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FROM LITTLE KING TO LANDLORD: PROPERTY, LAW AND THE GIFT UNDER THE PERMANENT SETTLEMENT

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ABSTRACT

This paper concerns the set of issues surrounding the imposition in south India of a Permanent Settlement in 1803 for the local "nobility" -- the "ancient zamindars and polygars." I focus here on the "little kings" themselves, their transformation into "landlords", and the implications of the new political economy for the old political logic in which law, property, and the state were linked in very different ways. I look in particular at the problems concerning "alienation" under the Permanent Settlement, the fact that landlords, in contravention of the principles of profit and management, continued to make gifts of land. I conclude by examining the implications of my narratives for a consideration of colonial state and society, with respect in particular to the praxis of culture and the discourse of law. I demonstrate that all colonial transformations were, for inherent structural reasons, incompletely realized.

FROM LITTLE KING TO LANDLORD: PROPERTY, LAW, AND THE GIFT UNDER THE PERMANENT SETTLEMENT*

Nicholas B. Dirks

Introduction: The Moral Economy of the Precolonial State[1]

All discussions of colonialism and change presuppose certain understandings about the nature of precolonial society. Recently, Indian historians have begun to appropriate a different, but still relatively confined and predictable, set of characterizations of precolonial society for the purposes of considering different aspects of colonialism. Historians who concern themselves with economic processes such as protoindustrialization tend to minimize the impact of the consolidation of colonial rule in the late eighteenth century.[2] Changes viewed as significant by these historians usually begin with the introduction of capitalism and the early encroachment of one form or another of a world system, both of which predate the full political realization of colonialism. Historians who concern themselves with political changes tend in the other direction, although some of this group have proposed major continuities between the "ancien regime" and the early colonial state.[3] Historians concerned with social change view colonialism as significant but invoke various new forms of "dualism" to account for the limited effects of colonialism on local social forms.[4] But all of these historians see, or at least say they see, the seventeenth and eighteenth centuries as crucial for viewing

later changes in economy, polity, and society. From varying theoretical and ideological perspectives, they delight in excoriating traditional views of India as static and "traditional" before the arrival of the British.[5]

My view of precolonial India derives from work I have done on a set of little kingdoms in the dryland regions of southern India. Since I have centered my research in the precolonial period, I too am one of the historians who is critical of those who write, or assume, that India had no real history before the British, although I differ from some of these historians in that I do not see history as being defined either by Western notions of historical consciousness or by the introduction of such demystifying objects as money or commerce.[6] Nonetheless, my perspective -- both that from the little kingdom and from a strong concern with culture -- accentuates my sense of major differences between the precolonial and colonial periods, particularly since I see social forms as vitally linked to political structures. However limited, my perspective does permit some insight into the radical implications of certain changes brought about by British colonialism as well as into the resistance to particular forms of change by the major actors of the precolonial political system.

I will argue here that not only were changes under colonialism in the realm of law and property major, but that the reasons for the incomplete realization of change had in part to do with the strong role of culture, by which I mean here the ideological realization of the political structure, in making certain changes both unfamiliar and unpalatable. However, I do not wish to hearken back to some form of

modernization theory, which is increasingly, and deservedly, out of fashion. For I will also submit that change under colonialism was limited by the set of purposes which lay behind, as well as the functions which attached themselves to, many of the innovations of colonial rule. Colonial change was limited as well by the set of colonial understandings which, as much as they involved the fundamental reordering of epistemic constructions of social reality, also led to the paradoxical attempt to freeze the sheep in wolf's clothing.

This paper concerns the set of issues surrounding the imposition in south India of a Permanent Settlement in 1803 for the local "nobility" -- the "ancient zamindars and polygars." Fundamental to the Permanent Settlement were particular notions of property and law. Before considering the ideological base and institutional procedures of the introduction of these new ordering principles, we must consider, though in this paper very briefly, the nature of property in the seventeenth and eighteenth centuries. Later on, I will discuss the contrast between the way in which law was conceptualized and operationalized in the precolonial and colonial periods. In recent years, Indianists have convincingly shown that land as something which was "owned," "possessed," or even "controlled" meant something very different before and after the British arrived on Indian soil and set out to determine "property" rights in order to assess and collect revenue.[7] Nonetheless, much discussion about the nature of pre-British property continues to be shaped by the same colonial sociology which was constructed with the land systems of

British India. The British were concerned about property partly because they perceived it as the fundamental means by which they would order Indian agrarian society and because they wanted to establish an ideologically coherent and functionally systematic basis for revenue collection. And, in our historiography revenue has been seen both as the principal modality of agrarian relations within villages and as the basic function, and agrarian concern, of the state: as revenue extraction.

The problem with this preoccupation with revenue, let alone with the more traditional obsession with the question of who owned the land, is that property existed in terms of social and political relations. At the risk of some simplification, I will suggest here that the two terms used for property in Tamil suggest the somewhat different but interdependent nature of these social and political relations.[8] Paṅku, a term meaning share and often used to characterize the shares of rights to the usufruct as well as hereditibility of land, is fundamentally a horizontal term. Shares of land were shares among a group, of family members, holders of mirāci right, of Brahmans all granted lands together under the terms of a single brahmadeyam grant, and even in more extended senses of members of an entire village. These paṅkus were sometimes related to particular plots of land and sometimes to a particular proportion of a larger unit of land, proportions which would be redistributed and reallocated periodically. Pankus in land were related to pankus in a variety of other contexts: shares in local temple festivals, and shares in kinship units (in which, for example, members of the same

lineage were called paṅkāḷis). The second term is kāṇi. Meaning a hereditible right, the term suggests a vertical relation, since entitlement to a share was usually seen to have been granted by a superior agent. This agent was often a king, or the agent of a king, although in certain cases it could have been the chief of a previously resident dominant caste group. To have this entitlement, or kāṇi, was to have kāṇiyācci, which was related both to control over land and to participation in the village/lineage assembly and also, as was the case with paṅku, with rights to a share in local temple honors.

There is one more term which must be examined in this brief discussion of concepts of property in pre-British India. The king who gives land is the overlord of all the land in his kingdom. The term which suggests the nature of the king's mastery over land perhaps better than any other is kṣatra. According to Robert Lingat:[9]

> Kṣatra . . . is a power of a territorial character, exercised within a given territory and stopping at the frontier of the realm. . . . Of the same nature as property, it implies a direct power over the soil. That is why the king is also called svāmin, a word which can be applied equally to a proprietor as to a husband or a chief, and which denotes an immediate power over a thing or over a person.

The king's mastery of the land is not opposed to the paṅku and kāṇi rights in land held by peasant cultivators, but rather exists in complementary relation to these rights. We have seen through our analysis of kāṇi how entitlement to land is seen to be conferred by a higher agency, preferably a king. When the British attempted to sort out who owned the land, they assumed that the answer would be either the cultivator or the king, thus raising many of the classificatory

problematics of the land systems debates in the late eighteenth and early nineteenth centuries.

In the dryland regions of southern India, most land rights were seen as having been granted in one form or another by a king. Kaniyaaci rights and lands were granted by kings to local lineage heads, called nāṭṭampalams or nāṭṭānmaikārars, and later dubbed mirācidars under the influence of late eighteenth century patrimonial terminology. Other land rights and privileges were granted to military chiefs, retainers, temples, brahmans, village officers, priests, servants, and artisans. Rights to land were granted along with other types of rights, as seen here, for landholding was not an isolated economic fact. Landholding, rather, was part of a system of privilege in which rights to exercise local authority, use certain titles, carry certain emblems, and receive temple honors (from temples which ritually symbolized local territorial and social unities) were part of the same package of rights as rights to "enjoy" land. Landholding also indicated a great deal about one's participation in local communities, as has been generally acknowledged by historians who have noted that even when there was a "free" market in land well into the colonial period such land was often not, or at least not readily, purchasable by people from outside the local community.[10] Thus, land must not only be viewed in concert with many other things, such as emblems and honors, but the significance of land must be seen as constituted in relational terms, of both a horizontal and vertical nature.

Gifts of rights to land, titles, emblems and honors by kings to a variety of subjects became in cultural terms the dynamic medium for the constitution of political relations.[11] These gifts symbolically, morally, and politically linked individuals with the sovereignty of the king and created both a moral unity and a political hierarchy. These ritual gifts were not mere tokens, nor were they signs of political weakness. In many of the smaller states in Tamil Natu in the eighteenth century, between sixty and eighty percent of all cultivable land was given away to the types of persons and institutions mentioned above. Over all, lands were given away in both central and peripheral areas of the state, although military grants did tend to correspond with strategic borders. The acceptance of gifts, which to a very large extent reflected a complicated set of categorizations and gradations of kinship relations, entailed loyalty and service. It is commonsensical to note that in the dry land regions of southern India in the eighteenth century, with vast portions of scrub jungle still uncultivated, control over men was more important than control over land, since control over men was in effect control over land. But it is wrong to think too exclusively in functionalist terms about the grants, since such analysis depends solely on our exogenous notions of what is and what is not functional. Such analysis is also limited, since function, purpose, and meaning are all distinct frames of reference. The point here is that the king ruled by making gifts. These gifts were the fundamental signs of sovereignty, which while it (continually) emanated from the center, was distributed and displayed at every level within the kingdom.

Without the continuance of gifts, therefore, there could be no sovereignty. And it was sovereignty, above all, that the little kings, when converted into zamindārs and princes, continued to seek.

From Moral to Political Economy

When the British consolidated their position in south India in the late eighteenth century, they immediately began to introduce a political economy in which relations among Indians and between them and the new colonial government would be regulated by law and property. Most of the little kings who had survived the eighteenth century and were not deemed subversive by the British were "permanently" settled as zamindārs on proprietary estates. Political relations were rechanneled into the new domain of proprietary law. If the zamindār defaulted on his fixed yearly payment, the estate would be put up for auction. As long as the terms of the property right were upheld, the zamindār's position was secure. Whoever held the title, by virtue of transfer by heredity, sale, or gift, was the zamindār. The drafters of the Permanent Settlement were convinced that a series of consequences would flow from this single transformation. The principal change, they thought, would be the redirection of the interests and energies of the little kings from issues of local state, warfare, and intrigue, to tasks of agrarian management and investment. In short, the zamindārs were to become the rural gentry, sources both of local stability and a steady flow of revenue.

