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ANCIENT RIGHTS  
AND FUTURE COMFORT

Bihar, the Bengal Tenancy Act of 1885,  
and British Rule in India

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## Chapter Five

### *Custom and the law*

We may conclude from chapter four, unsurprisingly, that the 1885 Act originated in colonial perceptions. Noteworthy in the debate was the paucity of direct justification for the favourable prognosis—the future comfort—which was promised as a result of the reforms. Instead, alongside the cases made for historical legitimacy and present poverty and oppression, an adverse trajectory was presented: the fate of tenants since the permanent settlement. This appeared as a professedly factual account, but contained an implied counterfactual (what would have happened if tenant rights had been preserved by law), which reduced the need to verify either the past ruin and its causes, or the future promise and its means. At issue, instead, was the subject of this chapter, the role of law and custom—as explanations or as remedies for present conditions, and in relation to a goal of improvement. By considering these questions, which appeared in several guises, this chapter will trace the impulse to *legislate*, as the outcome of colonial perceptions.

The reality of past or future conditions did not matter deeply to the tenancy debate; what was vital was that tenants were perceived to be poor and oppressed, and their fate linked to legal rights and structures. Though (as discussed in chapter two) it was unlikely that conditions were changed solely or directly by government policy, there were indications that the tenants' position was worsening. These were seized upon by the reformers, who concentrated on the damage to subordinate rights over the nineteenth century. An empirical gap was left for the landlords to allege that the material prosperity of the peasantry of Bengal was increasing and that zamindars treated them well. Characteristically the method was again to present the 'evidence' of official reports —of price rises in rice ahead of rent increases in Presidency Division (1876), of improvements in houses and consumption in Dhaka and Patna divisions (1877 and 1882), on the liberality and public spirit of zamindars (in the famine of 1873-4), and the growing knowledge of their rights amongst raiyats (1878). Ashutosh Mookerjea quoted the *Calcutta Review* of 1853 on the favourable condition of the Bengal raiyat in comparison with the Scottish and Irish peasantry, and referred to the evidence of expansion of cultivation and then of population, the second following from the first (in accordance with Thorold Rogers'

*Political Economy*) and thus not forcing people on to inferior land.<sup>1</sup>

But the better of the argument was had by those who stressed that the law was a dead letter (Bihar, 1870s), that raiyats had widespread debt (Nadia, 1876) and that the majority of landlords were grasping and oppressive (Tirhut, 1873). It was perhaps significant that in Dhaka the condition of 'raiya'ts' was 'excellent' in 1873/4 but that they paid 'low wages'.<sup>2</sup> About the same time, C.H.T. Crosthwaite was writing of Awadh that the cultivators 'as a body [had] suffered from our Government more poverty and oppression than fell to their lot under the Nawabi'. The British had 'changed or destroyed the conditions which protected them, without supplying any other safeguards in their place'; this was not 'a mere question of the just treatment of one class by another', he added: 'It concerns the welfare of the Empire.'<sup>3</sup> For Bengal the reformers also asserted that tenants had been in a more advantageous position in the eighteenth-century. A story of the decline of the tenantry derived from or shadowed the narrative of raiya'ts' rights.

Whether or not the decline was new depended on the situation before 1793. What was the administrative or socio-economic mechanism whereby the 'rights' of the raiya'ts would have been protected? What capacity had the laws of the East India Company to create changes in practice? Instead of considering such questions, Field argued that the lack of evidence of enhancement in locally-established rent-rates, by contract, showed that enhancement was illegal in the eighteenth century. His was a circular argument derived from the definition of *abwabs*; it should be set against the certainty that actual demands did increase, and that measures of coercion were taken to keep cultivators on the land. On the other hand, economic strategies were sometimes used to attract tenants, especially short-term

<sup>1</sup> A. Mookerjea, *The Annals of British Land-Revenue Administration in Bengal from 1698 to 1793* (Calcutta, 1883). The reference was to J.E.T. Rogers, *A Manual of Political Economy for Schools and Colleges* (Oxford 1868). Rogers, formerly and later professor of political economy at Oxford, was at this time Radical MP for Southwark, notable for his editions of Bright and Cobden, and for works on agricultural prices and on wages.

<sup>2</sup> Tarini Das Bannerji, *The Zemindar and the Ryot in Bengal* (Calcutta, 1883).

<sup>3</sup> Crosthwaite note, 15 June 1882, Add.Mss.43584. Interestingly for the discussions elsewhere in this book, Crosthwaite argued that the near-starvation of large numbers of tenants-at-will was 'a matter of grave *national* importance' (emphasis added), and that the answer was not direct state intervention but laws to ensure rights so that people could protect themselves.

favourable rent-rates and even grants or loans for productive purposes. Some of these and many other practices seem to have persisted through the later nineteenth century—including ‘proper’ shares of the harvest for landlords and village officers and servants, and differences in rent-rates for different castes. It is interesting that, even well into the twentieth century, land tenanted by ‘industrious’ castes was sold at a premium, even though generally, by then, population pressure had shifted the advantage to the landlords. The result was multiple not standard rent-rates, and no guarantee that rents would be stable.

Though, over time, there were of course real changes in agrarian conditions, there is an element of farce in trying to decipher them from descriptions by eighteenth-century East India Company servants filtered through the partisanship of late nineteenth-century polemicists. But perhaps we may assume that parts of the terminology and hence of the concepts of British agrarian analysis, for the 1790s and beyond, were derived from Indian practice. There must have been some indigenous notions of appropriate rates of rent and revenue, and of inappropriate demands. There were possibly even fixed principles of rent-rates, for example entitlements to a proportion of the product, say one-sixth for the landlord as in the code of Manu, though such rates were probably always controversial, or if not always, then by the later nineteenth century. In Dhaka district, landlords contested the idea that they should take only one-fifth, and inquiries concluded that in practice they were extracting anything from one fortieth to one half.<sup>4</sup> Similar disputes continued well into the twentieth century. Conversely, the exceptional persistence of known rates, or indeed rights and status, *but not necessarily of actual payments*, or practices, generally bedeviled assessments of rents, wages and social conditions in India.

Given a variety of conditions, the existence of ideas of proper or prevailing rates need never have implied that actual payments conformed over whole districts; no doubt, in practice *abwabs* greatly enlarged the amounts of rent actually paid even before 1793. Yet it was Field’s contention that customary rates had *become* shadowy and that they declined in importance during the nineteenth century. He might have made (though, like the *Zemindary Settlement*, he did not) the point

<sup>4</sup> Field’s *Digest*, pp.245-50, discusses this in the context of suggestions that rents ought to be related by law to gross produce, as proposed by Ricketts in 1859. This plan was also ruled out, in his view, by the variety of crops, and by the variety of the rates (influenced, Field thought, by the number of rent-receiving intermediaries). See chapters three and four for the full references for such sources.

suggested by Nuffer Chandra Bhatta, a sub-judge of the 24-Parganas, that the very heavy revenue assessment (one of the motives for giving ownership to the zamindars in 1793) had forced rent increases which had 'obliterated' the pargana rate before 1812, in favour of competition and contract rents.<sup>5</sup> Field did note that, as early as 1812, Colebrooke was calling for written declarations and records of the rates at which leases might be renewed, and suggesting (as provided in Regulation I of that year) that the rent-rates on new leases, replacing those abrogated at a revenue sale, should relate to what was paid on similar or adjacent land (or to previous rents paid on the land in question). Field took the view that this alternative was the origin of the 'prevailing rate' which recurred, much refined, in the Act of 1859 (whereupon it vanished for impracticality and disuse). The need for it in 1812 implied that it was then already difficult, at least in some cases, to identify a pargana rate and that rents were under upward pressure.

It seemed to the reformers that, for the majority of tenant landholders, obstacles to rent-enhancement existed before 1793 in so far as extra-legal conditions and notions of proper rates restricted the demand for *abwabs*, and that they had been eroded since 1793 by legal changes and court decisions. This was the basis of the usual assumption, mentioned earlier, that colonial laws caused rents to rise. The Regulations probably *assisted* in the perpetuation of some privileges which had existed in the eighteenth century, and which were formally recognised; but in all other cases the law was gradually tending to encourage the enhancement of rents (and eviction). In 1822 (Regulation XI) rights of occupancy were protected, but the courts took this to mean rights established prior to 1793; in 1841 (Act VII) enhancement and hence 'competition' rents were generally permitted in all cases, except for 'fixed-rates' raiyats and those where 'fair rents...for specified areas' had been prescribed in written leases. Field concluded from the court records that all, except those with agreements dating from before 1793, had become effectively tenants-at-will, as indeed the Court of Directors had claimed in a despatch of 15 January 1819. The process was exaggerated when Bengal Act VIII of 1869 transferred rent suits from the revenue to the civil courts (from Collectors to judges).

The assumption was that there were norms and trends influenced by the state. At least some of the differentiation visible in nineteenth-century Bengal, whatever its origin, had to be attributed to the settlement made by the British—the amount of land revenue payable, and the

<sup>5</sup> N.C. Bhatta, *The Principle of the Bengal Tenancy Bill Legally Examined* (Calcutta, 1883).

person or body made liable to pay it. Similarly one argument for protecting the tenants was that the outpouring of legislation and the expansion of the judicial system after 1859 in itself forced the regulation of agrarian relations into the courts, and that therefore the legal system must be adapted to meet needs which formerly would have been met by extra-judicial means. Field made this argument about the legal enhancement of rents, which he held had effectively been prevented by the inadequacies of the existing law. Referring to the occupancy right, he concluded also that it had had no rapid impact both because the raiyats knew little of it, and because the landlord anyway probably did not have the right to eject a tenant who paid his rent. Others argued that the tenants were left at the mercy of the landlords, not just from illegal oppression, but because of the excessive discretion which the law allowed. An analogous point was that the collapse of village-level administration had removed one line of defence for tenant rights.<sup>6</sup> A pragmatic approach was ranged against the 'freedom of contract' touted by supporters of the zamindars. Whereas one side of the case argued that the courts had never protected the long-standing customary rights of the tenants (that is, supposedly, to equitable rents and security of tenure), this other faction argued that the Rent Bill of 1883 would 'deprive a large class of people of the protection they now receive'—that is, the judicial enforcement of tenancy 'agreements'.<sup>7</sup> At the least there was considerable ambiguity about the legal position.

Another crucial question about land-rights was raised by Hunter. He considered that there were different categories of raiyat, with traditionally different privileges and rates of rent. He did not ask if a resident raiyat in practice could exercise independent rights against a proprietary raja, or even a Mughal jagirdar, any more than against a British-style landlord. But he did introduce the idea of economic and demographic influences upon agrarian relations. He believed the famine of 1769-70 reduced the advantages enjoyed by resident raiyats because of terms offered to attract new cultivators; a parallel point might be made about any incentive to extensions of cultivation through

<sup>6</sup> In addition to discussion elsewhere in this book, see, for example, E. Stirling, Collector of Aligarh, 8 November 1831, claiming that in Akbar's system the kanungo was 'the protector of the husbandmen', and that amils were still informed about district conditions in the 1830s. The effective abolition of such officers by the 1830s, especially in Bengal, obviously reduced any such protection; E.C. Buck note, 30 May 1882, Add.Mss.43584.

<sup>7</sup> J. Dacosta, 'Report of a meeting on 29 December 1883', in Dacosta, *Remarks and Extracts from Official Reports on the Bengal Tenancy Bill* (London, 1884).

revenue increases or commercial expansion. Shore too was reported to have thought that *khudkashta* raiyats did pay at known rates, so much per *bigha*, and on unlimited 'leases'; his authority was also deployed by zamindari supporters to suggest that there was, at that time, 'no uniformity whatever...in the demands upon the ryots', the conclusion being that the diversity was due to decisions by zamindars, and that any permanence or inheritance of tenancies was attributable to the shortage of raiyats at a time of low population. Moreover, as will be discussed later, the failure of the *patta-kabuliyat* system was attributed to a general unwillingness of tenants as well as landlords to have the areas and rent-rates of their holdings measured and recorded. This implied that real rates varied according to concealment as well as power and status, or other conditions, and that both sides found advantages in flexible and ambiguous arrangements. In a sense we have to assume as much for the eighteenth century, on the grounds that, given what is known of conditions in the late nineteenth century, to think otherwise would be to accept the paradox that a once centralised and standardised system decayed as it came under an ever more strongly generalising influence. It then follows generally, as Hunter and Baden-Powell explained, that agrarian relations varied according to political, economic and demographic conditions. For example, the Sale Law of 1841 permitted purchasers of estates to eject tenants even though they had paid their rents (the first time, in Field's view that they had had this weapon), but very few of them made use of the provision, because 'the competition used to be between zemindars for ryots, not between ryots for land': only when there were more raiyats than available land would it be a useful device.<sup>8</sup> A further (or alternative) argument of those who advocated a new tenancy law was thus that economic conditions were altering the balance of power in the countryside. Holderness believed the 1859 Act to be providing 'a very powerful engine of enhancement in the hands of the landlords' just at the moment when canals, railways and higher prices made them anxious to make use of it.<sup>9</sup> He saw that pressure for a broader, remedial state intervention derived in part from the pressure and increasing speed of change.

One effect of these extra-legal forces, and more important than them in shaping the reform, was that they brought a questioning of the role to be attributed to custom to the heart of the debate about economic prospects and historical rights. Custom sometimes seemed decisive. Secretary of State Hartington ruled out extending occupancy rights to

<sup>8</sup> Field, *Digest*, p.228.

<sup>9</sup> T.W. H[olderness] note, 21 July 1884, Add.Mss.43584.

all raiyati lands, on the ground that to do so would violate the ‘deeply rooted’ distinction between *khudkashta* and *pahikashta* status.<sup>10</sup> But, though custom became a more prominent issue in official British thinking by the later nineteenth century, this fact is ironic. Aspects of custom, especially the supposed autonomy and collectivity of the ‘village community’, were being endorsed by a government which proposed to interfere as never before and which espoused commercial agriculture and individual rights before law. This very counterposition, of ancient and therefore appropriate indigenous institutions, against disruptive, modernising, *colonial* innovations, was made explicitly in the tenancy debates as in others, by officials for whom it might have seemed a poignant and two-edged weapon.<sup>11</sup> Here the question had three contentious aspects: what was the custom in particular matters, the extent to which custom could be permitted to determine proper practice, and how far it would provide for change unaided.

It was inevitable firstly, given the importance accorded to historical legitimacy, that one aspect of the tenancy debate would be sparring between rival versions of custom. The kinds of argument are indicated on one hand by the assertion of Mr. Justice Cunningham in 1883 that distraint formed no part of Indian law but was an innovation of Regulation XVII of 1790,<sup>12</sup> and on the other hand by the dubious riposte on behalf of the zamindars of Ashutosh Mookerjea, citing Henry Maine’s *Early History of Institutions*, that on the contrary the law’s remedy was ‘a bequest of the Aryan Hindus to the communities of the West’.<sup>13</sup> It may be noted here that ‘custom’ was equated not with current practice but with historical precedent. The Maharaja of Dumraon, for example, in a speech delivered at a meeting in the Calcutta Town Hall in December 1883 (chaired by the Maharaja of Darbhanga), claimed that

<sup>10</sup> He wanted too the twelve-year rule established in 1859; Revenue despatch no. 54, 17 August 1882, Add.Mss.43584. See above, chapter three.

<sup>11</sup> The ironies did not end in the nineteenth century. Similar points might be made about zamindari abolition and panchayati raj under Congress hegemony in newly-independent India, reforms billed as remedying colonial evils.

<sup>12</sup> ‘Minute on the Bengal Rent Bill’ (reprint), *Englishman*, 24 January 1883.

<sup>13</sup> A. Mookerjea, ‘The proposed new rent law’ (1883). Allegedly distraint of cattle to compel debt repayment was approved in *Vyavahara Mayukha*, presumably meaning *acharitam* or confinement (‘tying of...son, wife, and cattle’); V.N. Mandlik, *The Vyavahara Mayukha...* (Byculla 1880), p.109, or Borradaile’s translation (Standard Hindu Law Books, Madras 1879). Mookerjea thus echoed contemporary critiques (Mandlik, pp.xliv & ff.) of the narrow range of legal authorities then used; but Bhatta Nilakantha’s text, not itself very ancient, envisaged debt-recovery mainly by sanctions against the person.

the Dumraon zamindari rights predated the Mughal conquest—thus offering up a sort of battle-challenge on historical precedence to the advocates of raiyats' property. In practice too, some aspects of custom were emphasised by zamindars, but not considered by the tenancy reformers (and *vice versa*). Dumraon, while protesting that Bihari rent rates were generally lower than those in Bengal, and that his fellow zamindars were not tyrannical, drew attention to the fact that many of the landlords were of the same caste (Brahman, Bhumihar, Rajput, Kayastha and so on) as their tenants, and that they could not 'disregard the voice of the community among whom they live'. It is curious that appeals to custom took no account of this possible alternative, zamindari tradition, or of the impact of differentiated social norms and allegiances which cut across the categories of landholding and revenue-paying. The failure is indicative of the sway of the peasant proprietary model in the current accounts of India's history, and its supposed 'civilisational' pedigree.

How far things could be left to custom, and how it would evolve, were questions even nearer to the core of the debates for and against government intervention. Doubts over the acceptable degree of meddling with custom had always diverted colonial laws from the path laid down by theory. The result was incoherence. In addition, then, the desire to define tenant rights arose partly because the formal provisions on Indian tenancy were so ambiguous: they seemed to offer no internal, coherent explanation—this was not just the inevitable complexity of the real world, but the imposed confusions of contradictory representations and interpretations by the colonial legislators. In Regulation VIII of 1793, for example, there were provisions which seem spectacularly vague, relating to dependent taluqdars' tenurial terms and to rent increases. The taluqdars were entitled to pay revenue through the 'actual proprietors' and for the same period of time as the latter's agreement with government. Taluqdars had to agree to the rent and its terms, which also had to be such as the proprietor was entitled to demand from them. The conditions of the tenure could be settled either by custom or contract; and the rent could be increased if the contract or 'special custom of the district' permitted, or if the taluqdar had rendered himself liable to an increase by having received an earlier abatement—and provided the lands were capable of affording the increase (section 51). The 'remaining lands' (not held by dependent taluqdars or certain specified categories of fixed-rent leaseholders) could be let 'under the prescribed conditions in whatever manner [the proprietor] may think fit' (section 52). The prescribed conditions laid

down entitlements to leases and receipts, and forbad *abwabs* (additional cesses levied after and outside the 'rental' agreement). A debate between Field and Alexander Mackenzie on the meaning of 'remaining lands' in Regulation VIII was popularised as the 'matter of the colon'—that is, whether or not (in section 53) the right to let lands at will applied to all raiyati land, as Field suspected, and as zamindari supporters believed to be plain in the vernacular translation of the Regulation.<sup>14</sup> On the Rent Law Commission, Mackenzie and O'Kinealy argued that the word 'let' was used loosely in Regulation VIII, because the relationship between zamindar and resident raiyat was not one of landlord and tenant and not intended to become so. Opponents retorted that 'let' meant what it usually means; this supported their contention that zamindars had or had acquired proprietary rights of an exclusive kind.<sup>15</sup> This confusion of 1793 with its scholastic echo in 1880 so closely foreshadows that which the 1885 Act provided in regard to the alienation of tenancies as to suggest that some general influence was at work—presumably the balancing of Indian custom and Western theory, pragmatism and principle, fear and hope.

Some matters were left to 'custom' in 1885, the most notable being whether or not a landlord could refuse alienation of a tenancy or demand a fee (*salami*) upon transfer. In important ways these provisions were designed to legitimise the *status quo*, as when it was to be presumed (under section 27) that an occupancy raiyat's rent was fair—replacing the alternative notions that fair rents ought to be divined from competition or as a proportion of the net value of the produce. Such presumptions, as on occupancy itself, were intended to protect incumbents from arbitrary demands. On one occasion Garth found, in favour of a man who occupied waste land and cultivated it, that he was assumed by 'established usage' to have the landowner's consent and to be his tenant, even though there was no formal contract between them.<sup>16</sup> This kind of argument, a mirror image of the raiyats' con-

<sup>14</sup> See *ibid.* Punctuation—the colon—allegedly affected interpretation. In Field's view (*Digest*, pp.194-5) 'the term "let" was not a very appropriate expression' for *khudkashta* raiyats. See also *ibid.*, pp.190-1, on sections 48 to 54 of Regulation VIII.

<sup>15</sup> Mookerjee, 'The proposed new rent law' (1880).

<sup>16</sup> *Rani Surnomoyee v. Deno Nath Gir Sunmyasee*, 1883 ILR, 9 Cal.908. The 1885 Act referred to express or implied contracts which would establish the landlord-tenant relation.

tracting out of rights (which was forbidden),<sup>17</sup> allowed a partial accommodation between Western and Indian systems. Thus custom supposedly allowed landlords to transfer land from one tenant to another, but the law added that they could only do so by decree. The law permitted the abrogation of occupancy rights at the sale of an estate, but only where custom did not maintain them; conversely the law forbade raiyats to transfer their interest in parts, but, when custom permitted the transfer of tenancies, any new part-holder's title would be good, once rent had been received from him, even if it was not recorded in the landlord's accounts.<sup>18</sup> Again, under the 1885 Act, three years' practice was held to confirm a rent, in the absence of a contract; but when landlords tried to use this loophole to increase rents in defiance of the provisions of the Act on enhancement, the gap was filled by further legislation.<sup>19</sup> By such accounts, law did not only bring change; it also reflected it.

A notion also existed whereby an *evolutionary* custom would remedy the defects of legislation, or render it irrelevant, or change in its image. Maine had defined custom as 'habitual practice', and we may recall how Field and the reformers concluded that it *must* evolve (towards contract), in the same way as law, though by a different process. Thus custom, as the term was used in the tenancy legislation, was not necessarily a fixed point. Before 1885, as when upholding landlords' objections to the sale of tenants' holdings, the law had distinguished between custom and usage.<sup>20</sup> Afterwards it did not, and courts came to decide that practices were legitimate if 'well-known and acquiesced in' rather than necessarily ancient or uniform.<sup>21</sup> One judg-

<sup>17</sup> Notably by section 178 which superseded section 7 of Act X of 1859, and section 7 of Bengal Act VIII of 1869. Several cases later tried to water down this provision.

<sup>18</sup> *Kripanath Chaki v. Dyal Chand Pal*, 1874, 22 WR 169.

<sup>19</sup> See Finucane and Ali, *Commentary*, on section 29. Landlords would set higher rents by 'compromise' with their tenants, and after three years claim they were lawful by custom. The strategy received some encouragement from *Sheo Sahay Panday v. Ram Rachia Ray*, 1891, ILR 18 Cal.33, but the gap was filled in Bengal Act I of 1907 as confirmed in the High Court in 1908.

<sup>20</sup> This was established in many cases between 1864 and 1874, notably *Huro Mohan Mukherjee v. Lalan Moni Dassi*, 1864, 1 WR 5. For this and other notes on this paragraph see also Finucane and Ali, *Commentary*, on section 26.

<sup>21</sup> *Shakarpati Thakurani v. Saifullah Khan*, 1872, 18 WR 507, and *Kripamoyi Debia v. Durga Gobind Sircar*, 1887, ILR, 15 Cal.89. Finucane and Rampini, *Tenancy Act*, concluded, on English precedents, that custom meant a reasonable and certain practice which was generally recognised and acted upon in a particular area.

ment found that a custom could not apply to a given tenure unless it had existed when the tenure originated, but it was apparent in several other cases that a right to transfer occupancy holdings could be recognised on the evidence of previous purchases, even against the will of the landlord.<sup>22</sup> By this means the law started a process which indigenous practice could develop. Act X of 1859 had been interpreted to mean that occupancy right was not transferable, though a holding might be. After 1885, though one case suggested that this rule still applied at the execution of a decree for rent arrears,<sup>23</sup> others held that occupancy right could be transferred to a third party, where usage allowed, even if the landlord objected.<sup>24</sup>

However, in such processes of change, at any one time or place custom was still assumed to be definite in nature and extent. It needed to be, if it was to be susceptible to findings of fact. The complications of custom were thus readily regarded as proving their inadequacy, and justifying interference. Moreover, it was plain that in the end custom was subordinate to law and to order. Section 183 of the 1885 Act, for example, purported to reserve to custom, or at least recent or current usage, anything not specified in the Act—a degree of residuary authority. But such custom also had to be general, definite, peaceable, agreed, and not contrary to public policy, which meant a norm of individual property-rights and capitalist relations. By contrast, Indian custom might have been supposed to represent a body of norms and beliefs which defined or made sense of practices in terms of collectivities. When the colonial laws proposed other meanings and possibilities, the different forms thus did not merely co-exist; they competed.<sup>25</sup> This was apparent, for example, when the 1885 Act confirmed the existing law

<sup>22</sup> This is discussed by Finucane and Ali, *Commentary*, on section 183. One High Court judgment, on *Dalgleish v. Guzaffer Hossein*, 1898, 3 CWN 21, found that the landlords' consent as well as previous transfers had to be proved, but other judgments at this time tended to extend the right of transfer.

<sup>23</sup> *Ram Lal Sukul v. Bhela Ghazi*, 1910, 14 CWN 614.

<sup>24</sup> *Palakdhani Roy v. Manners*, 1895 ILR, 23 Cal.179. The argument was based on sections 22 (transfer of an occupancy right) and section 26 (devolution of the right from an intestate holder).

<sup>25</sup> The sense intended here is that to which attention has been drawn by the philosopher Charles Taylor, among others—namely that the meanings and possibilities of an individual's social actions are influenced or determined by the meanings and possibilities prevailing in society. See also the discussion of language and agriculture in P. Robb, 'Peasants' choices? Indian agriculture and the limits of commercialization in nineteenth-century Bihar', *Economic History Review* XLV, 1 (1992), pp.97-119.

to the effect that a registered co-sharer could not abrogate the rights of other co-sharers.<sup>26</sup> Individual rights were protected between joint landholders, who in turn were treated as one corporate entity for purposes of ownership—for example, in section 93 which required coproprietors to act as one or through a manager, in order that individual tenants might not be disadvantaged.

The regulation of rent enhancements is also relevant here. On one hand it was typical that the Rent Law Commission should have proposed substituting a 'customary rate' for the elusive pargana rate. In part this reflected Field's attitude when he satirised the 'scientific' approach to Indian tenancy: 'Some people talk of pergunnah rates as if they remained fixed for ever, and were some quantity determinant in the nature of things, which could be discovered by swinging a pendulum *in vacuo*'.<sup>27</sup> But then official enquiries confirmed that no 'customary' rate existed either. This meant that indigenous rent-rates conformed either to no objective, general principles, or to ones which were unrecognised by a European government and its political economy: 'Not only was the multiplicity of rates found to be almost inexhaustible, but little relation could be traced between the existing rates and the quality of the soil'.<sup>28</sup> Repeatedly therefore (as said) the concept of a rational norm proved useless for enhancing rents under a British legal system. Before 1885 the prevailing rate had been held to be that paid by a majority of the same class of raiyats in the same neighbourhood;<sup>29</sup> in the absence of other information, local classifications and terms were followed as reflecting the status and productive capacity of different lands. Some judges argued that an

<sup>26</sup> *Boikonto Nath Das v. Bissonath Majhee*, 1868, 9 WR 268; and see Finucane and Ali, *Commentary*, on section 86.

<sup>27</sup> Field, *Digest*, p.193.

