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Tea, Terror, and Territory: The Authoritarian and Economic Application of British Colonial Law in 18th and 19th Century India

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While domestic laws within England during the 18th and 19th centuries were quintessential to domestic peace, it was not the only application of the law as power in the British Empire. The empire, spanning several continents, had many colonial establishments where the rule of law was just as important to uphold as it was in England. In colonial India, the law was used as a tool of authority in order to regulate the Indian populace into obeying the rules of the British Empire. A study of the labor laws within tea production territory in the province of Assam and the authorization of law as a criminal deterrence in the fringe province of Punjab illustrate that the British colonial law in India was not one of judicial equity, but that which regulated the interests of the colonizing empire.

Prior to the ownership of India under the British Crown, the East India Trading Company held most political, administrative, and economic rights over occupied regions of India. In order to facilitate this governance in the 18th century, the company vouched for a form of law which saw the incorporation of both British common law alongside the judicial structures of Hindu and Muslim law.[1] If legal infractions had occurred, the offender in question would be trial in accordance to the pluralist legal structure. By the 19th century however, the crown authorities pushed for the comprehensive merger of all legal systems into British common law. The movement from a legal pluralist system of law into one governed by British common law is indictive of the shifting social power structure within the Indian continent. Centralized British bureaucratic control was enforced for two important purposes. First, was the preservation of colonial authority, as a rigid judicial structure allowed the effective enforcement of imperial dogma within a distant colony. Stature passed in 1784 saw an extension of British Parliament authority concerning the rule of India. Compared to the Regulating Act of 1773, The East India Company Act of 1784 saw the termination of political and administrative privileges of the East Indian Trading company within Company lands.[2] The continuous diminishing of the East India Trading Company's power would finally be consolidated in the Government of India Act of 1858, in which all company territory within India would be ceded to political, administrative, and economic control of the crown.[3] This sudden shift in policy should not be shocking, as decades before this Parliament had already saw the steady influence of crown authority seep into India.

On July 10, 1833, a young English Lawyer named Thomas Babington Macaulay presented a brilliant oration on the role of British colonizers within India. In line with the tightening administrative grasp the crown had over the country, Macaulay wrote, "to give good government to a people whom we cannot give a free government."[4] He vocalized his support for a codified law system enforced by the English colonial government in India as the greatest form of good that the English could offer.

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[1] Benton, Lauren A. Law and Colonial Cultures: Legal Regimes In World History, 1400-1900. Cambridge: Cambridge University Press, 2004. https://hdl-handle-net.proxy1.lib.uwo.ca/2027/heb.30961. EPUB. Pg. 135-143

[2] East India Company Act 1784, 24 Geo. 3 Sess. 2 c. 25

[3] Government of India Act 1858, 21 & 22 Vict. c. 106

[4] "A Speech Delivered in the House of Commons on the 10th of July 1833," in Lord Macaulay, *The Miscellaneous Writings and Speeches of Lord Macaulay* (London: Longmans, Green & Co., 1889)

A code is almost the only blessing—perhaps it is the only blessing which absolute governments are better fitted to confer on a nation than popular governments. The work of digesting a vast and artificial system of unwritten jurisprudence, is far more easily performed, and far better performed by few minds than by many—by a Napoleon than by a Chamber of Deputies and a Chamber of Peers—by a government like that of Prussia or Denmark, than by a government like that of England. A quiet knot of two or three veteran jurists is an infinitely better machinery for such a purpose than a large popular assembly divided, as such assemblies almost always are, into adverse factions. This seems to me, therefore, to be precisely that point of time at which the advantage of a complete written code of laws may most easily be conferred on India. It is a work which cannot be well performed in an age of barbarism—which cannot without great difficulty be performed in an ago of freedom. It is the work which especially belongs to a government like that of India—to an enlightened and paternal despotism.[5]

The framework in which Macaulay presents this concept of paternal despotism is like that of a parent talking to a spoiled child. Yet one can derive the implicit meaning conferred within his announcement; executive crown authority was needed to exercise absolute law over India to ensure the continued security of colonial and economic interests. It is of little wonder that Macaulay eventually contributed to the formation of the Indian Penal Code in 1860, an amalgamation of British law concerning the legal issues issues which may arise in the Indian colonies.[6] By the mid-19th century, the legal pluralism form of law favored by the company was not so subtly overturned in favor of a more direct method of control, perhaps overtly signified with the signing of the Colonial Laws Validity Act in 1865, directly writing,