The story of how it did not work out that way is well known. Many of the estates went immediately into arrears. The energies of the zamindārs went into diverse avenues of local intrigue and were spent in running up debts, litigating in courts over succession and other issues of property and office, and alienating increasing amounts of land from the local tax base. Perhaps it is no surprise that those historical studies which have been done about the zamindārs stress only their incompetence and corruption in the face of British administrative concerns about management. This historiography shares the expection of the Permanent Settlement that the opportunity of security would be greeted by local investment and the subsequent generation of a group of landed capitalists.[12] This expectation was miserably unfulfilled. Indeed, not only did the fixed revenue demand fail to stimulate the pursuit of profit, it proved a source of major difficulty in the years when rainfall was insufficient for a good harvest. Curiously, the prohibition of remissions in the Permanent Settlement (as well as in other land settlements) proved even more difficult in many cases than the considerable increase in the tax assessment on estates, thus bearing out the suggestions of James Scott that it was precisely the fixed aspect of colonial taxation that was most problematic.[13] In south India remissions had always been the rule rather than the exception, and almost all of our notions of precolonial taxes derive from epigraphical references to particular remissions, of which there were many.

The enfranchisement of the tax free lands, called inām, which had been given by Indian kings to a variety of subjects, paralleled

the proprietary assumptions of the Permanent Settlement for zamindārs. The introduction of "property" was justified by noting that it would only be by releasing peasants from the customary bonds of their social relations and by making land valuable through the creation of a market in land that agrarian progress could be made. As was written in the Government Order which set into motion the Inam Settlement throughout Madras Presidency:[14]

> The institution of private property lies at the foundation of human society, and the progress of improvement is generally commensurate with the respect in which the rights of property are held by the Government and the community. In this instance, an enormous mass of property, situated in every part of British India, has been kept for a long period of time in a state of unsettlement. Its precariousness, under the various and uncertain conditions of resumption, has been so much, that for many years it has had the character of property only in the lowest and most qualified sense. The loss of productive power which has been caused by this is incalculable. It is a great mistake to suppose that the owners are the only sufferers. The community at large is injured in nearly an equal degree by the absence of those improvements, and still more of that contentment which are the result of a secure state of landed property.

Thus we read here virtually a credo for British rule. The introduction of private property rights would advance the Indian countryside from a state of feudal slumber -- a slumber which was both unproductive and by implication a cause of general discontent -- to one of capitalist vigor. The problem was that property as we characterized it in the pre-British period was "precarious" and "unsettled." Whether this property was in fact regularly resumed, except in cases of disloyalty or outright war, was not something the British set out to prove, although the theory of resumption was crucial for their own intention to resume tax free land and convert it

into taxable but secure "property." What the British were responding to was the relational character of property, which made it property only in the "lowest and most qualified sense" of the term. The British saw the need to replace the relational context of landholding not only because it made no sense to them, but because it was dependent on the continuance of pre-British political forms. It was also not without significance that it was estimated that "upwards of a million sterling of annual revenue" stood to be gained by enfranchising the inām. And, while the British knew what was ultimately best for the agrarian community, they also realized that there would be some resistance to the settlement, an initial inability for some at least to recognize the contentment which property was sure to bring along with it.[15]

For both the little kings and for the local big men who derived their position, privileges, and rights from the little kings of old, the nineteenth century was a period during which the moral economy of the pre-British period had come unhinged from its full infrastructural underpinnings, but nonetheless remained strong enough in cultural terms to make impossible the ready acceptance of the new colonial political economy. Some groups were of course more successful than others, in particular the Cēṭṭiyar merchants of the Putukkōṭṭai and Ramnad regions who became the principal creditors of bankrupt Rājas, as well as the primary purchasers of land which was obtained from defaulting ināmtārs.

The encroachment of the merchants upon the proprietary base of the new agrarian economy was, of course, not what the British had in

mind. The British wanted to introduce a political economy in a rather restricted sense, for they were concerned to maintain an agrarian stability and order which they saw as predicated upon the preservation of the position of the dominant agricultural classes and their natural leaders. With respect to their administration of the putative "gentry" of these classes, the landlords and princes, the ultimate irony was that the British kept wishing to pension these landlords off and assume the management of the estates themselves to achieve the desired increases in agricultural production. But in those cases where the British achieved this goal, they realized that it, too, was not what they had in mind. For in the twentieth century when nationalism reared its nascent head, loyalty replaced management (returning things in some sense to where they had been around 1800) as the principal criterion of rulership, and following from this the British wanted a state (or estate), the loyalty of which to a ruler would ensure, through the ruler's loyalty to the British, the security of British rule. What the British had learned (or should have done, as should we) was that their twin objectives of security -- viewed as the maintenance of the old regime but with the British as the new overlords -- and management -- viewed as the introduction of a new colonial capitalism -- seemed constantly to militate one against the other, as incompatible as twins in those societies where the classificatory logic of kinship can accord only one slot to multiple products of a single parturition. And this incompatibility was compounded by the fact that the political systems of pre-British India could not be frozen in British ice, allowed to continue on in form but

not in content.

In this paper, I shall explore in a number of specific cases the ideological base for and the structural problems which developed from this incompletely realized colonial transformation of political authority in the southern Tamil countryside. I will focus here on the little kings themselves, their transformation into landlords, and the implications of the new political economy for the old political logic in which rule and property were linked in very different ways. I will conclude by examining the implications of my narratives for a consideration of colonial state and society, and in particular for the complex set of issues involved in determining that all colonial transformations were, for inherent structural reasons, incompletely realized.

The "Poligar Wars"

Perhaps the story of the transition from little king, or pāḷaiyakārar, to permanently settled rural landholder, or zamindār, is best told in the folk epics about heroes such as Kaṭṭapomman, who is even today a folk hero in Tamil Nadu.[16] Kaṭṭapomman embodied in his short but illustrious career the severe implications of British rule for the continuance of old political forms. The ballad opens with a long panegyric on Kaṭṭapomman and his capital city Pāñcalaṅkuṟicci. We hear about the prosperity of this beautiful place, a prosperity explained by the presence of this great king, whose court assemblies grandly displayed the moral order of the kingdom. The "action" of the ballad finally begins when Major Jackson, the Collector of Poligar

Peshkash stationed in Ramnad, sends a letter to Kattapomman demanding his attendance at his court and the payment of considerable arrears of tribute. Thus, the interaction of the old political world with British colonial institutions began around the issue of revenue.

After much deliberation Kattapomman collected his army and went to Ramnad to meet this impertinent Major, who interrogated Kattapomman in an exchange which is perhaps the best known of the entire ballad:

Major Jackson: Who gave Arumukamankalam to you?

Kattapomman: I gave it to myself. Why should anyone else give it?

Major Jackson: And why did you seize five hundred sheafs of grain in Arunkalam?

Kattapomman: I took it to feed to the birds. Is that so treacherous?

Major Jackson: Why did you steal the cattle of the Ettaiyāpurām Zamindari?

Kattapomman: I drove them home to give milk to my children.

Major Jackson: And why have you not payed your taxes for the last seven years?

Kattapomman: The heavens shower rain; the earth bears grain; why should I pay for my land? Do you collect tax to command the elements? Does rain shower at your command?

Herein, of course, we can see a fundamental difference in the definition of political authority and in the understanding of political legitimacy. Kattapomman's job as king was precisely to command the elements. The ballad began by describing the prosperity of the beautiful Pāncai country and correlating this prosperity with the exalted qualities of this noble king. In marked contrast, the British Collector had no moral claim to a share in the produce of this land, and on these grounds was ridiculed in the ballad.

With this exchange as background, the ballad goes on to narrate the courageous resistance of Kattapomman and his younger mute brother, Umaitturai, against the British troops, which in the end prevailed. Both Kattapomman and Umaitturai were eventually caught, and the former was hung in the presence of a select group of pāḷaiyakārars who had been especially invited by the British to impress upon them the consequences of such rebellion. Subsequent to the hanging, however, Umaitturai escaped from prison and joined with the Marutu brothers of nearby Civakankai in further resistance. This, dubbed by one south Indian historian as the first Indian War of Independence,[17] ended in 1801 when the British were finally able to apprehend the leaders, who met fates as ignominious as their heroic predecessor.

Thus in 1801 the British concluded what had been a half century of intermittent warfare against the pāḷaiyakārars of southern India. These military efforts had begun in the 1740s when two campaigns were waged by Nawab Anwar-ud-din's son, Muhamed Ali. The British joined these efforts when the Nawab, financially in a bad way

after the "Second Carnatic War" (1749-1755) in which he defeated Chanda Sahib along with the French and the Mysoreans, requested the Company to assist him in an attempt to squeeze some income out of the recalcitrant southern chieftains. While this expedition yielded few if any military, political, or financial rewards, the combined forces did manage to alienate the Kallars of Kovilkuṭi by seizing their brass deities and holding them for ransom.[18] In late 1755 the Nawab sent Maphuz Khan to be governor of Maturai, which led to renewed outbreaks of violence when he joined with groups of pāḷaiyakārars against the Nawab and his newly sent agent, Khan Sahib, who was posted as Governor of Maturai in 1759, a year before he too joined the local pāḷaiyakārars in rebellion against the Nawab of Arcot. Thereafter Company forces joined the Nawab in 1765 and 1767, and in 1783, again under the framework of their alliance with the Nawab, the Madras Council commissioned Colonel William Fullerton to lead an expedition against Civakīri and Pāñcalaṅkuṟicci. These expeditions were little more successful than the earlier one, though the percentage of years when collections of "poligar peshcash" were made rose more or less steadily after 1761, the decade before which they were made only 40 percent of the time, to the high point of 80 percent during the 1780s.[19]

In 1792, at the conclusion of the Third Mysore War, a treaty was concluded between the Nawab and the Company in which the powers of administration, in particular the right to collect tribute from the pāḷaiyakārars in recompense for their military services to the Nawab, were handed over to the Company. Nonetheless, the treaty clearly

stipulated that the Company was "desirous of preserving the rights of sovereignty over the said polygars to the said Nawab," and furthermore that the Company would "engage to the utmost of their power, and consistent with the realisation of the tributes or peshcush from them, to enforce the allegiance and submission of the polygars to the said Nawab, in customary ceremonies. . . ."[20] It was under the terms of this treaty that the Company pursued with increasing vigor a policy of ensuring order among and extracting revenue from the southern pāḷaiyakārars. In the 1790s collections were made 90 percent of the time and the average yearly collection rose from 2,560 chakrams for the 1780s to 5,300 chakrams.[21] Throughout this last decade of the eighteenth century there were a series of military encounters, which culminated in 1799 with the defeat of Kattapommu and in 1801 with the final dissolution of the rebellion. In that year also, on the grounds that the Nawab had violated the terms of the 1792 treaty by conspiring with Tipu Sultan, a new treaty was drawn up in which the Nawab's successor became in effect a pensioner of the Company.