<sup>28</sup> See *Selections from Papers relating to the Bengal Tenancy Act, 1885* (Calcutta 1885), p.417, and Finucane and Ali, *Commentary*, on section 7 (enhancement of tenure-holders' rents).

<sup>29</sup> This was provided in *Shadoo Sing v. Ramanugraha Lal*, 9 WR 83. In the 1885 Act, however, section 31 set out how the rate was to be calculated. See Finucane and Rampini, *Tenancy Act*. Similar provisions applied also to non-occupancy raiyats under Chapter VI of the 1885 Act (section 46). For under-raiyats rents were limited to 125 per cent of the landlord's (rent-receiving raiyat's) rent, or to 150 per cent by registered agreement (section 48); this proved largely inoperative as most sub-tenancies were on part-holdings only. See Finucane and Ali, *Commentary*.

average could be said to be 'prevailing',<sup>30</sup> but most disagreed. One judgment accepting an average was balanced by another which held that the lowest rate should be counted. All were seeking categories based upon *similar* conditions. But in India the very concept of 'rates' of rent might not operate, in that rents were not set uniformly in units, appropriately to land or tenure, but separately in lump sums for unmeasured areas.

In desperation, an amendment in the Bengal Act III of 1898 (section 2) allowed comparisons with neighbouring villages. But the officials were also anxious to avoid progressive increases through manipulation of prevailing rates, and therefore added a proviso that the rent had to be deemed fair, in terms of price rises—which, incidentally, came to be assessed for the staple food crops, rather than all produce, so as not to discourage the growing of higher-value (frequently export) crops.<sup>31</sup> As in earlier rules allowing enhancement for the increased value of output (and thus assuming that it would be marketed), assessments of proper rent were moved towards market economics. Further, when the Bengal government proposed abandoning the whole charade of prevailing rates as 'illogical, unnecessary and mischievous', it argued that it was wrong to regulate a raiyat's liabilities with reference not to his own rights and position but to others' rights which 'it was not his business to maintain'. A rule of 'prevailing rates' left individuals at the mercy of 'the feeblest, stupidest and most venal' of their class. This resounding denial of community was endorsed on all sides. Even Elliott, in considering amendments which were to become law in 1898, argued that it was just that a tenant should have his rent raised if he paid less than others without sufficient reason. As the approved reasons were mainly economic, this was a competition rent by another name, and the rump of the prevailing rate became (as indeed the reformers had intended in 1885) merely a device to ascertain what a fair rent might look like, in a situation in which a market test could not be applied

<sup>30</sup> This was provided in the NWP Rent Act, XVII of 1873, and was said to be 'disastrous to the raiyats'; see Finucane and Rampini, *Tenancy Act*.

<sup>31</sup> This was of course an alternative basis for enhancement. In an elaboration of *Thakurani Dasi*, courts were empowered under section 32 of the 1885 Act to approve rent increases which were proportionate to the excess of prices in the ten years before the application (and during the currency of the rent) over those of any other appropriate ten-year period (not necessarily the time when the rent was first fixed). Such enhanced rents were then fixed for 15 years (section 37). Section 39 provided for government monthly price lists.

because of occupancy rights.<sup>32</sup>

Another part of this process was that all payments by tenants to landlords were held to constitute rent. This followed Regulation VIII of 1793 (section 54 consolidating old *abwabs* and section 55 prohibiting new ones), which had been repeated in Regulation V of 1812 (section 3) and reinforced by punitive damages allowed to the tenant in Act X of 1859 (section 10) and Bengal Act VIII of 1869 (section 11). The principle was announced by the Full Bench after the 1869 Act that 'Nothing could be recovered for the occupation of land except one sum'. But the courts interpreted these provisions unevenly, because their effect could be either to consolidate all demands (including state cesses) into a lawful rent, or to rule out new demands.<sup>33</sup> Ultimately the attempt was to reduce all agrarian relations to tenurial ones. Among those payments ruled out or consolidated by judicial decisions was a tax on *gur* (molasses) production (1867), a cess to make up for the death or disappearance of neighbours (*nagai*, possibly implying co-operative cultivation of such abandoned lands; 1866), festival dues (1869 and 1875), sums collected for *naprasan* (the first eating of rice after the birth of a son to the zamindar; 1870), patwari and other village dues (1875), and forced labour (*begar*; 1894). Such demands did not suddenly disappear. But clearly the intention of the British law was that they be replaced. Often what they represented were continuing communal forms, whereby a zamindar might be involved in production or in maintaining his raiyats' subservience, whereby villages might collectively support its officers, festivals, cultivation and payments of revenue. In place of such forms the British imagined individual rights, where known rents would express a purely tenurial relationship, on fixed holdings of land. Either of these conflicting sets of social norms might be oppressive or liberal, and each might have overlapping features in practice; but clearly they are substantially different in their

<sup>32</sup> See Finucane and Ali, *Commentary*, on section 30. Bengal Act III of 1898, section 31A, provided that, in notified areas, the pargana rate need not be what anyone actually paid (it might be what was paid for a single, large field if need be) but rather the rate at or above which a majority of the land was held. Elsewhere (section 31) it had to be 'generally paid', that is by the majority of tenants, and a competent officer (of rank not below a Sub-Deputy Collector) was permitted to declare a rate. Caste was not normally to be taken into account, but it could be if proved relevant by custom. For all this the measure remained unused. The question of the amendments will be taken up again in later chapters.

<sup>33</sup> *Radha Prosad Singh v. Bal Kowar Koeri*, 1890 ILR, 17 Cal.726 (FB). These points are discussed by Finucane and Ali, *Commentary*, on section 74.

nature.

The British often appreciated the complexities of Indian praxis and deployed them in argument; but they could not entertain them in policy overall, lest they preclude the making of laws. Indian conditions of landholding were diverse and complex. In the 1880s, for example, the Commissioner of Patna Division complained of draft proposals for setting out fair rents and in particular to the drawing up of tables of rates. 'These sections...', he complained, 'contain a Procrustian scheme of enforcing uniformity in matters in which, from the nature of things, no uniformity exists. The rates in a village are about as numerous as the fields of the ryots, and cannot be classified without an arbitrary disregard of actual facts.' The same Commissioner, however, supported the legal categorisation of occupancy raiyats, and most of the incidents of that status which the legislation proposed.<sup>34</sup> In short, where the British admitted diversity, they tried to manage it, and present it as comprising definite sets of categories. Even when professing their sensitivity to Indian realities, they assumed that custom itself was a generalising force. In the debate about the tenants, this tendency implied that all were poor and oppressed, or that none was.

In justification of the reform was a multitude of reports, especially from Bihar, stressing that the problem was a want or misuse of law. This implied external, inappropriate forces with malign effects. But the second step was that custom, though it should be respected, was also inadequate and needed to change. The papers relating to the part played by the law of distraint provide good examples. So urgent was the matter that, in 1882, Eden was proposing a brief Act to check abuses, in advance of the main legislation. Many reports, including MacDonnell's on north Bihar in 1876, had claimed distraint was used oppressively against tenants, even a whole village, to enforce enhanced rents: tenants might be forbidden to harvest, for example, and thus stand to lose all. Finucane referred also to the depredations, often using distraint, of the many thikadars in Alapur in Darbhanga raj in 1875/6, the worse because they were 'petty rent-jobbers not residents'. Often the result was that raiyats were forced to borrow from beparis (travelling merchants) on unfavourable terms. But was the problem the law of distraint? Could the abuse of rights not be old practice, mas-

<sup>34</sup> The Commissioner, F.W. Halliday, was reporting views of Collectors after a conference in July 1883. The remarks were later taken up by pro-landlord interests; see Dacosta, *Remarks and Extracts*. See also H.J. Reynolds, 'Memorandum on the Rent Bill', 18 May 1881, in *Report of the Government of Bengal* (1881).

querading under a new legal guise, or equated with it by observers?

In Shahabad, peons would be stationed to prevent the harvest, with no attempt at legal restraint. In Gaya, too, as soon as crops began to ripen 'dikdars' would be sent to prevent their being cut, and sowars quartered on refractory villages, until all dues were paid. None of these devices employed the British law. Again, a local barrister reported that when the law of distraint *was* formally used, it was often merely as a device to secure a victory in some unrelated dispute. The Gaya government pleader claimed that tenants *generally* did not receive their legal entitlements, for example to written leases, set rents without *abwabs*, freedom from eviction or enhancement, and so on; instead 'our gomashas and barahils go and sit at the door of his house, preventing egress and ingress, and depriving him of the use of the village wells until he pays off our rent'. Or he might be imprisoned in the zamindar's *kachhari*. He dared not protest to the authorities, but rather was intimidated by the power of the written word: the 'terrifying influence exercised over him by the *bosta* [*basta*, bundle of documents] of the putwaree or gomasha'.

On the other hand the written word might be a solution: 'At the root of the present evil', wrote R.C. Money, 'is that ryots, not being given pottahs, do not know what their rights and positions are. Abwabs, kurchas and salamis have become so numerous that no ryot knows...how much he may be called on to pay.... He may have a general idea...but experience has taught him that he will most probably have to pay that sum twice over ere he has satisfied everyone's demands, and hence a natural reluctance to pay at all'. Dhanesh Chunder Roy, personal assistant to the Patna Commissioner, agreed: 'in 99 cases out of 100 the ryot has no pottah; he does not know what amount of land he holds, or what rent he has to pay'. If the problem were want of law and uncertainty of information, then this might propose a remedy.

In Champaran, by contrast, J. Ware Edgar, the Collector, reported on the Madhubani lands of Bishen Pergash Narayan Singh:

The ryots have of late taken their stand on the rates shown in the settlement papers [of 1850], and some of them declare that they have never paid any more. There was a very strong attempt to make me believe this when I went among the villagers; but when I got the older and more respectable ryots singly, they frankly acknowledged that they have for many year[s] paid rates far higher than the settlement rates. But they object to the increase now claimed, and still more to the constant enhancement and to cesses exacted on various occasions, and from time to time consolidated with the rent to form a starting point for fresh cesses to lead again to a fresh enhancement. They also complain of not getting receipts, and some of them of not getting pottas.

These raiyats appealed to a new order; alternative ways echoed *Vyavahara Manukha*.<sup>35</sup> Edgar had been an author of the plan to make occupancy right ‘inherent in the cultivation of ryoti land’; he advocated this repeatedly to Tupper, to Reynolds, to Finucane and at the Bankipur conference, on the argument that the real evil was not formal enhancement but illegal cesses backed up by wrongful distraint. He admitted: the ‘weak point in my proposal is that it undoubtedly does to a certain extent fail to recognise the customs, feelings and ideas of the people’.<sup>36</sup>

A desire to make the crooked straight—the Biblical overtones are quite appropriate—both justified the reforms and helped fix their terms. Rights regulated in law, or in contract (as in the *patta-kabuliyat* system), are different from those derived from a set of social relations and historical norms. Much of British practice may be seen as an attempt to reconcile the two. The problem concerned, as much as anything, whether or not Western unitary categories could be made to fit the complexity of Indian conditions. The crux of the matter was that it was mediated by legal process in the English manner: that which facilitated it was to be encouraged, on abstract principles. Once again, behind the readiness to provide tenants’ property was the urge to instil responsibility and enterprise—and behind that lay a preference for legal sanctions to be levied against property rather than the person (the positive side of distraint of crops), because ‘imprisonment for debt is...a relic of barbarism’ as Mackenzie, Eden and Bengal’s Advocate-General all agreed.<sup>37</sup>

<sup>35</sup> G/I despatch R&A no.7, 21 March 1883; demi-official by D.W.M. Testro, Gaya Coll, 3 October 1877; R.C. Money, 13 September 1877; D.C. Roy, 1 October 1877; J. Ware Edgar, 15 January 1881, from G/Be Rev (March 1881); P. Nolan, Offg. Coll. Shahabad, W. Kemble, Gaya Coll, and Edgar, 18 January 1881, from Behar Rent Papers, vol.III: Add.Mss.43584. There were a few dissenting voices: Beames thought the power of distraint was not much used (or abused) in Burdwan, Midnapur and Bankura; the East Bengal Landholders Association claimed the same for their region, and said that the interposing of court action (proposed by G/I, 5 May, and in a G/Be circular, 24 May 1884, and in chapter XIII of the Act) would so delay the process as to render it useless—similar points were made at conferences in Patna, Bhagalpur, Rajshahi and Presidency divisions. Against this were such as Field, Dampier, R.C. Dutt, and B.M. Mitter who thought the power used only by bad landlords; loc.cit. The so-called Madhubani Babus’ estate mentioned here was a former jagir of some 37,000 acres near the Nepal border in Champaran, granted in 1763/4, resumed in 1819, and reconfirmed to the family in 1850. See also above, note 13.

<sup>36</sup> Edgar to Tupper, 11 December 1881 (2 letters), Add.Mss.43584.

<sup>37</sup> Mackenzie note, 28 October 1881, Add.Mss.43575.

The case was made by 1880 that the law now needed to help protect tenants; it contains some elements which help explain features of the 1885 Act, and also (as will be discussed later) its impact. We have established that the motive was either to re-establish or to create (the same ambivalence as was applied to the proprietors of estates in 1793) a property of the tenants, as peasant proprietors. It was assumed that this must mean unfettered transferability, as a defining incident of private property. Occupancy right was chosen as the means of securing this property. Legally, it derived from continuous tenancy over twelve years. In his *Digest*, Field had suggested that if the right were to apply to any land of equivalent area and quality, within an estate, this would cope with cases when raiyats' holdings were regularly changed, as in Bihar, to avoid the acquisition of occupancy rights.<sup>38</sup> Raiyati land meant agricultural land (as many court cases had established)—that is, excluding *zerat*, whatever land was in direct possession of the zamindar. The implication of the proposals in 1885 was, therefore, that, alongside any gain for occupancy raiyats, there would be a reduction in the varieties of status of permanent holders of land, and potentially between different legal categories of agricultural land. Many objected precisely to this uniformity;<sup>39</sup> it reinforced the consequences already noted in respect of agrarian dues. Contrasting with the 1885 Act's simplifications and inflexibility, a sample list of tenures in Bihar (themselves already subject to judicial interference and regulation) gives a image of a complex and subtle agrarian society attuned to particular needs and processes.<sup>40</sup> By defining occupancy right in 1859, the law

<sup>38</sup> Field, *Digest*, p.38.

<sup>39</sup> See Peary Mohun Mookerjea, *Opinions of Mofussil Landholders on the Bengal Tenancy Bill compiled from communications received by the Central Committee of the Landholders of Bengal and Behar* (Calcutta, 1883).

<sup>40</sup> Those noticed by Finucane and Ali, *Commentary*, included the following: *assamiwar* (created by indigo farmers), *ayma* (by royal charitable donation, *inam*), *bhatottur* and *bhoguttur* (for Brahmans), *chakran* (for service) including *chaukidari chakran* and *ghatwali* (for military or police), jagirs dating from Shah Alam, *kartauli*, *zarpeshgi* or *sadna patna* (part or whole sub-leases for usufructuary mortgages), *mukarrari* or *istamrari* (perpetual fixed-rate), *thika* (rent-farming), *malikana* or *arazi* (retained rent and revenue-free by proprietor when selling estate—supposed by Shore to have originated in compensation to the zamindar-middlemen when the Mughals wanted to deal directly with the raiyats; not found in Bengal proper), *khoris* (temporary to support a relative), *inamat* (rent-free for Muslims), *birt* (rent-free for Hindus for religion), *nakdi* (cash), *shikam* or *shikmi* (fixed-rate cash), *chakath* (temporarily cash, often for reclamation; or cash commuted from produce-sharing), *paran* (cash for sugarcane and poppy, and produce-sharing for rice, on rotation), *agorbatai*

had in some ways restricted it (to those who could prove twelve years' occupancy of the same holding). Field in effect suggested that the same procedure be adopted for all agricultural land. Under the permanent settlement it was already likely to be regarded as *zerat* unless held by a raiyat; but the new law implied that it could be *zerat* even if held by a raiyat, provided it could be shown to have once been in the landlord's immediate possession as defined by law. After all, then, the expected contribution of evolution and of law was to generalise custom and direct it into a single track. It was standardisation too that made crucial the decision on how to apportion the benefit, whether by policy or precedent.

When the colonial officials considered these questions, they projected two opposing narratives. According to the first, the inherent defects of Indian custom had necessitated intervention through law, which would produce improvements. According to the second, arbitrary pre-colonial or misguided colonial laws had created defects; once the law was reformed, custom would suffice to induce social and economic development. These two versions, though mirror images, combined to produce the Bengal Tenancy Act. But then law effectively eclipsed custom. Both the combination and the displacement were possible because the elements in the story were not all equal. Custom was constituted as autochthonous practice in the first version, but in the second as the universal or natural tendency (as Field would have it). Therefore, though the village community or the peasant proprietor were lauded as indigenous forms, as zamindari too had been once, they were chiefly favoured because thought efficient for progress, which could only be achieved by means of property, capital and trade. Law too had to conform with this universal prospectus, as was seen when zamindars' property and rights were qualified in the interests of tenants, the better to produce economic improvement. Similarly, whether Indian custom or Western law was at fault in producing the crisis of the later nineteenth century, they were agreed to be incompatible. Unsuitable conditions of late nineteenth-century law and economy endangered Indian practices, but protecting the indigenous could only be part of the remedy, because it was impossible to escape the universal trends of politics, economics and demography, and the universal pre-eminence of property and commercial production. This chapter explores several more instances of these anomalies. It shows that by them the state was inspired to act, but that because of them it

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(produce-sharing, on the threshing-floor), and *danabandi* (produce-sharing by appraisal of the standing-crop, often paid in cash).

sought not social or individual protection, to redress oppression or provide for equity, but rather to ensure an economic hierarchy which would mobilise resources and harness economic rationality. The 'actual cultivator' was the rhetorical but not the effective focus of care.

There was a certain intellectual muddle behind the tenancy reforms: it both added to and helps explain the complexity of the question. It was as if ideas developed by accretion rather than selection, and perhaps this was appropriate for Bengal where the landlord model of the permanent settlement had been maintained since the early nineteenth century on the basis of an official (though not judicial) commitment to the quite contrary principles of revenue settlement and property rights for 'actual cultivators'. The conclusion must be that the decision to enact the 1885 Act was produced from a recognition of the ambiguities of the law, added to an illusion of certainty about the malignant tendency of landlord-tenant relations (due to legal, economic and demographic conditions). The course of change in Bengal was considered inauspicious, while the general principles of social evolution were reaffirmed. According to such arguments historical justifications and future prospects were equally salient, in both law and custom; and in both there was expected, at the same time, inevitable evolution according to universal laws, and the persistence of peculiarities of locality and civilisation (which had therefore to be seen as different stages in the one process). The implication was that Indians needed special remedies and could not be left to their own devices. The basis of rights was historical, and particular circumstances were recognised as requiring special measures.

This section began not by searching for indications of some real changes which explained the decision to legislate in 1885, but with a suggestion that it was the perception of need which mattered. Henry Cotton warned at the time and later: 'The experimental introduction of agrarian theories', substituting contract for personal relations between zamindar and raiyat, was 'calculated to produce nothing but disorder'; he railed against interfering in the great variety of 'old customs', and against the 'most dangerous doctrine' that the government should *avoid* placing landlords over tenants.<sup>41</sup> Indeed the great rent law debate concerned matters which perhaps could not be understood, and on which nothing would have been done, without 'theorizing'. The keys hidden among the contested concepts of ancient rights were the power of personal conviction and the hopes for the future. The last was apparent

<sup>41</sup> Henry Cotton, *New India or India in Transition* (1885; revised edn. 1907), ch.4; see also Add.Mss.43618, passim.

in the despatch which Kimberley endorsed on 11 January 1883. It trusted that the land law would be settled on a 'firmer, juster, and more satisfactory basis; to keep the cultivation of the soil in the hands of a substantial peasantry...'.<sup>42</sup> For all its quibbles of detail, it represented a consensus in favour of 'improvement', a commitment to legislation. The element of personal conviction was also perhaps over-abundant.

## II

The Bengal Tenancy Act was passed in 1885, after more than a decade of deliberations, for reasons which included criticism of the existing state of the law, mainly as consolidated in the Tenancy Act of 1859, and worries about landlord-tenant conflict in Bengal. The conflict was instanced in rural violence which played an important part in persuading the government to take the tenancy question seriously. We now turn to these specific antecedents, which also helped shape the Act, particularly in terms of establishing the state's right or duty to intervene, and the reformers' understanding of the roles of custom and law in securing change. In 1864 the landholders had objected to a proposal to determine, 'once and for all, what is a fair and equitable rate of rent payable by every ryot having a right of occupancy at such rates, and to fix it in perpetuity'.<sup>43</sup> In 1881 Mackenzie did not go so far. As had earlier compromises on similar issues, he stopped short of fixing all rents and thus truly creating a property for the raiyats. Eden wanted, wrote Mackenzie, modestly enough, 'to define and strengthen the position of the great mass of cultivators, while giving landlords a reasonably cheap and effective procedure for regulating and revising rents'. But, in addition, as noted at the start of this book, the intention was that the raiyats 'as a class' were once again to enjoy 'those rights which the ancient land law and customs of the country intended them to have', namely protection against arbitrary eviction and 'a reasonable proportion of the profits of cultivation'. The hope was that they would thereby attain 'substantial comfort' and capacity to resist 'the occasional pressure of bad times'.<sup>44</sup> In short, the diagnosis was that the province's agrarian problems derived from the insufficient margin left to the actual cultivator by the zamindar; and the remedy was for the state, under the guise of providing 'effective procedure', to regulate rents and agrarian relations. In many ways, this would involve even

<sup>42</sup> See Add.Mss.43523.

<sup>43</sup> Mookerjea, *Opinions*. The quotation is from Cockerell.

<sup>44</sup> See above, p.1.

greater or more frequent interference than the more radical alternative of fixing rents in perpetuity.

Paramount in establishing the wider agenda, as already explained, was concern at the plight of the Indian poor and a belief in the need for government intervention. These were also expressed by John and Richard Strachey on partly fiscal grounds, and in the Famine Commission Report of 1881. In addition, freedom from oppression was regarded as an absolute good, and a boon which a British government had to provide.<sup>45</sup> In eastern India, the suggestions referred particularly to conditions in Bihar, as they had been revealed in various studies and reports during the 1870s. However, the issue originally inspiring the Act of 1885 had been the conditions of indigo cultivation, initially in Bengal proper. Above all, it sparked off a debate on the proper limits of state power, and helped establish, in principle, an acceptance of further interference. In this it continued a protracted process whereby discussions of the proper roles of the state led to new policy initiatives. Already there was a clear opposition of custom with law. The discussions sometimes invited interference, in the interests of colonial power, revenue or trade, or on arguments about the special inadequacies of India (including Indian expectations of despotism), but very often they also revolved around issues of law, rights, precedent, political economy, conservation, or expediency, which might restrict the state's intervention. The range of government expanded in the nineteenth century, but there was less change in the kinds of argument conducted about proper policy.<sup>46</sup>

One extended departmental debate in 1864 will illustrate a process whereby concern at conditions of production was translated into action to change the tenancy law.<sup>47</sup> Spurred on by the so-called 'blue mutiny' of indigo cultivators in 1859-60,<sup>48</sup> and inspired to some extent by the findings of the Indigo Commission of 1860, officials became alarmed by many aspects of the relations between indigo planters and their raiyats. Frequently, in mid-century, officials concluded, as did the Gover-

<sup>45</sup> This was the rhetoric shared by Dadabhai Naoroji in his check-list of the pros and cons of British rule in 1871; see W.T. de Bary, ed., *Sources of Indian Tradition*, vol.II (New York 1958), p.113-17.

<sup>46</sup> Apart from examples elsewhere in this book, and in the literature generally, this question may be pursued for the earlier period in a forthcoming London PhD thesis on NWP famine policy, by Sanjay Sharma.

<sup>47</sup> The file on which this is based is H Judicial A 26-46 (18 June 1864), hereafter 'Indigo files'.

<sup>48</sup> The best introduction to this well-known saga remains B.B. Kling, *The Blue Mutiny* (Philadelphia 1966; Calcutta 1977).

nor General, John Lawrence, in 1864, that the planters were implicated in harsh and injudicious proceedings. The European indigo planters, though certainly assisted on the whole by ready access to their official compatriots, were also often regarded by them with suspicion or disdain. Particular objection was taken to the planters' informal and irregular methods of control, or to formal contracts which were regarded as abnormal or inequitable in character. It was thought that the planters and their agents were possibly keeping within the law, but that the double duress of debt and rent, under which they held the raiyats, was not 'wise, or just, or politic'.<sup>49</sup> Official concern at the abuses of the indigo system and at protest movements then generated attention to tenancy and land-rights. In response—foreshadowing later arguments—Bengal landholders protested that the government were proposing to reward tenants for their having combined to commit 'murderous assault[s]': what now would be the condition of Ireland, they asked, if concessions had been made whenever there was an agrarian outrage?<sup>50</sup> The landholders interpreted proposals made in 1864 as implying a transfer of beneficial interests in land from the landowner to the tenants.

In short, the debate began with indigo, an issue which slid inexorably into a discussion of agrarian relations more broadly. Indigo was not enough by itself: in the Home Department in 1864, E.C. Bayley remarked that, if general legislation were envisaged in order to curb the excesses of the indigo system, then it would have to be 'determined on far broader grounds'.<sup>51</sup> Just such arguments would be provided by famine, Bihari poverty, and new doctrines. But indigo was an important trigger. In 1877, when Eden became Lieutenant-Governor, he had also decided that the Bihar indigo system was intolerable. He gave the planters an ultimatum through S.C. Bayley, then Commissioner of Patna—six months to co-operate. To an extent they complied and formed their Association, with a secretary on £1,800 a year, to inquire into and remedy abuses; MacDonnell acknowledged that improvements had been made under Bayley's influence.<sup>52</sup> Bihar indigo

<sup>49</sup> J[ohn] L[awrence], note, 16 May 1864, 'Indigo files'.

<sup>50</sup> J. Beckwith, Secretary, Landholders and Commercial Association, to F.R. Cockerell, Officiating Secretary, Government of Bengal, 3 May 1864, H Judicial A 20-1 (13 September 1864).

<sup>51</sup> E.C. B[ayley] office note, 11 May 1864, 'Indigo files'.

<sup>52</sup> Eden to Ripon, 14 January [1881], enclosing Eden to Northbrook, 19 November [1881], MacDonnell to Judicial Department Secretary, G/Be, 7 September [1880], Add.Mss.43592

had become controversial also through publicity—notably representations by an Irishman, C.J. O'Donnell, the sub-divisional officer in Gaya (where there was little indigo production) from 1877 to 1879. O'Donnell was author of 'The ruin of an Indian province' (19 July 1880); his brother was a British MP.<sup>53</sup>

Accordingly by the 1880s the draft legislation was designed not to aid landlords but to redress the balance of power in favour of the tenants, in order to reduce oppression, ameliorate poverty, and unlock economic progress. Indigo helped establish and sharpen this response because the debate of the 1860s had already rehearsed all the positions we have just established as existing in the great tenancy debate. E.C. Bayley noted that 'the power which has been declared by the High Court to reside in the landlord, has been used, and effectually, to compel the tenants to what is manifestly injustice with the result of smothered hatred and ultimate guilty violence'.<sup>54</sup> At the core of the official reactions was British credibility. Charles Trevelyan asserted that conditions were such in some Bengal districts as to injure the 'strength and credit of our Government'.<sup>55</sup> The response of the Bengal authorities was to propose that the tenants should be assisted by the fixing of their rents, thus securing them in their property and giving them the resources to resist the exactions of the indigo planter. In the Home Department the case of indigo helped draw attention to the fact that the law currently equated fair rents with market rates (whatever could be obtained from a new tenant). Lawrence thought it would be 'most desirable if the proprietors of land could be induced to come to a compromise with the hereditary ryots of their land to receive a largely enhanced rent, to be fixed for ever', and where this could not be achieved it would be expedient to provide 'a summary and simple'

<sup>53</sup> Ibid. See also notes by C. Grant, 28 July 1880, C.L. Tupper, 10 April, and A.R. Thompson, 23 September 1880, Add.Mss.43575. Than O'Donnell, however, there was not, in Eden's view, 'a worse, or more useless, officer in the Bengal Civil Service'. According to F.C. Daukes, 25 August 1881, O'Donnell had also proposed to the Maharajas of Hathwa, Bettiah, Dumraon and Darbhanga that they fund an association in London, with himself as paid secretary, to combat the 'despotic' Government of India and the loss of their rights, as by the landholders in Ireland.

