

Land and Law in Colonial India

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1. Introduction

The East India Company's conquest of various territories in India typically brought one issue to the forefront right away: How would land taxes, the principal source of governmental revenue, be collected? But taxation was not a thing unto itself; it was inextricably linked with "ownership" and indeed with the entire structure of land rights. For this reason, among others, the Company also created/adapted legal systems that would adjudicate the disputes that, inevitably, followed in the wake of its land-rights interventions. The legal and land tenure arrangements chosen also affected credit markets: to the extent land ownership is secure and transferable, land can be used as collateral, or seized in lieu of repayment of debts or other contractual obligations. Land, law, and credit in colonial India generated a huge (and ongoing) discussion: debates preceding policy choices; later commentary within the colonial administration; "nationalist" criticisms from the late 19th century onwards; and current research linking present-day economic outcomes to colonial era choices. In this paper we provide an overview of this literature, focusing on the period 1765-1900. In the interest of brevity and coherence we focus two regions, Bengal, which was first conquered (1757-64), and the Bombay Deccan, which was annexed in 1818, though we make references to other regions as well.

From the very beginning, Company rule in India generated an extraordinary amount of documentation. Policy discussions characterized the nature of pre-colonial regimes and land tenure systems, invoked the theories of contemporary economists and philosophers in Europe, and might even use surveys to gather information. Much of the discussion was conducted in terms that would be familiar to contemporary economists: secure property rights and contract enforcement, and, more generally, good governance, would promote investment, trade, and economic growth. The Company would (it was argued) provide this essential support for economic development far better than the despotic and mutually hostile regimes that had preceded it. However, the intellectual sophistication of the discussion notwithstanding, the Company (and later the Crown) continually struggled with the three related problems: (i) A lack of understanding of existing institutional arrangements, (ii) Limited administrative capacity, and (iii) Especially after the "Mutiny" of 1857, concerns with political stability. Decision-making was also complicated by the fact that there were three key players: the administration in India, the Court of Directors in London, and the British government's "Board of Control," whose relative influence varied over time.

Given the complex and evolving interplay of these factors, it is difficult to classify the policy choices made by the colonial administration. However, at the risk of oversimplification, we can identify three broad phases. The first, which is closely identified with the Permanent Settlement in Bengal, was overwhelmingly concerned with one task: tax collection. The second, which we illustrate with the experience of the “mature” Raiyatwari system in the Bombay Deccan and tenant protection in Bengal, reflected the increasing administrative capacity of the colonial state, and its ability to intervene more extensively at lower levels of the agrarian structure. In the third phase, after the rebellion of 1857, political concerns repeatedly came to the fore: the state was willing to abandon cherished notions of political economy and curb market transactions, thereby altering some of the rights granted earlier. The next three sections of the paper sequentially describe these phases. In the final section we take stock, and comment on the relationship between land law and the eventually poor performance of colonial India’s agrarian economy.

2. The Fiscal Imperative

Bengal was the first region in India to come under direct rule of the East India Company, in 1765. After operating as a trading concern, acknowledging the authority of the Nawab of Bengal and the Mughal emperor in Delhi, the East India Company took an important step towards political power by winning the famous Battle of Plassey in 1757. After installing a series of client rulers, the Company took formal authority in 1765, becoming the Diwan of Bengal, thereby acquiring the right to collect land taxes. The Company’s initial intention was to operate with a low profile, and not emphasize its new-found political power. It therefore tried to preserve, to the extent possible, pre-existing institutional forms. But this was problematic: the real locus of power had shifted, and existing arrangements could not operate as before. The Company was therefore increasingly drawn into creating a new administrative infrastructure that reflected its de facto power. The collection of land taxes was the most critical task. But taxation was, at least in the mind of Company administrators, inextricably linked with ownership, so that issue had to be addressed as well. A complementary task was the creation of a judicial system that would, among other things, protect the rights of owners, punish defaulters, etc. The key event in this process, a landmark in Indian history, was the proclamation of the “Permanent Settlement” of 1793.

The Permanent Settlement

The administrative challenge for the East India Company was not trivial. The area to be governed was vast, and its own European staff was miniscule in comparison. Therefore, in all its activities, whether in administration or trade, the Company was dependent on local intermediaries. Intermediaries were also critical because of their knowledge of the local environment. For tax collection natural intermediaries were “zamindars,” who had collected revenues for the Nawabs of Bengal. The zamindars were a diverse group. Some who had enormous estates, military capacity, and judicial and administrative responsibilities might well be called (Bose 1993, p. 70) “feudatory chiefs.” Others operated on a much smaller scale and might fit the more conventional definition of “landlord.”