"Any Colonial Law which is or shall be in any respect repugnant to the Provisions of any Act of Parliament extending to the Colony to which such Law may relate, or repugnant to any Order or Regulation made under Authority of such Act of Parliament, or having in the Colony the Force and Effect of such Act, shall be read subject to such Act, Order, or Regulation, and shall, to the Extent of such Repugnancy, but not otherwise, be and remain absolutely void and inoperative."[7]

Parliamentary actions spoke volumes about the shifting domestic attitude towards foreign land occupation not just in India, but the other colonial establishments. By the integration of colonial law into the English judicial structure, the crown would have more control over foreign territories.

The unification of legal pluralism with the English common law should not be mistaken for a case of truly equitable judicial justice. Rather, it was simply an existing framework for which to expand upon when dealing with the unique socio-economic conditions of managing a colonial state. The liberal legal, judicial, and administrative systems which governed and structured rule abroad was different from the analogous system present in the home country. Partha Chatterjee, political theorist, elaborates by framing this idea as "rule of colonial difference", in which colonized subjects were seen as inferiors to their governing European

[5] Hansard's. Third Edition., Volume 19, 531

[6] Kolsky, Elizabeth. "Codification and the Rule of Colonial Difference: Criminal Procedure in British India." Law and History Review 23, no. 3 (2005): 631-83. Accessed April 2, 2021. http://www.jstor.org/stable/30042900. Pg 632

[7] Colonial Laws Validity Act 1865, 28 & 29 Vict. c. 63

counterparts, and as such, requires a specific subsection of judicial law to treat them with.[8] On February 28, 1866, the wife of Lieutenant Ashton Brandreth left her house in the frontier city of Kohat accompanied by four of her Hindu servants. Suddenly, a man approached and fired a double-barreled pistol at Mrs. Brandreth. The bullet passed across her collarbone and through the front of her neck, sparing her serious injury. The assailant in question was a Muslim man named Summad, who had admitted to the courts that he simply wished to injure a European officer. Subsequent interrogation revealed that the man was of sound mind and was not under the influence of narcotics.[9] Peshawar Division Commissioner J. R. Becher reviewed the trial proceedings, remarking: "The fierce fanaticism directed against the lives of the ruling race of India is a special danger of this frontier, and one which requires to be taken into account in determining punishment."[10] Becher sentenced Summad to death and authorized his execution. What drew this case to attention is the extralegal measures employed in this sentence. Becher exceeded both the maximum legal punishment for the crime of attempted murder and his judicial authority by failing to request confirmation for the death sentence from the Punjab Chief Court. Though he had overstepped his boundaries, instead of condemnation from the Indian government, the bureaucracy agreed with the local Punjab government that special legislation was needed to deal with similar offences in a swifter and more severe fashion than the previous Penal Code allowed.[11]

Punjab, being a frontier region within the British presence within India, was synonymous to the concepts of violence and turbulence under colonial occupation. By 1867, sixteen Europeans had been killed or badly wounded by native inhabitants on India's northwest frontier. India's serving viceroy at the time, John Lawrence, contended that murderous attacks on Europeans must be responded to in an overwhelmingly forceful response to teach the people a "lesson of obedience."[12] This warlike nature of frontier security prompted the inquiry and adaption of the, "An Act for the Suppression of Murderous Outrages in Certain Districts of the Punjab", or the Murderous Outrages Act in 1876. This law created a new legal category of persons within the Indian legal system labelled as the fanatic. Such individuals were deprived of many of the rights and procedures provided for in the British-Indian Penal Codes, including the right to legal counsel, the right to have a capital sentence confirmed by a higher tribunal, the right to appeal a conviction, and formal rules of evidence. No juries were allowed for cases convicted of this nature. Instead, the accused was tried by a tribunal consisting of a commissioner and two other executive officers with full magisterial powers.[13] By effectively recognizing the sense of fear and desire for revenge these sorts of attacks inspired in the local