<sup>54</sup> Beckwith to Cockerell; see above, note 50.

<sup>55</sup> Sir Charles Trevelyan, minute, 27 May 1864, and note to Bayley, 17 June 1864, 'Indigo files'. On later papers from Bengal, Trevelyan remarked that they threw 'a stronger light on a lamentable and disgraceful state of society—disgraceful I mean to the Government which fails to apply a suitable remedy without unnecessary delay' (note, 25 July 1864, loc.cit.).

means of rent enhancement by law such as would ‘preserve the just interest of both landlord and tenant’. As the papers passed around the government, even Major-General Sir R. Napier thought it impossible for the rent law to be left as it was without ‘determining the limits of a fair demand on the ryot’; G.N. Taylor echoed Lawrence in favouring rents ‘fixed in perpetuity as a full and sufficient equivalent to the landlord’s present and prospective claims’; and Maine was prepared to countenance a ‘permanent sub-settlement’ by which (as he ruled out legislation for ‘fair and equitable’ rents, or any rates set by government) he seemed to mean fixity of tenure and an entitlement for settled raiyats to rents at a percentage below the market rate.<sup>56</sup>

There were arguments from existing rights—as ever, because the British professed to run a government subject to the rule of law. On the one side, G. N. Taylor advanced what would become the familiar argument that the permanent settlement had transferred only such rights as belonged to the government, had guarded under-tenures and had preserved a right of future state regulation; that was the basis on which he thought the state should now establish the ‘precise nature of the tenure of the occupancy ryot’ and fix a permanent rent. On the other side, in the Home Department, the evils of the indigo system did not at once overcome objections that perpetual rents would be inconsistent with the permanent settlement (which had prohibited rental agreements of longer than ten years), that it would not be proper to deprive the landlord of discretion and any ‘fruits of his own good management’, and that it would be difficult either to decide what rates were fair or to find means of making them permanent. The Home Member, W. Grey, endorsing such views, thought the Bengal government’s radicalism must have been prompted by a sense of danger, but that it still should not have been aired before soundings were taken from the Government of India. The restraint of law by law was an argument regularly raised to government by Bengalis for at least half a century, and was the one advanced by the pro-zamindar camp when it alleged a violation of the permanent settlement.

Even Maine feared that if legislation were required—as he agreed it was, to check the infinite enhancement of rents—then Europeans might seek compensation for a loss in the value, as defined hitherto by the highest courts, of any property which had been purchased after 1859. But Maine also thought the permanent settlement itself would be no

<sup>56</sup> Notes by B[ayley], 11 May, Grey, 13 May, Lawrence, 16 May, Napier, 6 June, Taylor, 13 June, and H.S. Maine, n.d., ‘Indigo files’. These notes are also drawn on for the following paragraphs.

obstacle. He declared that, unless the landlords could be held to have promised future prosperity (which they had not delivered), then the settlement had not been a contract but a treaty without consideration (*pactum sine causa*). It could be modified at the will of the government, the 'party which gave everything and received nothing', in order to remedy a 'formidable political and social evil' which had resulted 'to any class of the population'. He implied that state interference was justified for a public good—that is, for the benefit of a class in the community, as opposed to an individual or private purpose. In addition, when it came to theoretical principles, Maine conceded that all 'the ordinary economical maxims are adverse to interference between landlord and tenant', but he suggested that the 'peculiar and exceptional constitution of Indian society' (though that alone) would support regulation.

Such limits on the task of law were somewhat arbitrarily set. Trevelyan argued that the law could do damage, as it had when the British ignorantly interfered with the landed tenures 'moulded according to the common law and custom of India', and created four classes on the land: so-called zamindars with a conditional title; hereditary peasant proprietors; tenants entitled to occupancy on payment of a customary rent; and tenants-at-will. Then (he went on, in what we have seen became an orthodox view), Act X of 1859 had inadvertently facilitated rent increases while trying to enhance security, by setting general conditions for rent enhancement and bringing the issue before the courts. Because they had interpreted fair rents as the highest obtainable competitively, and because indigo planters were taking advantage of this to force their will on all cultivators indiscriminately (the threat being to enhance rents if the raiyats did not agree to provide indigo), effectually the judiciary had been enabled to 'settle the rents of a whole Province', which would be 'an ever re-commencing, never-ending task'. Trevelyan insisted that it was the state's (and the courts') job only to define and protect property, and not to decide rents, which were a matter for individuals and private agreement.<sup>57</sup>

Here we may see how the relationship later established between law and custom represented a further advance of British intervention and standardisation; but also how this advance was inherent in the ideas of earlier officials. Trevelyan's claim was that, unlike property and for reasons unspecified, rents were determined by particular cases, and not according to general principles or so as to set precedents. They were not, in Maine's sense, public matters. Yet Trevelyan was not averse to

<sup>57</sup> Trevelyan, Minute, 27 May 1864, 'Indigo files'.

all interference. He cited the Commonwealth's abolition of hereditary feudal privileges in seventeenth-century England, and regretted its failure to achieve the same trick in Ireland. He welcomed the replacement of hundreds of thousands of uncertain inherited *inam* (assigned) rights in Madras by a regulated system of revenue-paying 'freehold' tenancies. He favoured a commission to go from district to district in Bengal, as the Inam Commission had, to 'investigate and adjudicate the landed tenures...according to fixed rules'. He then wanted the state to protect such private property, and expected capital to take on the task of social and economic improvement. On the other hand:

I altogether repudiate the idea of importing into this question the consideration, whether it is most conducive to the progress and improvement that land should be held by peasant proprietors, as in Belgium, Switzerland and India, or by large proprietors, as in England and some other countries. My belief is that in an early stage of society, when capital is scarce and agriculture is rude, peasant proprietorship is best; and that, as society advances, scientific agriculture requires concentration of capital and division of labor, and the evil works its own remedy, as is taking place in Ireland. But, however this may be, we ought to protect persons who have a permanent interest in the soil in their rights, whether their interest be large or small, and whether the right be founded on the custom or common law of the country, on long possession, or on any other ground. We may rest assured that the protection of actual rights, whatever they may be, is a necessary foundation for every other improvement. If we succeed ...in establishing certainty and security of landed property, estates will be rapidly re-cast in the form which the circumstances of society demand. Capital is as powerful in Bengal as in England; and, when it is that the hereditary and occupying Ryots have to sell, the process of absorption and concentration by mutual consent, for mutual benefit, will make rapid progress.

The history of the tenancy law, as of the state itself, shows that the line set by Trevelyan could not be held. His was a curious and inconsistent mixture of protection and laissez-faire, of principle and pragmatism. Far from endorsing 'actual rights, whatever they may be', Trevelyan clearly believed, like some latter-day physiocrat, in the superiority of the 'English way' of large landowners, and in the duty of the state to promote it indirectly. Yet he did not think it the task of the state otherwise to take a view about the most efficacious form of landholding, or even about land-rights of different origin; he wanted the state to preserve 'rights' in land, but not to protect them artificially against capital. Earlier political economists and nineteenth-century novelists alike had noted the necessity of poverty, meaning a lack of independent means, as an effective spur to labour. Trevelyan seemed to imagine that this incentive of economic disparity could be achieved by consent and the market—by evolving custom—provided only that there was a guaran-

tee of one kind of property, possession of land. Apparently a parallel right of property in one's labour (that is, surety that it would not be coerced or exploited) did not need to exist, except indirectly in the different degrees of landed property, whereby hereditary raiyats at fixed rents, occupancy tenants at fair rents (fixed in perpetuity), and tenants-at-will, and so on, would all be recorded by field survey, title-deeds and registration.

As Trevelyan denied the state's right to legislate for a desired form of landholding, and implied that law had to be socially appropriate, manifestly he believed that some invisible hand would re-create among the raiyats of Bengal the capitalist landlords he preferred. But if the state was not to make them by law, it had to find some way of identifying which 'rights' to protect (so that the invisible hand could do its work). Trevelyan fell back on history, on 'permanent' interests. His recipe was to recognise these so that they might the more rapidly give way to ones devised by the market! Many of the tenancy reformers no longer shared Trevelyan's reluctance to legislate, but they followed parallel contortions in their search for remedies. They found it impossible to avoid taking a view of the optimum form of society, in framing the laws, but they clothed it in historical legitimacy so as to conceal the extent of their engineering. In assessing the state's right to intervene, they appealed to the public interest, as Maine had, as a limit. It was also a licence.

The colonial administrators had long sought reassurance from what they conceived of as holders of inherited privilege in India, whether Brahman informants, Mughal overlords, princes, landed magnates or village headmen. The British were therefore disposed to legitimise land rights historically, from grants, conquest or settlement. Equally (as was the case with *lakhiraj* resumptions in Bengal, with the *inam* rights to which Trevelyan referred, or with the community or caste-based land-ownership later provided in the Punjab Alienation of Land Act), they tended to confiscate possessions which could not be justified from the imagined or recorded past. In part this was derived from a European legal and rationalist tradition; in part from what was or was thought to be (which of these is not our present concern) a peculiarity of India. Rudyard Kipling reflected the stereotype in his story, 'Tods' Amendment', in which Tods, a child brought up in India, reveals the flaw in a Bill which proposed to restrict leases to five-year terms on the ground that:

if the landlord had a tenant bound down for, say, twenty years, he would squeeze the very life out of him. The notion [explains the story] was to keep up

a stream of independent cultivators...; and ethnologically and politically the notion was correct. The only drawback was that it was altogether wrong. A native's life in India implies the life of his son. Wherefore, you cannot legislate for one generation at a time.<sup>58</sup>

On this matter, the 1885 Tenancy Act, with its ancient rights and future promises, was of the same opinion as Tods. Act X of 1859, as noted, also had been framed on such principles. The addition of the missing element in Trevelyan's prospectus, a beneficial proprietary peasantry, will be considered shortly.

A British view of historical legitimacy, as in caste for example, may well have refined several Indian institutions, in terms of their beneficiaries and their origin or basis. The practical result was not necessarily to homogenise classes—say, 'peasants' as tenants or settled cultivators—but rather to differentiate society along new, more standardised lines. But, in doing this, the law was also recognising civil and private properties or arenas which the state itself had to respect, and which were partly the creation of state actions or forbearance: this was true of religion (curiously enhanced by colonial neutrality), of land-rights, and even, to an extent, of political opinion and organisation. Hence the project in 1885 involved not only a paternalist re-structuring in the colonial interest, but also an extension and guarding of individual ownership.

Similarly, in 1864, the problem which the indigo production system presented was of an 'abuse of rights' according to universal principles. One European planter, for example, explained that the terms he offered to the indigo cultivators were less onerous than they appeared—this was a common excuse—because they did not specify the lower rents and the remission of debt which he also allowed.<sup>59</sup> What this showed, however, was that significant elements of the planter's relations with his raiyats were hidden, and personal or discretionary; the implication was that violent coercion and injustice could be a part of the planters' operations. The colonial state was tempted, by contrast, to make all relations regular, formal and visible to law and government. The conditions for tenure and rent-enhancement provided in the tenancy acts were examples of that process, and they were designed to attack just the kind of informality which was apparent in the conduct of indigo planters, whether or not it was actually oppressive. As H.L. Dampier wrote: if the planters' obligations were specified in the contracts,

<sup>58</sup> R. Kipling, *Plain Tales from the Hills* (1888; Aylesbury 1986), p.133.

<sup>59</sup> The planter was Hills of the celebrated rent case.

'much of the opposition now offered would disappear'.<sup>60</sup> Eric Stokes offers a succinct summary of the underlying doctrine here, according to Bentham and as adopted by James Mill: 'Government was an artefact, a creation and expression of will. Sovereignty was single and indivisible; its instrument was law speaking the language of command. Rights had no meaning except as they were a creation of law; liberty was but the absence of restraint, and found a place only where the law was silent.'<sup>61</sup>

The debate in the 1860s was firmly couched in Western law and related to categories or classes defined by rights. The issues of disagreement concerned the proper nature of those rights, and the extent to which government would be justified in legislating them into a more secure existence. According to Maine and others, the problem had arisen because indigo planting had grown up outside confines of regular law, with the connivance of government; Maine was confident that proper policing and properly organised courts would provide a remedy for this want of law.<sup>62</sup> Charles Trevelyan agreed that the situation had been anarchic and mediæval, and that 'the antagonistic classes' could now do battle in the courts. But he doubted that such a 'silent revolution' would suffice in this case; the rights of property existed 'only in a very imperfect form': hence his expectation that capital would do its work once property was secure. The power to make laws, in the minds of these officials, was limited by law itself; the principles of intervention were also universal, and law the remedy if properly conducted; but the need depended upon specific, Indian

<sup>60</sup> Dampier to Officiating Secretary, Bengal, 6 May 1864, and see J.L. Olyphant, joint magistrate, Nadia, to Nadia Magistrate, 14 April 1864, 'Indigo files'.

<sup>61</sup> Stokes, *Utilitarians*, p.72.

<sup>62</sup> His confidence was not borne out by events. Much remained invisible or problematic to the law and other regulated systems, even after the 1885 Act. The Bengal Settlement Manual of 1908 (p.114), for example, following up section 52 which was designed to ensure that any excess area was real and material to the rent, required Settlement Officers to inquire into the extent to which differences between old and new measurements were genuine, taking account of false records and distortions such as the inclusion or exclusion of the *ail* (the partitions between plots, included in official surveys). Another problem, to be discussed below, was the variable length of measuring poles. Similarly sections 55-8 of the Act provided for rent receipts with the intention *inter alia* of checking the Bihari practice whereby they did not specify what they were for; but the Patna Commissioner wrote in 1893 that this rule was still universally ignored and that civil courts continued to recognise irregular receipts. See Finucane and Ali, *Commentary*.

conditions.<sup>63</sup>

The consequence of this reasoning was that the law would seek to ensure evolution, and to move the ‘ancient rights’ in the direction of ‘future comfort’. Field, and those who followed him, were proposing (once again) an extended role for the state and law. The elements in their analysis of forces of progress were, in effect, economic rationality, legislation and practice. Different analysts saw the balance differently. All imagined a line of development over time. Some believed, according to *laissez faire* doctrines, that it should not be interrupted by state interference. Some argued that it needed special help in India. Some believed that custom was one of the impediments to be overcome; others that it must be respected if meaningful progress was ever to occur. Field, like Trevelyan, was saying both that natural economic forces existed, and that law had to free a way for them to operate.

How was one to achieve the goal of improved conditions for the cultivators? As was readily admitted in this debate, one way was by ‘natural forces’—in the case of indigo contracts it might be by the ‘commercial self-interest’ of planters or from pressure from raiyats, who tended to desert the more oppressive indigo factories.<sup>64</sup> But already there had emerged the main argument which we saw in the 1880s, and which, incidentally, had been reinforced in the intervening years by such measures as the 1879 Deccan Agriculturists’ Relief Act. It was not only that Indian society impeded progress, but also that British rule had profoundly altered the balance of advantage between the parties in social and economic relationships. Demographic and ecological pressures reduced the alternatives available to many exploited

<sup>63</sup> Maine, undated note, ‘Indigo files’ Also see his comment following the verdict of Grey (note, 20 July 1864) that the ‘whole cause of this mischief is indigo’. Bengal had censured one officer (destined for high office), J. Westland, for ‘confident and off-hand’ opinions on ‘a very difficult question which has long engaged...the attention of officers more able and far more experienced than himself’. But Maine wrote: ‘Despite his youth and inexperience, Mr Westland [‘one of the most distinguished of the competitive Civilians’, though bitterly criticised by the Bengal government—possibly in part because of his mode of entry to the service] is the only contributor to this correspondence [among Bengal officers] who has noticed a fact which my own inquiries (which have been exclusively among officials) have brought to my attention, the fact that a great part of the pressure (in some districts the whole) is put on the ryot by unexpected decrees for damages, in other words, by a perversion of the purposes of Civil justice’ (note, 22 July 1864; and J. Geoghegan, Under-Secretary, G/Be, to Nadia Commissioner, 14 April 1864).

<sup>64</sup> Office note by E.C. B[ayley], 11 May 1864, ‘Indigo files’.

workers. Economic changes and opportunities—growing with the revolution in transport and exports—often enhanced the relative strength of landowners, moneylenders, processors, transporters, wholesalers and merchants. The colonial state provided legal, administrative and punitive support for employers and landlords, helping them to collect rents, and put down violent resistance: these public measures more than compensated for the restrictions placed by the state upon the private exercise of force. The British also privileged written records. Generally they increased the power in the hands of elites and intermediaries. Inevitably, the state would try to use the same weapons to remove abuses. It was agreed, quite readily, and partly because of the recognition of social difficulties, that the government should intervene if ‘natural’ forces did not provide a remedy. However, an important motive, increasing in the later nineteenth century, was also to try to retard the rapid social change that was inherent in the forces then being unleashed: hence the ‘abuses’ to be addressed could be either impediments to social and economic progress, or upheavals in the existing order.

In a recent study, Javed Majeed has made a special point of pinpointing the distinctions between various approaches to India, divided into two main camps. In the first, Majeed places William Jones as an orientalist radical, important because his work was empirical and comparative, both attributes intended as a means of acquiring an empowering knowledge, so that Jones learnt Persian and Sanskrit, for example, partly so as to study India’s history and Hindu laws independently of the distortions of informants. But also (in his own words) Jones wanted to ‘unlock the stores of native genius’, a metaphor implying an original, recorded essence, albeit one that he knew to be imperfectly recoverable. For Jones, the legitimate form, for India, remained ‘authentic’ Hindu laws and an Oriental idiom as revealed in accurate history. (At one stage Majeed compares this with Coleridge’s idealist view of institutions, defined in terms of the original and ultimate aim which they embody.) For all the offence Jones gave to some orthodox opinion, his was therefore a conservative position, similar to that which generally was revitalised and made more assertive among aristocratic sympathisers in England in defiance of the revolution in France. For Robert Southey too the Orient was a fount for religious, political and aesthetic fantasies, though he professed them to be accurate reflections of local mythologies and history, again as part of a conservative definition of national culture. The Irishman Thomas Moore took this further, by arguing in effect in favour of national self-determination.

All these we might call advocates of ‘ancient rights’. The second camp, in Majeed’s analysis, is one which sought ‘future comfort’ for India by subordinating it to universal but British-made laws of political economy. James Mill was a philosophic radical who, like Bentham, attacked the predominance of common law as a refuge of privilege, and the confusions of law as an instrument of oppression. Applying such ideas to India meant treating its ‘native genius’ as merely the ‘ungoverned imagination’ popularised by Southey and Moore. For Mill, progress was linked to discipline and uniformity, to the utilitarians’ universal rationalist prescriptions—universal because defined by abstract and scientific principles. Such principles constituted impediments to any self-government on the part of ‘irrational’ and ‘uncivilised’ peoples. They encouraged the kinds of legal intervention which we have seen in the 1885 Tenancy Act.

Majeed’s other key point is that Indian images and examples were important to *British* intellectual arguments, a kind of mirror image of Stokes’ famous conclusions about the impact of utilitarianism upon Indian policy. Mill’s *History of British India* was written to confront conservative tendencies, as part of a British political and social agenda. H.H. Wilson, in his edition of the *History*, entered the same argument by reasserting the value of observation and practices ‘on the spot’. For our purposes all this suggests that the value attributed to ‘ancient rights’ and the preferred means for producing ‘future comfort’ in India (whether as a rationalisation of imperialism, a cover for exploitation, or any other reason) were radically different by the mid-nineteenth century in comparison with the late eighteenth. The two principles, and their interpretation, by the late nineteenth century, thus represent a combination, if not a resolution, of the former divergent approaches. This is true in many senses, particularly in terms of political stance, but there was also some common ground. Majeed suggests, for example, that a revitalised conservatism in England was related to the agrarian patriotism discussed by C.A. Bayly: that is, the desire to harness a national community in order to improve agriculture. Mill and Bentham objected to the patriotism as a derogation from universal principles; they also objected (as in Mill’s endorsement of the raiyatwari system) to the aristocratic party’s equation of property and virtue. But of course they did not object to the agrarian improvement. In the Indian rent law debate, we have—co-existing—concepts of property, claims about the legitimacy of past forms, and goals of progress. Officials feared social upheaval, and frequently appealed for the preservation of a supposed Indian society; but to them Indian norms had instrumental use but little

intrinsic value: not least, evangelical Christians encouraged contempt for Indian thought and traditions, and racist doctrines had now been constructed to explain societal difference and European conquest. Indian norms were expected to conform to ‘rational’—that is, Western—principles. Thus was ‘custom’ massaged and devalued. To Mill, as Majeed tells us, India was poor economically as well as spiritually and historically. It needed uplift, through a functional government and law which would facilitate and harmonise individual efforts.<sup>65</sup>

The 1885 Tenancy Act represented an important example of the fertile mix of apparently opposed goals and ideas. The ‘ancient rights’ were not *wholly* redefined as Western precepts; nor was the goal of progress ever unqualified. Strong elements remained, even in this utilitarian thinking, of arguments about the ‘special’ character of India, including what it contained of the role of imagination rather than rationality, and the importance it accorded to collectivities rather than individuals. The protection of what was perceived to be Indian culture and society did still imply some recognition of the value of ‘native genius’, comparable to the adjustments utilitarians had had to make to Indian realities all along. Nevertheless, in the end, such ‘custom’ had to a large extent to give way, because law provided a better protection for individuals and for property. The measure of custom’s inadequacy was the man of substance already met in earlier chapters. We now turn to his economic role as embodied in the 1885 Act.

He mattered because, above all, in regard to tenancy, ‘rationality’ meant recognising the necessity of individual property to economic progress. Of course this idea had its aristocratic versions (which the next chapter will consider), but it also continued to be potent through all the utilitarian influence on policy in India—in the raiyatwari settlements, the would-be Ricardian revenue demands, the reforms of the laws relating to landed property or tenancy or debt, the efforts to change cropping patterns and to promote improvement in agricultural methods, and indeed the very idea of an empire justified by ‘good government’. The result was that official worries were repeatedly translated into a concern for ancient rights in *property* (though also in social status, religious belief and custom), as well as for future comfort through *improvement*. In short there were also continuities in British thinking about India, from Jones, through James and John Stuart Mill, to Maine, Mackenzie and MacDonnell. To these continuities and their consequences we will now turn.

<sup>65</sup> Majeed, *Ungoverned Imaginings*. See also Stokes, *Utilitarians*, and Bayly, *Imperial Meridian*.



## Chapter Six

### *The magic of property*

It is evident that not only the perceptions of the tenancy debates but also the impulses for reform were essentially ideological. Both provided for law to triumph over custom, intervention over 'natural' progress, standardisation over variety. At the core of the triumph were the diagnosis and the remedy proposed—that is, property. Indigo abuses helped focus the willingness to legislate, as did famine and Bihari poverty, and (paradoxically) a host of other dissatisfactions with the nature and impact of British law and administration. But, as ever, as in Trevelyan quoted in the last chapter, property was the programme—whether to promote economic improvement, or to protect the subjects against an overweening state and from one another. The Tenancy Act was also, therefore, a marker of particular decisions about the nature and advantages of unequal possession, for classes and individuals.

In the definition of property rights the Irish example has been recognised as having been important.<sup>1</sup> Several officials—MacDonnell for example—were personally interested in the Irish land question; all were aware of it, and many referred to it, as one of the great political questions of the day. Officials were familiar with the three 'F's, of fixity of tenure, fair rents and free transfer, as the embodiment of the conditions of a protected tenancy. Several of these features were translated into the Indian setting, or introduced into arguments in support of particular solutions to Indian problems. The existence of an intellectual tradition in which free transfer was regarded as an essential incident of property doubtless reinforced the reformers' insistence that tenancies should be transferable—in practice if not unequivocally in law, as we have seen—and their unwillingness to entertain the arguments, put forward by their opponents, to the effect that the ability to sell and mortgage holdings would place the raiyats in thrall to the moneylenders, the true cultivators at the mercy of intermediaries. Nonetheless, too much can be made of this Irish influence, which in any case was mainly that

<sup>1</sup> Dietmar Rothermund, *Government, Landlord and Peasant in India. Agrarian Relations under British Rule, 1865-1935* (Wiesbaden 1978), provides a full account, especially from p.90, which presents the Irish legislation as experiments made by what is there (though not always in his book) the monolithic 'British', and as having 'taught them some lessons'.

of general European ideas about property rather than anything more specific. Ireland's particular importance was greater at the polemical than at the ideological level: it was a fraught party issue. As such, Mackenzie questioned Garth's 'good taste', in the course of their debate, when he referred to the 'terrible fruit' of the 'confiscation' of property in Ireland. Responding nonetheless in kind, Mackenzie retorted that 'Ordinary people' had been under the impression that agrarian outrages in Ireland had resulted from 'the confiscation or non-recognition of the rights of the *cultivating* classes'. Holding up the spectre of agrarian outrages in India was a favourite ploy of tenancy reformers.

Such party divides apart, however, much that occurred in India was related to experience and debates within the country, and was reinforced rather than modified by the exigencies of Irish politics. The preferred remedies arose in contexts which favoured particular strategies and assumptions. The usual accounts of the opposing social propensities of colonial policy have assumed them to be opposed and consecutive: the permanent settlement gave way to the raiyatwari, and peasant proprietary policies succeeded zamindari ones. It should be noticed that these changes suggest three different, even contradictory trajectories: in the officials' willingness to approximate to 'Indian' conditions, in the development of ideas of political economy, and in related assumptions about the best means of securing economic and social progress. Our purpose, however, is to explore something of what they shared.

Here it has been argued that, for all the inventive readings in the records, the idea of co-extensive peasant-proprietary property would have been unintelligible to the officials' eighteenth-century predecessors. At that time, although the elements for the construction of such a theory were present, the possibility of a re-definition of real property was not considered. The British then believed in two models, in one of which indivisible ownership was derived from sovereignty, and in the other of which indivisible sovereignty was derived from ownership. In India, as the British were unable to find individual ownership, they had concluded that the state owned the land and granted subordinate rights in it. This seemed to them a primitive state of affairs, inimical to the kinds of economic and social progress achieved in Britain. They resolved therefore to do away with it in Bengal. They offered absolute rights in landed property, subject only to payment of the revenue, and sought to strengthen or create an aristocracy on what they thought the model of a well-regulated society. It is true that they intended an autocratic government for Bengal, and therefore held on to the state's claim to original ownership and rights over surplus which justified the land-

revenue demands. They also proposed that land law should be universal and that administration, though minimal, should be general and bureaucratic. Hence landlords could not be admitted to be ruling over little fiefdoms. But it did not occur to them to reserve some original property to the raiyats; they merely asked that the terms of voluntary alienations—contracts and leases—should be equitable and certain, by agreement between the parties, so as not to disturb the peace or jeopardise the revenue. The state's renunciation of its own land rights was to set an example for moderate behaviour by the landlords.