The traditional historiographic interpretation of Britain's conquest of India as virtually absent-minded must therefore not obscure the actual military record of those years. And the respect the Company held for the pāḷaiyakārars, if not for their moral character indubitably for their capacity of military resistance -- a capacity based not on technological superiority but on guerilla techniques of resistance, deep-rooted local loyalties, as well as the threat of their potential collaboration with more powerful foes, from the French to Mysoreans -- was very real indeed. The extension of the

Permanent Settlement in Madras Presidency must thus be seen on the backdrop of these long years of warfare, and as testimony to the fact that there were still major areas where local kings continued to rule with power and authority.

The Permanent Settlement

The extension of the Permanent Settlement in Madras Presidency has never been examined with great care by historians, who have been as a rule far more impressed by its initial formulation in Bengal and by Madras' far more original contribution in the ryotwari settlement. But virtually one-third of the area of Madras Presidency was settled with zamindārs, and however much this settlement was a reflex of Cornwallis' operation in Bengal, the significance of this southern reflex is deserving of some consideration. The terms and operations of the southern settlement were based on those devised in Bengal, and by the turn of the century the enthusiasm which had accompanied the initial drafting of the Permanent Settlement in 1793 was still little diminished and not yet under attack by the southern-based advocates of ryotwari tenure. But at the same time, the actual drafters of the Madras Settlement had many reservations about their handiwork, and were by no means apologists for the little kings whom they converted into zamindārs on the Bengal model. While they shared some of the same hopes of those who had prophesied the creation of a new gentried class in Bengal, they actually had rather low opinions of the men who were supposedly to be made into gentry.

Stephen R. Lushington, who was Collector of Poligar Peshkash during the crucial years of the formulation of the Permanent Settlement from 1799 to 1803, was one of the most severe critics of the pālaiyakārars, and yet he seems never to have given public expression to any doubts about the wisdom of the Permanent Settlement. His note on the "Origins of the Poliagars"[22] was not only one of the principal texts of the settlement, but has been cited more frequently than any other in subsequent discussions of this chiefly group. In this note Lushington advanced the following conclusions about their origins:

> First, that the pretension which the Poligars advance to their present lands, on the ground of ancient immemorial possession, have little foundation. Secondly, that they were created about 300 years ago, by the policy of the hindoo Government, for the protection of the country and the support of the Sovereign; and that in the time of Tirumala Naicke, 160 years ago, they had not degenerated from the original purpose of the institution.

Thus he saw their existence as totally contingent on an arrangement with a sovereign ruler, and thereby accorded full authority to the Company to develop an appropriate policy with respect to the pālaiyakārars, as he interpreted them to have no independent proprietary rights. Moreover, his characterization of the pālaiyakārars was hardly flattering:

> Their insolent tyranny in the absence of authority is as proverbial as their treacherous intrigue in the presence of it, and . . . your records teem with relations of their delight in times of tumult and disorder, when all their favorite passions of tyrannising over the country and of contempt for their rulers may with impurity be indulged. . . .

The tyranny of the pālaiyakārars was explained by two principal

factors. First, Lushington claimed,

> The assumed power and state set up by these people is most attended to, and we believe will be found the principal cause for their turbulence. It misleads the most powerful to uphold themselves against the Circar and it stimulates the rest to rivalry and insolence. This propensity is to be seen in the six principal Poligars. . . . These men have indulged themselves and we have no doubt still rest their ideal consequence upon their Forts, a few old guns, and a wretched equipment of stores . . . by which they overawe their weaker neighbors. The false pride derived from thence demands attention as the source of a spirit of insolence and aggression in the Poligar that is fatal to all order, obedience, and security of property.

The second source for the pālaiyakārars' actions rested, according to Lushington, in their illegal appropriation of "desha cawel" (tēcakkāval), or rights to protection over the countryside which justified collecting taxes of a sort, which he saw as one of their most invidious means of oppression:

> The Collection of it was made in the most oppressive manner, by parties of armed peons, whom the Poligar detaches from his fort as suits his convenience, and who receives payments in money or in grain, cattle, etc., according to circumstances; the payment of the tax being often disputed and becoming the cause of many quarrels and the armed peons employed on these occasions frequently compelling the inhabitants to allow them batta, betel, etc., and putting them to considerable inconvenience besides extra expence.

Thus one of the first recommendations made by Lushington was that as soon as it was possible the "desha cawel" right should be abolished. Lushington further recommended that the pālaiyakārars' forts should be demolished, their firearms appropriated, and their tribute increased. Without firearms they would not be able to collect the "desha cawel" fees, and with a higher tribute they would have fewer resources to justify their arrogance and support their establishment. The higher

tribute was explained as a commutation of "desha cawel."

The Company did follow these recommendations. A report of 1803 from the Special Commission to the Governor in Council, Ft. St. George, explained the adoption of such a policy in terms which congratulated the Company's enlightened attitude and "progressive approach":[23]

> The Honorable Court have uniformly insisted on the absolute suppression of the military power of the poligars; and on the substitution of a pecuniary tribute more proportionate than the ordinary peishcush, to the resources of the poligar countries, and more adequate to the public demand, for defraying the expenses of general protection and government. The circumstances connected with the rebellion of the poligar (Kattaboma Nayaka) of Panjalamcourchy; the general commotion excited in the southern provinces, subsequently to the defection of that chieftain; the punishment of the rebellious chiefs, by the confiscation of their lands; the demolition of the poligar forts; the discontinuance of their military retinues; the consequent augmentation of the public revenue, and the several proclamations published by the authority of your Lordship in Council; are events which serve to mark the progressive approach in the administration of poligar affairs, inculcated by the Court of Directors, and enforced by the necessity of providing for the internal tranquillity, and for the efficient exercise of the authority of government over that part of the British territories.

But we might ask, why stop here? If the pāḷaiyakārars were such a scourge, why not make settlements with the principal ryots, as was done later in the nineteenth century in many parts of Madras Presidency.

The reason why not was succinctly stated in a Minute of the Board of Revenue, dated 5th January 1818:[24]

> The ancient zamindars and polygars were in fact the nobility of the country, and though the origin of their tenures would not bear too minute a scrutiny, they were connected with the people by ties which it was more politic, more liberal, and more just to strengthen, than to dissolve . . . when the attachment of the

> people to their native chieftains and the local situation of many zamindaries are considered, it may be greatly doubted whether such a policy (of reducing them to pensioners) would not have been as unwise as it would have been ungenerous, and at the time perhaps impracticable.

The question as to whether their decision had more to do with "wisdom" than "generosity" notwithstanding, it never seems really to have occurred to officials such as Lushington, who worked in the areas of the pāḷaiyakārars, that settlements should not be made with the local chiefs. When opposition to the Permanent Settlement mounted in years subsequent to its enactment in 1803, the principal opponents were men who worked in areas, such as the Baramahal, where the traditional structure of political authority had already been significantly eroded by the revenue and political policies of the Muslim rulers of Śrīraṅkapaṭṭinam.[25] It might further be argued that a major impetus behind the ryotwari settlement came not from actual experience in India, but from the changing intellectual climate of Britain in the early nineteenth century.[26]

The Permanent Settlement in Madras was explicitly modeled on the settlement which had been made ten years before in Bengal. It was the firm intention of the President and Members of the Board of Revenue that the "zamindars" should be constituted "proprietors of their respective estates" on the basis "of the principals on which the permanent settlement has been established in Bengal."[27] For the Board, the only major difficulties they saw when they enunciated this policy in 1799 were to determine the proper amount of peshkash and to ascertain the "rights of the Talookdars, or under Tenantry throughout the different districts, that in confirming the proprietary rights of

the Zemindars we may not violate the ascertained right of other individuals."

The Board felt that the security afforded by the Permanent Settlement in Madras would have even more dramatic consequences than in Bengal, where a "more regular form of government . . . has been gradually established."[28] So while they wished to estimate the permanent peshkash according to the "probable improvement in the course of a short period under the system of property and security about to take place,"[29] the fundamental justification of the permanence of the settlement was, as in Bengal, its "productive principle":[30]

> that the possession of property and the sure enjoyment of the benefits deriveable from it, will awaken and stimulate industry, promote agriculture, extend improvement, establish credit, and augment the general wealth, and prosperity. Hence arises the best security that no permanent dimunition can be expected to take place at least to any considerable amount. . . .

Even so, the rhetoric of the settlement did not make it any easier for the Collectors to establish what an appropriate amount would be. Neither did it counteract Lushington's prescription for enhancing the tribute. Lushington's constant complaint was that the turmoil of the eighteenth century, particularly when combined with the monopoly of revenue records in the hands of corrupt village officers, made it difficult to establish any proper notion of precedent. Of course, the British view of the second half of the eighteenth century allowed them to see decadence in customary form, and in this vein Lushington's assurance that there had been a system of regular payments was based more on conviction that historical acuity. Elsewhere Lushington wrote

that the alienation of extensive tracts of land as inām benefits was nothing more than an established mode of tax evasion, rather than a vital component of the precolonial political process. And where inams were seen as straightforward remunerative grants for military service, the East India Company shared his belief that tribute had to be at least in part assessed on the basis of the commutation of military service, which was no longer seen as necessary. In the end, the usual principle followed by Lushington, as for example in Ramnad, was to take two-thirds of the average collections of the six previous years.[31] In zamindāries where actual rebellions took place, such as Civakānkai, the determination of peshkash proved more difficult as previous collections had been "irregular."[32] But the major point to be noticed here is that the average collection was determined on the basis of collections after 1792, when the British had taken over the administration of the pālaiyakārars and had raised the average collections by more than a factor of two.

The more general theoretical question that emerged in the Permanent Settlement was in what sense the rights of the zamindārs would be "proprietary." This question was never adequately resolved, and gave birth to immense practical difficulties in the years to come. In the Sunnud-I-Milkeut Istimirar or Deed of Permanent Settlement, it was noted that up until 1803 the practice of the British Government was simply a continuation of the "established practice of Asiatic Governments"; such practice consisted of constantly augmenting the revenue assessment, and replacing the Zamindars by revenue officials of Government's choosing, "thereby reserving to the ruling power the

implied right and actual exercise of the proprietary possession of all lands whatever." By the Permanent Settlement the British Government would end this sorry state of affairs -- "so fruitful a source of uncertainty and disquietude" — by granting to "Zamindars and other landholders, their heirs and successors, a permanent property in their land in all time to come." However, this permanent proprietary right was not to be absolute. First, it was dependent on the proper and punctual payment of peshkash. Default in revenue would give the British a free hand to assume the estate. Second, this right would not infringe upon the established rights of the "undertenantry." To accomplish this, the zamindārs were enjoined to

> enter engagements with your ryots either for a rent in money or in kind; and . . . within a reasonable time grant to each ryot a pattah or kowle clearly defining the amount to be paid him and explaining every condition of the engagement. . . .