The zamindars were, however, only the first tier in the agrarian hierarchy. The land on which they collected taxes might well be in the hands of “jotedars,” who had secure occupancy rights to their land, at customary rents (Sinha 1962, p. 18, p. 27). Jotedars could be quite powerful at the village level, and might have tenants of their own (Ray 1979, pp. 6-7). In short, the agrarian hierarchy was complex, with several possible intermediaries between the zamindar and the actual tiller of the soil.

Initially, the Company followed the time-honored practice of weak regimes and resorted to revenue farming, wherein short-term rights to tax-collection were sold to the highest bidder. Economic theory suggests that this can create adverse outcomes of two kinds. First, the revenue farmer will try to extract as much surplus as he can during his lease, ignoring the long run. Second, the revenue farmer is subject to auction theory’s “Winner’s Curse” (overestimating the value of the asset) and will often default. Both these outcomes came to pass in Bengal, with complaints that revenue farmers were coercing peasants. The Company was under severe pressure to improve its administration; its actions were under especially close scrutiny from London because Bengal was hit by a devastating famine in 1770, in which a third of the population may have died.

In this environment Philip Francis, member of the Calcutta Council and critic of revenue farming, proposed that zamindars be given clear private property rights in land. However, his proposal had a feature that may appear odd to present-day economists, and did even to some contemporaries: the land tax owed by the owner should be fixed in perpetuity. This, Francis argued, gave the owner the best incentives to invest in his property, since he would keep all the gains. This proposal was initially rejected, in 1776. In 1786, with the

Company still facing accusations of poor governance, a new Governor-General, Charles Cornwallis, was sent to Calcutta. Cornwallis set about cleaning house, and eventually endorsed a plan similar to that of Francis. In 1789 ten-year agreements were made with zamindars, but in the famous Proclamation of 1793 it was declared that “at the expiration of the term of settlement no alteration will be made in the assessment which they have respectively engaged to pay, but they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever” (Guha, 1963, p. 11). If the zamindar failed to pay his tax, his property would “invariably” be sold.

As mentioned above, the Permanent Settlement was discussed and formulated via appeals to economic theory. Given the structure of incentives in the Permanent Settlement, Cornwallis argued, zamindars would turn into “economical landlords and prudent trustees of the public interest” (Guha, 1963, p. 172-173). We are, however, more persuaded by Robb’s (1997, p. 66) view that the primary appeal of the arrangement was its simplicity; the Permanent Settlement was, he writes, “to an extent just another quasi-feudal response of a weak state....which depended on inherited institutions and was still fearful of the competence and probity of its own direct employees.”

If the property rights of the zamindar were to be secure they had to be protected, even from the state. Under the Permanent Settlement the practice of the “Collector,” (the Company official in charge of land-revenues at the district-level) also having judicial authority in the event of disputes was eliminated. A hierarchical system of courts was set up: “Native Commissioners,” who were (geographically) closest to the villages could hear suits for small sums. Each district had a civil court, called the Diwani Adalat, and apex of the system was the Sadar Diwani Adalat. An important feature of Cornwallis’ reforms was that Indians were excluded from higher levels of the judiciary, on the grounds that they were more corruptible.¹

Cornwallis also took other (successful) steps to reduce corruption in the Company’s bureaucracy, including raising salaries. The “Bengal System,” associated with Cornwallis’

¹ Legal innovations, like those associated with land, were extremely fraught. Pre-colonial legal arrangements varied across time and place, and there were multiple sources of judicial authority (Cohn 1961). But despite all the variation, historians generally agree, they were not impersonal -- over and above the content of the dispute, the identities of the participants mattered. Judicial arenas were more arenas for arbitration, and negotiated settlements, than for the mechanical application of law. In contrast, the system introduced under Cornwallis was rule-bound as reflected, for instance, in the provision that the property of zamindars who defaulted on revenue payments would “invariably” be sold. The courts were heavily used, to the point where British officials came to characterize Indians as “litigious.” As we will see below, at times courts thwarted the intentions of the executive. They also became sites of contestation along class lines.

enormous personal credibility, became the reigning model of Company governance in India. But it was soon challenged.

