such difficulties. This 'regional' approach thus takes into consideration the findings of the vast anthropological literature on this part of India as well as the processes of construction of colonial knowledge, of which the work of Bernard S. Cohn, among others, is fundamental. Second, connected to this, a 'subaltern perspective' is also needed; that is to say, these processes are analyzed by taking into consideration not only the 'voices from below', but also the local dynamics that existed and persisted within and beyond the Western imperial framework. Finally, these two approaches relate to recent scholarship on the legal history of India, some of which is referred to in this chapter.¹⁸ In addition, this chapter is also inspired by comparative and connected methodological perspectives, favoring the relationship between the Portuguese empire and Indian polities as well as their relationship with the Spanish and the British empires. A final methodological issue refers to the use of the words: 'Goa', 'Goan(s)', 'Hindu(s)', 'India', 'Indian(s)', 'Europe', 'European(s)', 'Muslim(s)', and even 'Portuguese'.¹⁹ Although it is problematic to use these terms when speaking of the 16th and 17th centuries since they refer to identities that did not exist then as they are recognized today, they are nevertheless used throughout this chapter to facilitate understanding.

18 Besides Cohn's *Colonialism and its forms of knowledge*, the scholarship on these issues is so vast that it cannot be referenced here. An example of the combination of all these approaches applied to the Portuguese empire in early modern India can be found in Xavier and Županov's *Catholic Orientalism*.

19 In his recent book *Os Filhos da Terra*, António Manuel Hespanha discusses thoroughly what "being Portuguese" could mean in this period, questioning the uniformity of the concept. His findings are extremely relevant to the discussion of the concept of 'Lusitanization'.

2 The Apprenticeship of Empire:²⁰ Uses and Customs during Early Portuguese Rule in Goa

Afonso de Albuquerque, governor of the *Estado da Índia* between 1509 and 1515, conquered Goa in 1510 and established somewhat of a feudal pact with his Indian ally, Timmaya.²¹ He assigned him with the offices of *aguazil-mor* (chief judicial and administrative officer) and captain-general of Goa, in exchange for the defense of Goa, the representation of the Hindu population's interests and 60,000 *pardaos* of gold per year. Later, Malhar Rao,²² brother of the King of Honavar (and later himself the king), acquired the same offices in exchange for 40,000 *pardaos* of gold.²³ Sources from 1510 say very little about the political and administrative organization of Goa. It is likely that locals retained their ways of living, as was common in suzerainty, a term Luís Filipe Thomaz used to characterize this initial period.²⁴ Through these pacts with Timmaya and Malhar Rao, the Portuguese recognized the property rights of the 'collaborationist' locals and did not ask for more taxes than the ones they had previously paid to the Bijapur Sultanate. Local populations were probably accustomed to this kind of situation since, as in other parts of South India, it was common to produce contracts between the ruler and his interlocutors. This allowed the conservation of local chieftains as well as the sharing of political, administrative, judicial, and fiscal power.²⁵

Later, this pact was terminated and, by 1515, King D. Manuel I (1495–1521) decided to adopt the procedures of the "kings and lords of the land from the time of the Moors" to govern the territories of Goa, but it is unclear if these procedures were Muslim at all.²⁶ The territories of Tiswadi, Diwar, Chorão, and Jua (which included the town of Goa) had only been under Muslim rule for 40 years. They knew 20 years of Bijapur dominion (1490–1510), another 20 of Bahmanid rule (1470–1490), and a dispersed dominion, during the 14th century, of the Delhi Sultanate. Bijapur classified the territories of Goa as *Muāmala*, i.e., lands belonging to the Sultan. A *havaladar*—the governor—ruled them, helped by a *thānedār* (the chief fiscal and police officer, who became *tanadar* in the Portuguese documents) and a *Deshpande* (the general scribe). All of them

20 This expression is inspired by Luis Filipe Alencastro's essay, "The Apprenticeship of Colonization". On that, see also Guerra, "L'État et les Communautés: Comment Inventer un Empire".

21 Timoja in the Portuguese sources.

22 Mel Rao in the Portuguese sources.

23 Shastri, "Gersoppa's hand in the capture of Goa", 39–42.

24 Thomaz, "A estrutura político-administrativa do Estado da Índia", 228.

25 Magalhães, *Pequenos Reis e Grandes Honras*, 26.

26 Madeira-Santos, "As Instituições Indígenas no Império Português", 273.

mediated the relationship with the villages of the region of Goa, a function that was later assumed by the Portuguese *tanadar*. Judicially, the Sultan was the final authority of the *Qazi* court, while regionally there were courts presided by *vizirs* and *amirs*.

The impact of Muslim rule was undoubtedly more substantial in the town of Goa than in rural areas. Still the Portuguese documentation identifies village institutions and officers that were also present in other territories of the Sultanate of Bijapur, like the *muqqadam*, the *kulkarni*, and the *nayak*.²⁷ It is also telling that the names of these offices were of Persian, Konkani, or Marathi origin, demonstrating that Bijapur rule already adopted offices and institutions that existed before their domination of Goa.²⁸ Thus, adoption of the procedures of the “kings and lords of the land from the time of the Moors” meant to adopt previous political and administrative experiences that were already plural, of which only the most recent was visible to the Portuguese in the first years after their arrival. This means that King D. Manuel I’s statement was the result of the Portuguese’s ignorance of the long and complex history of domination of these territories.

This (apparent) respect for local differences represented the initial pluralist political and legal culture of the conquerors. António Manuel Hespanha demonstrated long ago that, in what concerns the early modern Portuguese kingdom, the law of the Crown coexisted with and was sometimes complementary to other types of law, such as local law and the jurisprudence of the courts. Similarly, sovereignty was shared, in contrast to the monopoly of the Crown, which would characterize later periods. In this initial period, these principles somehow translated into the imperial territories in respect of the local institutions. In the legal arena—like in other parts of Europe and the Hispanic world²⁹—the local/corporative norms had precedence over the law of the king if they conformed to the *ratio juris* or the morals of the Christian religion.³⁰ Again, this was a political and legal culture that somehow converged with the situation in early modern India: in cases of dispute between the prescriptions included in the *Dharmaśāstras* and local customs, the latter often prevailed in the moment of making judgements.

27 Fukazawa, “A Study of the Local Administration of Adilshahi Sultanate (A.D. 1489–1686)”, 37–66; Fukazawa, “Rural servants in 18th century Maharashtra. Demiurgic or Jajmani System?” 14–40; but also in Kulkarni, “The Indian village with special reference to Medieval Deccan (Maratha county)”, 1–42.

28 Gune, *The Judicial System of the Marathas*, xxii–xxviii.

29 Agüero, “Local law and Localization of law. Hispanic Legal Tradition and Colonial Culture”, 101–130.

30 Hespanha, *Panorama da História Institucional e Jurídica* 3, 20–22.

The practice of compiling uses and customs was renewed in early modern Europe through the long-distance voyages that sought to find better routes to the Indies. During the 16th century, identifying the uses and customs was familiar not only to jurists, but also to travelers, merchants, missionaries, and humanists interested in mapping such uses and customs of the ‘newly discovered’ parts of the world. In 1520, for example, Johannes Boemus published an *Omnium Gentium Mores, Leges et Ritus*, arguing for its usefulness. Boemus’ book did not yet include the information assembled by the Portuguese and the Spanish as a result of their overseas expansion.³¹ Similarly, travelers, merchants, and officers of the Portuguese Crown compiled the uses and customs of the Indian societies since the beginning of the 16th century. Letters, reports, or treatises like the one of Duarte Barbosa of 1516, “*Descrição das Terras da Índia Oriental, e dos seus Uzoz, Costumes, Ritos e Leys*”, the *Summa Oriental* of Tomé Pires of 1515, and the *Chronica de los reys de Bisnaga*, of Domingos Paes about Vijayanagar were included.³² In contrast with the jurists, who were more interested in the uses and customs that overlapped or complemented the field of the *ius commune*, these actors mainly inquired about other normativities: social, religious, and ritual.³³

To record and keep these uses and customs—which were, from a jurist’s perspective, the “practices followed by most members of the community for a sufficient length of time to become binding”³⁴ and recognized as *ius proprium*—the Portuguese Crown had first to know them. It was in this context that several royal letters, laws, and decrees, issued between 1510 and 1526, tried to map the new territories and their people. In the same decades, when the jurists of the School of Salamanca theorized about the nature of the relationship between the Spanish monarchy and its non-Christian subjects, Portuguese practitioners in early modern Goa were building this relationship based on their Iberian cultural encyclopedias and experiences. The main issue at stake then was to identify which were the political, administrative, and judicial bodies that operated locally. This was crucial for grasping which taxes were paid by the inhabitants of Goa, as well as identifying which local structures could be integrated into the imperial order.³⁵

The rules of João Machado, the captain and the *thānedār* of Goa in 1515, are exemplary of the initial efforts of the Portuguese Crown. Acquainted with the