The zamindārs were to be held accountable for these arrangements in the local courts. Third, the Government reserved to itself rights over revenue derived from salt, liquor, sales, and market taxes, as well as rights over all inām, or lakhirāj, lands, in addition to lands which in the past were for the support of the police establishment. The assumption of control over all inām lands, however, was not to be construed to mean that the zamindārs could no longer alienate land. According to Article 7 of the deed:

> You shall be at free liberty to transfer without the previous consent of Government or of any other authority, to whomsoever you may think proper, either by sale, gift, or otherwise, your proprietary right in the whole or in any part of your zamindary.

The zamindār had only to register any such transfer in the Collector's office and to be consistent with the principles of native law in the provisions of his alienation. The bottom line was that no alienation could reduce the permanent peshkash, for which the "whole Zamindary shall continue to be answerable . . . as if no such transact had occurred."

However abridged the nature of this proprietary right, it is clear that the single greatest innovation afforded by the Permanent Settlement was this establishment, to use Ranajit Guha's phrase, of a "rule of property."[33] Property was now to govern political relations. In the case of the Permanent Settlement, the ksatra (the encompassing lordship of all land) of the king was to be translated into a title, or patta (a term which previously meant a title, usually of some heroic and/or royal association, as well kingship itself: the coronation festival for kings was called the Pattapicēkam), indicating particular, and legally negotiable, ownership of land. The rights to land of the "cultivators" were deemed under this system to be tenancy rights rather than proprietary rights. While Thomas Munro had his own polemical purpose in writing this, since he was advocating direct settlements with the "cultivators" in a scheme called the ryotwari system, he was correct to assert that,[34]

> We have, in our anxiety to make everything as English as possible in a country which resembles England in nothing, attempted to create at once throughout extensive provinces, a kind of landed property which had never existed in them;

As Munro predicted, the nineteenth century did not witness the actual creation of a landed gentry, as many had hoped, but rather, at least

in British terms, a steady deterioration of the state of agrarian affairs.

Many of the estates went immediately into arrears. As noted before, the energies of the zamindārs went into diverse avenues of "local intrigue" and were spent in running up debts, litigating in courts over succession and other issues of property and office, and alienating increasing amounts of land from the local tax base. Not only were the expectations of the Permanent Settlement often unfulfilled, so too were the terms of the Settlement. Time and time again the British bailed the zamindārs out from their desperate positions of improvidence and indebtedness.

The estate of Ūttumalai is a good case in point. In 1836 the Collector of Tinnevelly District investigated the resources of this estate which had been in arrears for some years. His initial suspicion was that the value of the estate might have been overestimated by Lushington when the Permanent Peshkash was instituted, but at the conclusion of his investigation he wrote:[35]

> This estate cannot be expected to rise to its intrinsic value at once, but I hope I have clearly showed the estimate of its resources made by Mr. Lushington is not overrated and I am sanguine in being able to show by the outturn of the current year a very considerable improvement, so long however as the Zamindar is connected with it in any shape, that connection cannot fail to operate as a retarding and material obstacle to a better order of things. . . .

The Collector thus proceeded to recommend that the Government assume the estate on the grounds that

> the feudal feeling that exists in an Old Estate always operates powerfully to prevent the inhabitants from complaining and

> seeking redress but there is no doubt the Zemindar and his adherents are widely disliked and feared by the peaceable part of the community and that this feeling has much contributed to its long impoverishment.

And yet, after a long correspondence, the Board of Revenue finally decided to restore the estate to the Zamindār. The subsequent Collector was outraged at this decision, not because of the restoration of the zamindāry so much as because all of its debts were written off, an act which the Collector feared would be misinterpreted by other zamindārs who had just agreed to comply with complicated arrangements to repay debts of long standing.[36] In similar cases, the Government for the most part restrained the enthusiasm of Collectors who felt the Government could do a much better job of managing the estates, arguing instead "the acknowledged expediency of preserving the ancient aristocracy of the country."[37] And so, with certain exceptions such as Cokkampatti (which even so was restored twenty-five years after it was assumed in 1834 when the troublesome zamindār was expelled from the estate and confined in prison), most estates were preserved from extinction in spite of their failure to conform to the principles of management espoused by the British Government.

The preservation of the "ancient aristocracy of the country" was conducted in the face of mounting criticism of the Permanent Settlement by prominent members of Government such as Thomas Munro. In 1824 Munro wrote that,[38]

> we have relinquished the rights which the sovereign always possessed in the soil, and we have in many cases deprived the real owners, the occupant ryots, of their proprietary rights and bestowed them on Zemindars and other imaginary landlords.

Earlier that year the Court of Directors observed:[39]

> There can be no doubt that evils of such magnitude as those so forcibly pointed out by the Board demand an immediate and adequate remedy. The levy of extra assessment on the ryots, by Reddies, Curnums, Zemindars, and other persons in power and office, appears to be frequent, and application to the regular courts on the part of the Ryots for relief, from the expense, delay, and other inconveniences . . . is altogether hopeless.

A. D. Campbell, who was at one time Secretary to the Board of Revenue, prepared a report on land tenure in 1832 for a Select Committee of the House of Commons in which he was less overtly critical but nonetheless insistent that the provisions of the Permanent Settlement be interpreted to include a statement of proprietary rights for the cultivator:[40]

> The Zemindar's undeniable and often hereditary property in the land revenue of his entire zemindary was confounded with the separate property in the land itself, which, as a cultivator, he possessed in some of his fields alone and as he in general happened to occupy, in the ranks of society in India, the place held by the gentry or aristocracy in Europe, this fortuitous circumstance tended to confirm the error, and seems to have rendered it a matter even of policy to acknowledge him in the new light of the landed proprietor, not only of his own fields, but of every field. . . .

Campbell and Munro both felt that the original intention of the Permanent Settlement had to be restored in the face of the encroachment of the rights of zamindārs on those of the ryots. But in spite of all this the rights of the Zamindars were protected far more zealously than those of the ryots.

Another type of objection to the Permanent Settlement appeared rather later, and is summed up in a lengthy polemical paper by H. R.

Farmer entitled: "On the Subject of the Extent of, and Rights of Government Which Though Excluded from the Settlement Made with Zamindaries and other Holders of Proprietary Estates is Now Shown in the Maps as Forming Part of these Estates."[41] The specific question addressed by Farmer was whether or not the Government had any rights over the "puṟampōkku" lands within the zamindāries, i.e. the "uncultivated, arable, and waste lands," or whether they had given them up in perpetuity to the zamindārs by the provisions of deed of Permanent Settlement. As we saw earlier, the only lands explicitly reserved by Government were those set aside for police establishments and lands under the heading of lakhirāj. According to Farmer, the key to the problem rested in the faulty interpretation of that term. Whereas lakhiraj was conventionally understood to mean only iṉām, or tax-free land, Farmer maintained that it really meant all "waste" lands as well. Farmer's confidence in the acceptability of his etymological claim, however, was belied by his strong emphasis on the amount of money the Government was losing annually by forfeiting all revenue claims to such land. In the end, Farmer's argument was simply another victim of the spirit of the Permanent Settlement, which had clearly implied that the possibility of cultivating waste lands was part of the incentive built into the settlement scheme. Eighty years into the nineteenth century memories of the former position of these chiefs were rather dim, and the absence of any southern participation in the 1857 "Mutiny" made them even dimmer. But, however hasty and ill-conceived the establishment of the settlement might have been, its permanence, which was instrumental in the design to restore agrarian

order and assure a regular payment of tribute, was basic to its constitution, and Farmer's inability to get anywhere with his proposal attests to this.

The most significant problem of the zamindāries in the nineteenth century was not Farmer's, but rather that the Settlement had failed to achieve even its limited objectives. In British terms, the major manifestation of this problem was that rather than operating in the pursuit of profit, the zamindārs, as mentioned above, continued to engage in activities that seemed antithetical to this pursuit. One such activity was the alienation of land, which among other things eroded the tax base of the zamindāries. We shall now look at this problem in more detail.

The Problem of Alienation: The Gift Colonized

The Permanent Settlement had established a rule of property, or so it seemed. As the British set up the framework and institutions of colonial governance it became increasingly clear that property itself was to be governed by law. Law was seen as a counterbalance to the unprincipled exercise of political power. In Britain these notions were developed to a new degree under the influence of Bentham and the utilitarians in the early nineteenth century.[42] Law was also, though I am unaware about any explicit ideological enuncation of this, to deflect the political implications of such major questions as property holding and tenancy rights under the new political economy of colonialism. Stated in ideal terms, the importation of law into India was to secure the loyalties and protect the rights of all its

citizens. However, the effective operation of law as an autonomous domain was belied by the constant manufacture of acts and regulations to direct and constrain the free play of legal norms and procedures. And yet, however much the working of the law was ultimately controlled by the interests of the colonial state, it is indisputable that the daily exercise of the law had a peculiar, though partial, autonomy from Government, often frustrating Members of Council and the Board of Revenue to the point of utter distraction.

While the law was vested with the "rule over property" and had such an esteemed position in the structure of British rule, it was never really clear what law in India was to be. The British assumed that there were two things called Hindu law and Muslim law, a somewhat preposterous claim given the variability of Indian legal traditions. Even so staunch an advocate of the law as James Mill was sharply critical of the efforts of Sir William Jones to codify Indian law. He characterized Jones' efforts as "a disorderly compilation of loose, vague, stupid or unintelligible quotations and maxims: selected arbitrarily from books of law, books of devotion, and books of poetry; attended with a commentary which only adds to the mass of absurdity and darkness; a farrago by which nothing is defined, nothing established."[43] Mill's venom was directed at both Indian law and the Orientalists' sanctification of it, not the law itself or the principles of legal codification. Other less eurocentric critics such as Madras' J. H. Nelson were critical of the reliance on Brahmanic codes (and pundits) to formulate codes for non-Brahmans,[44] who constituted 97 percent of the population in the south.

While all these criticisms rang true, the real problem was far more fundamental, and lay in the very institutionalization and codification of the law. All of these critics shared the belief in the autonomy of law. However, in pre-British Hindu India the law was embedded in the structure of political authority and measured against dharma, a principle of order which was both natural and moral. As Robert Lingat, an authority on classical Indian law, has written:[45]

> Western juridical systems are based on the concept of legality. Whether strictly speaking a written law or the common law, the law is understood to express the will of all. Even in cases where it has done no more than declare the customary law or case law in the form of codes, its imperative force resides entirely in the popular will or constitutionally established authority which has sanctioned it, and not in the power and usage or custom which lies behind, and has in a sense given birth to, that law. What is just, within the meaning of those systems, is that which is legal, i.e. that which conforms to law. What is unjust, and thus irregular and reprehensible, is that which is illegal, i.e. contrary to law, i.e. to an actual provision of law. . . . The classical legal system of India substitutes the notion of authority for that of legality. The precepts of smṛti are an authority because in them was seen the expression of a law in the sense in which that word is used in the natural sciences, a law which rules human activity.