By contrast, as we have seen, the radicals in the 1880s, while conceding that the rights of zamindars could not be confiscated, argued that it was the duty of the state to intervene to restore some of the position of the resident cultivators. In the past the state's power had regulated rents through fixing a 'pargana rate'; the inadvertent abandonment of this practice had impoverished the tenants and enriched the rentier class. The outcome included famine, subinfeudation and political unrest. The role of the state had therefore to be reasserted. Here was a view of public policy whereby the government was required to arbitrate between the naturally selfish interests of its subjects. The outcome was not unqualified intervention;<sup>2</sup> but it violated expectations that the state should merely provide conditions in which the beneficial influence of social and economic processes could flow.

Yet we must incorporate the mid-century trend, lasting almost until 1885, which favoured an extension of the permanent settlement of the land revenue, and which may be contrasted with the influence of the Punjab and its model of the peasant proprietor, to be considered in more detail in a later chapter. The two tendencies were not as incompatible as they appear at first sight, and both underwrote the remedies proposed for Bengal in the Tenancy Act. The British created a regime concerned that 'rights' (or property), as guaranteed by government and the courts, should be an instrument of social and economic progress. It was a well-established truism by the 1860s that in India effective landed property originated from British revenue settlements. The per-

<sup>2</sup> A cameo to sum up the distinction is provided by proposals in the 1880s for legislation for the protection of birds. F.C. Daukes, backing the Pune Sarva-janik Sabha, claimed that such a law would involve 'the most objectionable features of all legislation, viz., interference with the social economy of the people' with no corresponding benefit. Ripon's response was that he did not object to such legislation provided it was 'in accordance with the habits and feelings of the population affected' or, *where it did conflict with feelings and interests, if it met an object of sufficient importance*. Notes of 15 April and 20 June 1881, Add.Mss.43575.

manent settlement had been an attempt to protect land rights, and further measures had extended the principle to other levels of land-holding, even before Act X of 1859. By the 1870s the efficacy of property was again strongly being advocated: possession was a bulwark against oppression and a measure of prosperity; if secure, it would be a long-term remedy for famine. This justification had applied to the permanent settlement, the extension of which was then being discussed, and to fixed terms for temporary settlements. For example, Canning's government considered that settlements for terms of years 'would be free from many of the objections to which at present temporary settlements are open, and would greatly improve the tenure of land'. But the argument applied also to protected tenancies, and more widely still, as when Baird Smith, reporting on the famine in the North-Western Provinces, advocated established 'water rights' by means of a record of rights and fixed rates.<sup>3</sup>

One paragraph of Baird Smith's report led to inquiries about the desirability of instituting a permanent settlement 'as a general measure, applicable sooner or later to the country at large'.<sup>4</sup> Thus the tenancy debate overlapped with an argument about opposing types of revenue settlement, representing also different administrative styles. By the time of Crown government, after the great rebellion of 1857, the emphasis was once again on a new formalisation of government and law. In this context, old debates about a permanent settlement took on a different complexion. The development of the state was furthered by the introduction of civil-service entry examinations and promotion on merit, the growth of specialist departments of government to complement and sometimes to rival the main executive cadre, the spread of the courts structure, and the establishment of legal codes and of Acts to regulate an increasing range of public and private activities. Why then should a permanent settlement have appealed once again, as government grew? Three main reasons may be suggested: the search for cheaper means of extending the state's activities, the fear of social dislocation as a supposed modernisation proceeded, and the desire for bulwarks against excesses of authority. To all of these property was the key.

The advent of government on scientific principles—meaning on the

<sup>3</sup> The Home Department's covering letter sending Colonel Smith's famine report to the NWP Government quoted the Governor-General in Council on temporary settlements. H Public A 20-6 (7 October 1861).

<sup>4</sup> *Ibid.*; see paragraph 62 of Smith's report. See also A. Colvin, *Memorandum on the Revision of Land Revenue in the North-Western Provinces* (Calcutta 1872), and B.H. Baden-Powell, *Land-Systems of British India*, vol.1 (Oxford 1892), vol.1, pp.341-9.

basis of an allegedly exact knowledge of the country and its people (hence the greater interference)—was accompanied by the running post-Mutiny financial crisis, and subsequently by a loss of confidence in the likelihood that India would be transformed under the supposedly civilising influence of European rule. The conflicting influences were the fear of Indian revolt, the incessant worry over government revenue and commitments, and the embracing of European intellectual currents, including renewed denigrations of Indian society or an appreciation of the complexity and difficulty of all kinds of reform. In the midst of their revolution in government itself, the British became both suspicious of and anxious for change. In this context, there was pressure for a return to a minimal, indirect revenue structure. As an aspect of the changing administrative circumstances there was a renewed enthusiasm in some quarters for a permanent settlement, and for the aristocratic model of society which it implied. In the 1860s and 1870s the fashion was strong in the secretariats though it remained fairly impotent in practice. It was related to the restoration of the so-called natural, taluqdari order in Awadh; it promoted some protective legislation for encumbered estates; it engendered numerous but ultimately irrelevant myths about the relationship between Indian princes and magnates and their British overlords. Accordingly the idea launched in the North-Western Provinces in the aftermath of Baird Smith's report was for either a one-off payment to redeem future land revenue dues (this was vetoed by the Secretary of State), or alternatively a permanent settlement, which it was agreed could be considered in districts where existing rates had been revised, where 80 per cent of the culturable land was in cultivation, and where no increase in land values was to be contemplated other than by the investment of the owner. A permanent settlement, it was supposed, once again, would create a loyal and prosperous landed class, preserving social harmony, acting in the public interest, and reducing recurrent administrative costs.

The permanent settlement was finally buried, as a matter for prosy-letising, in 1883. The Secretary of State, prompted from India, issued the final warrant in a despatch in February 1885. The state was henceforth to claim not just a residual right to its share in the produce of the soil, as original owner, but the right to enhance that share as required. The share was taken, or so theory proposed, from the 'unearned increment' obtainable on better soils; but—with the usual contradiction between styles and ideas—the government would claim its enhancement on the basis of general trends rather than a minute inquisition,

field-by-field.<sup>5</sup> A resolution of August 1879 had required local governments to consider likely cost benefits when planning revision settlements.<sup>6</sup> The returns from the great works of survey and settlement were apparently insufficient, in financial terms, whatever their alleged merits as producers of 'better government'. At one level this may seem a victory for the school of personal government, allegedly appropriate to a people who had experienced and understood only despotism. At another level it was a tribute to believers in impersonal forces of history, and in minimal government within certain general rules.

The plan for permanency was squeezed out in part by administrative ambition. Intellectual considerations which (as said) played a special part in policy-making favoured the construction of the reasoned minute and report, which became the mark of the successful official, even where the avowed tradition was of open-air paternalism. By these means, from the 1870s the temporary settlement system and the concomitant trust in close, personal administration, came once again to the fore. The advocates of 'peasant rights' endorsed the potency of the semi-independent revenue officer, perennially touring his district, as the true representative of an Indian government and the surest transmitter of the 'civilising' message. But they spread their influence upon policy by effective deployment of secretariat skills. The extended permanent settlement was defeated also by the prospect of price inflation, and by the observation that permanently-settled areas were not more dynamic or prosperous than temporarily settled ones. It was defeated by economic necessity—famine expenditure compounding military debt—as well as intellectual and administrative priorities. Even in Bengal, official efforts from the 1870s onwards were designed to increase the revenue-take from rural areas, partly in order to facilitate an increase in government activity. The call for permanence was related, peripherally, to the perennial disagreement between finance departments which sought to maximise income and to take account of price inflation when setting revenue demands over a thirty-year period, and the settlement officers who argued that over-

<sup>5</sup> One suggestion was to record classes of land according to productivity and security from scarcity, and then to apply revenue increases in relation to staple prices; C.H.T. Crosthwaite and E.C. Buck, memorandum, printed 2 June 1882, Add.Mss.43584. Here the influence on discussions about how to regulate tenants' rents is particularly obvious. For scepticism about the proposal, see S.C. Bayley to Ripon, 22 August [1882], Add.Mss.43612.

<sup>6</sup> This did not rule out re-settlement—revenue increases in Bombay, for example, had easily justified the cost of re-survey—but the tendency was to reduce the scope of the settlements; E. Stack, Officiating Under-Secretary, H R&A, 4 October 1881, extract from proceedings, Add.Mss.43584.

assessment would stem the prosperity or exacerbate the impoverishment of districts which they had so minutely examined.

The Secretary of State took his decision in the 1880s in the context of his desire to ensure the enhancement of revenue without the need for regular settlement: a system was proposed whereby the officials, after inquiry into the economic state of a particular tract, would fix a general rate of enhancement in accordance with prices, actual rentals, the sale price of land, and even its letting value, subject to a maximum increase of fifty per cent. Regular re-assessment would be reserved for 'backward' areas—that is, of course, those in which there was most to hope for from an increase in economic activity. It sounded very much as if the Secretary was eager to maximise revenue, by ensuring that government took its cut of the profits of commercial agriculture and market rentals, and indeed encouraged the landowners to seek the greatest possible returns. As a strategy it seems ill-calculated to promote economic expansion (if the government were set to swallow a large proportion of increased income) or the well-being of the tenants.<sup>7</sup> But it reminds us of the importance given at this time to the improving of agrarian production and profitability: the Bengal Tenancy Act may be included among the measures directed to that end.

Despite the formal set-back, arguments for permanent and secure property remained influential in the favour shown to long and fixed settlement periods. They lingered too in the minds of outsiders to the original dispute, for whom the Bengal settlement took on a different meaning or purpose—Indians who interpreted it as a route to economic advance. Expressing sectional rather than general interest, they saw it as a means of transferring wealth and influence out of foreign and into indigenous hands (and indeed the Bengal settlement had produced some notable patrons of commerce and of political, intellectual and religious life). The famous debate by pamphlet on this subject between Rameshchandra Datta (R.C. Dutt) and Curzon's government was a strange echo of an issue which had long since ceased to have any official relevance, but which was nevertheless of public significance.<sup>8</sup> In the 1880s E.C. Buck too had been ready to cite the evils of temporary assessment—the need for and heavy cost of settlement and revisions, the depressing effect on investment from uncertainty and conse-

<sup>7</sup> R&A Rev A 36 (February 1886).

<sup>8</sup> See 'Land revenue policy of the Indian government', Resolution of the Governor-General in Council, 16 January 1902 (Calcutta 1902). Dutt had written a series of letters to Curzon's government in 1900, prompting an extensive investigation and this reply; they also were later published. It was interesting that Dutt endorsed the British diagnosis: secure landed property was needed.

quent revenue increases, and discontent from errors and harassment—but he also insisted that general re-assessments were never desirable because of the variability of soil and conditions. The only possibility was to maintain complete and accurate local records, and then to increase the revenue demand in individual cases in line with increased area, increased prices, and increased output where it was attributable to improvements at government expense. If this were done, it would limit government demands in respect of improvements made by the revenue-payer—a step towards a permanent settlement—and then it would also be necessary to impose some limit on the demands which could be made from tenants. Perhaps they too should be fixed for the settlement period; otherwise the sufferings of the Bengal cultivators would be reproduced in the temporarily-settled areas. Why a lower government demand should increase the pressure on tenants is not entirely plain; nor was the factual basis of the analysis secure: G.E. Erskine, reporting on Awadh, thought that rents there had been raised so as to ‘press severely on the tenants’. The parallels are obvious between Buck’s reasoning and the justification and shape of reform in Bengal, but also (as we shall see) in the shortfall in policy-execution, the lack of local records that were sensitive to variations.<sup>9</sup>

Most important, by this time, and (as said) alongside the discussions of permanent settlement, *a common concern for occupancy right* was to be found in many provinces. This too promoted standardisation. A lasting legacy of the debate about permanency may be found in the certainty that security and interrupted enjoyment of property were necessary for social stability and progress. Behind the advocacy of a permanent settlement lay a feudal dream—a line of thinking about India as a precursor of Europe, and of maxims about social forms which were conducive to progress, stretching from Philip Francis, through Tod, to Maine and Harcourt Butler. This dream did not disappear when a permanent settlement was ruled out. It dissolved into new forms, one of which was the 1885 Tenancy Act. The rent law debate both expressed and gave a boost to pro-peasant strategies unprecedented since the Fifth Report. But, as then, they were expressed in terms of property. There was a real divide of opinion, as in the

<sup>9</sup> Buck to Secretary G/NWP, 9 May 1883, and Erskine to J. Woodburn, 1 June 1883, with Add.Mss.43584. The difficulties did not go away in the 1880s. William Muir had declined to apply a permanent settlement in NWP, but later attempts to devise principles for reassessment on a statistical basis, rather than by inspection or survey, also led to the conclusion there that a purely mechanical system was impractical; see J.R. Reid, Secretary G/NWP, to R&A, 17 May 1884, loc.cit.

Bengal tenancy debate, between those who favoured great landlords and the advocates of tenant proprietors. The latter often slid, as among the Utilitarians and Radicals, into a denigration of landlords as consumers of unearned surplus and a glorification of cultivators as producers of wealth. Yet a consensus about property confused the battle-lines.

In Madras, for example, J.B. Penington, the Collector of Tanjavur, writing in 1885, felt safe to assume that it would generally be admitted that agricultural produce was originally shared between government and cultivator in India, and that zamindars were persons to whom the government made over the management of its share on condition that they behaved well to their 'tenants'. The problem in Madras, therefore, as he saw it, was that the government had continued to settle with the cultivators directly without noticing that they had become great landlords who controlled tenants-at-will rather than mere labourers. When finally observing this phenomenon, the government had declined to interfere for fear of destroying or injuring property rights. Penington argued that, on the contrary, the government should try to create a 'prosperous, contented tenantry' with secure rights which were as good as those of the landlords. He wanted, in particular, to fix the share of the produce which could be taken from the 'actual cultivator', and for government thereby to intervene actively on the side of the 'poor and needy'.<sup>10</sup> Earlier Penington had joined those who advocated instituting a permanent settlement throughout India; he wanted to do so in order to secure the rights of landlords at a time when a tenants' charter was being introduced.

The Government of Madras refuted Penington's analysis by re-asserting their own categories and assumptions about agrarian life: the mirasdars of Tanjavur, in their view, were small-holders, and those whom Penington called tenants were merely labourers. By this account, the government should encourage the application of capital to agricul-

<sup>10</sup> But obviously in other respects as well, his ideas were influenced, in substance and justification, by those current in Bengal. The advocates of tenancy reform had marshalled their arguments in Field's *Digest* and in the report of the Rent Law Commission. Penington was in receipt of these, intellectually-speaking; he quoted from both sources. An understanding of historical process was crucial to his argument; perhaps his respect for current authorities allowed him to escape from thinking his arguments through. How, for example, had the cultivator become transformed into a landlord? It might be said that this change was an unexpected bi-product of British rule, but even so it implies a mechanism whereby agrarian relations were not arbitrated solely by the state—and in that case there is little reason to suppose that they had in fact remained in the pristine condition which Penington described even at the start of British rule.

ture and endorse 'customary rights' in land by means of the law; but they should not presume to 'regulate the wages payable to the farm servant'. This verdict was then, in turn, challenged from above, when the Government of India insisted on a clear statement from Madras on the status of sub-tenants, labourers and others in the expected settlement report on Tanjavur district.<sup>11</sup> In such ways did changes of ideological fashion impinge on policy. Obviously, this dispute over tenant rights rested once again upon two main props: interpretations of the past, and definitions of agrarian classes. Different demarcations of the state's role, and different ideal forms of society, were promoted. But the past and classification were consistently employed to define property—whether for small-holding mirasdars with labourers, or for 'actual tenant-cultivators'; for zamindars or for raiyats—and it was property which was to be protected and also to be the instrument of change.

Similarly, in the North-Western Provinces before 1880, the question of occupancy right had been endlessly debated but largely ignored. Perhaps the fact that a fashion for tenant-right could co-exist with advocacy of summary settlements reflected the relative unimportance of the former issue in the supposedly raiyatwari areas, or perhaps (since Awadh was central to the issue in the NWP) it was a luxury to be afforded by government only where there was no prospect of enhancing its own income at the tenants' expense. Moreover, economic or administrative considerations were not generally cited as showing that the tenants required protection. R.M. Bird had proposed that government should fix the rent rates for tenants-at-will, but, starting with Bentinck's government, this had consistently been rejected, for example in the NWP tenancy debate of 1865-7. The Awadh Rent Act of 1869 abandoned previous attempts to protect tenants from rack-renting, and maintained privileges only for a small group of ex-proprietors. In 1872 William Muir concluded that, for 'those whose traditions fail to connect them with an original interest in the soil, the process may be left to work itself to an equilibrium, and the proprietors to push their claims to the utmost'. Thus where there was interference, it was to maintain 'classes whose customary rights...are liable to be injured or ignored by our land laws, and by the changes inseparable from our system of government'; for Muir this meant ex-proprietors who were being ousted by low-caste cultivators. Generally, then 'custom' was supreme.

<sup>11</sup> The Madras case was quoted by Cunningham. J., in the *Gazette of India*, 24 January 1885, R&A Rev A 7 (December 1885).

This attitude was still confirmed when, from the 1860s to the 1880s, several NWP investigations were prompted by inquiries from Bengal. The investigators concluded tautologically that all long-term tenants had occupancy rights subject to paying a 'fair'—that is, a market—rent; no particular term of occupancy guaranteed this right, such as it was, and no right existed to hold land against the will of the landlord. Only 'original proprietary title' guaranteed a higher claim. Though settlement showed haphazard variations in rent-rates, these were generally raised in line with the capacity of the land, and frequently for whole villages at one time. Supposedly (from settlement reports), the rates of effective occupancy rights ranged nonetheless from 33 per cent of tenancies in Banda to 71 per cent in Allahabad. Despite these variations, only very wealthy or powerful landlords could eject their tenants every twelve years, and some areas showed a marked rise in the number of secure and independent tenants. A.C. Lyall, reflecting on this history in 1882, concluded that the growth of occupancy-tenant rights had not worked well in the province as a whole, probably could not be fitted in to 'modern relations between landlord and tenant', and should not be extended to Awadh.

But he went on to show how views were changing. He accepted that there was a problem of insecure tenancies, that all tenants should be allowed a certain fixity of tenure at fair rents, and that the state should help secure this. He was ready to offer protection to the 'whole body of cultivators', and to 'equalise the position of the two contracting parties', though not to provide the tenant with 'an anomalous and imperfect title'. He proposed an official rent-roll, or special courts to adjust rents, or (as planned for the Central Provinces) a right of compensation for evicted tenants. As a first stage, the NWP government proposed recording all *de facto* twelve-year occupancy by tenants in the province. The first survey under this regime was due in Banaras and Ghazipur in 1885. In 1882, in accordance with the Secretary of State's instructions, it was proposed to reduce 'field inquisitions' as far as possible, but also to give occupancy rights to almost all tenants, and to approve limited rent enhancements on a uniform basis mainly in relation to price increases. The Secretary of State balked at the second and third of these measures, but they show how far, and how suddenly, the NWP had been converted to the principle of occupancy rights. The local government had been moved also by a perception that rents were rising and evictions rapidly increasing in NWP as population increased—the previous policy had allegedly been influenced by the advantageous position of many tenants in lightly populated regions. Now interference (as the Government of India put it in 1884) was

‘justified on the broad ground that it is imperatively necessary, in the interests of the general community, that the complete efficiency of the agricultural industry be maintained’. In short, at the time of the rent law debates in Bengal, the NWP government was also considering giving an occupancy right to almost all tenants, on the model proposed for Bengal, with rents to be raised only in line with prices. Their suggestion, considered too radical by the Secretary of State in 1882, harked back to the 1830s, when Bird had proposed fixing rents in relation to the revenue demand. As we have seen, some of the would-be reformers in Bengal propounded the theory that such rent-fixing had been intended, or that, in law, it should have been unavoidable, in the permanent settlement as well. In the NWP the proprietary right had grown, as in Bengal, in the absence of such control, though the cultivators’ rights defined in the Act of 1872 fell far short of a permanent interest in the soil. In NWP, there was not to be a *property* for the raiyats. Occupancy right would lapse where there was sub-letting. It would not be heritable, Lyall fearing opposition and litigation from the landlords, and incessant subdivision and overcrowding on tenanted land as population increased. Nonetheless the effect of Lyall’s scheme, as he recognised, would be to give what amounted to an occupancy right, after all, to most tenants, in line with what was being proposed in the Central Provinces and Bengal.<sup>12</sup>

Evidently there were some fundamental differences between the possible approaches to reforming the land law; they imply the influence of local circumstances, and thus relate to our earlier consideration of the balance between custom and statute. The particular expedient, first proposed in the Central Provinces and adopted for Awadh, whereby

<sup>12</sup> For the preceding see minute by A.C. Lyall, 28 December 1882, R&A Rev A 16-21 (April 1884), quoting *inter alia* W. Muir minute, 4 July 1872, notes by Yule and Wingfield, December 1862. See also J. Woodburn note, 26 July 1882, recording ejectment notices served on tenants in Awadh: 1869, 25,744; 1870, 52,151; 1880, 56,686; 1882, 91,000. Of those served notices in 1880, 30 per cent remained at increased rent, and 29 per cent at the same rent, 12 per cent were evicted from part-holdings, and 29 per cent were evicted from all cultivation in the village (including 6 per cent who took up land in another village, 10 per cent who later acquired land in the village, and 2 per cent who abandoned agriculture—all these remaining in the village—plus 5 per cent who were *pahikashtha* raiyats from elsewhere and left the village). See also G/I to S/S, 30 September, G/NWP to G/I, 6 September, and NWP Director of Agriculture to Board of Revenue, 31 March 1884, R&A Rev A 21 (September 1884); also B 77 (December 1884); R&A Rev A 19 and 36 (February 1885), including NWP letter of 17 October 1882, and S/S despatch of 22 March 1883; and G/NWP to G/I, 12 May 1884, and G/I to S/S, 7 June 1884, R&A Rev A 1 (June 1884).

tenants had to be compensated for eviction, was an elaboration of a provision of the Irish Land Act of 1870. It was thought not to have worked in Ireland, and opinion in the NWP government in the 1880s was that nothing short of fixed statutory periods of tenancy would really make the tenants secure. However, the Central Provinces suggested matching the compensation to the scale of rent-enhancement, severely punishing large increases, which might, it was thought, have the desired effect of encouraging the landlords to settle with their raiyats *at rates below those which would be obtainable by outside competition*. It was not certain the NWP government would go so far; at one point they welcomed an occasional ‘opening for the market rate’ of rent (once in seven years), and the Government of India retorted that ‘under the present circumstances of the province’, including having 409 people per square mile, ‘the market-rate is synonymous with the highest rack-rent that the landlord chooses to ask’.<sup>13</sup> But clearly the NWP government too was prepared to move some way towards a non-competitive system. The present situation in Awadh, explained NWP Secretary Woodburn, was that the law had ascertained and defined ‘prescriptive rights and customary privileges of certain classes’, and thus allowed a kind of proprietary tenancy to grow. This was the position reached in Bengal in 1885. The question was now, Woodburn went on, in a contemporary recognition of the contest between custom and law, ‘in what way the law should intervene so as to regulate beneficially the non-privileged cultivating tenures...and farming contracts’ (sharecroppers). In Bengal, he claimed, ‘the rent law proceeded by way of...maintaining, reviving and declaring rights, ...working upon material familiar to jurisprudence’. The appeal was to ‘principles which took their rise in remote antiquity’ and which therefore were ‘within the hearts of the people’. The avowedly more radical stance in the NWP, necessarily tentative, implied securing rights to all manner of cultivators, and altogether excluding from such rights those who had very large holdings or who sub-let land to others. Otherwise: ‘It is open to doubt whether the absorption of small farms, on which at least the tenants manage to make a living, and the consequent relegation of their occupants to the rank of labourers with a most precarious subsistence, would not be attended by much suffering’. By such policy, government regulation stood out (with no certainty of success) against the ravages of competition.<sup>14</sup>

<sup>13</sup> G/I to S/S, 7 June 1884, R&A Rev A 1-2 (June 1884).

<sup>14</sup> J. Woodburn, Secretary to G/NWP, to Secretary, R&A, 21 December 1883, Add.Mss.43584, commenting on Erskine’s report (1883).

Two points may be noted. First the appeal to history and custom, in Bengal, was still a device for extending state interference, for having laws which overrode and shaped practice by 'declaring rights'. So MacDonnell, noting abuses connected with distraint under the Darbhanga raj, had hoped that the proposed Tenancy Act, 'if *honestly enforced*', would 'assure a kind of millennium to rural Behar': 'the spread of education and awakening of intelligence may be trusted to secure a more prosperous future to the people of this province; but for the present it is the duty of local officers...to effectuate the intention of Government'.<sup>15</sup> Secondly, however, 'principles of remote antiquity', 'in the hearts of the people', also avowedly influenced the form which these legal definitions took, leaving further improvements to other forces of evolution. To MacDonnell, as just seen, the outcome of the rights promised in the legislation would be intellectual and political regeneration; and the state's job was to act as a stopgap to enforce the rights until they had wrought their effect. Custom and 'natural evolution' were not wholly unseated. It followed that the Bengal efforts were less pitted against the market or against tradition, but also less firmly in favour of actual cultivators, than were the measures Lyall and Woodburn contemplated for NWP.

These local variations do not refute that fact that rights of occupancy became a general remedy. There was a shift of focus, from landlord to peasant proprietor, which gave new life to some ideas of political economy that might have been thought to have been tested and found wanting. In addition, in the particular case of Bengal, the main idea thus advantaged was the 'magic of property'. Supposedly, it had not overcome the Indian environment in the case of the zamindars. Like the NWP government, Field had a ready answer: sub-letting, that undesirable diversion from the path of economic rectitude, had appeared spontaneously in nineteenth-century Bengal because 'alienability, not to be suppressed, ...[had] asserted itself'. Thus it was that legislation was needed not only to hurry up the inevitable evolution of custom, but to channel it into productive forms. Sub-letting 'grinds the cultivator down', but transferability of peasant holdings would encourage thrift.<sup>16</sup> To Field's political economy was added the special stamp of James Mill's Utilitarianism, or even of Samuel Smiles: particularly hateful was any form of unproductive rent-receiving (such as the thikadars of Bihar); if it was important to keep

<sup>15</sup> MacDonnell to Bengal Secretary, 7 September 1880, Add.Mss.43592 (his emphasis).

<sup>16</sup> Field, *Digest*, p.183.

estates in the hands of managing zamindars, it was even more desirable for holdings to remain in the possession of 'actual cultivators'.