31 Boemus, *Omnium Gentium Mores, Leges et Ritus*, S. Grimm & M. Wirsung, *passim*.

32 Paes, *Chronica dos Reis de Bisnaga*, *passim*.

33 On this literature, see, *maxime*, Lach, *Asia in the making of Europe*, vol 1.

34 Herzog, *A Short History of European Law*, 124–130.

35 Miranda, “The center and the periphery in the administration of the Royal Exchequer”, 1–14.

Sultanate of Bijapur, Machado had to figure out the best way of exacting taxes from the farmers of Goa. These would be registered in a book and should be the same they paid to the previous 'lord of the land' (the Sultan of Bijapur). Four years later, the new *thānedār*, Duarte Pereira, received a more detailed set of instructions. First, Pereira had to count the *gaunkars* (the elites of the villages) that lived in Tiswadi, Chorão, Dívar, and Jua. Then, he had to identify their lands and the taxes the villages paid, which lands belonged to the Muslims, as well as which were small or damaged. Finally, he should know which *gaunkars* sold their properties or moved from one village to another, "as they were used to doing", so he could prevent them from doing so. Pereira also had judicial powers: he was supposed to settle the disputes between these *gaunkars* on issues related to their lands, trees, and plantations. Furthermore, he had to travel twice a week to the island of Tiswadi, accompanied by guards, to watch over it so that no one would steal fruits from either the king's or the *gaunkars'* trees.³⁶

While Pereira was doing this, the "Rules for the government of the town" of Goa, of 1519, stated that the city councilors should know the ordinations of the towns and villages, preserving them when useful and amending them if bad.³⁷ This understanding conformed to paragraph 29 of volume one of *Ordenações Manuelinas*, which established the preservation of local customs unless the king decided to alter them. Article 66 clarified, however, that while each municipality explained its 'old rules', the Crown only kept those that were 'good', excluding those that were inconvenient.³⁸ Unfortunately, there are no traces of these early compilations that witness the effort of knowing the land and synthesizing the uses and customs of Goa already in the second decade of the 16th century. The same principles that guided Machado and Pereira's activities were present in the rules of the next *thānedār*, the powerful Goan Brahman Krishna,³⁹ who was now supposed to keep the information collected in a book divided into different sections, each one concerning a different village.⁴⁰

These were indeed times of the 'apprenticeship of the empire', in which the Portuguese agents were slowly delving into the Goan local order, attempting

36 APO, Fasc. 5, vol. 1, 35–36.

37 APO, Fasc. 2, 20–27.

38 Hespanha, *Como os Juristas viam o mundo*, 2.4.1.2. Posturas, costumes locais e lei.

39 Crisná in Portuguese. The choice of Krishna demonstrated the dependency of the Portuguese Crown on local collaboration. Moreover, it allowed, at least theoretically, depending on the genuine political loyalty of Krishna to the Portuguese, easier access to the local people and their dealings.

40 APO, Fasc. 5, vol. 1, 65–68; On that, see Rochelle Pinto, "The Foral in the History of the Comunidades", 203–204.

to grasp it intellectually, in a process that increased in the following decade. When Viceroy Vasco da Gama was sent to India in 1524, accompanied by a new team of officers, with the mission of correctly organizing the administration of the *Estado da Índia*, he inherited the results of these processes of learning and recordings of local uses and customs from the previous decade.⁴¹ Among the officers that arrived in India in 1524 was Afonso de Mexia, who had extensive experience as an officer of the king (he had been one of the royal scribes, as well as a scribe of the Royal Exchequer). Mexia would substitute Pedro Nunes in the office of *Vedor da Fazenda*, the institution that oversaw all the economic and fiscal matters of *Estado da Índia* and supervised the *thānedār* as well.

3 Local Uses and Customs and Imperial Order in the *Foral*

It was on the 16th of September of 1526 that the *Foral* was concluded, signed by Mexia, and made public.⁴² Another document written by Mexia reiterates that the *Foral* had, above all, fiscal goals. He explained that he had seen the papers of *thānedār* João Machado and inquired about the rents to be paid by the villages.⁴³ As Susana Münch Miranda has pointed out, tax revenue—and the establishment of institutions that allowed it in the politically subjugated territories—was “a means of establishing sources of revenue” that enabled the king “to ensure the self-sustainability of the crown’s intervention in Asia”.⁴⁴

The first part of the *Foral* (today lost) materialized this endeavor, critical in a moment when the inhabitants of these villages were not Christian. The Portuguese Crown did not have the right to extract from them the tithes that Christians of other parts had to pay. Without tithes, other tribute payments and rents, namely the *foros* (one-fifth of the agrarian rents) the villages had to pay to the Portuguese Crown, became more important for the financial sustainability of the Portuguese presence in Asia. The first part of the *Foral* was in harmony with the process known as *Reforma dos Forais*, during which almost 500 *forais* of the Portuguese kingdom were rewritten between 1495 and 1520. These *forais* also aimed to control the tax revenue to be paid by the Portuguese municipalities and villages to the Crown.⁴⁵

41 *Apud* Loureiro, “Reconstituição da documentação produzida por Afonso de Mexia”, 22.

42 APO, Fasc. 5, vol. 1, 114–117, 139–141; Magalhães, *Pequenos Reis e Grandes Honras*, 58.

43 APO, Fasc. 5, vol. 1, 133–134.

44 Miranda, “The center and the periphery in the administration of the Royal Exchequer”, 3.

45 Coelho, “O Poder Concelhio em tempos medievais”, 19–34; Neto, “O foral manuelino de Porto de Mós”, 77–78; Oliveira, “O Foral de Faro e a Reforma dos Forais”, 14–15.

In contrast with the new *forais* of the kingdom, the *Foral* had a second part that compiled the uses and customs of Goan villages. However, its encounter with alterity was more challenging than the ones faced by medieval and early modern European royal agents and jurists. In India, the Portuguese faced different forms of social organization, languages, religions, and uses and customs, of which Goa was only a small part. The process of knowing and assembling local uses and customs for the *Foral* was simultaneously similar and different from previous experiences in the kingdom and in Europe since it adapted the *Foral*, as Pinto remembered, to the “socio-ecological conditions” of the region of Goa.⁴⁶ Moreover, relying on information previously collected, Mexia also included documentation produced in the context of (and prior to) the Bijapur Sultanate, and information found in old books, registering the *nemos* (decisions of the *gaunkars*) on economic and fiscal matters.⁴⁷ The *Foral* also included fresh information provided by the *gaunkars* and the scribes of the villages, many of them of Brahman origin. Mexia and his officers thus had many cultural, legal, and administrative resources to draw on when compiling the uses and customs of the Goan villages.

As a “socially embedded community”, South India’s Brahmans’ presence was usually constituted in temples, lineages, referential books, and ritual practices.⁴⁸ The same can be said for the territories of Goa, where the presence of Brahmans was significant.⁴⁹ A copper plate of 1391 reported that Madhav Mantri, Goa’s governor under the rule of Vijayanagar, had founded a *brahmapuri* (a learning place inhabited by Brahmans) on the island of Diwar.⁵⁰ In 1510, the *brahmapuri* of Diwar was still very active, described by the Portuguese as the equivalent of the “Holy Land” for the local populations or Rome for the Christians.⁵¹ Brahmans of Kushashtali in Salcete worked as scribes during the rule of Vijayanagar too, as well as in the Bijapur Sultanate in the late 15th and early 16th century. Their involvement with these royal courts allowed them to reinforce their local and regional positions, expressed, for instance, in the donations they made to their temples.⁵² Kushashtali, as well as Keloshi in its neighborhood, had

46 Pinto, “The Foral in the History of the Comunidades”, 187, 195.

47 Viegas, *As Políticas Portuguesas*, 47.

48 Fischer, *Hindu Pluralism*, 13–14. See also Rao, *Cultures of Memory in South Asia*, 307.

49 On that, see Xavier, *A Invenção de Goa*, 279.

50 A summary of this copper plate, translated into Portuguese, can be found in Barros, *Décadas da Ásia*, vol. 2, 188.

51 *Documentação para a História do Padroado Português do Oriente* (henceforth DHMPPO), vol. 7, 85. See Xavier, *A Invenção de Goa*, 267, 289–296.

52 Pereira, *Gaunkaris*, 95; O’Hanlon and Minkowski, “What makes people who they are?”, 381–416; Rao, Shulman and Subrahmanyam (eds.), *Textures of Time, passim*; Alam and Subrahmanyam, “The making of a munshi”, 185–209.