The king, as Lingat explains, has the role of imposing the law, for the law does not impose itself, at least in an immediate sense. But his real duty is to interpret the law according to each context of its application. The authority of the interpreter, and thus the interpretation, does not, however, yield a system of codes and precedents that can, at least independently, orient future legal decisions. Authority continues to be invested in the complex but integral relationship of the authoritative interpreter and dharma. As Lingat notes, although the judgments of the king are "really law-in-

action, they remain singular and unrelated, staccato, without any future."[46] Thus, while the king is constrained by the principles of dharma, he is at the same time enjoined to maintain dharma, and as such he becomes the embodiment of the law.

Under the Permanent Settlement the zamindārs were invested neither with political nor with legal authority. Political authority, in the form of British rule, had made them proprietors of their estates, and their proprietary rights were to be protected and regulated by the legal authority of nascent institutions and hastily conceived and executed codes of jurisprudence. This complex background oriented a great number of issues in the nineteenth century, from disputes of succession and the division of property to the problem of alienation. And in cases which concerned zamindāries, the problems of adjudication became particularly byzantine because while the properties of joint families were seen by ordinary Hindu law to be partible estates, "the theory as to ancient Zemindaries has always been that they are in the nature of regalities or principalities, the property attached to which is inseparable from the regal or princely office."[47] The most fundamental problems with the zamindāries began in the actual drafting of the deed of Permanent Settlement, which presumed, as Munro had noted, the possibility of creating a new society based on the principles of property and law which were as foreign as they proved unworkable. And this is where the problem of alienation takes on its double meaning.

As we have seen, the deed of Permanent Settlement put few restrictions on the power of the zamindār to alienate, "by sale, gift,

or otherwise," any part of the zamindāri estate. Little did the drafters of the Permanent Settlement suspect that the ambiguities of this clause would haunt their administrative successors for at least a century. They did not anticipate such a turn of events because they did not understand the cultural logic of politics in the old regime. What the British saw as tax evasion was in fact the "gift," as I described it in the first section. Lushington was in fact wrong to suggest that inām̲s were given away to reduce the tax roles, even as Eric Stokes, far more recently, was wrong to see inams as having swelled "to an unnatural extent" due to the "long period of disturbed political conditions and unstable central authority" in the period prior to the early nineteenth century.[48] Lushington, of course, wished to characterize inām̲s as forms of tax evasion because he was directly charged with the collection of the poligar peshkash as well as with the resumption, to the extent possible, of all military tenures. Later in the nineteenth century, after the Permanent Settlement, the apparent irony was that inām̲s continued to be given away even when the tax had been permanently fixed.

Within the context of the British attempt to control alienation as part of the permanent settlement, two legal questions developed quickly as major issues: the first had to do with the status of certain alienations made before 1803, and the second had to do with those made after 1803, when successors to zamindāri titles began to complain about the encumbrances on their estates handed down by their predecessors.

As for the first issue, all had not been made clear by the assumption of British control over inām lands within the estates at the time of the Permanent Settlement. For example, there were a great number of lands rented at a low rate on perpetual leases dating to a period before the Permanent Settlement. In one case[49] in the large Tinnevelly estate of Ettaiyāpuram, the zamindār claimed his right to resume fifteen villages which had been granted on cuttoogootaga tenure "in consideration of military services performed by the ancestors of the grantee." The case was taken to court by the zamindār, and it was decided against him. The reason was that the court judged the favorable lease not to be an alienation:

> This is not an alienation of the Zemindary, or any part of it. It is a perpetual lease of a distinct portion of the Zemindary, which constituted a distinct portion before the Appellant's title to the Zemindary accrued. . . .

A similar case occurred in Ramnad in 1850, when the British denied the reversionary right of the zamindārini to lands alienated as māniyam prior to the Permanent Settlement.[50] In both of these cases the hereditary nature of the "leases" was established by their venerability, and the reversionary right of the zamindār denied both because of their heritability and because of the classificatory logic invoked. And yet these classificatory assumptions were in other cases contradicted. For instance, lands in Civakaṅkai of a similar description to those above were held to be inām. In all these cases the classificatory decisions were motivated by the desire to preserve the status quo.

The desire on the part of the British to maintain the status quo (assuming wrongly, of course, that there was anything static about what had gone on before 1803) led to far more serious legal debates concerning lands alienated after 1803. In retrospect it is amazing that such fundamental questions as the hereditary nature of alienations and the future reversionary rights of zamindārs were not addressed, nor the problems concerning them anticipated, in the Permanent Settlement. The drafters of the Settlement apparently assumed that the fixed nature of the peshkash would restrict excessive gifts of land, but they could not have been more wrong. Alienations were made to attain religious merit, to establish political alliances, to reward services, and to pay off debts. Alienations were made because in spite of the changing nature of the political system, the traffic of the political process continued to be in gifts of land. The consequences of this were startling to the British, all over India, as they saw the maintenance of the dominant landed classes in their privileged position as crucial to the stability of the agrarian economy. Long before the British passed legislation in the Punjab to restrict the transfer of land from "peasants" to "money-lenders," they fought battles of one zamindār after another in southern India to resume land alienated by zamindāri predecessors to groups such as the Cēttiyārs, whose merchant associations and usurious activities made them inappropriate and undesirable landholders in British eyes. No sooner, of course, did one zamindār win his battle than he set the stage for a subsequent confrontation by alienating more land to new people and sometimes new groups.

In 1871, J. D. Mayne, the Acting Advocate General, was asked to give his opinion about the status of two alienations in Ramnad, and his response became thereafter much cited as a general authoritative position on all such matters.[51] The first question he addressed had to do with what restrictions there were on the zamindār's rights of alienation, and this question rapidly turned him to a consideration of the possible restrictions constituted by Hindu law. Did the application of Hindu law, for example, mean that the zamindār could neither encumber nor alienate beyond the period of his own life? In this respect, the ordinary statutes of Hindu law dictated that as one's heirs became at birth coparceners, any Hindu proprietor could not, without his heirs' consent, or "unless under circumstance of necessity," alienate more than his own interest in the estate. But, as Mayne observed, the zamindāri is not an ordinary Hindu estate. In an ordinary estate the father and sons are actual joint owners in possession, but a zamindāry is "impartible":

> Neither the land nor the annually accruing income is divisible, and the joint interest of the heir does not vest in enjoyment till the death of the holder. The consequence therefore, is that the father has a complete estate for life -- and the next heir has a complete estate after his death.

The implications of this were clear enough to Mayne. Hindu law provided no counterbalance to the deed of Permanent Settlement. The only possible restriction on alienation he saw had to do with the statute of limitations, which was of twelve years.[52] The question then arose as to whether the limitation should begin from the date of the grant (or, perhaps, its registration in the Collector's Office),

or from the date of accession of an heir who might have reason to desire the resumption of his predecessor's alienations. Mayne interpreted a number of High Court decisions to stipulate expressly that the former case was to be taken as the intent of the law, in spite of certain misgivings he had:

> It certainly does seem to be an anomaly that this should be so. The heir could certainly not sue for possession of the property during the life of his father, nor could he sue to undo the act of his father except so far as it might injure himself and the injury to himself, would not arise till his father's death. . . . On the other hand, the words of the statute are express, and it has been held by a Full Court in Bengal, that when the statute of limitations has run against a widow, it will also bar a reversioner, which is exactly a parallel case.

Mayne gave no hope to the Collector about his possible success in recovering certain alienations on behalf of the minor zamindār on these grounds as well due to the expiry of the limitation.

Mayne also considered the legal complexities of cases which concerned lands rented on favorable leases. He classified such leases into three types. The first were what he called "service" ināms, of which there were two sub-types: (1) ināms on amaram tenure, the important feature of which he said to be the performance of services to the zamindār himself, and these he saw as "resumable at pleasure, as soon as he (the zamindār) chooses to dispense with the services"; and (2) tenures for service "for the public or the Government," and these he said "will not be resumable on the ceasing of the duties, unless the continued performance of the service was the whole motive to, and consideration for the grant." Mayne noted that the second type of perpetual leases, those at full assessment, for whatever

duration, were to be considered equally binding on the zamindār and his successors. As for the third type, leases at a favorable rent, Mayne considered them as binding on the grantor, but not the successor. Mayne did not examine the classificatory problems involved in this scheme, particularly given the arbitrariness of the term "alienation" as alluded to earlier. But, whatever these problems, and however much subsequent legal opinion deviated from Mayne's interpretations, the questions he addressed in this memo turned out to be fundamental to the deliberation about the nature and extent of intervention allowed to the British administrators. Mayne concluded his memo by noting that in any case the Government need not worry:

> Government has no ground for the alarm expressed. . . . No act of the Zemindar in alienating his assets by lease or otherwise, can in any degree diminish the security for the public revenue. . . . The public demand . . . takes precedence of all other encumbrances, and in the event of either attachment or sale, the Collector in the former case and the purchases in the latter case, are in no way bound by any alienation or dimunition of the assets of the Zemindary.

But, Mayne's assurances notwithstanding, the concern of the British Government was to keep such a turn of events from happening. They were as concerned about public order as they were about the public demand (i.e., revenue), both of which they saw as indissolubly linked and as dependent on the preservation of local elites. Time after time this ideal union seemed to come unhinged, as we shall see in two cases from Ramnad where Mayne's principles were put to the test.

The first case concerns the alienation of two taluks in Ramnad Zamindāri, Pantalkuṭi and Pāḷaiyampatti, the first in 1858 (the initial grant of which was confirmed in 1863) and the second in 1863.