But always possession was clearly superior to labour. Repeatedly, in the land-revenue debates of the previous half century, paternalists had wanted to preserve the supposed property rights of cultivators, by fixing their rents and securing their tenure; pro-zamindar elements had argued that such privileges should not be introduced by the state as they were incompatible with the landlords' rights in the soil; and radicals had envisaged the free operation of market forces, which would simplify agrarian relations and turn the mass of tenants into agricultural labourers. The compromise which emerged outside Bengal in the 1830s provided that tenants had security through a record of rights—which retained some of the complexity—but, especially after the 1860s, also that rents were not to be fixed in perpetuity. Utilitarians succeeded, as Stokes explained, in restricting both absolute landed property rights and laissez-faire economic ideals; they provided precedents for the state's right and duty to intervene, over rents and tenancy as in other aspects of social and economic life. On the other hand they did not abandon property in practice; rather they intended to extend it, for example to superior 'cultivators'. In this respect the main thrust of north Indian policy contrasted with the more egalitarian system introduced in Bombay under the influence of Wingate and Goldsmid, where intermediaries were removed and rents were supposedly related to the different potential of different holdings.<sup>17</sup> The 1885 Tenancy Act reflected these north Indian or Punjabi propensities.

## II

Social conservatism, like that of Trevelyan or of Maine, did not preclude either state responsibilities or Indian progress. The salience given to both of these indicates the continuing importance of universal and evolutionary elements in colonial attitudes to India. It was theories of a universal character, owing much to philological and ethno-historical researches, which traced coparcenary rights on settled and conquered land to supposedly tribal and pastoralist Aryan origins. In the modern world, as Maine proposed, such communistic rights were or should be replaced by private property. The presence of such elements in the debate implied that the tenancy reform would be based upon essentialisms of categorisation or about India, and in dogma about social and economic progress. The particular consequence was a search for the propertied and maximising peasant, a prospect long ago held up by

<sup>17</sup> For the preceding see Stokes, *Utilitarians*, especially pp.117-39.

Richard Jones, and presented here both as truly Indian and as potentially progressive. But the underlying principle was the positive impact of property and ownership.

It was camouflaged by a supposed faithfulness to Indian history and custom. As MacDonnell put it, quoting Maine (in another context, while advocating the gradual extension of the elective principle in India), it was not until the 'warlike people' of the north-west had been subjugated that the true proprietary unit of India was discovered; he meant the 'village republic', made up of proprietary cultivators. This idea underpinned the radical core of the pro-raiyat stance, which as we have seen was the idea of co-extensive rights of property—that is, the interest in land divided into different aspects between landlord and cultivator. It was argued, as the Bengal government put it, that raiyats had and should have 'substantial rights of a proprietary character', expressed in security of occupation, and rents which took account of their 'beneficial interest' in the soil.<sup>18</sup> Rent-receiving rights, it was said, ought to be qualified by this property in the cultivation. The idea has its roots in theories of Asiatic or Indian social formation, polity and production, and has become familiar not just to readers of Henry Maine, but to those of Karl Marx and more recent historiography. But the idea itself (though not all its Hegelian echoes) was novel in official and public circles in Bengal in the 1870s and 1880s.<sup>19</sup> It was introduced by officials of the reformist persuasion. They had been alerted by agrarian conditions in Bihar, and proposed North Indian remedies.

Clearly the state's expanding role had had to be accommodated to a theory of Indian rights:

My own view [wrote Mackenzie in 1880] is that, under the law and custom of

<sup>18</sup> Government of Bengal to Government of India (R&A), 27 July 1881, in *Report of the Government of Bengal* (1881). The notion may be traced back to the early nineteenth century, for example, Holt Mackenzie's minute of 1819, repeatedly quoted in the 1870s and 1880s.

<sup>19</sup> As is well-known, Hegel wrote of India as a 'phenomenon antique as well as modern; one which has remained stationary and fixed, and has received a most perfect home-sprung development'; he also added: 'When they [the English] conquered Bengal, it was of great importance to them, to determine the mode in which taxes were to be raised on property, and they had to ascertain whether these should be imposed on the tenant cultivators or the lord of the soil. They imposed the tribute on the latter; but the result was that the proprietors acted in the most arbitrary manner: drove away the tenant cultivators, and ...gained an abatement of tribute. They then took back the expelled cultivators as day-labourers, at a low rate of wages, and had the land cultivated on their own behalf.' Georg Friedrich Hegel, *A Philosophy of History* (tr. J. Sibree; New York 1956), pp.139 and 154.

Bengal, no zemindar is entitled to rack-rent *any* cultivator admitted to settlement on the village lands. On his demesne lands (his khamar, nij-jote, or seer lands) he can ask what he likes, but on the village lands the rates should be uniform, customary, and fair, and such as to *divide*<sup>20</sup> equitably between the zemindar and the cultivator, *in accordance with the custom that may have established itself in the village*, the *net* profits of cultivation, after defraying all outgoings and the actual cultivator's wage. This is what I conceive to be the constitutional theory of ryots' rents in Bengal, even at the present day.<sup>21</sup>

We have had reason to notice the free-for-all (or free-for-a-few) revealingly proposed for demesne lands. In regard to raiyati holdings, Mackenzie was here presenting himself as a realist, making concessions on the principle (pre-British raiyati rights) in order to reflect the present situation (division of profits according to custom). He was being disingenuous, in view of the current arguments about unqualified zamindari property, but he thus indicated the consensus among the reformers and within which the Rent Law Commission conducted its arguments, even those members who disagreed with Mackenzie. In the spirit of his manifesto, when the Commission rejected free competition without legislative interference as a means of regulating rents, they did so by urging that classical (Ricardian) theory was appropriate only to capitalist farming, and by noting that more 'modern' political economists anyway defined rent as 'surplus profit' without Ricardo's reference to the minimum set by the worst lands. They added that in India, where government had ever taken a proportion determined by itself, the cultivators sought subsistence and not profit.

But then, rather giving away this argument, the reformers recommended government-regulated enhancement *on the basis of existing rents*, which were to be presumed 'fair' as the case law had decided.<sup>22</sup> In the 1885 Act the expression 'fair and equitable' was used, but was not defined. Finucane and Ali show that it derived from section 5 of Act X of 1859, so that there was case law upon it. Finucane and Rampini suggest that it was a charter for raising rents, in that all rents were assumed to be fair until the contrary was proved (section 27), meaning

<sup>20</sup> A marginal notes adds: 'It is almost certain that in 1793 it was intended that the cultivator should get the whole net profits, after paying the rent as *then* fixed, or at any rate after it had once been raised to full pergunnah rates; but this privilege has been lost to him, and now the two parties having proprietary interests in the land must *divide* the surplus accruing from the increase in the value of produce since then; and the one who has the most risk should get the larger share.'

<sup>21</sup> Mackenzie, 'Note on the rights and status', *RLC Report*, vol.2, p.403 (emphasis in original).

<sup>22</sup> Following Trevor, J. in *Thakurani Dasi*, 3 WR Act X, 41.

that rents which were out of line were susceptible to reduction (section 38) or more probably enhancement (sections 30-34), though that increase also had in itself to be fair (section 35). As will be discussed below, a different view is that, as the *Commentary* concluded, the outcome was that existing rents, the result of custom, haggling, or oppression, could be changed, in law, only on proven and specific grounds: 'The effect...is to give occupancy-tenants practical certainty as to the amount of the rent which they may legally be called upon to pay at any particular time.'<sup>23</sup> Why should this have been thought such an obvious advantage, if not to promote investment and increase property values?

On rent, the reformers supposedly rejected an untrammelled role for the market and for competition on better soils, and argued for political intervention to fix levels which would secure a sufficiency of income to the tenants. For their theory, they preferred Jones to Malthus or Ricardo. Rent was regarded not as the necessary expression of economic factors creating a 'net product', but as a variable traced originally to power. They criticised the landlords' present oppression. Yet the grounds they favoured for allowing rent-increases (prevailing rate, excess area, increased productive capacity, increased value of produce) were all, as said, to be worked against the yardstick of *existing rents*. The reformers (and the grounds for enhancement) also assumed production for profit. By ruling out differential rents for different crops the Rent Law Commission endorsed earlier criticisms of this practice as discouraging the growth of higher-value crops: they mentioned the disapproval expressed of special sugarcane rents in the revenue despatch of 12 December 1792, and that implied in 1837 when the Court of Directors argued that the 'productive power of the land' and not the crop should guide assessment.<sup>24</sup>

The reformers adhered, in short, to general theories, many of which are still influential. They clung still to the capitalist model of production and the 'magic of property', the belief that ownership was a necessary engine of economic advance. They clung to it, while arguing that the landlords of Bengal had failed to create prosperity; they insisted that the ideal was for the owner and the producer to be combined. The landlord was a parasite, neither placed nor concerned to increase pro-

<sup>23</sup> See Finucane and Ali, *Commentary*, on the sections cited, and Finucane and Rampini, *Tenancy Act*. This would be beneficial only if the rents were not raised at the same time. Finucane's earlier view had been that raiyats preferred illegal cesses to increased rents, as they knew the former could not be recovered through the courts (!); Darbhanga estate, Alapur Settlement Report, with G/I R&A despatch no.7, 21 March 1882, Add.Mss.43584.

<sup>24</sup> See *RLC Report*, vol.1, pp.31-2.

duction. How unlike the peasant proprietor! He was the indigenous figure in the Indian landscape, and his selfishness could be harnessed to the development of the economy, thus combining social harmony with prosperity. If he in turn should grow rapacious, as the reformers suggested at one awkward moment in their proposals (to a chorus of derision from their critics), then the government could intervene again and redress the balance. By such nimble footwork, a path was struck for an interventionist policy through the prevailing thicket of *laissez-faire*.

Pro-zamindari advocates objected to interference with the supposed contract of 1793. We have considered some of their views. The pro-tenant reformers argued that the settlement had not intended, or had not been competent, to deprive raiyats of rights in land. They interpreted the zamindari settlement, in ways fundamentally opposed to its principles, with an eye to supposed economic and political benefits; they wished to remove obstacles to progress and justice which they identified in the existing rule of property in Bengal. At the same time the reformers professed to advance the interests of the 'actual cultivators of the soil'. Because of the historical arguments, however, the beneficiaries of the tenancy legislation were identified with holders of traditional privileges rather than with persons currently engaged in cultivation. They sought to advantage 'men of substance'. The Rent Law Commission 'seriously considered' limiting the occupancy right to actual cultivators, but shied away from this step into the unknown.<sup>25</sup> At one stage, the newly-retired Permanent Under Secretary at the India Office, Louis Mallett, prompted by an article in Allen's *Indian Mail*, became most alarmed at the possible consequences of transferability. Kimberley saw 'there is a danger' but not 'the way out of the difficulty'.<sup>26</sup> In consequence, many of the occupancy raiyats, as defined in 1885, were not 'peasant' proprietors; nor indeed, in a market-oriented economy, could the self-sufficient smallholder be preferred over the capitalist farmer.

In the 1885 Act, it was provided, as said, that all permanent tenures were transferable, in whole or in part.<sup>27</sup> It also was stated that sub-lets of less than nine years might be registered, though otherwise they remained subject to the landlord's consent. These provisions rather

<sup>25</sup> *RLC Report*, vol.1, p.13.

<sup>26</sup> Kimberley to Ripon, 3 October 1883, Add.Mss.43524. For some reason Kimberley suspected that an occupancy raiyat could be just as much in the moneylender's power even if transfer were prohibited.

<sup>27</sup> See Finucane and Ali, *Commentary*, on sections 3 (8) and 11, defining tenures as permanent if they were heritable and not held for a term.

recognised subletting than restricted it, by confirming that occupancy raiyats could enter into such agreements, and sub-let all or part of their holdings, without changing their status. The previous law had permitted an occupancy raiyat (whose right was already established) to sublet only provided he did not thereby alter the nature of his tenancy,<sup>28</sup> or become a middleman.<sup>29</sup> It was later held that such agreements (even if for longer than nine years) were void only in regard to a dissenting landlord of the principal raiyat, and not between the contracting parties (so as not to confiscate the putative rights of the under-raiyat).<sup>30</sup>

The 1885 Act defined a raiyat primarily as a person who had acquired land for purposes of cultivation—which followed the existing law—but it did not make this definition exhaustive, so that persons who had the right to cultivate but did not do so could still be considered ‘raiyaats’ within the meaning of the statute. In addition, even the weak restriction thus implied (on raiyats being rent-receivers) referred to each holder only in respect of each holding or tenure; the same individual could have a different status in regard to another interest in land.<sup>31</sup> Given the legal sanctions against the splitting of holdings, it seemed thus that aspects of the Act unintentionally encouraged subleases or share-cropping. By case law, confirmed in 1885, raiyats were not permitted to split their holdings without consent, and part-holders could be evicted as trespassers; similarly landlords were prohibited from dividing up raiyati holdings and redistributing them.<sup>32</sup> This encouraged sub-letting in preference to partition. Moreover, though the 1885 Act was unclear on whether or not occupancy rights could be gained by sub-tenants, this had been ruled out for land let for a term or year-by-year in Act X of 1859 and Bengal Act VIII of 1869, and even more broadly in the courts. An amendment in 1907 protected the rents of ‘occupancy’ under-raiyats, possibly

<sup>28</sup> *Ram Mungal Ghose v. Lukhi Narain Saha*, 1 WR 71, which held that sub-letters became tenure-holders.

<sup>29</sup> *Durga Prosanna Ghosh v. Kali Das Datta*, 1881, 9 CLR 499.

<sup>30</sup> *Gopal Mondal v. Eshan Chunder Banerji*, 1901, ILR, 29 Cal.148. On the other hand, in chapter IVA, section 18 (a) & (b), of Bengal Act I of 1907, it was provided that a transfer without the landlord’s consent was not evidence of any incident of tenure, including transferability.

<sup>31</sup> See Finucane and Rampini, *Tenancy Act*, on section 5 (5), and, for the existing law, *Ram Mungal Ghose v. Lukhee Narain Saha*, 1 WR 579, and *Kalee Churn Singh v. Ameerooddeen*, 9 WR 579.

<sup>32</sup> Following *Ruheemuddy Akun v. Poormo Chunder Roy Chowdhry*, 1874, 22 WR 336. See Finucane and Ali, *Commentary*, on section 88.

meaning those who existed by custom, as the 1885 Act allowed.<sup>33</sup>

Harrison put in a note to the Rent Law Commission suggesting that actual cultivators and not middlemen should be secured in the right of occupancy. Field and Mackenzie countered with their own notes, Mackenzie arguing that Harrison's idea was impractical: substantial raiyats, he explained, generally did sublet, and their subtenants (*korfas*), being of low status, would be unable to maintain any privileges awarded to them. The only way to stop sub-infeudation, he held, was by limits upon rents. After three more meetings, at which O'Kinealy backed Mackenzie, this position was substantially accepted. Mackenzie was absent from the dozen or so ensuing meetings at which rent-enhancement was discussed, but this had been a telling point: it implied that Mackenzie and the Commission accepted that occupancy rights, to be effective and useful, had to be secured for men of substance.<sup>34</sup> Mackenzie admitted as much in 1884 by giving up some of the provisions he had sought in the Bill to protect non-occupancy raiyats: 'It is a distinct object in the policy of the Govt.,' he began, 'to *foster* the growth of the "residuum" [of tenants] into occupancy ryots'; but, after seeing MacDonnell, he agreed that '*if the occupancy ryot is carefully safeguarded*, it would solve many difficulties to leave the "residuum" to the existing law or nearly so'.<sup>35</sup> Even in 1882, in apparent qualification of his insistence on securing occupancy rights for all cultivators, he had conceded that no one thought *pahikashta* raiyats had any 'ancient status';<sup>36</sup> if this mattered in the 1880s, then it was an easy elision, from resident, to established or privileged raiyats, as the beneficiaries of policy. The reformers found themselves in the ambivalent position of proposing rights based on history (inherited customs and status) and not upon agreement (acts of creation), while at the same time trying to construct new rules which would after all create such rights—rights which might have been supposed to be fixed were discussed in the form of laws which were yet to be made. The reformers were able, therefore, to take decisions, in the guise of respecting what existed, which were in fact determined by the outcome they wished to achieve—in this case a society of independent peasant-proprietors. We noted earlier a different conclusion for Awadh.

The supposed justification for all this potential for change was agri-

<sup>33</sup> See Finucane and Rampini, *Tenancy Act*.

<sup>34</sup> *RLC Report*, vol.2, Minutes of Proceedings, 20 January, 2, 16 and 29 March, and 30 March to 4 June 1880.

<sup>35</sup> Mackenzie to Primrose, 26 February, and to Ripon, 28 February 1884, Add.Mss.43615 (emphases in originals).

<sup>36</sup> Mackenzie to Primrose, n.d. (logged 10 August 1882), Add.Mss.43615.

cultural improvement. To the raiyat as rentier was to be added the raiyat as capitalist—the possibility which Richard Jones had identified. The 1885 Act allowed tenants to benefit from and to register their improvements in the productive capacity of their holdings. They were also permitted to do anything on their holdings, without consent, including house-building, which did not permanently damage the land for agriculture. This provision (section 23) in conjunction with sections 24 on fair rents, 30(b) ruling out enhancement for the growing of more valuable crops, and 82 and 83 on compensation, constituted a definite strategy to create ‘improving’ raiyats. For similar reasons, and in order to promote certainty, the Act displayed an animus against produce-sharing rents. Considerable inquiry had been made into these tenures in Bihar, concluding that they needed to be regulated. Though not objectionable as such, it was said—even useful if providing for irrigation, at times ‘very popular’ and ‘perfectly satisfactory’—yet, given the relative power of Bihar landlords, they tended to keep tenants ‘in a depressed condition and incapable of maintaining’ their legal rights.<sup>37</sup> The Bihar Rent Committee suggested requiring landlords to file their accounts, which the Rent Law Commission thought impractical. Other controls considered were a ceiling on the proportion of the output taken as rent, and powers to the Collectors to appraise or apportion the crop.<sup>38</sup> The existing case law was that produce-sharing (*bhaoli*) rents could be enhanced and, even if fixed as a proportion of the output, could not be ‘fixed rents’ under section 4 of the 1859 Act.<sup>39</sup> From prejudice against produce-sharing rents, this was confirmed by section 28 of the 1885 Act, which restricted the enhancement of *money* rents to the grounds provided in the Act. The intention was to encourage raiyats to seek commutation to cash rents. On the other hand, to discourage landlords from extending produce-sharing tenancies, section 71 gave possession of disputed crops to the raiyat, for harvesting and storage, pending adjudication. Again commutation to cash rents was the intended outcome.

In the end, the 1885 Act, far from providing safeguards and means of improvement for all raiyats, tended to increase any dangers they faced.<sup>40</sup> Not least, the reason was that it permitted the occupancy right

<sup>37</sup> Patna Commissioner to Board of Revenue, 21 August 1858, and BRC Report.

<sup>38</sup> See *RLC Report*, vol.1, pp.73-4.

<sup>39</sup> *Thakoor Pershad v. Nawab Syed Mohammed Bakir*, 1884, 8 WR 170.

<sup>40</sup> This is deliberately expressed as a trend and not a universal rule. As will be shown in chapter ten, the trend was that some raiyats, who tended not to be ‘pure cultivators’ and to have relatively high status, gained some benefits

and all its advantages to be enjoyed by non-cultivators. As at least one commentator remarked, echoing J.P. Grant, the district judge of Hooghly, such a 'misnamed occupancy ryot' was likely to become enriched as a 'new middleman', at the expense of zamindars and cultivators alike. Such 'petty middlemen', the Collector of Murshidabad argued, were the most oppressive; *they* would be the rack-renters instead of the zamindars, claimed E.V. Westmacott, the Collector of Dhaka. But the tenancy reformers *intended* to create a class of agricultural entrepreneurs amidst the smallholders of Bengal and Bihar, and they did not see how they could do so without providing them with a property in their tenancies. That property, being necessarily heritable and transferable, obviously could be lost through mortgage, or acquired, in a highly stratified society, by those who would employ labour and lend capital. In mitigation, case law (according to Finucane and Ali) implied when interpreting the 1885 Act that a raiyat should not be a mere rent-receiver, entirely divorced from cultivation. However, an occupancy raiyat could buy and sell rights, and did not have to be resident (unlike a settled raiyat) provided he continued to hold land (under section 20 his rights would lapse if not exercised, after one year). No measures against external or professional moneylenders could have prevented this; nor could a ban on sub-letting on occupancy holdings (suggested by, among others, J. Monro, Commissioner of Presidency Division).<sup>41</sup>

By the same token, if the Act did not discourage those raiyats who were landlords, equally it did not necessarily curb the proprietors in their control over land. In addition to sharing in many of the weapons already discussed, the zamindars also had the chance to benefit from the Act's indecision over demesne land. The draft rent bill for Bihar had tried to re-define *zerat* because it differed in Bihar from what was envisaged in Regulation VIII of 1793, and because it was so easily extended in many estates. It was partly for this reason that the presumption of occupancy right (section 120 in the Act) was strongly supported by Bayley and Mackenzie;<sup>42</sup> and some other safeguards were

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against their landlords. Note, however, the advantage taken by some 'agricultural' castes of middling status, or the instances of Namasudras in Bakarganj seeking commutation of rents and standing up to their landlords in 1908, coincidentally with settlement operations, as described in Sekhar Bandyopadhyay, *Caste, Protest and Identity in Colonial India. The Namasudras of Bengal, 1872-1947* (Richmond, England, forthcoming, 1997), ch.3.

<sup>41</sup> Dacosta, *Remarks and Extracts*. The references above to official comments are taken from this source also.

<sup>42</sup> See chapter II, clause 9, of the draft bill, and section 39 of Regulation VIII of 1793, 'Draft bill for Behar', *RLC Report*, Appendices.

also included in 1885: Bihari lands cultivated directly by indigo planters and called *zerat* were not recognised as such in the 1885 Act because of the rule excluding tenure-holders. More generally, there was little use of the survey procedure to establish such lands, and Finucane and Ali reported: 'Every year that passes makes it more difficult for proprietors to prove that lands held by them directly are true legal "private lands".'<sup>43</sup> On the other hand, claims were encouraged by, and such lands recorded in, the main survey and settlement operations. Moreover, whereas sections 37 to 39 of Regulation VIII of 1793 had recognised as *khamar* those lands already recorded as such on 12 August 1765, sections 117 to 120 of the 1885 Act admitted as *khamar* whatever land was shown currently to fall within the definitions provided.<sup>44</sup> The zamindars quickly understood how to manipulate these aspects of the law.

The pro-raiyat school in Bengal was selective in its radicalism. It was inventive when it came to re-interpreting agrarian relations in the eighteenth century, but not when defining the nature of the property which was to be provided for the tenants. The intention, of course, was to give rights of occupancy to the vast majority of raiyats. But this property was not to be any inalienable good, or a right inherent in the cultivation of land: such proposals foundered on the twin rocks of practical politics and incomplete theory. This property was to be an exclusive personal possession in precisely the sense in which the courts had hitherto usually supposed the landlord's estate to be. It was to be bought and sold, because property, it was assumed, had to have value and marketability.

Consideration of the arguments for and against legislation makes it plain that conditions only 'made sense' if reviewed in terms of a strong external hypothesis. The ideological certainties contrast with the real difficulties of the record. In particular, judgments remained firmly located within assumptions about exclusive ownership which were characteristic of British ideas of property. Those who regarded tenancy legislation as a confiscation of zamindari rights quickly discovered early and apparently supportive texts which fitted in with the historicist flavour of the current discourse. But *a priori* assumptions were not confined to the zamindars' advocates. The Rent Law Commission did not even collect its own evidence or have public hearings from

<sup>43</sup> *Commentary*, p.539.

<sup>44</sup> Namely, that cultivated by the proprietor directly, or by his servants or hired labour, for twelve years, or recognised as such 'by village usage', or let out as such before 2 March 1883. See Finucane and Rampini, *Tenancy Act*.

interested witnesses, as one critic pointed out.<sup>45</sup> The reformers made no real attempt to derive their proposals from, or even to reconcile them with, Indian conditions. They knew that sub-letting and labour-exploitation would be a problem, but they preferred to ignore it, because of an intellectual conviction that transferability was essential to 'true' and useful property, and also that property would transform its peasant possessor into a capitalist who would need no special help to remain true to his economic interests and to enterprise. However, given the emergence of a consensus in the Punjab about the problem of indebtedness in the 1890s, it may be that a decade later officials would have been convinced, on the contrary, that because of his property the peasant-proprietor needed to be protected from outsiders who would exploit him—that is, protected from himself. After all the features of the 1885 Tenancy Act were derived from a particular conjunction of the events and attitudes of its time.

We have seen that the Tenancy Act redefined three major aspects of agrarian relations: types of land, different classes of land-holders, and the kinds and limits of rights, especially as regards transferability and rent. In attempting to fix and secure such definitions, the Act also provided for settlement and record-of-rights proceedings, though their outcome was probably quite different from what had been intended. In all these aspects the Act was chiefly concerned with categories of property, abhorring any gap or ambiguity either of land or of status, even though it retained some poorly defined distinctions—for example, one that was important but as yet unmeasured, between zamindari and tenants' land. The point, already made, that zamindars could benefit by extending *zerat*, rested on the principle that all land (including the state's) had to be either zamindari or raiyati, at any one time, and that the incidents of each were quite different. For example, by section 6 of Bengal Act VIII of 1869, reinforced by section 116 of the 1885 Act, no occupancy rights accrued in respect of the so-called home-farms of the landlords (not tenure-holders), which were called *nijjot*, *khas*, *sir*, *khamar* or *zerat*, and recognised in effect as any land thus specified, supposedly by custom, even if held by tenants, plus any land that was untenanted. This *zerat* included land not held by tenants in 1793, or which had since come into the 'immediate possession' of the landlord, for example by the relinquishment or annulment of a tenancy.<sup>46</sup> In the Bill introduced in 1884, the statement of objects and reasons had inclu-

<sup>45</sup> J. Dacosta, 'The Bengal Tenancy Bill. Remarks on a paper read by W.S. Seton-Karr at a Meeting of the Society of Arts' (London, 1884).

<sup>46</sup> Field, *Digest*, p.22. Regulation VIII of 1793, section 52, referred to the 'remaining lands' of the estate.

ded the need to see that *khamar* land was not further extended; Ilbert reiterated this in his speech. But the relevant clauses were dropped, and the determination of such land was left to the revenue officers, by survey, as requested by government or individuals. A result of the Act was therefore (as said) to encourage the already-extensive claims to *zerat* land, identified as a special problem in Bihar. By contrast, tenant lands were defined according to the status of their holder: we have seen how the reformers abandoned their earlier attempts to associate occupancy rights with all raiyati land and not with the occupant. The reformers held in their minds a picture of a stable Indian village made up of largely undifferentiated tenant-cultivators, so that it seemed to them not to matter if rights were vested in occupants rather than land. But this left open several possibilities: transfers of land from weaker to stronger occupancy raiyats, the further creation of under-tenancies, and the loss of presumed tenant rights by legal or other manoeuvres. We shall consider these consequences in a later chapter.

Legislation thus occurred under the influence of ideas whose limitations it reproduced. Particular distortions can be traced to social theories and views of India which made up the mentality of the officials, whether large ideas with a wide currency or specific interpretations with a restricted appeal. Two intellectual reflexes were apparent: one historicist and the other essentialising. First, the reformers insisted on a necessary evolution from the past to the present. Thus, in his *Digest*, Field accepted that 'alienability was not an ordinary incident of landed property in its early stage', but, as noted earlier, he also argued that the tendency of development in any society was towards that end.<sup>47</sup> Accordingly the government, in supporting early drafts of the 1885 Act, set about investigations which purported to prove that raiyats' holdings were in practice readily transferred throughout the presidency, if only at the behest of landlords who sought to oust a defaulting tenant. It was held to be wrong to restrict transfer; it had already appeared in the natural course and in advance of any legislative interference. Opponents retorted that transfer was mostly very uncommon, and certainly did not take place without the landlord's consent. To introduce it by legislation would thus be 'mischievous'. A little later, the desire to restrict land transfer would seem to be a fixture of the pro-peasant school of thought, part of an inheritance taken up chiefly by Denzil Ibbetson and to be found in published treatises on Indian law from at least that of Raymond West in 1873. But in fact it was not

<sup>47</sup> Field, *Digest*, p.165. Once the idea was established, he argued, extending it to raiyats' holdings 'was only natural progress'.

essential. Both sides of the argument on transfer paid at least lip-service to the ideal of appropriate rather than universal legislation, and both also adhered to the evolutionary ideas which Maine had expressed.