Brahmanical centers of learning. Their pundits wrote versions of well-known epic poems *Mahabharata* and *Ramayana*, adapting the stories of Pandavas, Kauravas, Rama, and their brothers to the territories of Goa. Rescued and transcribed by the Jesuits, these few texts that survived the destruction campaigns of the mid-16th century witnessed the presence of *dharma*—the moral world of the heroes of *Mahabharata* and the *Ramayana*—in the Goan territories.⁵³ They also testify to the creative appropriations of ‘classical texts’, as well as the capacity of local Brahmans to disseminate their worldviews and, to a certain extent, what some scholars called their “regulatory project”.⁵⁴

As shown below, the *gaunkars* and scribes involved in the production of the *Foral* did not provide all the information they had about their uses and customs, namely those concerning the laws of inheritance. When later questioned, they argued that this was due to the rush with which Mexia had pursued the inquiry.⁵⁵ Another explanation, however, is that the concealment of specific dimensions was intentional and sought to preserve their normative autonomy. It is also plausible that this was the result of (un)expected misunderstandings;⁵⁶ interpreters were involved in the translation of the local language and political and administrative categories into the Portuguese ones, and they could have mistaken the intentions of both parts.⁵⁷ There was neither a wholly *bottom-up* control of information nor a *top-down* one in the production of the *Foral*.

Each of the participants in the process somehow interfered in the final arrangements of the document, which made it into somewhat of a bridge between the village order and the imperial one. Parts of the *Foral* clearly express the command of the Portuguese Crown, while others show the local elites’ ability to defend their interests. Above all, the *Foral* was not only a hybrid document, but also a monument to a particular historical context, which, for several reasons, was later generalized.

53 Sama, *Koṃkaṇī Rāmāyaṇa*, *passim*. Also a *Shri Krishnachavitrakatha* was written in this period, today in the Archives of Braga. See Gomes, *Old Konkani language and literature*, 50–54. On the appropriations of the *Mahabharata*, see Pollock, *The Language of the Gods in the World of Men*, 223–237.

54 O’Hanlon, Minkowski, and Venkatkrishnan, *Scholar Intellectuals in Early Modern India*, Introduction. On these appropriations in early modern India, see, in general, Davis, jr., and Brick, “Social and Literary History of *Dharmaśāstra* – Commentaries and Legal Digests”, in Olivelle and Davis (eds.), *Hindu Law: A New History of Dharmaśāstra*, 33; Mitchell, “The Practice of Hindu Law”, 58–77. Lubin, “The theory and practice of property”, 13.

55 APO, Fasc. 5, vol. 1, 157.

56 Galindo, “Legal transplants between time and space”, 134 onwards.

57 Couto, “The Role of Interpreters, or Linguas, in the Portuguese Empire During the 16th Century”, 1–10; Flores, “Le «língua» cosmopolite”, 225–250; Deshpande, “Scripting the Cultural History of Language”, 62–86.

How did the imperial agents interfere in the contents of the document? And how did these interferences contribute to constructing a new local order? The preamble of the second part of the *Foral* openly assumed the interference of the Crown by indicating that it assembled the “rights, uses, and customs” of the villages, which “we [the Crown] should keep”. Further, those “rights, uses, and customs” were to be used in the manner the agents of the Portuguese Crown found appropriate. The appropriated institutions were, in this case, the existing political and administrative bodies, the *gaunkari*, and the members that composed them, the *gaunkars*. The latter, defined in the *Foral* as governors, ministers, and benefactors, belonged, the *Foral* said, to the lineages of the founders of the villages. They constituted the collective organism that headed the village, the *gaunkari*, which governed, as already mentioned, the land and rituals associated with it. The *gaunkari* also defined access to the privileges annexed to the *gaunkar*’s and other officers’ lineages (the *vangaḍ*), each one usually living in specific quarters of the village. In addition, the *gaunkari* had judicial powers, settling, in general, the disputes among villagers. It was up to the *gaunkari* to make the decisions that bounded all villagers collectively.

However, contrasting with the *Foral*’s explanation, possibly provided by the *gaunkars* themselves, most of the 16th-century *gaunkars* did not descend from the founders of the villages. An 11th-century document, for example, shows that a man called Chadamma received, as a grant, the village of Morumbi, perhaps at that time already depopulated. In 1526, the *gaunkars* of that village belonged to several lineages, but Chadamma’s was not part of them. Chadamma’s case, like others, is consistent with the narrative about the foundation of Goan villages presented in the *Décadas da Ásia* by João de Barros, who argued that none but three of the lineages that controlled the *gaunkaris* of Goa were descendants of the founders.⁵⁸ The *Foral*’s narrative also did not consider the *gaunkars* that had abandoned their villages after the Portuguese conquest of Goa, settling down in the lands of the Sultanate of Bijapur. The Crown expropriated their lands, which were received either by relatives or, in their absence, by other people, who occupied their positions in the *gaunkari*.⁵⁹

By assuming that the actual *gaunkars* descended from the founders of the villages, by recognizing new *gaunkars*, and by making their powers and honors permanent, the Crown crystallized for the future a situation that was not necessarily descriptive of the villages’ past. As Pinto has pointed out, this perpetual

58 Moraes, *Kadamba Kula*, 400; Barros, *Décadas da Ásia*, vol. 2, 190–191.

59 Paragraphs 17, 18, 40 of the *Foral*; APO, vol. 5, 25. If they returned to their original villages, they could be given other lands that were vacant at that moment (APO, vol. 5, 25).

association reinforced the internal power of those that were the *gaunkars* at the time the *Foral* was written.⁶⁰

It is likely that the Portuguese agents were merely pragmatic in applying to the villages of Goa the principle of indivisibility that operated in the kingdom since the *Lei Mental* in the previous century. This principle stated that honors and jurisdiction should not be separated (*dignitates et jurisdictiones non dividuntur*). In the early kingdom, this principle had helped to tie powerful families to the Crown, settling an interdependency between both.⁶¹ In Goa, where the weakness of the power of the king and the lack of human resources was evident, the adoption of this principle was a way of attracting the loyalty of the village elites to the imperial power.

Besides expressing the shared and the specific political culture of each Portuguese agent, this arrangement also converged with the mutual dependency of the ruler and the local chiefs that characterized many South India polities. In these polities, *dāna* (gifts) in the form of *mānya* (rents, plus honor and ritual supremacy, namely the right of heading the ritual sacrifices) and *rakṣaṇa* (protection) were exchanged for taxes.⁶² The protection of the elites in exchange for their loyalty was essential to the conservation of the imperial power, particularly in what concerned the fulfilment of fiscal duties. It was the *gaunkars'* duty, the *Foral* said, to pay to the "Lord of the land", the taxes each village already paid to the previous ruler. Many paragraphs are concerned with this aspect, while others, directly or indirectly, also refer to tax revenue and the rights of the Crown concerning the immovable and movable properties of the villages and their inhabitants.⁶³

In other matters, the power of the *gaunkars* was reshaped and/or reduced. Several clauses concerning other aspects of the relationship between the *gaunkars*, the *gaunkari*, and the imperial power make it evident: their almost complete submission toward the *thānedar*; their obligation of hosting the officers of the king when they wanted to stay in the village; their commitment to providing services to the city of Goa when asked to do so; and their obligation of registering their decisions by following writing protocols in use in Portugal.⁶⁴

The *Foral* also prohibited the *gaunkars* from exercising *dāna*, an essential part of the social recognition and ritualization of their power, in their

60 Pinto, "The Foral in the History of the Comunidades", 188, 211–212.

61 Hespanha, *Como os juristas viam o mundo*, 2.4.3.7. Transmissão dos direitos senhoriais.

62 Magalhães, *Pequenos Reis e Grandes Honras Culto*, 23–25, 34.

63 *Foral dos usos e costumes*, paragraphs 3–6, 9–10.

64 *Foral dos usos e costumes*, paragraphs 11, 14, 18, 21, 36, 37, 39.

relationship with the king's officers. This prohibition referred directly to paragraph 56 of volume 4 of the *Ordenações* of King D. Manuel I, which tried to control practices which we today identify as corruption. However, locally it meant stripping an essential part of the expression of their power. The interference in the symbolic authority of the *gaunkars* was present in other moments too. On the one hand, the governor had to authorize the use of torches and palanquins by new *gaunkars*, as well as pedestrian officers to accompany them, increasing their dependency on the imperial power. On the other, harvest rituals had to include a Christian vicar and a presentation of rice in the cathedral, reducing the religious autonomy of the village.⁶⁵

All these cases demonstrate that the *Foral* definitively reshaped the local political and administrative order. The *gaunkars* continued to be the heads of the villages, as well as responsible for the decision-making. At the same time, some of their honors were abolished, increasing their dependency on the Portuguese Crown. Furthermore, their administrative processes included some procedures that followed the Portuguese style. In addition, the *Foral* also insisted on the need to maintain the local uses and customs; the expressions "following their uses and customs" or "general customs" are frequently invoked. Moreover, the *Foral* stated that the customs of villages that had different customs should be respected as well. Thus, which local uses and customs were kept and how were they kept?