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[8] Partha Chatterjee, The Nation and Its Fragments: Colonial and Postcolonial Histories (Princeton, N.J., 1994), 10.
[9] Captain G. Shortt, Officiating Deputy Commissioner, Kohat, to Secretary to Punjab Government, March 1, 1866, India Office Records, British Library, London, L/PS/543, Collection 51/2.
[10] Kolsky, Elizabeth. "The Colonial Rule of Law and the Legal Regime of Exception: Frontier "Fanaticism" and State Violence in British India." The American Historical Review 120 (2015): 1218-1246. Pg. 1218
[11] Condos, Mark. "Licence to Kill: The Murderous Outrages Act and the Rule of Law in Colonial India, 1867–1925." Modern Asian Studies 50, no. 2 (2016): 479-517. doi:10.1017/S0026749X14000456. Pg. 480-482
[12] Viceroy John Lawrence, October 11, 1866, National Archives of India, New Delhi, Foreign/Judicial (A) Proceedings/March 1867, nos. 12–14, 17.
[13] Kolsky, Elizabeth. "The Colonial Rule of Law and the Legal Regime of Exception: Frontier "Fanaticism" and State Violence in British India." The American Historical Review 120 (2015): 1218-1246. Pg. 1221

British population along the frontier, authorities were able to capitalize on these sentiments and justify them through legislation. In effect, the law was being used to justify the enforcement of a pervasively brutal criminal culture of colonial punishment to those who were seen in infraction of this law. Notably there were aspects of psychological deterrence embedded into the act, as the bodies of those classified as Fanatics would be cremated under the judicial responsibility of the act. A known Muslim tradition is the burial of their dead; burning was designed to exploit what the British saw as a cultural vulnerability on Muslims that this action would destroy the soul, and therefore prevent the fanatic from ascending to Heaven as a reward for their actions.[14] In effect, this law was less about the equity of justice and law, and more of a wartime deterrence in order to preserve colonial stability within chaotic fringe regions.

Another faucet regarding the instatement of Indian colonial law concerned the economics of the empire. During the transition to authoritative colonialism within India in the second half of the eighteenth century, the East India Company's approach to labor contracting was driven by the need to obtain labor by whatever means. Of course, it is necessary to remember, that as a company, the less of a wage paid to a laborer was in effect a profit gained on the sales of processed goods. One historian of Madras discusses the breadth of work required to be done; workers were needed for domestic chores, for transportation services, and for the army.[15] The most discussed labor policy during early nineteenth century was, unfortunately, slavery. While certain jobs could not be given to the enslaved due to the lack of trust; specially warden, guard, and soldiery duties, other positions could be filled as such. The company's attitude to slavery was cautious and varied across time and space, with numerous external factors at play influencing their final decision. These included the intention to uphold Hindu and Muslim law under their legal pluralist methodology, which led to the conclusion that slavery was permitted. Early court decisions that translated this into legal practice were primarily concerned that tax collection might be undermined if landowners' rights to slaves' labor were eliminated.[16] It can be presumed then, that the company in India was not eager or proactive in seeking to eliminate slavery so long as it was socially and judicially justifiable with local customs. This opportunistic interpretation of local labor statures foreshadows the eventual instatement of labor laws under the English code to compliment economic gains.

Domestically within England, a stronger and growing abolition movement had started to grip the nation by the early 19th century, and the context of using those legally marked as slaves was seen to be morally reprehensible. The sincerity of that promise is called to question, as indentured servants were perhaps slaves in all but name. Consider the implementation of regulatory labour laws within England, such as the Master and Servant Acts, which judicially governed the employer-employee relations within the 18th and 19th centuries. Notably, the Master and Servant Act of 1823 specifically addressed the ability to utilize penal sanctions regarding

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[14] Condos, Mark. "Licence to Kill: The Murderous Outrages Act and the Rule of Law in Colonial India, 1867–1925." Modern Asian Studies 50, no. 2 (2016): 479-517. doi:10.1017/S0026749X14000456. Pg.510-514