A Competing Vision: The Raiyatwari System

Because the Company was perennially cash-strapped, and the Permanent Settlement's taxes were fixed in perpetuity, they were set at a very high level (Islam 1979, p. 25). Defaults by zamindars were common in the early years and, facing severe pressure from zamindars, peasants deserted in some regions (Chowdhury-Zilly 1982, chapter 5). Far from becoming progressive capitalist farmers, many zamindars simply rented their lands to others, who in turn sub-let it, creating a chain of intermediaries between the zamindar and the final cultivator, a phenomenon historians have called "sub-infeudation."² The Permanent Settlement was also criticized for leaving tenants unprotected from rent increases and eviction, at the mercy of zamindars.

It did not take long for a competing administrative model to emerge.³ As the Company gained control of various parts of South India, some Company officials resisted the imposition of the zamindari system. The figure most closely associated with the alternative model, "Raiyatwari," is Thomas Munro, originally a military officer, who moved into an administrative position in the 1790's. Munro viewed the land rights and the judicial system associated with the Permanent Settlement as inconsistent with prevailing institutions and norms in India. For Munro ideally the title and the tax assignment would be with the cultivator himself, not with an intermediary like the zamindar. He also objected to the exclusion of Indians from the upper levels of the judiciary, and favored an active role for them. Finally, Munro rejected Cornwallis' separation of the judge and the (revenue) Collector, and advocated a central role for the Collector in district administration. In a broad sense Munro had the same objectives as Cornwallis: tax revenues were still critical. Among other things, the Company was still at war, and short-term financial concerns were paramount. Also, like Cornwallis, he too was concerned with the long-term growth implications of his system. But governance in Cornwallis' system was by an impersonal set of rules which could

² Eventually, sub-infeudation could take on bizarre proportions. A study of Bakarganj district (Raychaudhury 1979, p. 167) mentions that by the early twentieth century there could be as many as twenty intermediaries between cultivator and proprietor and one hundred and sixty two terms were used to describe various forms of tenure and sub-tenure.

³ The description in this paragraph and the next relies on Stein (1989).

potentially transform Indian society. In Munro's vision, Indian institutions would be effective, under the wise and active guidance of the Company's officials.

Munro's views were opposed by the "Bengal School" in Company officialdom. As in the case of the Permanent Settlement, competing arguments relied on economic theory as well as alternative understandings of pre-existing arrangements (Stokes 1959, Stein 1989). After initial setbacks, Munro's ideas gained acceptance in part due to alliances he built during a long interlude in England. He was able to eventually implement Raiyatwari in Madras, where he became governor in 1820. The system was also eventually adopted in Bombay, discussed below.

The Raiyatwari-Zamindari distinction is a central organizing idea in Indian agrarian history. However, the sheer diversity of pre-existing arrangements, and the political need to compromise with existing landed interests meant that, in practice, both systems could deviate from norm. In particular, in the raiyatwari areas the government's agreement could be with a member of the village elite holding a substantial amount of land (cultivated by tenants) rather than with a cultivator. A category of large-scale landholding known as *inam* (reward or gift), which was charged low tax rates, was also recognized by the Company administration. Therefore, intermediaries between the cultivator and the state continued to be important (Mukherjee and Frykenberg 1969). The phenomenon of land transfer, which we will discuss below, also meant that landownership could be very unequal (and tenancy important) even in the raiyatwari areas.⁴ Similarly, though Munro had been critical of judicial arrangements in Bengal, and the judiciary in Madras and Bombay gave a larger role to Indians, its suitability to Indian conditions also came to be questioned, as discussed in section IV.

3. Consolidation

The Company's bureaucracy was slowly professionalized after Cornwallis' reforms. Its European officials were better-paid, trained, and selected (Misra 1977). Over the 19th century procedures for supervision of lower-tier employees also slowly improved (Robb 1997). As Company rule was consolidated, its greater administrative capacity was reflected in both

⁴ This is not to say the Raiyatwari-Zamindari distinction is meaningless. Recent statistical analyses show that landlord regions had worse economic outcomes than non-landlord regions in the colonial period (Kapur and Kim 2006) and even in independent India (Banerjee and Iyer 2005). "Landlord" and "non-landlord" are not synonymous with Raiyatwari and Zamindari because there was a third system (Mahalwari) in Punjab and the North-West Provinces where the village body was jointly responsible for revenues. Depending on the details, Banerjee and Iyer call Mahalwari arrangements "landlord" or "non-landlord" (Table 1, p. 1193).

zamindari and raiyatwari regions by the willingness to legislate and intervene at lower tiers of the agrarian structure.