The first alienation was made by the then minor zamindār's adoptive mother, and the confirmation and grant of 1863 were made by the zamindār when he came of age. The recipient of both alienations was Ponnucāmi Tēvar, the original grantor's sister's eldest son, and brother of her adopted son, the minor zamindār. Ponnucāmi Tēvar was also the manager of Ramnad Zamindāri between 1858 and 1868, and a man of very considerable influence. He attained this influence for the reasons cited to explain the granting of the two taluks to him: because of his services as manager and his legal support and efforts in getting the adoption approved upon which a long fought succession case had hinged. By 1868, the year of Ponnucāmi's dismissal, he had involved the estate in debts of at least fourteen and a half lakhs, and he left his office in a trail of accusations about this corruption. In 1873, shortly after the death of the zamindār, the Board of Revenue considered what legal steps could be taken to reappropriate on behalf of the new minor zamindār the considerable lands which had been alienated to Ponnucāmi.[53]

The legal questions involved turned out to be very delicate. The Statute of Limitations had run out for the 1858 grant, unless it could be shown that the 1863 confirmation was the legal date of the grant, and this was unlikely. Even if Hindu law respecting inheritance was invoked as relevant to the case, all of the alienations were made before the birth of the minor on behalf of whom the suits were being instituted. The conclusion of the Government Pleader, J. W. Handley, was therefore that the Government must argue that from the principle of "impartibility" it should "follow that

until the Raj is extinct the property must remain for the Raja to take, and hence that the holder of the Raj for the time being can neither encumber nor alienate beyond the period of his own life."[54] In supporting this position Handley was aware that, while there was some legal precedent, it would perhaps be "difficult to reconcile the extensive power of alienation allowed by later cases for family necessities with the dictum in its widest sense." But he was equally aware that

> if the contention of the defendants in this case is correct, any zemindar with no male heirs, on coming of age and before he has any children, can alienate the whole of his Zemindari thus entirely defeat the rights of his after born sons and the rights of the Government to succeed to escheat in default of such sons.

Assuming that his opinion was correct, he felt sure that the only necessary evidence to win the suit would be to document the undue influence of Ponnucāmi Tēvar in securing the grants.

Handley's opinion was used to justify the institution of a suit for the recovery of the two taluks against the descendents of Ponnucāmi Tēvar (who had died in 1869) in late 1873.[55] The Government based its suit on the claims that Ponnucāmi, who received otherwise proper remuneration for having acted as manager, "fraudulently induced them (the late zamindar and his mother) to grant the said villages to him without any proper consideration," on the fact that the grants were not properly registered, and because "by Hindu law, and the custom of the zemindari, . . . the late Zemindar had only a life-interest in the zemindari, and (n)either he nor his adoptive mother had power to alienate this or any portion of the said zemindari beyond

the period of their lives." In the judgment, rendered on February 12, 1874, the Government lost its case.

According to the judge, who echoed much of Mayne's original opinion, even if general Hindu law was followed, there would be no restriction on alienation for those without any coparceners. As for the particular case of zamindāries, the judge noted that the only obvious difference was that succession was governed by primogeniture, and thus the estate was impartible. But he disputed Handley's claim that alienability depends on partibility:

> prima facie partibility restricts rather than creates alienability. . . . Whatever prejudices may have existed in the minds of the old sages against alienation, at the present day it is too late to say that all property is not alienable if there is an absolute owner. If it is once conceded that a person with co-parceners can alienate the whole, and if there are none in the position of co-parceners, or if the person seeking to set aside the alienation was not in that position, I cannot see how the question of the right to alienate can be affected by the property being partible or the reverse. The result of course may be a Zemindar without a zemindary, But I suppose he could drop his title.

He went on to say that even if the zamindāri was considered on absolutely separate grounds as a (or as analogous to a) kingdom, he did not "understand why even a kingdom should be absolutely inalienable by an absolute monarch, much less a tributary principality, which was the utmost dignity to which Ramnad ever attained." Neither did he understand the claim that the zamindār had only a "life-interest," on the grounds that legal precedent had indubitably established the opposite in a variety of types of cases. The judge concluded his opinion by saying that nonregistration was in this case not an issue, and that he saw no evidence of undue influence

by Ponnucāmi in securing the grants. And thus, once again, alienation carried the day.

The second case to be considered here concerns those lands rented at favorable rates, many on permanent leases. In Ramnad these leases were called "cowles," and the leader of the battle against their legality was Lee Warner, the Special Assistant Collector, who successfully urged the Collector (with the sanction of the Court of Wards) in 1873 to issue a notice to all cowledars in Ramnad that their leases were to be canceled and their villages to be resumed by the Government on behalf of the minor Zamindar. Some of the cowledars immediately gave up their lands, but others, particularly those of some means, decided to contest the legality of the proclamation. It was at this point that J. A. Boyle entered the scene, and in October of 1873 he wrote a report in which he suggested the untenability of the Government's case.[56] Even the test case selected by Lee Warner for legal advice met with the negative opinion of Handley, who wrote that the possible justifications for a permanent lease were more various than Lee Warner had thought.[57] For example, Boyle noted that Lee Warner had a special but unjustified distaste for the Chetties (Cettiyārs) who acquired leases in return for unpaid loans:

> Mr. Lee Warner speaks with the vulgar dislike of usurers when he says that the Chetties made use of their influential position as creditors to extort cowles at low rates. Such transactions, however, so far from amounting to extortion, might be the most legitimate arrangements between a money lender and his deeply involved debtor. Who can blame a creditor, and what Court would set aside his contract because he required something more substantial than promises to pay from a spendthrift Zemindar?

In addition, Boyle saw nothing fraudulent in other grants to relatives

and palace servants for much the same reason: the zamindār had no money to part with, only land. Indeed, Boyle noted that the cowle villages were generally by far more prosperous than most of the other villages of the estate, and protested that instead of lamenting all the unearned revenue the British should realize that the villages became prosperous only after their grant as cowle, another argument in their favor. Curiously, the very classes which were to be prevented from holding land proved to be better land managers than the "traditional" agricultural classes.

The only thing Boyle did not note in his defense of the cowles was that historically rights to land had been the reward for service to the king, and that politically as well as economically this form of remuneration was part of the pre-British political system. Lee Warner, in his own cynical fashion, appreciated the political nature of the leases. He noted that in 1866 Ponnucāmi Tēvar had run into difficulties, and that he had attempted to put down opposing factions "partly by the distribution of heavy largess to all his dependents, partly by many settlements of accounts with the Chetties. . . ."[58] Leaving aside the fascinating questions about Ponnucāmi's managership,[59] we can nonetheless recognize the conflict between "traditional" modes of political action (however different this largess was from royal gifts which came before) and British expectations about the functioning of the new agrarian system. And, as we have seen in a number of curious respects, this conflict was both mediated and accentuated by the role of the legal system, which in this case seemed to prevent the British from "rationalizing" (in a

Weberian sense) their bureaucratic control even as it maintained, however ironically, the "status quo."

The Government did not give up easily. Between 1873 and 1882, the British were able to "recover" 104 villages in Ramnad "forming part of the alienations made subsequent to the permanent settlement . . . either on the expiry of the leases or by court decree."[60] This included the fourteen villages of Pālaiyampatti and Pantalkuṭi which were recovered under the provisions of the Act of 1876, a direct administrative response to the failures of legal cases such as O.S. #21 of 1873. This Act provided for the sub-division and separate assessment of peshkash on alienated lands within permanently settled estates. This was to be used "except when the quit rent paid to the estates was greater than the proportionate peshkash which would be payable after separation," thus displaying the true magnanimous intent of the Government.[61] As for "service" and "religious" grants, the Government followed the basic provisions which had been laid down in the Inam Settlement:[62]

> in cases in which the continuance of the service was found necessary the quit-rent was adjusted according to circumstances, but in other cases in which the service had been discontinued or was unnecessary the ināms have been resumed. In disposing of grants for religious and charitable purposes due consideration has been shewn for the feelings of the zemindar's families, and they have been resumed only in those cases in which the purposes were not daily fulfilled. They have been continued in other cases, the quit rent being adjusted according to the nature of each case. In cases of unauthorized enjoyment of estate lands, the occupants have been either ousted or subjected to payment of full assessment.

And so, little by little, the Court of Wards appeared to be regaining "control" of the estate. But in spite of all the recoveries, there

remained in 1886 another 323 alienated villages still unrecovered out of a total number of 2,168 villages in the whole estate.[63]

The fundamental problem for the British was that the Court of Wards could only exercise control when there was a minor zamindār. When the report of success in recovering alienations was written in 1886, three years were left before the minor, Baskara Cētupati, was to attain his majority. Lee Warner, who had been instrumental not only in pressing forward the "interests" of the estate but in establishing a number of other agrarian reforms, anticipated what might happen and wrote, in 1874, his assessment of what would be best for the estate:[64]

> Among other contingencies which might clear the path of reform (if it is not looking too far forward) it is just possible that the successor to the estate becoming as he grows up convinced of the hereditary inaptitude of his family for administration, may desire to leave his estate under management and become a pensioner of Government. Such an alienation would be valid if the recent judgement in the Madura Civil Court is to be relied upon, and with regard to all that I know of the life of the late Zeminar (who was considered to a 'gentle man among Maravars') and the antecedents of his family and ruin of this country, I cannot conceive a juster proposition for the Government to entertain; for I regard it as the remotest contingency of all, that the present boy when he succeeds to rule his estate will have the firmness or grasp of mind to reason out that his own happiness is intimately bound up with the welfare and prosperity of his tenants; and his first act after ascension to power, as Sethoopathy, would be to cancel this work, and deluge the villages again with dependents and officials of all sorts. All the family traditions and Zennanah training point this way.

The acceptance of Lee Warner's proposal would be tantamount to dismantling the Permanent Settlement, leaving only a pensioned king to live a life devoid of any real power, let alone his former proprietary rights. But Lee Warner did, nonetheless, give expression to the fundamental cleavage between the old political system and the new, and

realized more perspicaciously than many -- whatever his reasons for so doing -- that the attempted synthesis of the Permanent Settlement had been a failure. The reasons for its failure were in part the reasons why Lee Warner's advice fell on deaf ears; the old cultural system, however truncated, did live on, under the guise of the protection of the "native aristocracy" and the "status quo." And the British were most reluctant, particularly after their experiences in the north in 1857, to give the impression that they were undermining the authority and position of this local elite, however unsuccessful they were in attaining their goals of agrarian reform.

While there was no mutiny in the south, the desire of the British to maintain order was not totally fulfilled. We have seen that in the old political system the "gift" was basic to the constitution of the political order, and thus it should not be surprising that the efforts of the British to put a freeze on alienation and to resume as much alienated land as possible led to some local resistance. Even in the case of the Ramnad cowledars there was some trouble; the resistance, however, was more threatened than activated, and the major problem seems to have been the undermining of the local authority of the cowledars and a consequent resistance on the part of their tenants to pay their dues.[65] Perhaps predictably enough, the major incidence of violence after 1803 came in cases where the local "militia" was threatened with the cancellation of their landholding privileges by the Inam Settlement. The most conspicuous example of this occurred in Putukkōttai in 1854, well before the actual Settlement but not before fears of such an eventuation took

firm hold. And while we do not come close to seeing the violent resistance of the "poligar wars," it might not be inappropriate to view the events of 1854 as the last phase of those encounters, an agrarian revolt more tied to the disappearance of the old order than to the introduction of new forms of agrarian oppression, however salient those forms might already have been.