Again, the *gaunkars* were the main interlocutors, and they certainly tried to keep the customs that were most favorable to them, expressing, in practice, what Sumit Guha has argued: that "custom would favour the powerful whose predecessors had made it".⁶⁶ The *Foral* kept their customary privileges of leasing paddy fields as well as of granting wastelands if they were to be used to cultivate betel trees. The same happened with the grants they gave to the village officers—priest, dancers of the temple, clerk, porter, washman, shoemaker, carpenter, blacksmith, renter, 'faraz', cleaner—as payment for their services to the village. The taxes to be paid by each type of land—paddy fields, areca tree orchards, wastelands—were also preserved in conjunction with the principle that the *gaunkars* should not pay more to the Portuguese king than they did to the previous ruler.⁶⁷ However, according to John Duncan Derrett, those concerning inheritance were influenced by the *Yājñavalkya Smṛti* (the second

65 *Foral dos usos e costumes*, paragraphs 19, 27–29, 45 and 49; see also Pinto, "The Foral in the History of the Comunidades", 209–210. It was the Portuguese law that was applied in the cases of usury and thefts (clauses 25, 26) referring to Ord Man, L v, tt. xxxvii – Dos furtos...; Leis Extravagantes, tt. iii – Dos furtos & Roubos; OrdMan, L iv, tt. xiv – Das usuras.

66 Guha, "An Indian Penal Regime", 106.

67 *Foral dos usos e costumes*, paragraphs 5, 6, 9, 10, 12, 20.

most crucial 'legal' *smṛti* after the *Manusmṛti*), through the commentaries of Vijñāneśvara and Aparāditya I, as well as of *Parāśara Smṛti* by Madhāva. Derrett found this influence in a dispute taking place between Hindus in the first decades of 18th-century Goa, where "Goan customary law" was recalled.⁶⁸ If this 'classical' inspiration was still present at the beginning of the 18th century, two centuries after the Portuguese influence, it was probably more visible in the previous centuries and thus expressed in the *Foral*.

The judicial system inscribed in the *Foral* also followed the local customs. Many of the legal situations referred to were to be solved by the *gaunkari*. Modes of proof—documents, witnesses, oaths—were similar to those operating, in general, in the Indian world. However, if classical Indian legal texts treated legal procedures very carefully (like the inclusion of other modes of proof, such as 'possession' and 'ordeals'), the information included in the *Foral* was sketchy in what concerned legal procedures. In litigations between inhabitants of the village related to immovable properties and inheritance, the *Foral* required the annexation of the deeds (*rājaśāsana* or other documents) and the books of the village concerning the object of litigation. Also, the procedures related to mortgages, their amounts, and types of proof needed to solve litigations between creditors and debtors retained the local ways of solving conflicts.

The same did not happen, however, in the cases involving significant misbehavior by the *gaunkars*. In those situations, it was the *thānedār*, or even the captain-general or the governor or viceroy (the ultimate judicial officer of appeal), who decided what kind of punishment ill-doers would receive. However, this could also reproduce a local practice, since at least under the Bijapur domination, the Sultanate regional courts or the Sultan himself solved harsh criminal cases.

The pages above illustrate how difficult it is to reconstruct the village normativities through an analysis of the earliest available document that systematically maps some of them, especially concerning the political, administrative, and judicial spheres. Besides being a selection of norms, the *Foral* also witnesses the hybridity of the norms it contained. Admittedly, parts of them already operated in the villages, as a result of prior experiences, but others were the outcome of negotiations between the rulers and the ruled. Writing down the results of these negotiations was novel and made of the *Foral*, in a sense, a 'written constitution' of the village normativities, though not in the sense scholarship has traditionally attached to this word. Instead, the *Foral* did constitute a kind of new village order, which was the result of older norms and practices and imperial selections and impositions.

68 Derrett, "Hindu law in Goa", 206, fn. 6.

4 Dharmaśāstras and the Smṛti in the Local Order of Goan Villages: The Multinormativity of the Foral

Stepping back in history can be enlightening in what concerns the potential sources of some of the normativities that were considered old uses and customs. The medieval territories of Goa were under the dominion of polities that had the *Dharmaśāstras* and their commentaries as part of their world of normative reference. The Western Chalukyas (1076–1156), the Goan Kadambas (1006–1356), and the Vijayanagar empire (1370–1469) were all under Brahmanical influence and promoted the commentators of the ancient texts.

It was during the Chalukya government of Vikramaditya VI (1076–1126) that the Brahman jurist Vijñaneśvara wrote the *Mitāṣksāra*, the most famous and most widely disseminated commentary on the *Yagnavalkya Smṛti*. By that time, the Goan territories were under the rule of the feudatory Jayakesi II, who was the Kadamba rāja of Goa between 1125 and 1147 and husband of one the daughters of Vikramaditya VI.⁶⁹ More or less in the same period, the *Apārarka*—another treatise on the *Yagnavalkya Smṛti*—was written by the ruler of the Silaharas, Aparaditya I (1170–1197), a polity of the north Konkan in the vicinity of Goa.⁷⁰

It is still not possible to trace a direct link between these treatises and the customs included in the *Foral* that seem to refer to them. Still, the Brahmanical influence in the Goan territories since the 11th century allows us to suspect that they might have had an impact in these territories. In that century, for example, donations to Śivaite Brahmans reinforced the impression of a Brahman influence among the elites of medieval Goa. Those Śivaite Brahmans established centers of learning (*agrāharas*), where the *Vēdas* and the schools that interpreted them (the *Mīmāṃsā*, *Nyāya*, *Sāmkhya*, *Yoga*, and *Vedānta*, which was the last and the one that prevailed in 16th-century South India), were studied.⁷¹ Similarly, other ‘classical’ texts—the *Dharmaśāstras*, the *Itihāsas*, and the *Purānas*—were taught, through methods of exegesis and analysis comparable to the Scholastic tradition in Europe.⁷²

69 *Mitāṣksāra* became one of the most important medieval digests, translated into Tamil, Telugu, and Persian, at least. Another well-known digest was the *Dāyabhāga*, a treatise written by Jīmūtvahāna of Bengal of the 10th to 11th centuries, which proposed different interpretations concerning inheritance, property rights, women's rights, and other matters.

70 Kane, *History of the Dharmaśāstras*, vol. 1, 374–375.

71 Fischer, *Hindu Pluralism*, 5–6.

72 Moraes, *The Kadamba Kula*, 287–300. On that, see inscriptions from the time of the Kadambas in *Epigraphia Indica*, vol. 7; Herzog, *A Short History of European Law*, 78–79.

As Derrett has pointed out, some of the inheritance customs assembled in the *Foral* might have been local appropriations of the *Mitāṣksāra*. The principle that inheritance was due to the kinship between the owner of the wealth and the heir of it (father, son, grandson, and vice-versa)—what Vijñaneśvara called “unobstructed heritage”—ruled the majority of the succession norms present in the *Foral*.⁷³ Similar situations can be found in the clauses about the sale of land. Selling land was complicated since the agreement of all its heirs and other *gaunkars* was needed; in addition, cancelling the sale was also possible.⁷⁴ The same could be said concerning the *Mitāṣksāra* for the rules toward women, who were entirely unable to inherit from their fathers, grandfathers, and husbands.⁷⁵ Finally, the norm that stated that if any goods were “discovered” or “found”, they belonged to the king, could also refer to *Mitāṣksāra* (or other treatises) paragraphs on forms of acquiring property.⁷⁶

It is still unknown whether such uses and customs were transmitted orally or in writing. Documents produced under Portuguese domination in the early 16th century do refer to the existence of ancient scriptures and books of law in the villages of Goa. Were these books simply compilations of uses and customs without reference to the classical treatises, as some scholarship argues? Or were they mere apocryphal documents used to impress the new rulers? Many scholars contend that, instead of a normative textual tradition based on the *Dharmaśāstras* and the *Smṛtis*, customs were “the main source of court decisions”, “which decided case by case without taking into consideration any normative text”.⁷⁷ Practice and jurisprudence, not books, defined multiple and casuistic judicial architectures, where the very concept of enforceable law

73 *Foral dos usos e costumes*, paragraphs 22 and 30. However, the interference of Portuguese law was also visible in these sections. The paragraphs concerning the heritage of those dead without heirs provide an excellent case to observe: the inheritances belonged to the king, but he allowed the *gaunkars* to use or distribute them to other people.

74 *Foral dos usos e costumes*, paragraphs 15 and 16.

75 *Foral dos usos e costumes*, paragraphs 27, 30, 33.

76 *Foral dos usos e costumes*, paragraph 32. See *Dāya-Bhāga and Mitākṣarā*, 242; Bhattacharyya-Panda, *Appropriation and Invention of Tradition*, 21–22, and Rocher, *Jimutavahana's Dayabhaga*, 16.

77 Halpérin, “Transplants of European Normativity in India and in Japan”, 150–157. These authors bring up examples from 14th–16th century Kerala, where *Dharmaśāstras* were never quoted. There were places where the *sāstric* prescriptions were not even invoked. In fact, practical law relied on *ācāra*, *samaya*, and *maryādā*, all words referring to customs and practices, without reference to the *śāstras*.