Zamindar-Tenant Relations in Bengal

The Permanent Settlement had, to put it mildly, left a great deal of unfinished business. There were three major issues to be settled: (i) What level of coercion could the landlord use on tenants?, (ii) How much freedom did he have to raise rents?, and (iii) Under what conditions could he evict a tenant?

The Proclamation of 1793 paid lip-service to tenant security and protection from arbitrary rent increases. The Company did not have the administrative capacity to intervene at that level of detail, and in any case tax collection was the priority. But zamindars could pay taxes only if they extract rents from tenants. Corporal punishment and jailing of defaulting tenants was common in pre-colonial Bengal (McLane, 1977, p. 24). In the regulations of 1793 the Company took away these rights (Islam, 1979, p. 15). But zamindars complained that while the courts were strict with them, they were being disempowered vis-à-vis their tenants, and were struggling to collect rents. In response, in 1795, and especially the notorious Regulation VII of 1799, the pendulum swung towards the zamindars: the key concession was the freedom to use physical coercion on their own account, without the permission of a court. Further complaints, this time from the tenants, led them to receive, in Regulation V of 1812, some protection from asset seizure by the zamindar, but other provisions had a loophole that facilitated tenant eviction.⁵ Thus, up to the early 19th century the colonial state primarily regulated zamindar-tenant relations to attain its fiscal objectives.

Meanwhile, the problem of sub-infeudation was growing. To deal with their problems in revenue collection zamindars sometimes used a middleman, who, in turn, was given a perpetual lease and a fixed rent, thereby “subcontracting a Permanent Settlement” (Bose, 1993, p.71). In 1819 legal status was given to these middlemen, known as Patnidars. Further sub-letting to Darpatnidars also occurred.

As population and cultivated area grew, it became easier for the administration to collect the fixed taxes assigned in 1793. Zamindars made liberal use of their coercive powers, and tenant protection, which had been discussed all along, eventually came to the forefront due to

⁵ See Kranton-Swamy (2008) for a more detailed account of this back-and-forth.

fears of agrarian unrest, and the evident failure of the Permanent Settlement to promote agricultural growth. This led to the passing of the Bengal Rent Act of 1859.

In the 1859 Act criteria were laid down for the identification of "occupancy tenants" who would, in principle, have security of tenure, and protection from arbitrary rent increases. Occupancy rights, which were permanent and inheritable, were given when the tenant had occupied the same piece of land for twelve years. Rent increases had to be justified on the grounds that the prevailing rate was lower than that paid by similar properties close by, or because the value of the produce had increased for reasons other than the exertions of the tenant. The occupancy tenant himself could sub-let the land, and the Act did not protect his tenant (Sen, 1982 p. 11-12). The Act also took away the zamindar's right to "compell the attendance of their tenant," the 1799 clause that had permitted coercion by the zamindar.

The Rent Act received an immediate setback in a case filed in the High Court for enhancement of rent. In the infamous *James Hills versus Iswar Ghose*, Sir Barnes Peacock ruled that a competitive rent could be charged: the rent could be the remainder after allowing for costs of cultivation and a normal return to capital. The enhancement allowed was even larger than the amount requested (Sen 1982, p. 14). This judgment led to considerable alarm, and it was reversed in the Great Rent Case of 1865, where the "Gross Produce Rule" was applied: the rental increase should not change the ratio of rent/gross produce, compared to a benchmark.

The 1859 Act set the stage for conflict between occupancy tenant and zamindar. One easy way for the zamindar to defeat its purpose was to switch the tenant from plot to plot (Rothermund, 1978, p. 99) so he could not show occupation for twelve years and thereby acquire occupancy rights. Zamindars were also charging illegal cesses (*abwabs*), and manipulating measurement standards. Things came to a head in a revolt in the district of Pabna in Central Bengal, in 1873 (Sengupta, 1970). A well-organized Agrarian League was formed, and rents were withheld. Zamindars were also challenged in court. The League demanded secure leases at reasonable rates. The leadership of the movement was economically well-off, and, as similar movements spread across Bengal, they received support from urban professionals who had landed interests. The occupancy tenants' interests were represented by the Indian Association which challenged the zamindars' British Indian Association (Sengupta, 1971, 1974). Elements of the administration were also sympathetic, and the Rent Law Commission, which was set up to consider reforms, submitted a pro-tenant report in 1880. Though the Commission's recommendations were scaled back, the Bengal

Tenancy Act of 1885 was eventually passed. The Act of 1885 limited rental increases to 12.5%, with no further increases allowed for 15 years (Rothermund, 1982, p. 104). But perhaps the most important clause was one that gave a tenant an occupancy right if he had held land anywhere in the village for twelve years. This was done to counter the practice of tenant-switching mentioned above (Finucane and Rampini, 1886, p. 44).