Law and the Colonial State

While the attempts of the British to deal with the contradictions of colonial rule appear on one level as bumbling, on another level we must admire the British for effectively controlling the problem of order. As we have just seen, the British were, for all their foibles, remarkably successful in stemming disorder and presenting themselves as the salvation of the old regime at the very same time they were busy dismantling it. This capacity to manage the contradictory pursuits of revenue and order was matched by the successful management of the seeming contradiction of law as an autonomous domain. While the "rule of property" was supposedly ushered in by the Permanent Settlement, the Raj not only preserved two levels of proprietary interest, but also controlled very carefully the introduction of a free market economy. Zamintars were propped up and merchants were kept out.

Law provided both an ideological form of legitimation and a diffuse institutional means for the control of colonial society. The British were only able to "freeze" their reified conception of the old regime because the law provided a structural replacement for politics.

It is in this sense that law courts provided the new battlefields for the Rajas of old, where titles to kingdoms could be won and lost. Gifts could be given, or rather allowed after the fact to have legal validity, if they were given for reasons deemed satisfactory in British courts of law, which proposed new taxonomies of gifts and new notions of political expediency for the construction of what would, and what would not, be legitimate zamindari activity. At the same time, the law did not penetrate the full range of political relations which united superstructure and infrastructure in the old regime. Gifts of land might pay off political debts, but they no longer provided the forms and mechanisms for relations of service, loyalty, and honor. Even as the new British law courts absorbed and appropriated only a small fraction of disputes within Indian society, British attempts to create new forms of property and new meanings for local politics were only partially, and differentially, successful.[66] Political actors became increasingly alienated from the actions they engaged in, even as the "tenants" under these actors became alienated from the full configuration of social and political relations without being given full rights (let alone the economic means) to engage in an altogether new political economy.

The real irony was that the partial autonomy of law, far from indicating the loftiness of British ideals and the altruistic implantation of liberal institutions, succeeded in rationalizing and legitimating the colonial system. For example, we can realize why the pacification of the old rural elite by policy and intervention was done in conjunction with the enforcement of tenancy rights.

Legislation regarding the latter actually represented an attempt to appropriate the domain of landlord tenant relations and the possibilities for the growth of either anti-imperial feeling or incipient class consciousness into the diffusionary arena of British law. In this way, law had a far more important political than economic effect.

Some of these points have been made in a recent important article by David Washbrook.[67] Washbrook forcefully examined the discrepancy between the theory and practice of law to demonstrate that in fact the law was not used to facilitate the introduction of capitalist relations into agrarian society. In criticizing the notion of the autonomy of law, however, Washbrook let the law drop (increasingly as his article proceeds) from his consideration of colonial practice. I contend that law, while not totally autonomous, was not simply a reflex or arm of the state. Rather, law worked both ideologically and institutionally to permit the continuance of contradictions in colonial governance.[68] Law courts provided an arena for political dispute which was as all consuming for some of its litigants as it was non-threatening to the state. Old concerns continued, but these concerns were deflected and displaced by the appropriation of the political position of the zamindars, and had now to be argued in the language of the colonizers.

Law worked powerfully at the level of discourse. Situated as it was at the very highest level of cultural production and hegemonic influence,[69] law provided a set of discursive structures which, because of their real implications for the lives of the descendents of

old elites, put all other discourse -- about both property and sovereignty itself -- in relation to itself. The little kings, while they continued old forms of sovereignty by giving gifts, had to justify these alienations in terms not of the language of old -- where honor, protection, loyalty, kinship, service, property, and privilege had specific relational and operational meanings -- but in new terms of legal argument and adjudication. Succession disputes privileged new forms of conquest and legitimation, where the ability to influence a judge became more important than the capacity to mobilize the support and loyalty of one's military nobles and retainers. Disputes over alienation were now couched in the language of the zamindar's "life-interest" in his estate, in arbitrarily conceived and imposed statutes of limitation, and in taxonomies of alienation which specified "service" in quasi- bureaucratic language. These taxonomies not only separated "personal" from "public" service, but even set off "religious" from "non-religious" grants, in total violation of old regime meanings. The law was based on this kind of spurious translation, and operated not only in British terms, but, at least at the highest levels, in the English language. The partial autonomy of law in the structure of British colonialism made the discourse of the law all the more significant. The law appeared to be all powerful, even when it wasn't, and it was often the case that the zamindar saw himself as having <u>locus standi</u> only in the British courts of law, which appeared to mediate all the relations between landlords and state.

Washbrook's deconstruction of the rhetorical position of law within the new colonial state thus neglects the importance of rhetoric not only for most British administrators but also for the subjects of the colonial realm. Further, Washbrook's criticisms figure as part of his general assertion that the Company merely continued "the revenue system and institutions of economic management"[70] which had been part and parcel of the old regime. Washbrook is wrong here because he does not properly represent the old regime in the Tamil country, and mistakes certain transitional episodes in key commercial heartlands for the total pre-British past. He ignores the fact that the pre-British state in the Tamil country was not based principally on revenue, and that the freezing of traditional political relations and activities profoundly altered the nature of institutions we might presume to have been inherited from the old regime.

The colonial state was not simply a continuation of precolonial states, but represented something new and different from what had come before. In suggesting this, there is no need to adopt the assumptions of modernization theory, in which a static traditional world crumbled under the onslaught of the modern West. I am as concerned as Washbrook to pinpoint the proper nexus between past and present and to "understand its specificities in terms of the dynamics of a process of historical change."[71] But these specificities include the cultural weight of gift giving in the precolonial situation, and the ways in which these cultural forms provided as much resistance to a free market political economy as the very contradictions of colonialism itself. As asserted above, what becomes particularly

arresting in our examination of British colonialism in south India is that the law was used to perpetuate the lag time of culture, so that gifts of land continued to be given long after the pre-British political system has been effectively truncated and undermined.

A market economy was not ushered in overnight, but we cannot be satisfied with Washbrook's reductionist explanation pointing us to the "contradictions in the relations and imperatives of capital."[72] Washbrook attempts to rehabilitate Marxist discourse about colonial processes in India by noting that Marx was wrong to suggest that the colonial state was a necessary evil, a way of hurrying the historical transformation from feudalism to capitalism. The most useful part of his analysis comes when he demonstrates, by documenting the conservative use of law by the British, why and how the colonial state never favored the development of the kind of capitalism Marx assumed it would, one which for all the social unrest it might have brought with would also have been more profitable to the interests of capital. But he still perpetuates many of the same mistakes of Marx' own Orientalist historiography, in assuming that British policy, whether fully or contradictorily capitalistic, was the only game that counts (or, perhaps more accurately, set the rules of the only game). Washbrook does not bring the Raj into "the same social field as its subjects" in the way he purports to do."[73]

The study of colonial law is thus not only important, but still incompletely undertaken. We can assume neither that the law was a simple and unmediated reflex of the colonial state nor that it was immediately constitutive of the total domain of political culture.

However, I do not mean to suggest here the other extreme, that the operation of the law in India provides yet another curious example of mere bumbling on the part of the Raj, however much genuine bumbling did in fact take place. Rather, the introduction and operation of the law reveals how the British attempted to regulate, rationalize, and legitimize their rule while at the same time they were unable to conquer and subdue India in the total sense assumed both by Marx and, although in a reformulated sense, many who would use his name to legitimize their own historical enterprise. I do not know whether Marx would sanction my own attempt to understand the political economy of colonialism in terms of the accumulated weight of pre-British structures and meanings and by examining the operation of the institutions of the colonial state in light of their epistemic and political realization. But while I share with those I criticize here a continuing admiration for the penetrating analytic insights of Marx' theorizing on these matters (both specific and general), I suspect that the test for our modern approaches lies somewhere other than in Highgate.

FOOTNOTES

* I am grateful to Burton Stein for his comments on an earlier draft of this paper.

1. By moral economy, I do not mean exactly what has been proposed by James Scott in his The Moral Economy of the Peasant (New Haven: Yale University Press, 1976). In addition, to say that a moral economy is more moral than a political economy, even while accepting these two characterizations as heuristically useful, is to enter into a particular mode of argumentation which I would rather avoid. By using the term moral economy, however, I do mean to ally myself, however vaguely, with the same substantivist literature used by Scott, in particular Polanyi, at least to the minimal point of viewing the economy in precapitalist societies as substantially embedded in structures of social and political relations. But I also think that the role of the state, as best conceptualized at both a superstructural and infrastructural level, is neglected as a locus of authority and hegemonic power in many substantivist accounts.

2. For example, see Frank Perlin, "Proto-Industrialization and Pre-Colonial South Asia," in Past and Present, no. 98 (February 1983).

3. Perhaps the earliest, and most strongly stated version of this approach, can be found in the work of Robert E. Frykenberg. See his "Company Circari in the Carnatic, c. 1799-1859: The Inner

Logic of Political Systems in India," in Richard G. Fox, ed., Realm and Region in Traditional India, (Duke University: Monograph and Occasional Papers Series, 1977). See also the recent paper by David Washbrook, "Law, State and Agrarian Society in Colonial India," Modern Asian Studies, vol. 15, no. 3 (1981), which will be the subject of major comment later in the present paper.

4. See Eric Stokes, "The First Century of British Colonial Rule: Social Revolution or Social Stagnation," in Stokes, The Peasant and the Raj (Cambridge: Cambridge University Press, 1978).

5. In a recent series of articles, Frank Perlin has eloquently stated, though from a particular perspective, the epistemological assumptions of and problems with these "traditional" views. See Perlin, "Of White Whale and Countrymen in the Eighteenth Century Maratha Deccan. Extended Class Relations, Rights and the Problem of Rural Autonomy under the Old Regime," The Journal of Peasant Studies, vol. 5, no. 2 (1978); and also, "The Precolonial Indian State in History and Epistemology. A Reconstruction of Societal Formation in the Western Deccan from the Fifteenth to the Early Nineteenth Century," Claussen and Skalnik, eds., The Study of the State (The Hague: Mouton, 1981).

6. See my "The Structure and Meaning of Political Relations in a South Indian Little Kingdom," Contributions to Indian Sociology, vol. 13, no. 2 (1979); and "The Pasts of a Palaiyakarar: The Ethnohistory of a South Indian Little King," The Journal of Asian

Studies, vol 26, no. 4 (1982).

7. Walter C. Neale, "Land is to Rule," R. E. Frykenberg, ed., Land Control and Social Structure in Indian History (Madison: The University of Wisconsin Press, 1969); Thomas Kessinger, Vilyatpur 1848-1968: Social and Economic Change in a North Indian Village (Berkeley: The University of California Press, 1974); Gananath Obeyesekere, Land Tenure in Village Ceylon: A Sociological and Historical Study (Cambridge: Cambridge University Press, 1967); Burton Stein, Peasant State and Society in Medieval South India (Delhi: Oxford University Press, 1980).