Davis, “Dharma, Maryāda and Law in Early British Malabar”, 83, 119, 149 and 204; the *Manu Smṛti* was known in the 18th-century courts of the Marathas kingdom. Gune, *The Judicial System of the Marathas*, 69. A similar understanding of these processes can be found in Guha, “An Indian Penal Régime”, 101–126.

did not exist. In addition, other scholars have argued that these customs were “epitomes of past balances of social power”.⁷⁸

What was the status of the uses and customs compiled in the *Foral*? Were they only ‘local customs’ or, instead, did they witness the appropriation in Goa of the *Dharmaśāstras* and the *Smṛtis*? Moreover, if the latter is true, can it be said that *Tikās* and *Nibandhas* (treatises that were legal commentaries on the *Dharmaśāstras*) proliferated in 16th century Goa, like in the Islamicized territories of the Deccan or other Indian polities, by the time of the British arrival?⁷⁹ More detailed studies are needed to reconstruct the legal traditions that informed the administrative order of the Goan villages and to understand, with more rigor, the characteristics of this administrative order. Still, the examples presented above allow us to suppose that the village order that materialized in the *Foral* was constituted by several layers of experience, combining *genuinely local* uses and customs with local appropriations of classical Brahmanical treatises, transforming their rules into local customs. This diversity was undoubtedly related to the many dominations that had ruled the villages before the Portuguese. The Portuguese were merely another superimposed layer in an order characterized by multinormativity, which even hosted contradictory norms.⁸⁰

5 The Uses of the *Foral* in the 16th and 17th Centuries

The coverage of the *Foral* reinforced its *constitutive* dimension: the “*gaunkars*, laborers, tributaries, inhabitants” and other people of the villages and town of Goa were supposed to be attached to its norms. Moreover, even if the document clearly defined its initial normative space—the 31 communities of Tiswadi, Chorão, Dívar, and Jua⁸¹—from 1543 it was extended to the inhabitants of the

78 Guha, “Wrongs and rights in the Maratha country”, 26; Rocher, *Studies in Hindu Law and Dharmaśāstras*, *passim*; Mawani and Hussin, “The Travels of Law: Indian Ocean Itineraries”, 735; see also Davis, *The boundaries of Hindu Law*, *passim*.

79 Bhattacharya-Panda, *Appropriation and Invention of Tradition*, chapter 1, 17; Lapidus, *A History of Islamic Societies*, 361–364; Hallaq, *An Introduction to Islamic Law*, *passim*; Coulson, *A History of Islamic Law*, *passim*; Davis, “Dharma, Maryāda and Law in Early British Malabar”, 51–70; Rocher, “Hindu Conceptions of Law”, 1283–1284.

80 On the superimposition and substitution of different layers and the overlapping of sources of justice in early modern India, see Guha, “The qazi, the dharmadhikari and the judge Political authority and legal diversity in pre-modern India: Premodern Europe and India in Comparison (13th–18th Centuries)”, 97–115.

81 Pinto, “The Foral in the History of the Comunidades”, 200–201.

villages of Salcete and Bardez, which meant that 99 more villages came under its influence. Concerning these territories, a document of 1595 declared that Salcete followed most of the uses and customs of Tiswadi, but it is not clear whether the same applied to Bardez.⁸² In fact, concerning land, for example, a 1619 report explained that all property of Salcete belonged to the ruler, who rented it for short periods to the villages, while in Bardez, the document said it was the inhabitants of the villages who owned the land.⁸³ How did these statements unite with the norms of the *Foral* concerning the land and its ownership? The *Foral* was imposed on territories and people with different historical experiences, thus freezing the diversity of these experiences in favor of a process of essentialization of village life, which was mainly useful for the relationship between the imperial power and those villages. Was the *Foral* efficient in this endeavor?

A petition of 1534 sent to the Governor of Goa is particularly enlightening: on the one hand, this petition demonstrates that the judicial system of the village was considered insufficient to solve all conflicts, especially when the solution provided by the village courts did not satisfy one of the litigants. Perhaps this explains why one of the parties involved in the litigation decided to petition to the imperial court. On the other hand, this petition also demonstrates that, by 1534, some local inhabitants started to refer to the norms included in the *Foral* to settle conflicts between them, even if this discredited the validity of the document in relation to specific situations.⁸⁴

The *Sentença sobre as partilhas dos naturaes da terra*, signed by the Governor of the *Estado da Índia*, Nuno da Cunha (1529–1538), on August 14, 1534, refers to a conflict between three brothers: Santu Sinay and Sau Sinay against their half-brother, Ramu Sinay. The conflict concerned the inheritance of their father. Sau and Santu complained about the division of their father's heritage into only two parts, based on the number of wives he had, rather than three, based on the number of sons. Their petition argued that the *Foral* was insufficient in the clauses concerning inheritance after the death of a father, regarding the rights of the sons, nephews, and relatives, or sons of different wives. They argued that the “books of their antique laws” contradicted the clauses included in the *Foral*.⁸⁵ To solve this contradiction, the two brothers suggested the governor send the principal officer of justice—the *Ouvidor* Pedro Álvares

82 Paes, *Tombo das Ilhas de Goa e das Terras de Salcete e Bardês*, 100.

83 ANTT, Armário Jesuítico, Mss. 89, no. 19, 42; AHU, Índia, Cx 6. no. 29, 1.

84 Pereira, *História da Administração da Justiça*, vol. 1, 61–65.

85 Jaffe, “The languages of petitioning in early colonial India”, 581–597.

de Almeida—to listen to local “lettered men” (probably *prādviveka*)⁸⁶ about the various chapters concerning inheritance included in the “books” and “antique scriptures” of the land.⁸⁷

The judicial sentence issued by the Governor did include information provided by “lettered men”. They declared that the inheritance, both immovable and movable property, of a deceased father should be equally parted between his sons, though with an advantage for the eldest brother. They also said that the heirs should give some movable property to their mother, for her maintenance. The same principle applied in the case of multiple wives, but only when these were of the same caste as the deceased father. Some of these legal principles were present in the *Manusmṛti* and were repeated in other texts, like the *Dharmasūtras* of Gautama and Baudhāvana and the *Smṛtis* of Yājñavalkya and Nārada.⁸⁸ As mentioned above, these were principles that circulated, directly or indirectly, among Brahmanical communities, and were probably appropriated by the “lettered men” of Goa and its surroundings.

These explanations, however, opposed clause 33 of the *Foral*, which explicitly stated that in cases with two wives the inheritance should be divided into two equal parts, even if one wife had one only child, and the other, two or more. Consequently, the *Ouvidor* decided to convene an assembly of the *gaunkars*, who eight years earlier had informed the Portuguese agents about the inheritance rules that operated in the villages of Goa. The Portuguese ruling explained that “the truth of their customs” motivated this decision. The *gaunkars* validated the two different customs; however, they said that in disputes like that of the brothers, the law was to be followed, thus contradicting the rule that customs had precedence over law. In addition, the *gaunkars* explained, as before, that they had not given this information to Mexia because he appeared to be in a hurry when questioning them about the rules of inheritance that operated in the villages.⁸⁹

The *Ouvidor* conducted the process and wrote the conclusions, but the final ruling was Governor Cunha’s. He accepted both customs as valid, arguing that both customs were “ancient in this land”, and “both were used”. He decided for the norm that stated that the inheritance should be equally divided among all sons, independently of the number of wives. He also agreed with the

86 Local expert on the *Dharmaśāstras* and their legal commentaries (*Tikās*, *Nibhandas*), as well as on local customs.

87 APO, Fasc. 5, vol. 1, 156.

88 Rocher, “Hindu conceptions of law”, 39–58; Rocher, “Inheritance dāyabhāga”, 172; Kane, *The History of the Dharmashastras*, vol. 2–1, 472,

89 APO, Fasc. 5, vol. 1, 157.

application of the same solution to comparable situations, possibly because this norm was most similar to Portuguese law, where all the sons had equal rights to their fathers' inheritance.⁹⁰ Cunha's decision converged with the tendency to expand Portuguese law—probably considered to embody the *ius commune* better than any other—to all subjects, in tension with the legal pluralism that was still present at the time of production of the *Foral*.

This petition and the corresponding decision are unusual for several reasons. On the one hand, the decision of the Governor illustrates a change that was taking place in the political culture of Portuguese elites. Parallel to the traditional pluralist culture, a trend favoring the homogenization of the societies under the rule of the same prince was emerging. Somehow, Cunha already embodied this, which, as will be discussed, had other and more dramatic expressions in the territories of Goa. On the other hand, this case demonstrates that the local elites (at least, Brahman elites) were well aware of the lacunae of the *Foral* and took advantage of this when possible.

Ultimately, not only were the local normativities more complicated than what was assembled in the *Foral*, but so was the vocabulary used by the locals to refer to them. The reference to the body of rules that was perceived and translated by the Portuguese as “law” is enlightening. To which “law” was it referring? Why did the Portuguese think that such “law”⁹¹ could translate into the Portuguese word *lei*? The data available are insufficient to answer these questions. We can only hypothesize that the “lettered men” belonged to an *agrahara*⁹² or *brahmapuri*, where there was possibly an archive with scriptures in which different customs and laws were compiled.