Contemporary critics of the Bengal Tenancy Act (discussed by Rothermund, 1978, p. 105) pointed out that the occupancy tenant did not have to be an actual cultivator; he could have sub-let the land to a share-cropper, for instance, who received little protection from the law. Defenders of the bill argued that it had taken one useful step, and the next would have to wait. It was difficult to make progress on this front in the early twentieth century. As Indians began to play a role in provincial governance, zamindars continued to be influential, and occupancy tenants became more powerful, but the actual cultivator did not have much support (Rothermund 1978, p. 110).^{6 7} Thus, colonial era tenancy legislation in Bengal strengthened the position of substantial landholders in the village vis-à-vis the zamindar, but still left the lowest tier of the agrarian hierarchy unprotected.

Raiyatwari in the Bombay Deccan

After a series of conflicts with the major western Indian power, the Marathas, the British finally took control of the Bombay Deccan in 1818. Again, a key issue was the collection of land taxes. In the Marathas' system, a powerful official, the "mamlatdar" was responsible for collection of land taxes, and also had judicial and police functions (Kumar, 1968, pp. 14-15). The mamlatdar negotiated the land tax with the head of the village. The norm was for the tax to be assigned to the village as a whole, with its allocation across families to be decided internally; efforts to increase revenue by allocating taxes to individual peasants, which Madhav Rao Peshwa tried to do after 1760, had been successfully resisted. The system was

⁶ Chatterjee (1984, p. 82) provides a detailed account of the conflicts within the legislature regarding a tenancy bill debated in 1928. *The Statesman*, a prominent newspaper, correctly anticipated that "the real representatives of those who cultivate the land are very few in the Council and it will be difficult for them to gain much." The 1928 amendment to the Tenancy Act allowed occupancy tenants to sell their right, but the zamindars had to be given the right of pre-emption and a fee of 20%. These concessions to the landlord were withdrawn in 1937.

⁷ In a controversial paper Amit Bhaduri (1973) later linked the long-term economic development of eastern India to the share-cropping arrangement. Bhaduri argued that landowners leased land *and* loaned money to sharecroppers, who were caught in a "debt trap." An innovation that increased output would make the sharecropper richer and less dependent on loans, possibly making the landlord worse off, thus undermining his incentive to invest. Bhaduri's critics argued, among other things, that richer tenants might borrow more rather than less. Even sympathetic readers like Basu (1997), while appreciating his characterization of the debt-trap, were skeptical of this explanation for long-term stagnation.

in some disarray when the Company took over; the last Maratha ruler, Baji Rao II, had resorted to revenue farming, which had led to very high rates of taxation.

Discussion about policy under Company rule did not, of course, begin with a blank slate. Mountstuart Elphinstone, the first governor of Bombay, was a close associate of Munro, influenced by his ideas, and favored Raiyatwari. As in Bengal, the first few decades in the Bombay Deccan involved considerable experimentation. Initially, land taxes were pitched at a high level. Some of the discussion, again like the Permanent Settlement, was in terms of economic theory, this time the Ricardian Theory of Rent. Rent (it was argued) was paid only on infra-marginal land, and could be taken as tax without adversely affecting incentives. Some experiments by a revenue official named Richard Pringle, who sought to fix the land tax using Ricardian principles, have come to be notorious. Lacking information, and unable to manage local intermediaries, taxes were allocated disproportionately, and, facing intolerable levels of taxation, peasants deserted their properties in some districts (Kumar 1968, Hatekar 1996). By mid-century, though Ricardian language was not abandoned, a more pragmatic approach was adopted, and taxes were set at a more moderate level.

The raiyatwari arrangement by its very nature was more administration-intensive than zamindari, because an agreement had to be made with each cultivator. Munro was aware of this problem, and in 1817 was willing to concede that the government's survey would simply assign a tax to each cultivator, considering all his fields together (Stein, 1989, p.206). But by the middle of the 19th century the state was willing to take on more. In Bombay the famous "Joint Report" issued by H.E. Goldsmid, G. Wingate, and D. Davidson in 1847, which laid down the basic methodology for revenue surveys, was much more ambitious. The unit to be taxed was a single "field," which was defined as the amount of land that could be cultivated by a pair of bullocks (Government of Bombay 1882, p. 5). Three types of soil were identified, but their value depended on the depth, and, overall, there were nine rates of taxation. The classifier also had to record, when present, seven potential "deteriorating influences," including such features as "want of cohesion among the constituent particles of the soil" (pp. 15-16). The colonial state was now no distant entity; its reach extended to the minutiae of land quality.