8. See the discussion of these two terms in David Ludden, Agrarian Organization in Tinnevelly District: 800 to 1900 A.D. (Ph.D. Thesis, Department of History: The University of Pennsylvania, 1978):171-174.

9. Robert Lingat, The Classical Law of India (Berkeley: University of California Press, 1973), p. 212. My stress on the term ksatra derives from conversations with Burton Stein. My particular sense of the way in which the king's mastery or lordship of land was constituted in medieval India is also heavily dependent on the recent work of Ronald Inden.

10. See Kessinger, Vilyatpur; Washbrook, "Law, State and Agrarian Society in Colonial India."

11. See my argument in Little Kingdoms of South India: Political Authority and Social Relations in the Southern Tamil Countryside

(Ph.D. Thesis, Department of History: The University of Chicago, 1981).

12. See Christopher Baker, "Tamilnad Estates in the Twentieth Century," Indian Economic and Social History Review, vol. 13, no. 1 (1976).

13. Scott, The Moral Economy of the Peasant.

14. A Collection of Papers Relating to the Inam Settlement, selections from the Records of Madras Government, new (Revenue) series, No. 1, Madras, 1906, p. 50

15. But suggestions that any genuinely serious trouble would result from the enfranchisement of inām̲s were discounted. For example, when a disturbance broke out in the district of Cuddapah in what is now Andhra Pradesh after certain orders had been made affecting the status of military inām̲s, those involved in an initial investigation suggested a correlation between the proposal that inām̲s should be registered and the ensuing revolt. (A Collection of Papers Relating to the Inam Settlement, p. 23). But a reinvestigation came up with the conclusion instead, on the basis of evidence that not everyone affected by the orders had revolted but only those who gave allegiance to a particular pāḷaiyakārar, that the cause of the revolt was feudal, based on the residual regard held by the people for their "ancient family leaders" rather than on anything connected with the inām̲s themselves. What of course did not occur to the British was any

notion that the inams -- their status and the honors and perquisites attached to them -- might have been seen as directly linked to the status of the palaiyakarar and to the nature of the relationship of his followers to him.

16. Na Vanamamalai, ed., Virapantiya-k-kattapommu Kataip-patal (Madurai: Madurai Palkalaikkarakam, 1971).

17. K. Rajayyan, South Indian Rebellion: The First War of Independence (Mysore: Rao and Raghavan, 1971).

18. Military Consultations, 4 (Madras, 17 September 1755):159.

19. Tinnevelly Collectorate Records, 3583 (1808):309-311, Tamil Nadu Archives (hereafter T.N.A.).

20. C. U. Aitchison, ed., A Collection of Treaties, Engagements, and Sanads, 10:65.

21. Tinnevelly Collectorate Records.

22. Collector's Report Regarding the Tinnevelly Poligars and Sequestered Pollams, 1799-1801.

23. In P. K. Gnanasundara Mudaliyar, Note on the Permanent Settlement (Madras: Government Press, 1940).

24. Note on the Permanent Settlement, par. 369.

25. Tipu Sultan had commenced a systematic attempt to remove the local palaiyakarars and replace them with revenue officials

called amildārs. Often, rather than risking local revolt by directly attacking the pālaiyakārars, he would invite them to Srī rankapattinam, his capital, give them honorary posts, such as that of buksi, and settle their families there as well with armed guards to make them in essence captives. Tipu even resumed many of the local inams in the Baramahal and had brahmadeyam lands assessed in 1784. See Walter Kelly Firminger, ed., The Fifth Report on East India Company Affairs--1812 (Calcutta: R. Cambray and Company, 1918), vol. 3; and The Baramahal Records, or The Ancient Records of Salem District, Madras (1906-1920), Section V.

26. Burton Stein, "Munro Sahib and Elements of the Political Structure of Early Nineteenth Century South India," Mss., pp. 28-37.

27. Letter from Board of Revenue to Collector Lushington, 4 September 1799, in Correspondence Between Mr. S. R. Lushington, Collector of Ramnad and Poligar Peshcush and the Board of Revenue and the Special Commission on the Permanent Settlement of the Southern Pollams and of Ramnad and Shevagungah Zemindaries in the District of Madura (Madura: Collectorate Press, n.d.), ASO (D)304, T.N.A.

28. Article Nine of Deed of Permanent Settlement, reprinted in Ibid., p. 68.

29. Article Seven.

30. Article Ten.

31. Proceedings of the Board of Revenue, 2234, 25 March 1850. (hereafter cited P.B.R.).

32. In Civakāṅkai he simply "proposed for its Peishcush, and Government acceded to this proposal, two-thirds of the Ramnad zemindary peishcush on the grounds that originally the Zemindaries of Ramnad and Shivagungah formed one state, the revenues of which had been divided by the then Raja in the proportion of Ramnad three-fifths and Shivagungah two-fifths." Letter from Lushington to the Board dated 30 September 1802, in Correspondence.

33. Ranajit Guha, A Rule of Property for Bengal: An Essay on the Idea of the Permanent Settlement (Mouton: Paris, 1963).

34. Minute of 31 December 1824, in Note on the Permanent Settlement, p. 82.

35. Letter from R. Eden to Board, 14 October 1836, in Selections from Old Records: Papers Relating to Zamindaries, Mittahs, etc. Tinnevelly District, Board Sent (Madras: Government Press, 1934), p. 8.

36. Letter from E. P. Thompson to Board, 30 May 1839, in Ibid., p. 38.

37. Extract from a Letter from the Court of Directors, 9 May 1838, no. 5, in Selections from Old Records: Papers Relating to Zamindaries, Mittahs, etc., Tinnevelly District, Board Received

(Madras: Government Press, 1934), p. 17.

38. Minute, 31 December 1824, in Note on the Permanent Settlement, p. 82.

39. Despatch of 18 August 1824, in Ibid.

40. Reprinted in Ibid., p. 78.

41. (Madras: Government Press, 1884).

42. See Eric Stokes, The English Utilitarians and India (London: Oxford University Press, 1959).

43. J. Mill, The History of British India, 5 (London: 1820):513.

44. J. Duncan M. Derrett, "J. H. Nelson: A Forgotten Adminstrator-Historian of India," in J. D. M. Derrett, ed., Essays in Classical and Modern Hindu Law 3 vols. (Leiden: E. J. Brill, 1977), 2:354-373.

45. R. Lingat, The Classical Law of India (Berkeley: University of California Press, 1973), pp. 257-258.

46. Ibid., p. 259.32

47. P.B.R., Madras, no. 1863, 17 September 1873.

48. Eric Stokes, The Peasant and the Raj, p. 60.

49. Vencataswara Yettiapah Naicker vs. Alagoo Mootoo Servagaren, Tinnevelly Court Records, Bundle 62, T.N.A.

50. P.B.R., no. 2234, 25 March 1850.

51. Ibid., no. 2104, 22 May 1871.

52. As stipulated under Act XIV of 1859, Section 1, Clause 14, Madras Regulations.

53. P.B.R., no. 747, 8 May 1873.

54. Ibid., no. 1863, 17 September 1873.39

55. District Court of Madura, original suit no. 21 of 1873. I am grateful to Pamela Price for making the transcript of this case available to me.

56. P.B.R., no. 389, 21 February 1874.

57. Ibid., no. 1116, 12 May 1874.

58. Ibid., no. 3490, 2 December 1874.

59. See P. Price, "Rāja-dharma in Ramnad, Land Litigation, and Largess," Contributions to Indian Sociology, viii (1979).

60. Proceedings of the Court of Wards, Madras, no. 874, 24 July 1886. (Hereafter cited P.C.W.).

61. P.C.W., no. 1684, 4 November 1887.

62. Ibid.

63. Ibid., no. 874, 24 July 1886.

64. Ibid., no. 2060, 3 August 1874.

65. P.B.R., no. 389, 21 February 1874.

66. Even today, many disputes continue to be solved within the framework of traditional local procedures for dispute arbitration. In areas of Tamil Nadu where I worked, local assemblies called kuttams continue to play an important role in certain areas. In fact, it is often considered to be a sign of the demise of these institutions, and of local society in general, when the law courts are frequented. The characterization of Indians as unusually litigious is based on the extraordinarily rapid penetration of legal institutions into Indian society due to the transfer of all cases concerning landholding to the legal domain and the uncertain classificatory command the newly created legal codes had over foreign systems of landholding. But most other areas of "civil law" continued to be dealt with effectively in local assemblies, where the purpose of arbitration is not to punish offenders but rather to reestablish communal harmony -- and hierarchy. Landholding had been summarily removed from its previous contextualization within the same communal institutions.

67. Washbrook, "Law, State and Agrarian Society in Colonial India."

68. Here I borrow somewhat vaguely from the contributions of the Frankfurt school (particularly Marcuse, Habermas, and Adorno), which effectively combined a Marxian critique with a Weberian

analysis of capitalist institutions. I am particularly impressed with the analysis of how modern capitalist society rationalizes itself and marginalizes dissent by inclusion rather than by exclusion. Washbrook is not unaware of, but does not stress, this aspect of law. He mentions in passing how the law did absorb certain facets of class conflict, p. 693.

69. I borrow the notion of discourse in this sense from Foucault, and I view discourse in Foucault's terms as an important component of what Gramsci meant when he talked about the cultural hegemony of the state. While both Foucault's nation of discourse and Gramsci's notion of hegemony are too monolithic for most practicing historians to accept as fully persuasive, these theoreticians propose important ways to consider the cultural and political institutions of the state. Nonetheless, as I attempt to demonstrate here, the state orients but does not control all discourse. See Michel Foucault, "What is an Author?" in Language, Counter-Memory, Practice: Selected Essays and Interviews, trans. Donald F. Bouchard and Sherry Simon (Ithaca, N.Y., 1977), pp. 113-38. For a general overview of Foucault's work, see Hubert L. Dreyfus and Paul Rabinow, Michel Fouault: Beyond Structuralism and Hermeneutics (Chicago: University of Chicago Press, 1982). For Gramsci's thought on hegemony, the state, and civil society, see Quinton Hoare and Geoffrey Nowell Smith, eds. and trans., Selections From the Prison Notebooks of Antonio Gramsci (New York: International Publishers, 1971), pp. 206-276.

70. Washbrook, "Law, State and Agrarian Society in Colonial India," p. 665.

71. Ibid., p. 717.

72. Ibid., p. 719.

73. Ibid., p. 713. In equating structural-functional anthropology, nationalist golden age theories (p. 661), and much of the social history informed by American cultural anthropology, Washbrook dismisses the social and cultural aspects of the dynamics of historical change. Such a dismissal, however, satisfies neither a concern with specificities nor an awareness of the problematic of ethnocentrism in our Western social science, whether Marxist or Weberian.