Eden's government, in 1881, aimed not only to 'encourage the growth of a substantial cultivating class', but also to 'discourage the conversion of men originally cultivators into mere middlemen, or speculators of rent'.<sup>48</sup> But evolutionary theory stood in the way. On one hand the government admitted the impossibility of 'changing the face of the country by statute', and thought it would continue to change by natural processes, as it had already, from a community of subsistence peasants, to a society marked by various classes and occupations. Social differentiation, like markets, resulted from change over time; it was the product of innovation and not part of the original fabric. On the other hand, Eden's government also shared the view of the majority of such interpretations, that most of the change was comparatively recent, and the result of Western government and influence. Some distortions had been introduced, either from indigenous failings or sometimes by errors of British government; but the process of change was thought inevitable and (often enough) 'civilising'. Hence, though sub-letting would be objectionable, it was impossible to avoid entirely, and transfer of land between occupancy raiyats would be welcomed as a sign of progress—it would create a class of well-to-do cultivators with larger than average holdings. Such reasoning remains common in analyses of colonial impact and of development strategies.

The first implicit essentialism of the tenancy reform thus concerned the alleged immobility and lack of social differentiation in rural India in pre-British times, and the subsequent evolution towards dynamism and stratification. More importantly, in the rent law debates these same ideas clearly contributed to the essentialist notion of a uniform peasantry; the term used was resident raiyat. There was a recognised eighteenth-century category of villagers with security of tenure, or rather an obligation to remain in the village. One assumption was that this single category was eroded during the nineteenth century, to be replaced by an unprecedented free-for-all which reduced all tenants to another singularity: the tenant-at-will. Such categories were not, as is sometimes assumed, mere reflections of reality. They resulted from theory and discrimination. We can now see that the notion of a resident raiyat and a successor tenant-at-will was defective: it tried to describe conditions on the basis of speculation about the origins of property

<sup>48</sup> *Report of the Government of Bengal* (1881).

rights.

Against all such standardisation we must place the multiplicity of relations on the land. Indigenous categories existed; and they were legion, local and subject to change. On the one hand the permanent resident remained a powerful idea. In the 1880s one of the arguments against expecting competitive rents was that on the whole men did not go about looking for holdings, and rents reflected very local demand for land.<sup>49</sup> On the other hand landed interests had been complex long before the British appeared. They were influenced not only by customary expectations but also by ideological inputs and commercial and political forces. There is abundant evidence that in the eighteenth century some people moved in order to sell their labour and to take up holdings as non-residents: the very concept of a non-resident cultivator implies this.<sup>50</sup> Clearly raiyats could compete, and even residence was an advantage of shifting import. If there were changes in these respects during the nineteenth century, they were a matter of degree not of kind. By British accounts, someone who employed labour was an anomaly; this was admitted but not faced. Also anomalous was someone who sublet part of his holding and cultivated another part. After 1885, officials uncovered hundreds of such different types of relation and right which they had to squeeze into the categories provided in the Tenancy Act. Not only were there rights which did not fit in; there were individuals who performed in several roles at the same time.

The assumption that there was single category of peasant, and that its natural state was one of stable evolution, helps explain the failure of the reformers in the 1880s to inquire more fully into the identity of the 'bonâ fide cultivator' who was to be protected. Implicitly the reformers relied on an ideal definition whereby those who collected rent could be wholly distinguished from those who cultivated using their own labour. We have noticed that the 1885 Act contained two kinds of distinction, partly contradicting each other: a binary one between rent-payers of all kinds and rent-receivers (called 'landlords' in the Act whatever their legal status), and another between the four major headings, from landlord to under-tenant. In its confusions, this terminology effectively assumed that the 'raiyyat' was not a rent-receiver, whatever he might be in reality. If we compare this result with the writings of the pro-raiyyat group as a whole, we find how the chosen terminology of the Act obscured the original concern with the 'actual cultivator'—code in this

<sup>49</sup> This view was put forward by Phear, J., in the Great Rent Case, and adopted in the *Report of the Government of Bengal* (1881).

<sup>50</sup> See Aditee Nag Chowdhury-Zilly, *The Vagrant Peasant. Agrarian distress and desertion in Bengal 1770 to 1830* (Wiesbaden 1980).

context for the peasant proprietor as opposed to non-cultivating owners or landless cultivators.

### III

The ambivalence of the radicals' ideas contributed to some of what are now regarded as failures in the 1885 Act. It has been suggested that the consequence of allowing occupancy holdings to be bought and sold was to sever ownership from production once more, creating petty landlords who oppressed an ever-more impoverished labouring class.<sup>51</sup> Just such an outcome was predicted by opponents of the 1885 Act, and admitted by some of its defenders as early as the 1890s. Obviously one effect of the prevalent assumptions was to suppress the implications of evidence that was known to all. This included information that had helped provided the impulse for the 1885 Act. In 1878, the Collector of Patna wrote of visiting the houses of petty traders and cultivators—Telis, Baniyas, Gowallas (Ahirs) and Halwais—and seeing the manner in which they lived. He would not have believed their abject poverty, he said, if he had not witnessed it for himself. In Bihar, he argued, the specific problem was low wages; the general one was that the region was too poor to buy up its own harvests. Many of the cultivators farmed only two or three bighas—an acre or less—and ten to fifteen per cent of the population were landless labourers who were barely kept alive by those who held ten or more bighas and wanted their labour.<sup>52</sup> About the same time Antony MacDonnell attributed famine, more succinctly, to the 'inequitable distribution of the produce of the soil'.<sup>53</sup> Yet these conclusions were lost sight of in more generalised assertions about oppressed raiyats and rapacious landlords. It was assumed, in effect, even by MacDonnell, that zamindars were taking too much from tenants generally, rather than that various groups towards the bottom of the society had too little on which to live or were vulnerable to downturns in economic conditions. Explanations were

<sup>51</sup> For a statement of this view see Asok Sen, Partha Chatterjee and Saugata Mukherji, *Perspectives in Social Sciences 2. Three Studies on the agrarian structure in Bengal, 1850-1947* (Calcutta 1982). See also B.B. Chaudhuri, 'The process of depeasantisation in Bengal and Bihar 1885-1947', *Indian Historical Review* II, 1 (1975), pp.105-65.

<sup>52</sup> Patna Resolution for 1878-9, quoted in M[ackenzie], 'History of the rent question'.

<sup>53</sup> MacDonnell's views arose out of his work on famine relief, as a district officer in Bihar, and in preparing his *Report on the Foodgrains Supply* (Calcutta 1876). This particular remark was quoted by Sir R. Temple in 1874/5 and again in M[ackenzie], 'History of the rent question'.

sought in effects which might be supposed to impinge broadly (and which also relied on general theories): such factors as a rising population or the rapaciousness of the mahajans.

But law did affect agrarian relations as a generalising tendency. It has increasingly been recognised, but not yet much reflected in interpretations of revenue and tenancy law, that differentiation was the starting-point and not the end-product of the changes under British rule. The partition of estates indicated the impact of regulations favouring individual property rights, but it also occurred more in some places than others, and meant different things in different places. In general, a proprietor was now being secured in his position by the state, substituting for the weight of the clan. With rising agricultural returns, it was inevitable that advantage would be taken of the mechanism provided in the revenue law to separate individual shares from collective property. There was a general incentive to several property in the economic advantages of undivided management and of recording an enhanced rent-roll during the pre-partition survey and settlement. Similar impulses would work on tenants, once occupancy right was secure. On the other hand, the consequences were not general at all: the incidence of partition was far greater in Bihar than elsewhere, and most of all in some parts north of the Ganges. In much of north Bihar it was appropriate or necessary to slice up dominant and proprietorial interests vertically. In Bengal proper and where there were very large estates in Bihar, such interests were more likely to be divided horizontally. Tenants faced different pressures and opportunities in both cases, and according to their caste, size of holdings, competence and independence. The resulting society was always a mix between pre-existing conditions or long-term trends, and the changing pressures of and chances under British rule.

This account has emphasised defects of understanding which had practical consequences. It does not, however, argue that a distant and arrogant colonial machine ground on unseeing through indigenous norms and values. Though there was a mismatch between different conceptions of society and classes or rights, there was also a diversity and complexity in colonial interpretations, which continually engaged with perceptions of Indian reality. Contrary to what is sometimes suggested, the British never focused only on the particular and intrinsic disabilities of the Indian 'other'. They valued aspects of the Indian past and of indigenous knowledge. Thus the notion of peasants' property was couched in historical terms, derived from notions of cause and effect, and of precedent. It privileged Western rationality *and* an Indian inheritance. The village community ideal too, while retaining the ambi-

valence about progress and modern knowledge which had characterised neo-classicism and other 'golden age' theories, clearly encapsulated the now-familiar sentimental vision of a past that had once been more humane, communitarian and ecologically-friendly than was the present. This again gave a moral superiority to some aspects of the Indian experience. What is more, at the same time there were arguments backwards from what was observed of contemporary poverty and oppression in India. As those conditions were illegitimate, they were assumed to be new, in a reversal of the usual historicist and evolutionary explanations. As well, this argument accorded not only an inferiority to the Indian present (attributed in part to Indian 'character') but also a kind of superiority to an original Indian way, in line with other assertions of the need for special or appropriate policies—that is, of the inadequacy of European theory.

But of course these attitudes and techniques did not remove the desire to progress (along Western lines) or the tendency to distort and generalise. Though the past gave legitimacy, to identities as to land rights, it was also made problematic because of a colonial discourse in which India was seen as a kind of living fossil, and evolution towards the 'modern' was thought a necessary improvement. It was this combination of attitudes, also appropriated by Indians, which implied that a selection had to be made from the past, or that it had to be re-interpreted; thus 'objective' public standards had to be agreed and then policed. From literary taste to religious belief to land rights, the outcome was new law of one kind of another. In the case of the tenancy debate the core disagreements were about the nature and rights of agrarian classes; and so land law participated in the major project of colonial policy, to create classes out of Indian 'disorder' (or order on different principles). The reformers' most basic arguments depended upon treating the raiyats in uniform categories. In the present they were uniformly downtrodden, even though the tenancy-reform movement had originated in concern at violent combinations of tenants, and at evidence of peasant differentiation. In the past, equally uniformly, the peasants were supposed to have had quasi-property rights from *khud-kashta* status. Providing an occupancy right meant once again defining homogeneous types of rural property-holders. Though classification and enumeration are *not* in themselves colonial innovations, contrary to some recent interpretations, yet in this case and others like it they represent significant new kinds of, and means for enforcing, standardisation and structures.

Much of the colonial intent was to remedy other supposed Indian defects, and this permitted a greater degree of state intervention than

was favoured by the current orthodoxies of political theory. The Tenancy Act continued the British (and Indian) attack on forests, 'primitive tribes', migrants, and concealed or unruly classes beyond the law. It expressed a countervailing preference for settled agriculture, with its supposedly greater openness and certainty. Such attitudes dominated official thinking, though they were opposed by some at the time, as by most environmentalists since. Applying an evolutionary model, the vagrant, the uncultivated and the unknown represented the past in a different light—as a 'waste' literally, and a danger. By the same account, the boon of certain and stable property was the future. What was this effort for? Why this expansion of the state? Because administrative reforms allocated definite duties, they imparted to the officials (if only for career advancement and job satisfaction, and by bureaucratic logic) a sense of responsibility for particular spheres, for people, or regions. A professedly Christian or more specifically a Protestant-inspired morality led the officials to emphasise their own duty to promote Indian well-being, and to place high value on some kinds of activity—on useful works, on cultivation (of fields and talents). Thus the British claimed the main object and justification of state policy to be the advancement of 'civilised' features, meaning settled and standardised or categorised populations within fixed, specific territories.

The process was paternalistic, no doubt, with its 'scientific' reformations of knowledge and its definite views of proper conduct. It sought to reduce independence of action. On the other hand, in that respect it was not peculiarly colonial, for such interference and control were featured in the growth of the state wherever it occurred. Moreover, even when emphasising India's difference, and its backwardness and division, as in the 1880s, British officials searched for elements compatible with 'modern' societies—such as the rule of law, individual rights, private property and even egalitarian or representative institutions. Such values were perhaps Western in form, and linked to ideas of Western superiority, but they were also universal in potential, and readily if selectively appropriated by Indians, along with some of the criticisms of India. In particular, a consensus on the rights to property was potentially liberal, in that private property was considered an essential attribute of nations. On one hand, to focus on 1793, with the landlords, was to reinforce ideas of a pre-colonial India without individual rights, a despotic India without history, an India which was therefore an inchoate congeries of tribes and castes. On the other hand if this India had been newly created by Western laws and government, as the pro-landlord arguments insisted, then it too now permitted individual property and hence national attributes, in the European

sense; this some zamindars and intellectuals asserted. Henry Cotton, writing to Ripon of the inevitability of greater Indian participation in their own government, stressed the difficulty of advance 'in a country where the solidarity of classes is so broken up as in India'.<sup>54</sup>

B.H. Baden-Powell took the view, attributed to John Strachey and relevant to a discussion of the contribution of the Tenancy Act, that 'India' was merely a geographical and not a national term, and that therefore institutions took different forms in different places.<sup>55</sup> Nonetheless he made many generalisations. In doing so, he shared the general willingness of the period to revert to Hindu texts, including *Manusmṛti*, as evidence of original and thus legitimate forms of land-right. Though Mughal precedents remained important, the final arbiter seems to have become a notional Hindu past. It is an interesting preference, marking the 'communalisation' of historical periods, the mid-century repudiation of Mughal legitimacy, and the post-census recognition of the 'Hindu' majority of 'India'. To create property, similarly, in the 1885 Act, a fictional history was constructed which met the needs of the present, and also of theory, in that many argued that independent peasant proprietors were economically more efficient than landlords. Because of this fictional history—in which India was perceived as a *single* social entity—the ancient divisions of property rights were taken as generating rules for the proper disposition of land-rights in the present. But, if ancient rights existed so as to legitimise legislation, then it follows that India was not an arena in which European ideas were uncritically imposed, as for example were the ideas of individual property and other Westernisations that were being forced at just this time on Native Americans. The ideology was available to do likewise in India, as was the greed, but the confidence and power were insufficient. Instead there were alternative ideologies and objectives. These gave a value to indigenous forms, to the special character of individual places. The ancient land-rights gave India a national identity, as Britain had, thus returning to the comparative project started in the Indo-European studies of William Jones and the Asiatic Society of Bengal.

By this combination of elements, 'modern' and general categorisation was tempered (that is, hardened *and* modified) by the power and authority of the 'ancient' or specific. As early as 1810, Francis Buchanan, also had noted India's 'perplexing' local variety, which he blamed on successive rulers and their inferior officers who acted for

<sup>54</sup> Cotton to Ripon, 10 September 1893, Add.Mss.43618.

<sup>55</sup> B.H. Baden Powell, *The Land Systems of British India* (Oxford 1892), vol. 1, p.5. The reference is to Sir John Strachey, *India* (London 1888).

'temporary convenience' and on 'discordant principles'. He warned therefore against excessive standardisation:

We almost everywhere find the same terms employed in the customs, finance and government of the people; and superficial observers have done infinite harm by representing the people as everywhere guided by the same laws and customs. Now I will confidently assert that many of the terms expressive of points of the most essential consequence...are taken in meanings essentially different, not only in different remote provinces but even in neighbouring districts, divisions and estates. The use therefore of any such terms in a general legislative view, without a most accurate definition of the sense in which it is to be taken, may prove in some cases highly prejudicial, while with a proper definition the regulation might have proved universally beneficial.<sup>56</sup>

This warning was often repeated but ultimately unheeded. The effect *was* often prejudicial, but standardisation could also be positive.

In the end, categorisation plus property, as in the Tenancy Act, implied individual rather than collective rights. That kind of interest, and its reflection in broad classes, was necessary to the construction of the 'modern' society and state. Altogether, in its appeal to historical and geographical unities, its emphasis on origins, precedents and classes, tenancy reform was also located within a broader project, that of constituting the countryside and the peasant as the 'real India'. The officials who endorsed the Tenancy Act, like the French painters of the Salon in the later nineteenth century, imagined an agrarian order, a 'profound' and symbolic landscape, which was a marker of shared history and common identity. The idealised peasant struck a chord with the reformers as part of a search for stability in the countryside. It was a conservative response to economic, political and social upheavals. But it was not necessarily altogether reactionary in impact: an identification or construction of what was 'Indian' was implied, since it was ancient rights, alongside common interests and goals, that legitimised the gift of property; and such properties defined the nation.

<sup>56</sup> Francis Buchanan, *An Account of the District of Purnea in 1809-1810* (ed. V.H. Jackson; Patna 1928), p.161.

## Chapter Seven

### *The politics of land*

Land questions were deeply political, in British minds, because of the debates of political economists, the enclosures and Luddites, the corn laws, the Irish question, and advocacy of land nationalisation. Ripon's interfering radicalism was intolerable to some precisely because it aped that of Gladstone; the supposed confiscation of property in Bengal produced an avid alliance of opponents in Britain partly because it was supposed to repeat a confiscation which had just occurred in Ireland. The Indian reformers' hands were tied, indeed, partly for fear of political upheavals in Britain. But land and politics had long been entwined in India too. In colonial times, land policies were particularly significant in determining the competing styles of Indian administration. The decisions of the 1880s were political because they represented a victory largely for officials of one persuasion, were achieved by political rather than bureaucratic means, and were about styles and purposes of government. They were political too because they reflected a choice of government allies, created potentially political constituencies and classes, and engendered habits of political action and debate in defence of such positions and interests. Put another way, each aspect in the rent law debate required political decisions—they were indicators of officials in ascendancy and styles of administration; they revealed preferred supporters and the interests of individuals and classes; they were about goals of government.

The most apparent political change, in Indian agrarian policy late in the nineteenth century, was the rise in the credit of the paternalist Punjabi model of Indian society and government, alongside the defeat of an extended permanent settlement. The Punjab success was associated partly with a Benthamite zeal for reform, regulation and improvement, and partly with the overwhelming regard paid at this time to the ideas of Henry Maine and to the village community as the original or natural form of Indian society. The 1859 Act had already marked this influence by giving exclusive jurisdiction in rent cases to the revenue officers. In the great rent law debate, the adoption of ideals and assumptions associated with the Punjab was deliberate though hotly argued. It married a sentimental espousal of traditional Indian forms (or ancient rights) with a professedly hard-headed appreciation of the current laws

of political economy (producing future comfort). It meant that differential benefits were welcomed as a means of securing capital investment, but that rights would nonetheless be provided and recorded at all the different levels of the economic hierarchy. The peasant proprietor embodied the twin approaches. Those who favoured peasant proprietors (and also praised the independent experience and judgment of the local revenue officer) were attempting to export to Bengal certain Punjab ideals; this was reflected in the antagonism between these advocates and the pro-landlord, pro-regulation parties. The victory of the former chiefly explained major features of the Bengal Tenancy Act of 1885, especially the emphasis upon peasant-proprietary rights.

British officials in India did have, unsurprisingly, 'a political view of reality whose structure promoted the difference between the familiar ...and the strange',<sup>1</sup> but more interesting they were also in a position analogous to the stereotype of mediæval Europe eloquently recapped by Michel Foucault, when, he claims:

The great institutions of power...rose up on the basis of a multiplicity of prior powers, and to a certain extent in opposition to them: dense, entangled, conflicting powers, powers tied to the direct or indirect dominion over land.... If these institutions were able to implant themselves..., this was because they represented themselves as agencies of regulation, arbitration, and demarcation, as a way of introducing order.... Faced with a myriad of clashing forces, these great forms of power functioned as a principle of right that transcended all the heterogenous claims, manifesting the triple distinction of forming a unitary regime, of identifying its will with the law, and of acting through mechanisms of interdiction and sanction....<sup>2</sup>

But also, in India, as surely in Europe, the prior powers lived on; they and new interests grew under the ægis of state sovereignty and regulation. Nor was the growth of modern institutions unilinear.

Also illustrated here and in the next chapter will be a lack of political will that restricted the effectiveness of the Tenancy Act as a charter for tenant rights, or a device of socio-economic reform, and instead contributed to bureaucratic incapacity, an inability to reshape the codes into a working system so as to approach the professed goals. A second point will be indicated without being pursued: the importance of the tenancy debate and law for the establishment of an organised representation of tenants and a language articulating their condition, needs and rights. A full study has yet to be made explaining this politicisation, connecting the nineteenth-century debates and the organisation of pro-

<sup>1</sup> Edward Said, *Orientalism* (London 1895), p.43.

<sup>2</sup> M. Foucault, *The History of Sexuality. An Introduction* (tr. Robert Hurley; London 1984), pp.86-7.

raiyat parties, to the campaigns against indigo planters in Bengal and Bihar (long before Gandhi), and to the well-known twentieth-century involvement of the Congress and other politicians in the countryside's legal and political issues and in mobilising 'peasant' supporters. A third point is implicit: the importance to the development of the state of this mobilisation of Indian 'classes' or interests, and of the profound agitation of public opinion through the tenancy debate.

It will be convenient at this point to recap some of the findings of earlier chapters. Each of two main systems of Indian administration (zamindari and raiyatwari) can be regarded as having been dominant at different times during British rule, just as analytical or pragmatic approaches held sway at some periods more than at others: Baden-Powell referred to the 'pendulum of general and official opinion' swinging between permanency and tenant right.<sup>3</sup> Policy took several forms, each with its own authoritarian streak, imposing a pattern of behaviour and a set of expectations even when the rhetoric of the policy-minutes extolled the virtues of *ad hoc* decisions by the man on the spot, the man who knew. The late eighteenth century in Bengal was characterised mainly by a distant and minimal executive and by imported theories of society and governance. A permanent settlement was designed in part to provide government by rule, under the scrutiny of an independent judiciary and through Indian intermediaries whose existence minimised the need for contact with large numbers of Indians. In the succeeding period the raiyatwari and temporary settlements were avowedly responsive to Indian conditions; they favoured direct, personal, even military rule. The system invented by Thomas Munro applied his interpretation of Indian society and customs in Madras presidency, but, like other systems, it embodied an emphasis on individual rights.<sup>4</sup> In the Punjab the administration, established on the remnants of the Sikh state, followed the design of Henry Lawrence, employing the argument that the province required special measures, given its frontier position (at the time), its military traditions and its warlike people. The officials developed and extended doctrines of the independent village community

<sup>3</sup> B.H. Baden-Powell, *The Land Systems of British India*, vol.1 (Oxford 1892), p.342.

<sup>4</sup> See E.T Stokes, *The English Utilitarians and India* (Oxford 1959), W.J. Barber, *British Economic Thought and India, 1600-1858* (Oxford 1975), S. Am-birajan, *Classical Political Economy and British Policy in India* (Cambridge 1979), T.H. Beaglehole, *Thomas Munro and the Development of Administrative Policy in Madras* (Cambridge 1966), and Burton Stein, 'Idiom and ideology in early nineteenth-century South India', in P. Robb, ed. *Rural India* (London 1983; Delhi 1992).

and the cultivating proprietor. A temporary settlement implied a personal and pragmatic system of government—that is, the combination (at least at the level of the revenue court) of executive and judicial functions in the person of the local British official, and a close involvement with the character and customs of the people as a whole. The Utilitarian gloss on this policy, its principles gradually refined in practice by political and economic experience, implied the addition of a hierarchy of duties and jurisdictions, and systems of fixed reports and returns, all of which were provided, in the 1830s and 1840s, as we have seen, to make the administration more answerable and effective. The post-Mutiny period was one in which regulation, legal codes and distant government, even a permanent settlement, were to the fore. The time of the great rent law debate saw a reaction, a renewed preference for the all-knowing paternalism of the local official, better acquainted with ‘his’ villagers and his horse than with his files and his clerks. At this time, custom was supposedly again supreme, and principles of political economy and ethics were qualified, or hitched to the cart of expediency.

Everywhere the strategy was to preserve what was seen as the old order on the land. But this naturally took several forms. In south India the key controller of the land has been shown to have been the village headman, on whom the local administration depended.<sup>5</sup> In the Punjab, of course, policy evolved into the preservation of so-called peasant rights. As the reforms in Bengal spread this approach to other parts of India, the long-term goal remained unchanged, but the beneficiaries of policy were changed—in Bengal, potentially from zamindars to peasant proprietors. The attitudes of the rulers to India were also always of two kinds, which oddly co-existed, appearing, for example, on both sides in debates over particular policies. On the one hand, there was a sense of superiority reflected in arguments from universal principle, a tendency which ranged from the Evangelical to the social Darwinist. On the other hand, there was a belief in the specificity of Indian institutions, an attitude which led to attempts to establish the origin of practices as a measure of the suitability of British proposals, and to restrict what was thought to be the inevitable encroachment of market and non-customary relations, of social and economic change. These differences also implied two opposing views of policy. The British favoured their own traditions of government and believed in the need to transform India both socially and economically. But they also considered it dangerous to make a frontal attack upon Indian customs and interests. By the same token, they set up, as appropriate to a civilised regime and a civilising mission,

<sup>5</sup> D.A. Washbrook, *The Emergence of Provincial Politics* (Cambridge 1976).

supposedly equitable but abstract administrative systems which depended upon regulation; but also, in order to match what they believed expected by India, they advocated the personal, pragmatic despotism of the district officer.

This meant—it facilitated the change in approach in Bengal—that in practice the difference between the two administrative styles was less than absolute. A temporary settlement involved some rules and some relatively powerful Indian allies—partly because it was sensitive to custom and political implications, partly because the British official was still too isolated and increasingly too overworked to offer a close personal attention to all aspects of his charge, and partly because bureaucratisation progressively affected even the most independent of the regional traditions. Conversely, the permanent settlement allowed some leeway for individual officers—even in this, as it was said, the man was to some extent the system. At times this regime too was concerned to search for measures affecting the welfare of the population at large or at least for potential allies beneath the level of the landlord. Both systems, moreover, involved a degree of distortion and standardisation of local practices and institutions. In consequence there was a tendency for opposing strands of policy to be reconciled at the margins, because of the need for continuity and to match central dictates with local practice. In the Punjab, for example, the 1860s and 1870s saw various measures of regulation which ran counter to the traditions of that province. The codification of law applied to the Punjab too, with a High Court to give it effect; this province too was subject to the bureaucratic revolution of mid nineteenth-century government and to the improving communications which brought its decisions under more immediate scrutiny. In the Punjab the old tradition had had to be incorporated in the new. By the same token, any contrary changes in Bengal would have been matters of emphasis and not absolute.