Like clause 33, other requirements of the *Foral* were open to interpretation. For example, paragraphs 17 and 18 expressed different customs about the inheritance of *gaunkars* who had abandoned their land, rights, and obligations. Clause 18 established that the relatives of a fleeing *gaunkar* inherited his properties, but, if they did not want to accept it or were absent, the inheritance would revert to the *gaunkaris*. However, clause 17 stated that the *gaunkars* could give those rights “to whom they want”, paving the way for the entrance of other lineages into the *gaunkaris*,⁹³ as was later witnessed in three villages of Bardez (Calangute, Aldona, and Siolim) and one of Salcete (Raia). In these

90 APO, Fasc. 5, vol. 1, 158–159. On that case, see also Pinto, “The Foral in the History of the Comunidades”, 81–82; and D’Souza, *Legal Systems*, vol. 2, 73–74.

91 We only have access to the Portuguese translation, and not to the original word used by the *gaunkars* and the “lettered men”.

92 Land given by a king or a noble person to Brahmans to maintain their temples and a pilgrimage site and to sustain their families.

93 *Foral dos usos e costumes*, paragraphs 17, 18, and 33.

villages, people that did not belong to the lineages of the actual *gaunkars*, but had rents or rights in the village or were powerful creditors, were promoted to the status of *gaunkars*, constituting new *vanqaḍs*.⁹⁴

In contrast, other clauses were invoked by other *gaunkars* to counteract either the pressure of these powerful groups that tried to participate actively in the government of the village or, as would happen later, the policies of the Crown.⁹⁵ In 1572, the king received a collective petition against the public services that the government asked the *gaunkars* to provide. The *gaunkars* argued that these demands were against the *Foral*: Clause 21 established that they should only help in the construction and cleaning of the walls of the town of Goa and similar services.⁹⁶

Seeing that the second part of the *Foral*, the one specifically related to the uses and customs, was challenged, the same happened with the first (missing) part. In 1533, Governor Cunha asked for the presence of the *gaunkars* of Goa and asked them to include in the *Foral* the *goddevrad*, a tax they paid to the former rulers of Goa. The *gaunkars* admitted that this tax was absent, declaring that they would pay it henceforth. Six years later, *Vedor da Fazenda* Fernão Rodrigues de Castelo Branco asked the scribes of the villages to include the *cul-carna papoxi*, another tax they had formerly paid to Bijapur. In 1541, the same officer received information from the Sultanate of Bijapur about the *kushvarat*, a voluntary tax paid by the villages, calling the *gaunkars* again to settle this. As a result, an addendum was placed in the *Foral*, thus raising the taxes paid by the villages. Following this, the *kushvarat* was suspended by Governor Martim Affonso de Sousa in 1543 and reintroduced by Viceroy D. Luís de Athaide in 1579, who said that this was to respect the *Foral* and the agreements made with the *gaunkars* in 1541. However, since this tax was only paid since 1579 by the people of Bardez, its *Câmara Geral* (the assembly of the most important villages of Bardez) petitioned against it, which led Viceroy Francisco de Mascarenhas to suspend it once more until its second reintroduction in 1595.⁹⁷ All these decisions were attached to the original document, making both parts of the *Foral* a palimpsest of the historical processes taking place in Goa, as well as demonstrating their plasticity.⁹⁸ One of these processes was the Christianization of Goa and its inhabitants.

94 APO, Fasc. 5, vol. 2, 844–846. *Vanqaḍs* were hierarchical divisions within the *gaunkar* and caste groups expressed in the spatial organization of the village.

95 Magalhães, *Pequenos Reis e Grandes Honras*, 63, 201.

96 APO, Fasc. 5, vol. 2, 844–846.

97 Miranda, *A Administração da Fazenda Real no Estado da Índia*, 59, fn. 16.

98 Paes, *Tombo das Ilhas de Goa e das Terras de Salcete e Bardês*, 9–17.

6 Christianity and Conversion: Religious Homogenization and the 'Lusitanization' of Village Normativities

The Portuguese elites' political culture had changed significantly by the time of the annexation of the territories of Salcete and Bardez in 1543. The religious conflicts taking place in Europe, at least since the formal excommunication of Luther by Pope Leon x in 1521, increased the political relevance of religious affiliation. The decision-makers feared that the political loyalty of people who did not share the same religion as their king was feeble. Consequently, while in the kingdom there were visible efforts of re-Christianization and to control orthodoxy (the Inquisition was one of the institutional expressions of this)⁹⁹; in the imperial territories, Christianization became an essential tool to guarantee political preservation, particularly in those territories under the direct rule of the Portuguese king.

This change starts to materialize in Goa in the 1530s, already under the government of King D. João III (1521–1557).¹⁰⁰ The conversion to Christianity and the homogenization of Goa's inhabitants became systematic in the subsequent decades, with dramatic consequences for the life of the villages. The juridical principle that assimilated *regeneratio* (baptism) to *generatio* (birth) was associated with the conversion to Christianity and became an instrument of naturalization, that is to say, of 'Lusitanization' of the local people. After baptism, local Christians would enjoy, at least theoretically, the same legal rights and obligations of the Portuguese and they would submit to canon law and its precepts.¹⁰¹

It is therefore essential to visit the decade of 1540 to be able to assess the changing world of Goan villages and the transformation of the normativities that governed them. The systematic destruction of the temples, deities, and books of the villages and the expulsion of their priests started in 1540, severing the 31 villages of Tiswadi, Chorão, Dívar, and Jua, from one of their essential dimensions: the religious one. Knowing how the patronage of deities and temples and the performance of the rituals involved in this were relevant to the *gaunkars*' power, it is easy to deduce how this process of destruction

99 For an analysis of the strategies used by the Inquisition to stimulate and control orthodoxy in Asia, see Lourenço (Chapter 7) in this volume.

100 Xavier, *A Invenção de Goa*, chapter 1.

101 *Documentos Remetidos da Índia*, vol. 2, 66–67. The establishment of a High Court in 1544 also helped to enforce the efficacy of the new legislation as well as the reception of the decrees of the Council of Trent, which had been adopted as law of the kingdom since 1564.

had immediate consequences in the local economy of power.¹⁰² Twenty years later, the territories of Salcete and Bardez were the object of the same policies, even if this violated the 1555 treaty established between the Portuguese government and the Sultanate of Bijapur that annexed them; this treaty had established that the inhabitants of those two regions should only convert to Christianity with freedom of choice, allowing them to keep their temples, rites, and devotions.¹⁰³

It was in this context of Christianization that Fernão Rodrigues de Castelo Branco wrote a new *Foral*. This document was mainly concerned with taxes and was probably intended to substitute the first part of the *Foral de Mexia*. It established that the *gaunkars* would voluntarily (with “contentment” and without any obligation) pay to the Crown, “every year and forever”, 2,000 *tangas brancas* taken from the rents of the lands and other properties that belonged to the temples, priests, and other temple servants who had been expelled from Goa. This money was intended to be used for promoting Christianity, the building of churches, convents, and monasteries, and the payment of priests.

The *Foral* of 1541 recognized that the *gaunkars* were the owners of those lands and that neither the governor nor the *Vedor da Fazenda*, or any other officer of the Portuguese Crown, could ever violate those rights.¹⁰⁴ Curiously, this agreement kept the financial control over the (now Christian) religious world in the hands of the *gaunkars*, which was essential for the symbolic recognition of their supremacy. This was the case even if only one of the signatories of this agreement (which included the *Vedor da Fazenda*, Krishna, the *thānedār*, Loqu Sinai, and Gopu, three of the principal Brahmans of Goa, as well as the *gaunkars* of 15 villages) was already a Christian.

Although it testified to the increasing interference of the imperial power in the life of Goan villages, this new *Foral* was also a testimony to a time in which the *gaunkars* of the villages were still in charge and able to control their most valuable lands. Fifteen years later, an inventory of the properties given to the temples and their servants was made with the help of the *gaunkars*, who, in general, continued to be Hindu.¹⁰⁵ However, this situation would not persist

102 APO, Fasc. 5, vol. 2, 508, 612–614; DI, I, 63–89; Priolkar, *The Goa Inquisition*, 71. At the same time, it was suggested to the viceroy that some powerful Brahman families, like those of Khrisna, Loqu, and Anu Sinai, should be put away in order to facilitate the conversion to Christianity.