Thus, by the middle of the 19th century we see evidence of a more interventionist state. These interventions were, however, consistent with the original conceptions of the two land tenure systems. Indeed, tenant protection in Bengal had been discussed before, and a bill to

this effect had been formulated (though not accepted) as early as 1827. The growing capacity of the state was, however, soon to be put to a different use.

4. The Conservative Turn

Over the nineteenth century Indian agriculture was increasingly commercialized. Crops like cotton, indigo, and opium were grown for sale in distant markets, and the area under cultivation increased. This process was supported by the expansion of credit markets: changes in the legal system gave even non-resident lenders the confidence that loans could be recovered, and the clarification of land rights meant that land could be seized in the event of default, though this could still be a costly process.

Commercialization had the potential to raise incomes: wages would rise in a labor-abundant economy selling a labor-intensive product (McAlpin 1980). But the downside was that commodity markets were volatile, and peasants, especially those in debt, could suffer severely in downturns. Some Indian historians have also argued that peasants were forced to cultivate commercial crops at unremunerative rates as in the case (for instance) of indigo.

It is also likely that the legal arrangements introduced under colonial rule were relatively inaccessible to poorer sections of agrarian society. For instance, while a dispute between peasant and moneylender might have previously involved oral arguments in the village council (Panchayat), the moneylender might now be able to invoke documentary evidence in a district court. The greater formalism and cost associated with dispute resolution would likely leave the peasant at a disadvantage.

In this environment, in the second half of the nineteenth century, a controversy emerged regarding the “problem” of land transfer from traditional landowners to non-cultivating traders/moneylenders. Fears that this would cause political unrest were heightened by the rebellion of 1857. There was, as always, long and vigorous debate within the administration on the merits of alternative ways of addressing this problem. In some ways, however, the doubts about colonial policy expressed in this instance were more fundamental. In the controversy around the Permanent Settlement (say) the debate had centered on who should be given the ownership right, and whether the tax should be fixed in perpetuity. In the discussion of land transfer the question was more basic: Was the creation of alienable ownership rights in land, whose transfer was supported by a system of civil courts, a good idea? Eventually, the official response took two forms: intervention in the legal system, and direct restrictions on land transfer. We discuss an example of each below.

Land Transfer and Courts

As we have mentioned earlier, in the Bombay Deccan, after a period of high land taxation, there was some moderation mid-century onwards, and the agrarian economy expanded: population, cultivated area, and commercial agriculture grew. This growth was supported by the expansion of credit, with the arrival of immigrant traders/lenders (Marwaris and Gujaratis) from further north.

Present-day historiography is quite clear that land transfer as such was not a colonial-era innovation (Guha, 1985, p. 9). But there is little doubt that the use of land as collateral and its transfer to fulfill debt obligations were facilitated by institutional changes in the colonial period. One reason for this, as mentioned above, was the systematic creation of a documented individual property right in land. But critics also aimed their fire at the legal system, arguing that it had undermined hitherto harmonious relations between moneylender and peasant.

As Kumar (1968), Coats (1823), and Steele (1868) describe it, in the pre-colonial Deccan, a lender who was owed money by a peasant would have to take his case to the village panchayat, a group of landed village elders. The panchayat's decisions regarding the case would likely not take the form of a simple enforcement of the agreement because its sympathies would be aligned more with the borrower who was from their own community than a trader/lender who might even be an immigrant to the region. Also, the panchayat itself would not necessarily enforce its decision. The lender was authorized to use private enforcement methods to collect his money.⁸ This likely limited the geographic area in which the lender operated. In the colonial period the lender now had another recourse: he could take his case to an extra-village authority, a civil court. It is plausible that, compared to the panchayat, the court strengthened the hand of the lender. One can see the ex-ante advantage of this: capital would move more freely, presumably to more productive uses, once loan recovery was simplified. Ex-post, of course, outcomes might be worse for the defaulting borrower than it would under panchayat/private enforcement. Lenders used these courts

⁸ One method, used in political protest even today, was known as *dharna*, wherein a servant of the lender would squat outside the borrower's home, publicly shaming him. *Dharna* took various forms, but reports from the Deccan suggest that borrower paid the costs of feeding his tormentor. Other forms of physical punishment also seem to have been tolerated.

extensively, which appear to have operated fairly harshly against debtors, even passing ex-parte decrees.