Yet some underlying principles were extended with the spread of Punjab influence. What the 1885 Act expressed—a new orthodoxy of tenant rights and the great value placed upon peasant proprietors in village communities—dated from at least 1812 and the Fifth Report, as confirmed by Munro's system and the Punjab tradition. But it had been contested by defenders of the permanent settlement, and by those who regarded Bengal as having long been (or as having become) a different case; it is interesting that Baden-Powell's book on the Indian village community hardly mentions Bengal.<sup>6</sup> The merits of peasant proprietors

<sup>6</sup> B.H. Baden-Powell, *The Indian Village Community* (London 1896). This fact was related to the book's race theory (mentioned in chapter one) which attributed settlement in villages to the influence of 'Aryans'.

were generally and increasingly accepted, at least until 1857, and yet no effective steps were taken to help find or create them in Bengal. The Tenancy Act of 1859 provided jurisdiction in rent suits for revenue officials and thus a chance for paternalistic mediation between landlord and tenant (especially as, that same year, the offices of Magistrate and Collector were re-united once again). But, as we have seen, that Act was a measure whose most innovative features were introduced with very little discussion and under the impression (though also influenced by theoretical assumptions and experience in upper India) that they were no more than a codification of existing law and custom. The Act sought to simplify and standardise existing procedures and provisions rather than to redress what were considered imperfections of the agrarian and legal structure, and it did not remove the pro-landlord tendency of much Bengal policy, especially in decisions of the judiciary. It operated in a climate in which the prevalent view in Bengal was still that all land rights had been granted in perpetuity to the zamindars in 1793. The flavour of this view was apparent in the arguments already cited from the landowners in 1864. They claimed, in direct contradiction of Maine, that the permanent settlement was a contract to which the state had agreed 'for a valuable consideration', and which was 'not liable for alteration'. This meant the zamindar had power 'to deal as he likes with his own'.

On the other hand, even these landowners admitted that a concession was made in 1793 to allow certain established tenants to continue in their tenancies so long as they paid rents at the prevailing or market rate. In this version the government was entitled to intervene in order to insist upon that concession (but only to do so); Act X of 1859 had greatly extended it (to all those holding land for more than twelve years) and turned such tenants into proprietors at a fixed quit-rent. The alleged result was that raiyats, who all had once thought themselves liable to rent increases, now included a favoured exempt class, and others who were 'trying (through forgery and perjury) to get into it'.<sup>7</sup>

So much for the landlord view. In fact the 1859 Act had reflected the anti-landlord leanings of the previous generation of Company servants, without being supported by a coherent defence with regard to Bengal, with the result that, even in so far as it had clarified and protected tenant rights, it had been subverted to varying degrees by the courts, the local government, the European planting and mercantile community, and the landed proprietors. Still needed were arguments which extended the

<sup>7</sup> H Judicial A 26-46 (18 June 1864). See chapter three, and Regulation I of 1793, s.7.

conditionality of the permanent settlement, and justified the law's definitions of tenants and their rights. In a climate favouring a permanent settlement it was unremarkable that the fixing of rents should be seriously considered as an answer to this problem, as it was in the indigo debates of 1864. Later the same goals could be pursued by means of newly-defined legal rights in classes of property.

The debates in the 1880s thus sought to settle the unfinished business of Indian land policy. There is some debate about the origin of the pro-peasant resurgence. Van den Dungen attributed it to experience of Indian conditions; Barrier particularly to a fear of disorder as a result of British 'inability to defend the interests of several important classes'; and Dewey to a 'historicist-idealist' reaction to utilitarianism, which restored respectability to 'traditional land-based groups intermediate between the individual and the state', and recognised the political threat from 'anthropologically-inappropriate' policies. Barrier found government interference 'institutionalised into an active defence of peasant rights'. But the peasant and his economy also had first to be perceived. Dewey stressed that the new policy involved the abandonment of the free market philosophy, represented by James Fitzjames Stephen, and its replacement by deliberate conservation of rural interests: exemption from the full rigour of the law, seasonal adjustment of the revenue demand, and measures against land alienation or for the amelioration of rural credit.<sup>8</sup>

It will be apparent, from earlier chapters and in support of Dewey's position, that the 1885 Act marked an important if imperfect triumph for this new policy, and that the main mechanism for reaching decisions or for spreading ideas had been the harnessing of historical explanation to policy debates. The later nineteenth century was a time of high administrative ambition, in ways that some other periods were not, and one in

<sup>8</sup> A good short description of some aspects of the peasant strategy may be found in John R. McLane, *Indian Nationalism and the Early Congress* (Princeton 1977), ch. 8. The discussion in the above paragraph refers specifically to P.H.M. van den Dungen, *The Punjab Tradition* (London 1972); Norman G. Barrier, *The Punjab Alienation of Land Bill of 1900* (Durham 1966), especially pp.96-102; Clive Dewey, 'The Official Mind and the Problem of Agrarian Indebtedness in India, 1870-1910' (Cambridge PhD 1972), especially pp.1-21; and Eric Stokes, *The Peasant and the Raj* (Cambridge 1978), introduction and papers 4 and 11. Relevant published articles by Dewey are 'Images of the village community: a study in Anglo-Indian ideology', *MAS* 6, 3 (1972), and 'The education of a ruling caste: the Indian Civil Service in the era of competitive examination', *English Historical Review* (1973); see, for his definition of historicism, note 3 in 'Celtic agrarian legislation and the Celtic revival', *Past and Present* 64 (1974).

which intellectual considerations played a special part in policy-making. The construction of the reasoned minute and report was the mark of the successful official, even where the avowed tradition was of open-air paternalism. From the 1870s the temporary settlement system and the concomitant trust in close, personal administration were once again to the fore, but still the advocates of 'peasant rights' spread their influence upon policy by effective deployment of secretariat skills. They were politicians putting about a party line, even while they endorsed the potency of the semi-independent revenue officer, perennially touring his district, as the true representative of appropriate Indian government and the surest transmitter of the 'civilising' message.

In 1878, the Bengal government had advised the Bihar Rent Committee that 'the less radical the interference with the existing law the more chance there is of the proposals of the Committee being accepted'.<sup>9</sup> But soon afterwards the same government was adopting—albeit briefly—a fashion which was current elsewhere but extremely novel for Bengal. In defining agricultural classes, the 1885 Tenancy Act followed Punjab practice and was mainly concerned to support what were regarded as hereditary, resident cultivators in the villages. Again, they were defined by their property or rights; and again all possible classes were imagined to be subsumed in a complete schedule of tenurial forms. Let us consider again Field's suggestion, followed in the 1885 Act, that a presumption be provided that tenants had a right of occupancy in their land, with certain other privileges in regard to rent, unless it could be shown that they had held land in the village for less than twelve years. This turned the 1859 Act on its head, both in regard to the presumption of occupancy, and in deriving rights more or less from residence in a village, rather than from the long possession of specified plots of land. In law, one set of distinctions between tenants was removed, but room was left for the development of others. There was no longer any effective difference between 'original', 'full' or 'resident' raiyats on the one hand, and other, less privileged villagers on the other; anyone who had held or inherited any land in a village—unless they were patently newcomers—could claim occupancy rights in regard to all the land which they held there. Moreover, because the unit under consideration was not the estate (the lands of one owner or set of owners under one revenue head) but the village, as defined by government surveys (or historically by Metcalfe and Maine), it followed that rights gained under one landlord could be transferred to land held from another. What all

<sup>9</sup> Proceedings of the Bihar Rent Committee, 9 November 1878, *RLC Report*, Appendices; see chapter three.

this shows clearly is that the definition of occupancy right in 1885 reflected not so much an assessment of past conditions as the influence of Indian peasant-proprietary notions. The provision for survey, settlement and record of rights was an even more remarkable tribute to the persuasive powers of the Punjab school; its effects will be considered in the next chapter.

These abstractions and inexactitudes of policy do not mean that theory did not draw upon interpretations of Indian conditions; nor does the intellectual contribution make the policy changes any the less matters of political dispute. Grand theory altered over time, and drew policy along after it; but each step was doggedly fought, and each had implications for its protagonists and subjects. Also some fundamentals relating to the position of a colonial government proved inescapable. Almost invariably, for example, and with renewed force given the usual explanations for the North Indian revolt of 1857, British policies were avowedly conservative in social terms, even when 'progress' was held out as the rulers' main objective; where ideas were influential was in deciding the elements in society which were to be preserved. When those ideas favoured policies to boost the position of peasants, meaning in fact proprietary cultivators, this development too built equally upon three elements: first, the classical theories of political economy, the anti-landlord sentiment, and the individualist bias, introduced into official Indian circles by the Utilitarian employees and teachers of the East India Company; secondly the administrative precepts advocated first for the Madras presidency by Thomas Munro and his school; and finally the 'scientific' approach to government developed, alongside a critique of Utilitarian theory, in the course of census, settlement and famine work especially after the 1870s. All of these in the Indian context were both intellectual explanations and political strategies for ruling. For similarly mixed reasons, a regard for dominant peasant interests proved to be a continuing feature of public policy in India from the 1880s onwards, and indeed to the present day. In the twentieth century, of course, the British seemed to be facing the political consequences which had earlier been feared from social change: the nationalist struggle in the countryside could be taken to prove either that peasants were unable to provide a unified support base for the regime or that the strategies for maintaining their allegiance had failed. The same mixture of motives thus encouraged, yet again, the alternative strategy, to court landlords and present an aristocratic model as the indigenous and proper shape of Indian society. British colonial governments elsewhere also later assumed that the lesson of the Indian experience was that peasants were politically unreliable, a verdict arrived at by inegalitarian urban-based

regimes in many parts of the world, and backed up by twentieth-century theories of politics and revolution.

For all these future vacillations, the debates of the 1870s and 1880s led to policies which were quite different, especially within Bengal, from those of the period which preceded the tenancy law of 1859. Turning from the hinterland of ideas to the foreground of debate, the immediate contest which we need to explain, therefore, remains that which, by 1885, produced the fundamental change in attitude towards the latest version of pro-peasant paternalism espoused in the Punjab. In all the criticisms and remedies then current, the implicit comparison was between the Lower Provinces of the Presidency and the Punjab—to the disadvantage of Bengal. When an extended permanent settlement was ruled out, the exception remained what many thought the ill-governed and ill-omened lower provinces of Bengal. The Punjab, with its canals, enterprising peasants and loyal soldiery, seemed the success story of British India; and naturally its officials thought they had the answers. The Punjab school advocated the establishment of a vigorous village agency, and active steps to protect what were seen as the uni-formly down-trodden tenants of Bengal. The Punjab's 'manly' form of government and its supposedly loyal, independent and increasingly prosperous peasantry were what the tenancy reformers hoped to promote in soft seditious Bengal.

The caricature reminds us of some other special factors which allowed the Punjab model to flourish, and by stages turn a measure which was arguably once intended as a means of assisting zamindars to collect rents, into a Bill hailed as a charter for tenant rights. The Government of India played a powerful role. It advocated a pro-peasant line at different moments for reasons which related partly to personnel and geography. Punjab officials advanced notably in the central government in the 1870s and 1890s; many other success stories were of officials who shared much of their philosophy. Having the seat of government at Calcutta served to undermine the prestige of the local government in Bengal. The city's relatively active political life often proved less a stimulus than an irritant to the officials, who would blame it on the provincial government's weakness and the excessive influence of the courts. The central government's alternative summer seat at Simla, by contrast, seemed to put the departments in close and sympathetic touch with the Punjab, already important because of its strategic position, its role in 1857-8, its recruitment for the reformed army, and its growing significance for public works, trade and economic development. What is more, two main influences—the Punjab model and the Bihar example—combined when Charles Tupper, who in the 1870s had helped increase

Punjabi influence in the Revenue and Agriculture Department of the Government of India, was placed on special duty in connection with the Bengal Rent Bill, and in the early 1880s produced an important report on Bihar. Tupper made it inevitable that the Bill would introduce a special set of provisions for that area, regarded as needing more and different measures from the remainder of the province.

Yet the 1885 Act was not forced on Bengal. The radical pro-raiyat proposals most evident in the early 1880s were not simply an import of Gladstonian liberalism under Ripon; as argued already, they were also the result of efforts by particular, mainly Bengal civilians. From the 'best' districts in Bengal—notably those in Bihar where the 'manly' virtues of the old-style district officer could still flourish—there emerged a programme to transform the conditions of tenancy. Bihar was economically backward, and, except for some huge mostly absentee landlords, could be characterised as containing a great mass of idle and insolvent petty zamindars who refused to cultivate even tiny holdings themselves so long as they had tenants to oppress. Such a region seemed the perfect exemplum of the peasant school's arguments. In the 1870s and 1880s interpretations of Bihar were informed by a view of India which was historical and prescriptive and partial; protagonists in the rent law debate created a range of concepts, definitions and judgments. Alongside special pleading about eighteenth-century regulations and circumstances, a view was enunciated about the 'natural' or 'appropriate' conditions of society for the Bengal presidency. The very different actual conditions in late nineteenth-century Bihar provided the yardstick by which proposals were measured. Thus it was held by some that Bihar in particular proved it was necessary to restore people's 'ancient rights' if their 'future comfort' were to be assured.

Various other factors made the Punjab model attractive to the Bengal officials in the later nineteenth century. We have already noticed one: the interpretations placed upon what was a genuine though arguably exaggerated fear of disorder and violence, a lesson drawn from the uprisings of 1857 that policies were dangerous if they cut across 'natural' or existing social ties; thus were explained both the revolt in Awadh and the quiescence of the Punjab. In Bengal too rural disturbances in the 1860s and 1870s were interpreted as symptoms of the social disruption caused by inappropriate laws, and as omens of future threats to British rule. The likelihood of agrarian revolt was often flourished as a clinching argument.<sup>10</sup> A particular gloss was added by the indigo

<sup>10</sup> See for example MacDonnell on his defeat over the preservation of the land record (discussed below): 'Ten or fifteen years hence some other Bengal officer will take up the struggle, if indeed before that time a *Jacquerie* in Bihar does not

question. Planters were thought to represent an intrusion in the countryside, supposedly introducing a radical mode of production; they siphoned off profits, often out of India altogether, and their relations with their suppliers and workers were described as oppressive. If they suffered from agrarian riots, this could be held to be very much their own fault. But it was also said that the excesses of the planters were common enough among Indian zamindars; the criticism was partly that indigo was being produced not in the manner expected of Englishmen but by taking advantage of typically Indian tyrannies—such was village life under the permanent settlement. Racial stereotypes thus allowed the poor example set by the European indigo planter to add to the condemnation of a whole category of Indians.<sup>11</sup> Such considerations made Bengal officials receptive to alternatives to their long-standing reliance upon landlords, and gave a boost to the picture of landlords as useless drones who had failed to create economic improvements in Bengal and elsewhere. Outside Bengal, the fact that the zamindars in Bengal had failed in their social and economic task had been recognised for fifty years; in the rural disturbances of the 1850s and 1860s, there were indications that they were failing in their political job as well.<sup>12</sup> Well before the more violent upsets of the present century, which put the seal on British disillusionment, the usefulness of the old compact with the zamindars was being questioned, with a view to finding alternatives. Such sentiments were increasingly reinforced by objections to the political activism growing up in Bengal; landlords were sometimes held to blame because of their acts of commission or omission. Multitudes of idle, ambitious, disappointed, educated men had supposedly been spawned by the easy surpluses and the ‘subinfeudation’ of the Bengal

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precipitate an earlier *dénouement*’; note, 3 August 1894, R&A Rev A 17-20 (January 1895).

<sup>11</sup> By the 1880s, as shown in chapter five, planters had come under great pressure to regulate their conduct, and they were not universally opposed to pro-raiyati provisions. T.M. Gibbon, for example, advocated abandoning the right of distraint, or transferring its operation to the courts. Gibbon to Patna Commissioner, 22 February 1879, *RLC Report*, vol.2. W.B. Hudson, another stalwart of the Bihar Planters’ Association, told S.C. Bayley that he supported occupancy rights and limits on enhancement and ejection: his views were shared, he said, by all planters who could ‘look further than the length of their noses’, but Bayley feared ‘most cannot look that distance’; Bayley to Ripon, 23 January [1883], Add.Mss.43615. Gibbon and Hudson were considered, accordingly, for appointment as members of the Legislative Council. Gibbon later opposed the clauses allowing commutation of produce rents; note, 28 October 1884, Add.Mss.43584.

<sup>12</sup> See PCR 338, 12/19 (1883/4); and compare *ibid.* 12/1.

system.

As in the early years of the century, the argument was again being made that, contrary to expectations, the advent of private property, as for zamindars under the regulations of the 1790s, had not contributed towards prosperity. The readiness to decry the receivers of rent, which prevailed in many parts of India in the later nineteenth century, was only temporarily subdued by the campaign for a permanent settlement and by Lytton's elaborate wooing of princes and zamindars. It was important, though, that this anti-landlord fashion was related to the claim, agreed by advocates of the aristocracy, that historical legitimacy was the key to social harmony; in the pro-peasant camp this connected with a version of India's past and its present institutions which, as already noted, traced them principally to Aryan tribes. It was the breaking of these continuities which, according to such theories, produced the social dislocations which the British perceived.

In the 1880s many Bengal officials joined in this chorus. In particular, as said, the British were beginning to doubt the supreme influence of the zamindars: could they still deliver a quiescent population for the colonial rulers? Those who were active for tenancy reform expressed such concerns. Mackenzie wrote in 1881 in a manner suggesting that the zamindars were too inactive and self-absorbed to be politically useful—to the effect that the British Indian Association, the vehicle for the zamindars, was wholly the mouthpiece of its president, Rajendra Lal Mitra, as the committee 'simply accept any draft he puts in front of them'; only on rent questions did they have any opinions of their own; and the same could be said for the utterances of the Association's paper, the *Hindoo Patriot*.<sup>13</sup> Bayley commented, in 1885, that it was

worth noticing how strong the feeling of antagonism and contempt is between the older Hindus of good position, represented by the British Indian Association, & the younger & more noisy party, represented to a great extent by Surendranath [Banerjea] himself. I am afraid the power of influencing Bengali public opinion is slipping from the hands of the former in spite of the strong social & quasi-official support which Eden gave them, at the expense of their rivals.<sup>14</sup>

The advocacy of tenant rights was, in short, not innocent of political calculation.

Thus, in the eyes of its advocates, was the special case of the Punjab turned into a panacea. It implied a view of the most appropriate and

<sup>13</sup> A. M[ackenzie], note, 13 September 1881, from keep-withs to Home Department proceedings, Add.Mss.43612, p.289.

<sup>14</sup> S.C. Bayley to Primrose, 5 June 1885, Add.Mss.43612.

effective form of society for India, one in which cultivators, by nature and experience different from other men, worked on plots of land which they owned and for which, ideally, they were un beholden to others. It was one also in which communal ties and traditional practices—the cement which held together a diverse and segregated set of castes and occupations—could once again be regarded with respect. The pro-peasant school considered itself profoundly conservative, but also produced a particular view of society as it should be, usually equating it with the society as it was, or, in the case of Bengal, as it had been. It could then argue (as Munro had too) that working with the grain of the society was the best way to ensure its long-term improvement.

According to the pro-peasant theory, the original landowning interests had proved unable to keep up with the innovations introduced by the British, especially the grant of alienable property rights. This failure was principally to be set down to incorrect policy: it was innovation as the 'ruling vice' of policy, as in Metcalfe's famous dictum.<sup>15</sup> The newcomers in the countryside were politically useless, or dangerous, because they did not maintain traditional links of social dominance. The old style had proved economically incompetent while the newcomers were politically objectionable. In such an atmosphere, characteristic of the Punjab-dominated pro-raiyat school of the century's end, there was no room either for an optimistic assessment of the achievements of the past, or for an objective analysis of the part played by property. The British critics curiously shifted their ground: their political concern for social conservatism qualified their enthusiasm for economic change; their desire for progress dampened their regard for the old order. It was to answer this conundrum that one party extolled the allegedly improving landlord. To the other party, the peasant proprietor as agricultural entrepreneur offered a partial solution. It was assumed that a pro-peasant reform would help with the fact that Bengal did not really pay its way because of the permanent settlement; it was a rich and populous region which made little contribution to solving the financial crises which had beset the empire. The peasants were already being taxed; independent and prosperous peasants and the trade they encouraged could be taxed some more.

In this we may see that Bengal tenancy legislation which favoured peasant proprietors was not a victory for the Punjab school as originally conceived, where individual initiative was valued over regulation; rather it was an extension of Punjab practice, in which a framework of rules

<sup>15</sup> See E.T. Stokes, *The English Utilitarians and India* (Oxford 1959), p.19, and compare Henry Cotton, *New India or India in Transition* (London 1885; 1907), ch.4.

was important, along with longer-term, even Utilitarian notions of the optimum forms of agrarian society. In the Punjab, legislation had preserved supposedly original principles; the Punjab Laws Act (IV of 1872) declared the supremacy of custom. The strongest argument for such distinctions was naturally one about difference, even though the concepts underlying personalised government were general ones about Indian or even Asiatic tendencies. When the Punjab methods were on the defensive, their supporters fell back on the suggestion that they should be retained in those areas to which they were, supposedly, most appropriate. The argument could work both ways, and defend other traditions when the Punjab approach was dominant. It was ironic for example that in the 1890s Denzil Ibbetson, who was urging the extension of the Punjab approach to the administration of revenue law and the maintenance of a land record in Bengal, should have had to rely on the 'special case' argument to save his favourite project, the Alienation of Land Act, from the criticisms of other provinces; only by this expedient could he entrench this piece of 'custom' against the bias of the law in general towards contract and the market. Perhaps a greater irony still was to be found when the Punjab ideas *were* endorsed. Ibbetson regarded the 1872 Act as having 'saved us [in the Punjab] from the wholesale application by bookmen and lawyers, of the local law of a Bengal community whose social unit was the joint family, and still worse, of the law which Mahomed laid down for a people of herd-masters, to a province where the land is held in tribal occupation, and the unit is the village community.'<sup>16</sup> Yet, in the Bengal Tenancy Act, that spirit of the village community and of collective property ownership was supposedly being imposed where (by Ibbetson's own intelligent distinctions) it did not obviously apply, and it was imposed by bookmen and lawyers. There, however, as in the Punjab too, the victory was partial, again because of the bias towards contract and the market.

This point brings us back to the ideas. The history evoked in the policy debates was a special kind of history. It could justify particular policies, and give certain social formations a glow of historical justification. The decision about which to favour depended upon other theories and on fashion. Hence the importance of the fact that in the later nineteenth century the proprietary cultivator was made the ideal, a view which did not always prevail but gained in popularity among officials, a view which history and the comparative method appeared to endorse but did not wholly explain. It is sometimes said, on the contrary, that

<sup>16</sup> Ibbetson note, 31 April 1898, R&A Rev A 3-22 (November 1898), part IV (19-22).

imperial policy in India was governed by pragmatism but not by ideas. The assertion gains no support from a serious study of any decision or legislative measure. Indeed two kinds of idea can always be found: first, *a priori* assumptions, and second, interpretations of what was supposedly reality in India, or in other words, both 'theory' and 'knowledge'.

But here we find an arbiter which continued to outrank even the advice of the Punjab. Knowledge divided into what was imported and learned, and that which was indigenous and practical. Intellectually-acquired knowledge tended to be regarded as superior. Thus attempts to improve the society rested upon the conversion of 'primitive' into 'civilised' values and practices, whether in social relations or methods of production. The science of the expert was valued above the experience of the practitioner. Part of the Punjab way was the enhanced authority of the expert on tenancy, indeed on India (we have noted how the revenue officer was preferred to the jurist); but by the same token even he had to submit to a superior wisdom—the very one embodied in the constitutional structures of the British raj. In the end it was the Secretary of State who decided, or at least had to be convinced; and hence it was the politics and judgments in Britain which prevailed. In consequence even changes in agriculture, trade and finance, in spite of repeated evidence that imported remedies were seldom appropriate, were generally expected to conform to those which had occurred in Britain.

In government too there was seen to be an Oriental and a Western way; and, though many professed to prefer the former, transition towards the latter was felt to be inevitable, a consequence—indeed a benefit—of British rule. So too the officials' explanations of institutions followed a logic based upon or judged in terms of European experience and ideas of progress. Definitions, and especially the legal ones in regulation and statute, imposed an external, 'objective' categorisation upon a subjective multiplicity, as in distinctions between religions, communities and 'castes'; between landlords and tenants, peasants and labourers, agriculturists and moneylenders or traders; and between state and subject, ownership and dominance, private property and corporate rights. So it was (as said) that the victory in Bengal was not of a Punjab way but of a supposed Punjab style, suborned to produce the optimum economic and political dividends in the colonial era.

## II

Because the Tenancy Act of 1885 was political in the broad sense that it related to ideas of ordering India, it had to reflect—or indeed modify —

the range of allies and agents upon which British rule depended.<sup>17</sup> It is true that one of the strategies of the British was to create a kind of civil society that would be sympathetic to their rule, by being formed in the image of that existing in Europe. Roper Lethbridge's involvement in the tenancy debate points to the importance of the press and public opinion for tenancy and other issues in the 1880s, and also (contrary to the usual assumption—imperialist Briton pitted against nationalist Indian, autocracy against free speech) to the closeness between British official or commercial interests and some Indian journalists or classes, in this case conservative in opinion. But in rousing a public outcry over tenancy Ripon's government was producing an effect beyond what it had intended. The prominence of public opinion was growing as governments tried first to provide, and then to manage information, to create 'informed' support. As Press Commissioner, before he became a pro-zamindar polemicist, Lethbridge's job had been to collect material from secretariats and, after the Vernacular Press Act (1878), also to prevent the press from publishing 'falsehoods'. Madras had been first to provide information deliberately to the 'public', a policy commended to others in 1855; government gazettes superseded press rooms containing papers in 1864, and various ways of providing a précis of information continued in the 1860s; in 1876 'authentic news'—that is, news management—had gained importance. But under Ripon, Lethbridge's functions were returned to the Home Department. Though the Press Act repeal is often regarded as a retreat from conservative interference with freedom of speech and though Ripon did not find the Indian press as 'scurrilous' as expected, chiefly he wanted press and government to be separate, the latter not officially concerned to supply information. Many Liberals, from experience in Britain, felt estranged from the cosy relationship with the press which Lethbridge's appointment had implied.<sup>18</sup>

Aspects of the political underpinning and impact of the 1885 reforms mirrored this timidity, and a preference for older indirect methods of government, a pretence that it was above politics. Ripon, despite his popularity among some Indians and with a coterie of like-minded civilians, was deeply upset by the upsurge of European opposition, especially to the Ilbert Bill and the Tenancy Act. His education policy was designed to produce a public, to which appeals might be made, but results could only be expected in the long term. Publicity was therefore eschewed in favour of strategies based upon compliant leaders or

<sup>17</sup> I have discussed this at length in *The Evolution of British Policy towards Indian Politics*, especially pp.28-85.

<sup>18</sup> See keep-withs to General Proceedings A 43 (August 1882), Add.Mss. 43575.

privileged classes, even in regard to education (notably with *ashraf* Muslims). Ripon's local self-government policy and the Tenancy Act exemplified this, and Dalhousie confirmed it, after toying with educated opinion and the Indian National Congress. Curiously, in this respect the strategy of Lytton was recast rather than reversed. The approach was not seriously challenged until the first world war, and even after then continued to be very important in British political policy.