103 APO, Fasc. 5, vol. 1, 267–278, 272.

104 APO, Fasc. 5, vol. 1, 161–170; Paes, *Tombo das Ilhas de Goa e das Terras de Salcete e Bardês*, 67–75.

105 APO, Fasc. 5, vol. 1, 286–290; the lands and rents of the temples continued to be disputed by different agents. For example, in 1603, António Rodrigues, a converted Indian, asked

for long, as demonstrated by other documents from the second half of the 16th century concerning these lands.¹⁰⁶

The legal consequences of Christianization for life in the villages were critical. The royal decree of 1542 (confirmed in the following decades and expanded to the territories of Salcete and Bardez) defined the legal and political effects of the conversion of Indians. It openly expanded the privileges of the Portuguese living in Goa to people of “any other nation or generation” that married in Goa and set up house there, provided they were Christian.¹⁰⁷ This statement—“provided they were Christian”—became a juridical principle that would frame many of the subsequent imperial laws, provisions, and decrees.

Aspects such as marriage, family, orphanhood, women, inheritance, land, residence, labor, ownership, and political rights were now dependent on conversion. For example, conversion by one member of the family meant that inheritance would be regulated by Portuguese law, leading to conflicts among the members of the family regarding inheritance rights. As said before, the sections of the *Foral* on inheritance excluded women (widows) and daughters from family heritage.¹⁰⁸ However, Portuguese law stated that Christian women could access their own parents’ legacy and take precedence over their non-converted male brothers. Christian widows could marry a second time and receive part of their husband’s legacy. In the absence of sons, a man’s heritage was divided among wives and daughters that were Christian and among other relatives that had converted to Christianity. Additional legislation against the *sati* prohibited women from burning themselves “on account of the death of her husband”. The Portuguese ordinances would also regulate infidelity, prostitution, and other issues concerning morality.¹⁰⁹

Additionally, a significant number of laws were explicitly discriminatory of the non-Christians, reducing their local power, social status, and economic standing. For example, in the leases of the paddy fields of the villages, Christians had an advantage over non-Christians. These decrees and laws were among many aimed at persuading the locals to convert to Christianity. Ecclesiastical norms, such as decree 27 of the First Provincial Council of Goa (1567), stated that “a non-believer shall not receive office, dignity, honor, pre-eminence, or

for the rents of the temples of the village of Margao, the most important village of Salcete, and received them (APO, Fasc. 5, vol. 3, 1095, vol. 1099)

106 APO, Fasc. 5, vol. 1, 182–183, 218–219, 230–234, 249–254, 330, 336–337; APO, Fasc. 5, vol. 2, 687–689, 835–837; APO, Fasc. 5, vol. 3, 993.

107 APO, Fasc. 2, 115–116; Fasc. 5, vol. 1, 386–387.

108 *Foral dos usos e costumes*, clauses 28–30 and 32.

109 APO, Fasc. 5, vol. 1, 171–173, 175, 178, 381–383, 410; APO, Fasc. 5, vol. 2, 543–545, 612, 903–903, 994–996.

domain over a believer".¹¹⁰ In conjunction with this, non-Christians could not own Christian slaves and many Brahmans lost their power positions. These decisions were legitimated by the *Relação of Goa*, established in 1544 as a court of appeals, which was also charged with reviewing the *alvarás* and provisions issued by the governors and viceroys. Among these were those related to the advancement of Christianity.¹¹¹

The Christianization of the economy of power inside Goan villages was gradual, even if many administrative practices were kept. However, a relevant change occurred in the decision-making process: *gaunkars* who did not convert to Christianity became unable to vote in the *gaunkaris* or participate in the elaboration of the *nemos* (the written decisions). This excluded them, in practice, from the government of the communities. The introduction of the *Livro das Comunidades* by the end of the century, with paper coming from Portugal and kept in an arch located in the parish buildings, witnesses the ongoing process of 'Lusitanization' of the village life. From that moment onward, the *nemos* were registered in these books. The autonomy of the *gaunkari* also changed significantly. In 1633, the Viceroy Miguel de Noronha issued a provision that explicitly declared the loss of the status of *gaunkar* and the honors associated with it for all those that did not convert to Christianity. This decision responded to a joint petition by the *Câmara Geral*, the "Christian people" of Goa, and the "Christian ministers".¹¹²

There were also ambivalences concerning some decisions. For example, in 1561 D. Francisco Coutinho allowed the "gentiles" that had departed for Bijapur to return to their villages and receive their lands back. Though contradicting clause 17 of the *Foral*, this decision was prompted by the fact that many communities were deserted and the paddy fields became uncultivated, which meant significant decreases in tax revenue.¹¹³ However, Viceroy D. Duarte de Meneses declared in 1585 that Christians could inherit these lands or, in their absence, "whomever the *gaunkars* wanted" (clause 17), thus reaching a kind of compromise between the *Foral* and the policy of conversion. Furthermore, in

¹¹⁰ APO, Fasc. 5, vol. 2, 319–320, 543–545.

¹¹¹ Pereira, *História da Administração da Justiça*, vol. 1, 160.

¹¹² APO, Fasc. 5, vol. 3, 1399–1402.

¹¹³ APO, Fasc. 5, vol. 2, 521–523, 543–545. The same viceroy attributed in 1563 all the lands belonging to deceased Muslims, Jews, or "gentiles" without heirs, of all Goa, to the construction of the cathedral of Santa Catarina (because this was one of his priorities) and, in another decree, decided to expel many Brahmans and "gentiles" of Goa that opposed the conversion processes (APO, Fasc. 5, vol. 2, 580–581).

other cases, the Crown protected the rights of the Christian *gaunkars*, invoking, when needed, the *Foral*.¹¹⁴

The policy of conversion also changed the judicial system that operated in the village. On the one hand, as mentioned above, Portuguese law applied to the converted. On the other, Christian agents gained influence in the judicial sphere of the village.¹¹⁵ During the government of Francisco Barreto (1555–1558), António Martins, the *Pai dos Cristãos* (Father of the Christians), could solve civil conflicts between Christians and between Christians and non-Christians involving a fine of up to five *xerafins*. His decisions had no right of appeal as was also the case with his jurisdiction for criminal cases where there had been no blood shed. In 1560, Pius IV's bull, *Pro salubri regnorum*, renewed for King D. Sebastião (1554–1578) the rights of the monarchy to enlist ecclesiastics in civil affairs, such as judging cases of crime. In an *alvará* of 1563, Viceroy Coutinho extended this jurisdiction to "the rectors of the parishes and confraternities of the churches".¹¹⁶ They could "listen to the Christians of the land and the gentiles, in their conflicts". The fines imposed were up to a certain amount of money and their decisions were not open to appeal or grievance. From 1566 onward, a Judge of Orphans exclusively dealt with the inheritance of the orphans of non-Christians and converted Indians.¹¹⁷ Again, a competence previously divided between the *gaunkari* and the Crown in the *Foral* was now assumed entirely by institutions of the Crown. In the following decade, a clause required that if the rectors knew "the people in those lands and islands worshipped idols, or engaged in other forms of gentile acts prohibited by the Council", they were obliged to inform the competent judge. This provision ensured that these rectors were charged not only with religious power to resolve matters of minor importance but were also expected to denounce the ill-doers.¹¹⁸

However, after an initial period of judicial interdependence between the Crown and the regular clergy, there was a gradual push to revoke the priests' judicial powers. In 1581, the judicial power of the missionaries in the villages was limited through the creation of the office of *Conservador e Juiz dos Cristãos da Terra* (Judge of the Christians of the Land). This official had to investigate

114 APO, Fasc. 5, vol. 1, 489; APO, Fasc. 5, vol. 2, 602–603, 903–903; APO, Fasc. 5, vol. 3, 1397–1398, 1403–1404.

115 *Quadro Elementar*, XIII, 124.

116 APO, Fasc. 5, vol. 2, 512–513. Pereira, *História da Administração da Justiça*, vol. 1, 120.

117 See Faria (Chapter 4) in this volume.

118 APO, Fasc. 5, vol. 3, 1429–1431; APO, Fasc. 5, vol. 2, 903–904. Pereira, *História da Administração da Justiça*, vol. 1, 125.

and resolve all cases among the newly converted. When this official was not present, these functions were handed over to the captains of the forts, as was the case in the territories of Salcete and Bardez.¹¹⁹

7 Final Remarks

Almost 500 *forais* were rewritten in the Portuguese kingdom between the last decades of the 15th century and the first decades of the 16th. The aim of this administrative reform was to map the tax revenue that the Portuguese municipalities had to pay to the king. While this process was still taking place in the kingdom, a similar one started in Goa, ending with the compilation of the *Foral* in 1526. As mentioned above, this document was simultaneously similar and different from the Portuguese ones: it had a first part (today missing) about the taxes to be paid to the king and a second part compiling a selection of local uses and customs, which recovered a practice that had already taken place in the kingdom in the medieval period. Since there are no other documents comparable to the *Foral* in other parts of the Portuguese empire, it can reasonably be said that the *Foral* was a singular document and a testimony to the particular relationship established by the Portuguese Crown with the Goan territories and people in the first decades of the 16th century, during the period of the ‘apprenticeship of empire’. At this time, what was the role of Goan village normativities in the making of the Portuguese imperial order? How can we assess these normativities through the *Foral*, the earliest imperial document to map some of them? How did it constitute and construct the normativities taken by the Portuguese imperial agents (and, later, scholars) as the village normativities? Furthermore, given that it was a document produced for a non-Christian Goa, what was its relevance in a Christianized Goa?