From as early as 1852, British officials worried that the peasants were not sophisticated enough to handle their new credit opportunities. They were borrowing too much, and were being taken advantage of by unscrupulous lenders.⁹ Still, when the Civil War in the 1860's stopped supply of cotton from the United States, the region experienced a boom in cotton production, and substantial increase in borrowing. When the boom ended, indebted peasants found lenders unwilling to extend further credit. Kranton and Swamy (1999) suggest that increased competition in the credit market was partly responsible for this – lenders were no longer willing to rescue borrowers with whom their relationship was likely short-term

In 1875 there was widespread unrest in two districts, Poona and Ahmednagar, where peasants attacked moneylenders and destroyed the bonds that were proof of their indebtedness. Historians differ in their assessment of the scale of the Deccan Riots and the actual extent of land transfer in the Bombay Deccan in this period: while Kumar (1965, 1968) suggests that the Deccan Riots were a symptom of substantial loss of land by the peasantry, Charlesworth (1972, 1985) and Catanach (1970) are much more skeptical.¹⁰ But British officialdom took the incident very seriously indeed, and instituted the Deccan Riots Commission (DRC) which produced its famous report of 1876, widely used by historians. The DRC accepted the view put forth by many officials that existing legal arrangements worked to the detriment of the peasantry. Many of its recommendations were adopted in the Deccan Agriculturists' Relief Act of 1879 (DARA).

DARA introduced checks and balances into the operation of the civil courts, when it came to peasants' debts, and, especially, transfer of land for debt repayment. Judges could examine the entire history of transactions, reduce interest rates, and allow repayment in installments (Catanach, 1970 p. 24). Land transfers would be rarely permitted and land could no longer be seized for debt repayment unless it had been explicitly pledged as collateral.

⁹ See comments by George Wingate, one of the architects of Bombay's land revenue system, quoted by the Deccan Riots Commission (1876, p. 31, p. 45). Three decades later a Punjab official, Septimus Thorburn (1885, p. 57), provided an extreme statement of this view: "In the eyes of the law the two were equal. In sober truth, the peasant was in money-matters a crass and hardly-intelligible simpleton; the moneylender, a sharp and unscrupulous business-man, whose sole study was self-interest."

¹⁰ Indeed Charlesworth's earlier (1972) and more provocative piece entitled the "The Myth of the Deccan Riots of 1875" referred (p. 416) to these events as a "minor grain riots."

DARA also resurrected a credit rule known as *Damdumat*, which can be traced back to early texts in Hindu law, and seems to have been implemented in the pre-colonial Deccan. *Damdumat*, which bears a resemblance to credit rules from other legal traditions, such as *Alterum Tantum* in Roman Law, is a ceiling on interest accumulation: a lender can never sue a borrower for more than twice the outstanding principal, irrespective of how much time has elapsed, and how much interest has accumulated. Oak and Swamy (2007) suggest the law's likely effect was to encourage lenders to practice due diligence and lend only to those who were likely to be able to pay in a timely fashion. *Damdumat* is still on the law books in this region (Gandhi 2003).

Direct Restrictions on Land Transfer

A similar controversy arose in the Punjab, with the additional twist that, in western Punjab, moneylenders tended to be of Hindu trading castes and the peasants were Muslim.¹¹ A particularly alarmist take on the problem of land alienation was presented by Septimus Thorburn (1885, p. 1; see footnote 9), a British official whose 1885 book entitled *Mussulmans and Moneylenders* in the Punjab laid out its central thesis in its first two lines:

The Punjab is an agricultural province, and land of peasant proprietors, a large and annually increasing proportion of whom are sinking into the position of serfs to the moneylenders. The gradual transfer of ownership of the soil from its natural lords – the cultivators – to astute but uninfluential Hindu traders and bankers, is directly due to a system of law and administration created by ourselves, which, unless remedied in time, must eventually imperil the stability of our hold on the country.

Another consideration was that Punjab was an important recruitment area for the army, especially since Sikh soldiers had remained loyal during the Mutiny of 1857.