[15] R. Ahuja, "The Origins of Colonial Labor Policy in Late EighteenthCentury Madras," International Review of Social History 44, no. 2 (1999): pg. 159–95

[16] Kumar, D., ed. The Cambridge Economic History of India. Vol. 2, 1757– 1970. Cambridge: Cambridge University Press, 1983

breaches of contract; a worker in breach of contract could be imprisoned for three months of hard labor.[17] The act itself was eventually repealed in 1875 due to mounting political pressure from the labor movement. Considering this context, it is not surprising to see British-Indian law contain similar legislation following the codification of English legislative and legal practices. The Employers and Workmen Disputes Act of 1860 was passed after a violent dispute between European railway contractors and their workers in Bombay had occurred over wages and safety. The act allowed magistrates to summarily decide cases and allowed for imprisonment of the workers for up to two months.[18] While this act was limited to railways, canals, and other public works, it did have a more widely used predecessor in the Workman's Breach of Contract Act in 1859, which allowed three months of imprisonment. The 1859 Breach of contract act was subsequently extended and employed within a wide range of locations in colonial India and was extensively used in the plantations as a form of regulation for menial labour.[19]

The integration of indentured servitude into plantations arises from the mercantile nature of tea. A historical case study in the Brahmaputra Valley in the province of Upper Assam provides ample insight into the nature of using colonial labour law to ensure optimal productivity. Assam was sparsely populated but had tracts of land suitable for tea plantations. Local labourers, however, did not find the concept of the agrarian toil on a British plantation particularly thrilling, leading to much of the labor being imported in from adjacent provinces to meet the labour demands. The isolated nature of the province meant that usually a down payment of a year's worth of wages were given.[20] The issue which arose from this long-distance recruitment was the breach of contract, in which the new arrivals would simply abstain from work or seek out other opportunities. "The planter declares that he imports laborers into the province at a very great expense and that as soon as they arrive they refuse to work or leave service; that the punishment for desertion is slight and carries with it release from all engagements and that therefore the laborer willingly incurs the liability to punishment in the hope of being set free from the contract."[21] In response to the rise of similar complaints, the Bengal Act VI was instated. This was notably extraordinary, as it was one in a series of Special Acts applicable only in Assam. The law stipulated that the employer could privately arrest the worker on breach of contract and only subsequently approach a magistrate. It is important to point out that the privilege of a private arrest was also seemingly justified on the grounds that, in this sparsely populated area, magistrates were not always quite easy to find. While this privilege for the Assam tea planter was eventually withdrawn, it was only done so in 1908.[22] From a modern reflection. the primary purpose of the Special Act, especially the extrajudicial ability to

[17] R. J. Steinfeld, Coercion, Contract and Free Labor in the Nineteenth Century (Cambridge: Cambridge University Press, 2001)

[18] Roy, Tirthankar, and Anand V Swamy. 2016. Law and the Economy in Colonial India. Vol. 10. Chicago, IL: University of Chicago Press. Pg.108

[19] Ibid., pg. 109

[20] Ibid., Pg.110

[21] P. Griffiths, The History of the Indian Tea Industry (London: Weidenfield and Nicholson, 1967), pg. 269.

[22] Roy, Tirthankar, and Anand V Swamy. 2016. Law and the Economy in Colonial India. Vol. 10. Chicago, IL: University of Chicago Press. Pg.111

privately arrest contract breachers without warrant, was to protect the up-front investment in recruiting costs, a sort of legal protectionism on the economics of the empire.

The rule of law in colonial India was about finding new ways of regulating and making the exercise of sovereign power more omnipresent. The enforcement of this adaptable colonial law ensured that the indigenous subjects under the crown would be severely punished for their transgressions against Imperial colonial interests while simultaneously preserving a façade of judicial righteousness. While the initial adoption of legal plurality had served the East India Company's small-scale interests, only a nationally codified implementation of English law would be sufficient to bring India under a supposed paternalistic authoritarian government. This concept extends onto both that of deterrence of violent crime against the British government, but also into the preservation of an economic status quo which was beneficial to the economics of the colonial establishment. The interpretation of colonial law in India in the late 18th and 19th centuries can be seen the velvet glove around the iron fist of imperial rule.

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