Let us return to the idea that the *Foral* is only a “small inroad” to assessing the village’s normativities. The pages above have demonstrated that what we today call the *Foral* was only the second part of a document that included, in the first part, the taxes that the villages of Goa had to pay to the Portuguese Crown in 1526. Even if later documents compiled these taxes, the first part of the *Foral* would undoubtedly be useful for connecting the fiscal duties of the villages with the uses and customs selected to be included in the second part.

119 APO, Fasc. 5, vol. 3, 974–975. See also the documentation published by Abranches Garcia (Garcia, *Arquivo da Relação de Goa*) and Pereira, *História da Administração da Justiça*, vol. 2, 311–312.

Nevertheless, this link is missing and with it so are some of the meanings of the *Foral*.

This aspect related to the production of the *Foral* converges, in a very evident way, with the notion of its selective nature, stressing the idea that the *Foral* has to be used very cautiously when studying the normativities operating in the Goan villages. The selective nature of the second part of the *Foral* was the result of several variables. On the one hand, the *Foral* was the outcome of a continuous process by the Portuguese imperial agents of becoming acquainted with the land of Goa. As mentioned above, the *thānedārs* of Goa collected much of the information included in the *Foral* since 1515. This means that the contents of the *Foral* are also the result of their processes of getting to know the land, which involved Portuguese agents and local informants. Little is known, however, about these previous processes. In addition to the filters and layers of information already identified in the process of production of the *Foral*, its contents were submitted to other various other filters and layers about which we know almost nothing. Moreover, as the *Sentença* of 1534 states, the work of Mexia was probably done “in a rush”. Not knowing how much time Mexia did dedicate to the material production of the *Foral*, it is clear that this was mainly a pragmatic document that selected as much as it excluded.

Unlike Mexia, other officers were more cautious and “professional” when gathering information, thus, the diversity of attitudes is evident, particularly considering the imperial agents’ local interlocutors. Though we know almost nothing about who the interlocutors of the *thānedārs* were, the same applies to the *gaunkars* of the villages of Goa that were convoked by Mexia. Who were these *gaunkars*? Who did the *gaunkars* involved in the production of the *Foral* truly represent? Knowing that, in 1541, only the *gaunkars* of 15 villages contributed to the creation of a new *Foral*, one can hypothesize that the same happened during the creation of the original *Foral*. We know nothing, either, about the castes of the *gaunkars* involved in the process, even if we do know that the scribes of the villages were Brahman. Nevertheless, we do know that the villages of Tiswadi had *gaunkars* belonging to different castes: Brahmans dominated some of them, Charodos (who considered themselves of Kshatriya descent) and Sudras dominated others. Some villages had mixed *gaunkaris*, too. Did the *gaunkars* involved in the production of the *Foral* belong to different castes? If so, did their different ways of living shape the contents of the *Foral*? These and many other questions remain open.

The little knowledge we do have about the production of this document is telling about its status as a historical source, particularly considering all the missing information about its contexts of production. It is also telling, however, about the relevance it acquired after its production. The diversity of

voices involved in the *Foral* were somehow frozen and homogenized since the moment of its writing. Yet, this very process meant that some village normativities did play a role in contributing to the Portuguese imperial order. It is true that the mere act of writing down the norms agreed between some local informants and some Portuguese agents meant an interference in the local order. However, it also contributed to establishing specific rules, certain procedures, and, overall, the power of the local elites that had been recognized by the Portuguese as their privileged informants. Is it possible that these local informants had invited royal interference in order to reinforce their local power? If so, this would have meant that the gap between the contents of the *Foral* and the people it applied to is even more meaningful than what scholarship has assumed until now. In that sense, the *Foral* became, ironically (but also understandably), the 'written constitution' of the Goan villages that simultaneously satisfied Portuguese power and the local elites.

However, this equilibrium changed dramatically with the Christianization of the Goan villages, making it clear that the Portuguese Crown had two different approaches in their relationship with the local populations during the 16th century. The first, which roughly corresponds to the government of King D. Manuel I and the first decade of the government of King D. João III, was more secular, less concerned with religious issues, and more 'pluralistic'. For example, the *Foral* accepted the existence of bigamy and polygamy among the Goan people, even if these practices contradicted Portuguese rule and Christian values. Moreover, the *Foral* is almost absent in what concerns religious matters in general, accepting the Hindu organization of the local order. In that sense, the *Foral* was still an expression of the legal pluralism that characterized the Portuguese political order as well as the idea that the laws that organized each political community should be respected.

The second approach, more religious and less open to cultural differences, started to become visible in the decade of 1530, shortly after the production of the *Foral*. It meant the destruction of the religious and ritual life in the villages and the Christianization of the local populations. Due to the equivalence between *generatio* and *regeneratio*, converted Goans would be fully covered by Portuguese law from the moment of conversion onwards. This meant that the clauses of the *Foral*, which contradicted Portuguese law and Christian values, were applied less and less. In addition, from that moment onwards, there was an expansion of the law of the kingdom and the contraction of the local customs, namely those included in the *Foral*. Predictably, since then, Christian judicial officers started to solve minor conflicts and crimes either between the converted or between the converted and non-converted.

If these policies already limited the applicability of the *Foral* in the 16th century, by 1720 the *Foral* faced an entirely new local reality when the Portuguese law applied to 92.2 per cent of the Goan population.¹²⁰ This situation was in deep contrast with the moment of its production. At that time, most of the population of Goa was composed by non-Christians and was supposed to be governed by the *Foral*. This change in the demography of Goa meant that the norms included in the *Foral* that only covered the non-Christians applied to increasingly fewer people. Carmo D'Souza was probably right when he wrote that "Portuguese jurisprudence seemed to have prevailed over the indigenous system in the Old Conquests by the seventeenth century".¹²¹ This 'Lusitanization' of the relationship between the Portuguese administrative and legal order and the village normativities was sealed in a set of rules known as the *Regimento* of 1735 when the Portuguese Crown made new norms for the government of the villages, which would substitute the ones included in the *Foral*. This does not imply, however, that this process fully succeeded and that local orders did not continue to operate in parallel with the imperial order. Nevertheless, it witnesses the intentionality of the Portuguese Crown in imposing onto the local normativities what was considered, by then, the 'Portuguese way' of doing things.

Does this mean that the *Foral* is unreliable in recovering specific dimensions of the normativities that organized the Goan villages? This chapter argues that, despite its shortcomings, the *Foral* and all it entails is still necessary for assessing some aspects of the local order. The very fact that it voiced the interests and expectations of some (possibly Brahmanical) local elites provides an insight into the local order and its dynamics. A step back in history and a movement in geography are also useful for understanding whether there were links between some of the norms included in the *Foral* and more general South Indian juridical traditions. Derrett's intuition was probably right: in a complex and contradictory way, the *Foral* evoked, namely in the clauses concerning inheritance, the Indian classical traditions. However—as this chapter demonstrates—the information about the appropriation of these traditions is almost completely lacking, and further research is needed to verify the existence of linkages between these traditions and the *Foral*.

In any case, the status eventually attributed to the *Foral* by 19th-century scholars and local elites was, therefore, a convenient fantasy, projecting on the past a narrative that was different from that of the agents genuinely involved

120 Matos, "O numeramento de Goa de 1720", 321–324.

121 D'Souza, *Legal Systems of Goa*, vol. 2, 114.

in the production of the *Foral*. As mentioned at the beginning of this chapter, these 19th-century readings did contribute to shaping subsequent scholarship by overstating the descriptive power of the *Foral* and overlooking its constructive nature. By doing this, this scholarship contributed to a particular “vision of community”,¹²² as well as ‘invent[ing] a tradition’ that has persisted until today in the commonsense of the Goan people.¹²³ Furthermore, it gave legitimacy to the idea that legal and administrative pluralism characterized all of the Portuguese imperial experience in Goa, and that the Portuguese imperial order largely preserved the village normativities. As the previous pages have demonstrated, this was predominantly untrue. Even if legal pluralism was characteristic of the first two decades of the Portuguese imperial presence in Goa, and plural normativities coexisted in Goa in different times and modalities. This plurality was of a different nature to what is usually included under the label of legal pluralism.

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122 Kroppenberg and Linder, “Coding the Nation. Codification History from a (Post)Global Perspective”, 67–99.

123 On that, see the article of Fernandes, “Invoking the Ghost of Mexia”, 9–25.

Abbreviations

APO	<i>Arquivo Portuguez-Oriental</i>
HAG	Historical Archives of Goa
IAN/TT	Instituto Nacional de Arquivos/Torre do Tombo
AHU	Arquivo Histórico Ultramarino
Fasc.	Fascículo
OrdMan	<i>Ordenações Manuelinas</i>

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