Thorburn's proposals (and his career) went through various vicissitudes but the administration eventually came around to the view that land transfer was a potential political problem. The Punjab Land Alienation Act was passed in 1900, which restricted the transfer of land from "agricultural" to "non-agricultural" tribes. To implement this legislation a list of agricultural tribes was drawn up. Islam (1995) has argued that the Act did not quite achieve its objectives, partly because members of non-agricultural tribes engaged in *benami*

¹¹ For a similar nexus of economic and religious tensions in early 20th century Bengal, see Chatterjee (1984, Ch. 11).

transactions wherein they acquired control of the land via a nominal transfer to a member of an agricultural tribe. Still, it appears to have had an impact: (Bhattacharya 1985) reports that, over time, the wealthier sections of the peasantry displaced the professional moneylender in the rural credit market. For a politically conservative bill that aimed at political stability, the Punjab Land Alienation Act had the ironic effect of arousing the anger of urban Hindu trading castes, bringing them closer to the nationalist movement (Barrier 1964).

Thus, by 1900, colonial agrarian policy had come a long way from its beginnings in the Permanent Settlement. Cornwallis had expected land to change hands, and he wanted urban capital to purchase and develop agricultural land. The Punjab Land Alienation Act aimed to *exclude* urban capital. At the height of its power, the colonial state was more fearful of market forces than at its insecure beginning.

5. Conclusion

When colonial rule ended in 1947, agrarian India was still desperately poor. Given the colonial regime's long pre-occupation with agrarian issues, and the depth and sophistication of the policy discussion, this was surely an unexpected outcome. What had gone wrong? A full discussion of the roots of colonial-era poverty is well beyond the scope of this paper, but we conclude with some thoughts on the impact of property law on agricultural development.¹²

As we have seen, the colonial state's first bet, on large-scale capitalist farming, did not pan out: actual cultivation was on a small scale, predominantly with family labor, by tenants. Historians have differed on the reason for this. Some have argued that the British expectation that the zamindar would be an entrepreneurial "improving landlord" was fundamentally misplaced. For the zamindar land was an aspect of a broader political project, in which legitimacy was maintained by, among other things, symbolic allegiance to *dharma*, and distribution of largesse (Price, 1983). In a broadly similar vein Neale (1969) argues that the British failed to see that "Land is to Rule" and suggests that "Homo politicus was miscast as homo economicus."¹³ Others (Washbrook, 1981 and Chatterjee, 1984) see more potential for capitalist agriculture, but believe the colonial state's defensive moves such as tenant-

¹² Banerjee and Iyer (2005) and Kapur and Kim (2006) provide very useful discussions, focusing on the contrast between landlord and non-landlord regions (see note 4).

¹³ Price (1983) provides a fascinating description of a later 19th century zamindar in the Madras Presidency, whose norms and behavior were those of a benevolent aristocrat, rather than an efficient businessman. Among these norms was the notion that a *raja* (ruler) did not need to know mathematics!

protection undermined the possibility of capitalist development by weakening the property rights of the owner.

To the present-day economist, like the author of this paper, whose diet has been rich in the economics of asymmetric information, the appeal of tenant farming is no surprise: absent economies of scale, labor-monitoring concerns make arrangements like share-cropping attractive (Stiglitz, 1974). A second route to agricultural development then could have been to take tenancy legislation further and protect the actual cultivator, often a share-cropper, leasing land from an occupancy tenant in the zamindari regions, or from “raiyatwari landlords.”¹⁴ But the colonial state was much too weak and politically fearful to go this route. By the end of colonial rule intermediate landed interests, such as the occupancy tenants, had gained power and wealth in the countryside and in legislatures, where Indian political opinion was now represented. The colonial regime had little inclination or capacity to take them on, for the cause of the cultivator.

We should note though, in fairness, that effective land reform has been quite difficult even in independent India.¹⁵ Indeed, Besley and Burgess’ (2000) study of the huge corpus of land reforms in independent India finds a small impact on poverty, and tenant protection, which has the clearest benefit, actually *reduced* growth. The problem of land transfer also has echoes in the present day. In 2003 the state of Uttaranchal (now Uttarakhand) passed legislation aimed at preventing non-residents of the state from acquiring agricultural land. Again, capital is being kept out of agriculture. More generally, agriculture is the weak link in India’s recent growth spurt, and Maoist movements have emerged in a swath of the country’s eastern districts. In hindsight, the limitations of a comparatively weak colonial state should, perhaps, be no surprise.

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¹⁴ This expression is due to Daniel Thorner.

¹⁵ There are honorable exceptions like Operation Barga in West Bengal, which protected sharecroppers (Banerjee et al. 2002).

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