That the British chose their collaborators in several different and watertight categories is well enough known. Petty administration could not have been carried on without a horde of Indian clerks and functionaries, the army could not have managed even its internal tasks without the Indian sepoys, and the very pax Britannica rested on the co-operation of those many Indians who, despite the panoply of the raj, were still a power in the land. A fundamental axiom of British policy was that the clerks, the sepoys and the powerful were and should be kept apart; but also there was a hierarchy of collaborators in British eyes. It rested on a definite idea of what was important in India. At the turn of the century Denzil Ibbetson, then Secretary of the Revenue and Agriculture Department, set out the principle when he wrote: 'Influence, in this country, goes with land, not with money; and it is influence that we want to preserve'.<sup>19</sup> Thus the rent law was particularly sensitive, in that it impinged upon the apex of the colonial system of supporters. We will now consider two aspects of this policy: the limitations of all appeasements of supporters, in the British system, as they affected pro-landlord strategies quite apart from the Tenancy Act; and secondly, the resurgence of concern for zamindari interests during the 1890s, as a reaction to the Act and a qualification of its impact. Together these may be seen, paradoxically, as reinforcing the general message of this chapter—that the Tenancy Act politicised land questions.<sup>20</sup>

In dismissing the moneyed classes, as he would have the educated, Ibbetson was espousing a view of India that was quintessentially rural and traditional, at its extreme an India without history. Control of territory and its resources was what mattered; control of towns and opinions was less significant. The decision in 1885 to irritate the landlords of Bengal was therefore a serious one; a countervailing appeal to

<sup>19</sup> 12 May 1902, R&A Rev B51-2 (August 1903).

<sup>20</sup> The obvious general point here is that institutions, ideologies and laws shape politics; thus political interests and associations grew up around the debates and interventions of the Tenancy Act, as of other policies. But this does not show that state or colonial influence alone determined the political culture. Rather it was formed also out of indigenous connections and norms: politics occurred in the interstices of state and society.

peasant proprietors and to tradition was a necessary element in making it plausible. At the same time the decision reflected the erosion of the old certainties, as land ceased to be the only important source of revenue, and as supposedly localised life and economy in India's villages were invaded by the pull of cosmopolitan cities, by long-distance trade, by markets in land and labour, by inter-regional and inter-class communication and solidarities. Such developments underpinned Ripon's search for an Indian 'civil society', and made Ibbetson's principle vulnerable. Hence it was important for the 1885 Act to accommodate forces of change, or gesture towards supposedly Westernised elements of law, individuality, public responsibility and commercial production.

Marking the transitional nature of the Tenancy Act, however, great care continued to be shown for the landlords' position. Very noticeable is the caution with which the government began its direct involvement in rural affairs.<sup>21</sup> Every move the Bengal government made, any decision on public policy, was softened by concern for the zamindars. The tendency of interference was contrary to the zamindars' wishes and interests, but at least their representatives were always consulted and listened to; at times they even seemed to exercise a veto. The standard procedure when a new measure was under consideration included discussions with zamindars, not only because they were organised but also because they were recognised as having, in the nineteenth-century political sense, a legitimate interest. Thus, when it was still at a provisional stage, the scheme for patwaris drawn up under the 1885 Act (and to be discussed below) was submitted to the Bihar Indigo Planters' and the Bihar Landholders' Associations, which held a joint meeting under the auspices of the Maharaja of Darbhanga in order to discuss it. The same procedure was adopted in 1892 when the question came up again.<sup>22</sup> Such early consultation goes some way to explaining the intransigence of the local government on the issue of patwaris, and their repeated preference for schemes which the central government rightly considered doomed to failure. Earlier, by contrast, it had been to escape what was expected to be irresistible pressure that the Bengal government had been eager for the rent Bill to be introduced in the imperial and not the local legislature; they feared the Bengal landowners.<sup>23</sup> Earlier still (if we are to believe one of the interminable memoranda of the radical and bankrupt planter, D.N. Reid), a meeting at Sonpur in 1878, called by the Patna Commissioner to discuss the Bill, had caused the abandonment of

<sup>21</sup> See also P. Robb, 'Hierarchy and Resources', *MAS* 13, 1 (1979).

<sup>22</sup> PCR 337, 26/5 (1882/3)—wrongly filed; properly file 64 (1885)—and R&A Rev A 3 (August 1892).

<sup>23</sup> See R&A Rev A 16-46A (July 1883).

the idea of a separate rent law for Bihar because of the wide differences of opinion it revealed: the result was that the 1885 Act applied to greater Bengal and, as Reid put it, 'favoured the zamindar interest'.<sup>24</sup> Certainly it went less far than many Bihar officials had wished.

By the later nineteenth century, Bengal's alliance with the zamindars took the form above all of a working partnership in the districts—the officials provided some assistance, for example with enforcing rents, and occasional supervision or control through the Court of Wards of encumbered or minors' estates; the zamindars entertained officials on tour, and gave them support and advice during public disturbances and disasters. Spectacular instances may be found of the alliance in operation. In 1908, for example, the estate of Sir P.C. Tagore was granted a huge loan in order to purchase property, and in 1909 the Bengal government proposed allowing a delay in the repayments in order that Tagore should continue to enjoy his full allowance. So great was the assistance that on this occasion the lower echelons of the central secretariat were distinctly flustered, and thought the family might be expected to manage on less than the Rs.15,000 a month which it was to be guaranteed. At higher levels there was criticism of the laxity of the Bengal procedures—the government had entered into an exceptional and sizeable financial commitment without even having checked the figures. But the political considerations were thoroughly appreciated. The loan had been granted in order that the public position of the Tagore family should be unimpaired, and its loyalty enhanced. It was immaterial that the estates had been grossly mismanaged, and that Tagore may have been merely using the government as a cheap banker; it was of first importance that his income should not be reduced or he himself left 'sore and discontented'.<sup>25</sup> The particular situation was extremely unusual—the government simply did not have the funds to enter into many such transactions—but it represents a kind of policy, one which the pro-tenant legislation violated.

In this context the ideological elements in policy-making, and their political superstructure, are important also because they emphasise the fragility of Bengal's conversion to a pro-peasant strategy. Conservatism was always less thoroughgoing in Bengal than elsewhere; even its Lieutenant-Governors could be notoriously 'unreliable'—that is, sensitive to Indian opinion. They were also closer to commerce than the

<sup>24</sup> R&A Agric C 3-4 (January 1904).

<sup>25</sup> R&A Rev A 1-4 (April 1908), A 1-2 (July 1909), and A 22 (October 1909). Cf. PCR 367, 6/2 (1897/8) on management of the Dumraon estate.

military consuls of the Punjab.<sup>26</sup> The permanent settlement itself (as we have seen) had not precluded a transference of the landlord role into the most productive hands, and Lord Cornwallis, at least, recognised that successful merchants might apply their capital to land, and was as much in hope of economic advancement as in favour of an aristocratic social system. A familiar argument nowadays links the opportunities thus secured by zamindars, and also in government service and the professions, with the subsequent isolation of the 'middle classes' in Bengal from commerce and trade. But an economic partnership with urban dwellers was not ruled out by the Bengal system, as it was in the fully-fledged peasant strategies of late nineteenth-century Punjab.<sup>27</sup> Similarly, therefore, when the peasant-proprietary model, in a slightly earlier version, was imported into Bengal, it envisaged 'men of substance' who would benefit from it.

For similar reasons the long saga whereby the zamindars were favoured in Bengal was also diverted by several other political calculations, including the interests of trade and even Indian opinion. To an extent, these implied a concern for government within the law. The pro-zamindari policy may thus be compared but also contrasted with the concern with tenant rights that developed from mid-century. First, a recognition of the ruler's responsibility to his subjects—traced to the indigo disputes of 1859-62—implied the adoption of a goal of social justice, which was also the basis of the Indian challenge for political rights. In the original context, indigo disputes, this marked a transfer of rural power from planter to moneylender. But, second, the British government in India was no monolith; the terms 'policy' and 'strategy' may be misleading. Therefore the strong advocacy of a pro-zamindari line, as we have seen, bore the weight of British assumptions about Indian society—its hierarchies and deference—but on the other hand government by a bureaucracy was necessarily based on rules, and that meant that the balance would be redressed in favour of tenants. Equally it meant that zamindars' rights too were entrenched, and to a point would have been, even if colonial self-interest had been unequivocally ranged against them. In practice the bureaucracy, particularly in Bengal with its regulations, courts, newspapers and Calcutta public, was too

<sup>26</sup> Note Cotton's criticism of growing commercial and non-official European influence on the government in India, in private correspondence (Add.Mss. 43618) and *New India*, pp.63-6.

<sup>27</sup> See R. Guha, *A Rule of Property for Bengal* (S. Gravenhage 1963), pp. 171-3; Blair B. Kling, *The Blue Mutiny* (Calcutta 1977), especially the Conclusion; Sumit Sarkar, 'Rammohun Roy and the break with the past' in V.C. Joshi, ed., *Rammohun Roy and the Process of Modernization in India* (Delhi 1975.)

committed to old assumptions and patterns, or insufficiently cynical, or too afraid of hostile scrutiny, to violate entrenched rights (at least powerful ones) as readily as its constitutional autocracy and its rhetoric would seem to have permitted. This both defended and restricted the alliance with the zamindars. Part of the problem with any pro-peasant calculations was how to communicate them to the subordinates responsible for carrying out policies. The pro-zamindar policy in Bengal was based on the permanent settlement and cemented by mutual support, but also institutionalised in codes of procedure, legislative acts, orders from government, and inculcated moral and theoretical principles, all of which limited the possibilities for change.

Let us take the restrictions first. Even in operating a self-interested compact with the zamindars, the British had been impeded, not only by principles in the way the Mughals had been (to some extent) by the dictates of religion,<sup>28</sup> but *institutionally*—by checks, balances and ideologies—within the structures of government they had created. They were naggingly aware of this in their preference for methods ‘suitable to the East’, believing, as they did, that India did not understand the toleration of dissent. But they could never completely follow their idea of the Asiatic mode; in practice they constantly interrupted themselves with the impulse to move in the contrary direction. The British were in their own eyes administrators under rule, and rulers whose justification was, in the Burkean sense, their responsibility for the well-being of the people.

This predicament constituted a grave impediment to any policy of seeking and securing collaborators. It was not that policies did not emerge, but that they were not imposed single-mindedly—and this quite apart from the well-known problems of competence and supervision which beset the administrative system. All alliances were conditional upon abstract and moral as well as practical notions. Already, such scruples limited what could be offered to the zamindars, for much the same reason that, according to Clive Dewey, differences between British and Indian conceptions of friendship wrecked Malcolm Darling’s hopes for racial harmony.<sup>29</sup> In both cases, the British obligation was limited, in

<sup>28</sup> See P. Hardy, ‘The treatment of violence in Indo-Muslim Persian writing on history and polity’, paper given at SOAS, London, May 1978.

<sup>29</sup> See Clive Dewey, *Anglo-Indian Attitudes. The Mind of the Indian Civil Service* (London 1993): if an Englishman was asked for help by a friend, he had ‘a host of countervailing considerations to take into account; loyalty to the institutions of which he was a member; respect for abstract moral principles’ (p. 196). The term ‘friendship’ here is intended to include all forms of alliance and mutual obligation between individuals or groups.

the abstract and by rule. A Bihar example will reinforce the point. The Maharaja of Dumraon had been having trouble obtaining rents from raiyats who were cultivating the flood-lands on his estates in Shahabad. He took them to court, received judgment, and then (as the boundaries were being surveyed officially) began to worry that the court orders would be invalid if the area should be deemed to be in the North-Western Provinces. He asked the government for a statement that the villages had been in Shahabad since 1867. Dumraon was the leading landlord in the district and there was sympathy for his difficulties, but the government declined to help him out. The law stated that the midstream point had to be taken as the boundary, and officials could not and would not overlook the law in such a case, even to consolidate a political alliance.<sup>30</sup>

Moreover, if the law was not an obstacle, there was always the public interest. Certainly, its outline was drawn in ambiguous shadows which allowed room for rewards and favours. Thus, in Gaya, the Raja of Deo enjoyed remission of revenue, the authority for which could not be traced. G.A. Grierson, the Collector, a man not known for his zamindari sympathies, concluded that the remission had been personal to the present Raja's father, and therefore favoured resumption and steps to recover the arrears. His superior, the Commissioner at Patna, disagreed: an indulgence should not be withdrawn simply because orders could not be traced. The public interest demanded protection for the revenues, even if it meant making an enemy of a maharaja; and yet government allies or potential allies could be given the benefit of the doubt, where the rights of a matter were uncertain.<sup>31</sup>

But such discretion was sparingly used. We have already noticed, in passing, criticisms of conditions in the estates of the Maharaja of Darbhanga, in North Bihar. The government held a tenancy (an escheated jagir) called Malinagar from the estate. The Maharaja was one of the most important landowners in British India. The administrative saving on his vast estates alone was enough to make him important to government, quite apart from the political weight he carried in Calcutta and the social focus he provided for Hindus from (at least) Banaras to Purnea. Eden had described him as 'very sharp and well-informed', and recommended him for appointment to the Viceroy's legislative council, along with the Nawab of Dhaka and the Maharaja of Hathwa (in Saran district), as a useful representative of the landed interests, a man of high

<sup>30</sup> PCR 338, 12/19 (1883/4); and cf. *ibid.* 12/1.

<sup>31</sup> PCR 350, 12/1 (1889/90); 3,36, 12/1 (1881/2).

rank and social position.<sup>32</sup> His significance may be appreciated when we see him, a landlord whose wealth lay in North Bihar, asking questions on the council about the conduct of the local municipality towards Hindu temples in Banaras, where he was a public benefactor: clearly he could transcend the regional and hierarchical barriers by which the British divided their empire into manageable portions.<sup>33</sup> Yet when his estate demanded an enhanced rent or the relinquishing of Malinaggar, on the ground of change of use, the government defended the tenancy before the Magistrate, then on appeal in the High Court, and finally before the Privy Council. The point was not the possible loss to government—Malinaggar was notorious for its refractory tenants and probably more trouble than it was worth, while the legal issues were not such as to create any very dangerous precedents. The point was above all the duty, as officials saw it, of protecting to the utmost, in principle and in the name of the people, all the rights, interests and revenues of the government.<sup>34</sup>

But what of the sense in which these habits of government protected the zamindari alliance? The 1885 Act implied the rise of the rich peasant at the expense of the zamindar. Were rich peasants likely allies of British rule? Would they show gratitude, and could their goodwill be harnessed? Even more to the point, did the British have the courage to support them wholeheartedly, at the risk of completely alienating the landlords? The compromises of 1885 showed that they did not. What was true of zamindars, where the alliance was old and habitual, was more true of raiyats, where a new compact was on offer. The emerging arrangement suffered from all the inbuilt disabilities of political policy, and also from its novelty in the context of Bengal. Of course there were calculations of political interest, especially at the highest levels of government, which came for a time to favour the peasants and the 'real' India they embodied. But, as with the zamindars, there were again many instances from day to day when rule-book, precedent or principle led to actions which were counter-productive from the purely political point of view. This was rationalised in the argument (which was probably not objectively true) that the even-handedness of British rule was one of its best defences—a part of the argument for giving support to the raiyats in the first place. Plainly no alliance could be complete or exclusive.

The implications were potentially serious. There could be no absolute conversion in Bengal to a reliance upon proprietary peasants,

<sup>32</sup> Eden to Ripon, 10 February [1881], Add.Mss.43592.

<sup>33</sup> See R&A Rev C 36, March 1894.

<sup>34</sup> PCR 344, 5/61 (1886/7). On Malinaggar, see PC to Board of Revenue, 24 October 1887, PCR 345-6, 10/110 (1887/8).

because solid political reality still favoured the status quo, in Calcutta eyes at least, for the zamindars were concentrated in the capital, and long the best organised, most articulate and best connected of Indian pressure groups. Rather there was gradual attrition: belated and insufficient measures to assist the tenants and to improve the revenues of the province slowly eroded the goodwill which many zamindars had felt for the raj. Unsurprisingly, then, policies of the 1890s made more apparent the slippage from the proprietary-peasant ideal, already evident in late modifications of the 1885 Act, and from the supposed village-community tradition—anyway betrayed from the first in the inherent endorsement of individual transferable property and market-oriented production. This was a reassertion not merely of a pro-zamindar preference but of a deeper spirit of Bengal administration and Western legal practice. Increasingly the tenancy policy of Bengal revealed itself as a hybrid. It was illustrative of ambiguities and complexities within British political and economic policies as a whole.

Tenancy policy continued to evolve, and even the principles and attitudes of the reformers of the 1880s were modified. Three points were apparent. First, the pro-tenant emphasis was reduced by reassertions of the need to appease the landlords. Second, pro-tenant measures themselves came to be mediated by political considerations. Third, the increasing politicisation reduced the likelihood of decisive interventions on principle (for example, to reduce the poverty and dependence of actual cultivators): after all, the main limits on expediency had been law and the public interest—the *perception* of official duty—rather than an effective understanding of Indian conditions and the means of rendering them more equitable. A vivid illustration will be given in the next chapter, on the making and preserving of a record of land rights.

## III

The later adjustments which we shall see occurred in the 1890s and 1900s, and the original concessions of the 1885 Act, had the effect of further distancing the benefits of state intervention from the poor and the 'actual cultivators'. Also, as a struggle emerged between the Government of India believing that tenant rights were essential for peace and prosperity, and the Bengal government unwilling to antagonise the landlords, then the effect was more thoroughly to politicise the question of agrarian laws and conditions. This was a token of the future, when such issues would be intensely political, and in which rewards would go inevitably to those with most political clout. The context was one in which 'modern' features—the development of markets, the shift in emphasis from custom to contract, the political involvement of outsiders—were beginning to bite in India's villages. Any effort to monitor the changes and prevent excessive dislocation and distortion of the rural community was likely to be overtaken by stronger forces. Steps could be taken in the direction of restoring the 'natural' order, as in Bengal with tenancy legislation, or elsewhere with measures against moneylenders and the alienation of land. But external economic forces were ever more likely to be added to the political in determining outcomes.

The net effect of the measures of the last fifteen years of the nineteenth century was, according to the zamindars, a decline in their power and influence over their tenants; consequently they felt that the British had betrayed their mutual interest. This reaction and, in addition, political unrest in Bengal, early in the new century, certainly encouraged some officials to wonder if matters had not gone too far. The landlord policy might seem to have enjoyed an Indian summer. But the definite steps which were taken locally were in fact somewhat of a new departure. They were intended not so much to encourage landlords as they were, as to help create a new kind of landlord or at least a new attitude among them, as a counterweight to disloyal politicians. The Settled Estates Act of 1903 was one fruit of this policy; it was on this occasion that Ibbetson wrote his motto on the preservation of the influence of land, quoted earlier.<sup>35</sup> His view was (ominously for the Bengal zamindars) that 'exceptional treatment should be restricted to men who possess some political influence'; and it seems as if there had been a shift in the sense of 'political', that the compact was no longer

<sup>35</sup> See above, note 19.

mainly a matter of local order and good government, but rather what had previously been a relatively minor aspect, the control of public opinion. In general, with the political advantages in mind, Ibbetson welcomed the idea of being able to reward loyalty and good services by allowing the settlement of family estates.

It remained true too that the central government was reluctant to give Bengal full support in its wooing of the landlords. When the draft Settled Estates Act reached the Executive Council (six weeks after Ibbetson's note) almost the first suggestion was that appreciable stamp duties should be levied on settlements under the new law. Bengal resisted the idea. It was particularly embarrassing as the Bill had been framed in consultation with leading landholders who had been given copies and who would definitely not like the charge. J.A. Bourdillon, officiating Lieutenant-Governor (and a former Commissioner at Patna), would later duck the blame for the duty and advise the landlords to accept the whole package as it was that or nothing; at first, however, he pleaded with Ibbetson, privately, not to seem to be giving a boon with one hand and taking a fee with the other. (Oddly enough, H.H. Risley had indeed spoken of making 'a substantial charge for the concession'.) Bourdillon argued that to do this was to encourage, by example, 'a growing tendency in Bengal...for the rich and the charitable who render services to the state or the public, to consider what they will receive in return'. The bargain, it seems, should be unspoken and the rewards unspecific. Ibbetson was unimpressed, and thought Bengal were opposing merely 'as a matter of course'. Ibbetson was indeed a moderate on the subject, for some of his colleagues wanted to go further and stiffen the charges—their reasons went beyond the idea that it would be unfair to exempt a rich class from a tax which the majority would have to pay in similar circumstances, and on to the consideration that 'land in Bengal...pays far less...than land in other parts of India. It is bare justice to the rest of the country that when a legitimate opportunity occurs, we should...make it contribute a little more.' At the end only H.G. Stokes suggested that the question should be weighed with reference to the intention of preserving a 'permanent landed interest as a counterpoise to disloyalty in Bengal'.

By this stage the devastation wrought by the 'public interest' on the political motive was plain to see: what the despatch to the Secretary of State had called 'important land-owning families' (the phrase came from T. Raleigh) were now, in the words of Risley, not old families at all but merely 'successful banyas or promoted sheristadars' who wanted the Act to acquire rather than preserve status. Risley's now much-criticised theories of caste and race gave a kind of historical and ethnological

authority to multiple levels and categories of society within supposedly indigenous hierarchies, in contradistinction from ‘modern’ economic or political interests or classes. In such a context, officials were ready to believe that, far from benefiting the British by giving a boon to useful supporters, the Settled Estates Act would merely revive the dwindling influence of the British India Association (which was really made up of journalists or lawyers, and not zamindars at all). The boon of a settled estate, therefore, should cost these parvenus one quarter of a year’s revenue—and that was letting them off lightly.<sup>36</sup> Were landlords now too irrelevant to be worth reviving?

The problem with this, if one turns to ‘actual cultivators’, is that exactly the same ruthlessness was likely to apply. It already existed when Mackenzie had looked for ‘men of substance’ to whom the occupancy right should be secured. We have noticed that the colonial categorisations were not of indigenous forms, but inventions accommodated to a ‘modern’ agenda: in particular, the landed proprietor. Who should benefit from public policy, then? It should not be, we may recall Ashutosh Mookerjee arguing, any particular individual or class, at the expense of others. In 1907, when the Bengal government proposed to earmark revenue from the Road and Public Works cesses for their ostensible purposes (roads and public works), Risley objected that this was inconvenient, wrong in principle and supported only through an agitation engineered by Peary Mohun Mookerjee (who was still arguing that the cesses breached the permanent settlement). But Andrew Fraser, Lieutenant-Governor of Bengal, had announced his approval of the earmarking principle, and been greeted with ‘hysterical gratitude in the Native Press’. The announcement was out of turn, given the contrary orders of the central government; that government none the less had to give way. Political expediency prevailed, in order to avoid a revival of agitation. On the other hand, this was not a thorough strategy of refurbishing the alliance with the zamindars. On the merits of the case, without Fraser’s intervention, the Bengal proposal would certainly have been turned down.<sup>37</sup> But in such circumstances and given the political realities of the day, who was to ensure the protection of the *poor* ‘unfriendly peasants’?—not Mackenzie (whose phrase it was) or his successors, it seemed, though he had seemed to argue for the peasants, on principle, in the heated atmosphere of the 1880s.

This should not surprise us, for it was inherent in the terms of the

<sup>36</sup> R&A Rev B 51-2 (August 1903) or Legislative A 7-11 (June 1903), and B 35 (December 1903) or Legislative A 1-7 (November 1903).

<sup>37</sup> H. Local Boards A 2-4 (September 1907).

reforms. The categories were always instrumentalist; they had political purpose. The same currents of thought and argument which arose over tenancy policy had been aired equally in the other great debates of the period, for example, those over indebtedness and the alienation of land. First came pedigree; second status; third effective power; and fourth loyal support. Of the *malguzars* of the Central Provinces, for example, Denzil Ibbetson had written in 1898, drawing on a report by Charles Lyall, that they were 'of no great importance from any point of view'. They were, he argued, 'of very miscellaneous origin'; and even those 'of genuine agricultural stock, were mere village headmen whom the accident of our policy...elevated to the position of great landlords'. Being 'mere headmen' (at best), they had fallen victim to their new wealth. They had also been infected by the 'habit of organised agitation'. In this regard the history of the Central Provinces was 'curiously like that of Bengal', except that in the former area, the development of which was at an earlier stage, there was still a substantial residuum which might have been 'well worth saving'. Unfortunately, Ibbetson concluded, there was nothing to be done for them. Unless they were prevented from transferring their land they were lost; yet the 'agitators' amongst them would resist such restrictions. Ibbetson was sifting through the proceedings, quoting James Meston when settlement officer at Badaon, the collector in the same district, the Commissioner at Lucknow and the deputy commissioner at Kangra. He concluded that it was among new men that agitation obtained a hold. Of course, declining 'traditional' elites were also a focus for discontent. Even in the Punjab the landowners realised they were ruining themselves and their children, but 'have no stamina and cannot resist temptation', whether it be to please their womenfolk or gratify their neighbours. The likely outcome could be seen in the North-Western Provinces. The great landlords of the past had 'gone to the wall', except in Awadh where they had been specially protected, and old landlords were sullen because dispossessed. In Meston's words, they lingered on in their villages 'as bad tenants and cultivators, as centres of disaffection, and in the last stage as hungry and unscrupulous tools for the *dakait*-leader'. But the class the British had installed on the land regarded it as a mere investment.

We see here the contradiction between the definition of effective collaborators and modernisers, and the fearful attachment to 'legitimate', past, Indian forms. An evident though unspoken orthodoxy is the view of there having been a natural order which had been distorted under British rule, but which was best preserved in the Punjab and other parts of North India; the distortion, moreover, was the long-term cause of disaffection and agitation. There was a belief that in the remnants of

the old order lay true political power. The new men, in Ibbetson's view, 'might be probably be neglected with advantage. The native who shouts is not the man who matters.' The new men were, in the words of the North-Western Provinces' Chief Secretary (quoted by Ibbetson), 'the classes whose hostility can be most safely disregarded'. The only reason they were a danger was either by their infecting the more important agricultural classes, or in a negative sense by replacing them on the land, viewing it as a 'mere investment', and thus detracting from the security of British rule. In all this great landlords were of minor importance, except in a few areas such as Awadh; the problem was essentially small-scale—the emphasis was on village elites. There are of course many complex strands and differences of opinion in such controversies as these. But the constant ideas were of an old order which had changed, of some people 'worth saving', of soil ready for disaffection, of good (that is, loyal and conservative) sections infected by bad: so often the imagery was of agriculture or disease.<sup>38</sup>

On the other hand, we have already noted that a pro-peasant strategy was intended to widen the base of the government's support. The 1880s also saw some more ambitious gestures, particularly in Ripon's local self-government reforms and education policies. On the latter, E. Baring wrote interestingly in 1881:

The time cannot be far distant when the Natives of India will have to be associated with us to a greater extent than at present in the government of the country; and when the time for considering that great question arrives, we shall, unless I am much mistaken, find that our main difficulty is this, that the Native agency on which we shall have to fall back is for the most part such as we have created through our exotic system of high education; that the Natives bred under this system generally represent purely class interests; whilst the comparative stagnation of primary education will have resulted in the absence of any Native public opinion, properly so called, to act as a guiding and controlling power.<sup>39</sup>

Cotton, a radical thinker in terms of constitutional experiment, believed that the Indian call for Home Rule at this time was merely an accidental analogy with Ireland. What Indian politicians really wanted, he argued, was power, building on existing structures and norms. Surendranath Banerjea, he remarked, was the most conservative town councillor in Calcutta.<sup>40</sup> One aspect, then, of the creation of a propertied class of raiyats was an attempt to widen the numbers of the power-seekers, the

<sup>38</sup> Ibbetson, 31 January 1898, R&A Rev A 3-22 (November 1898), Part IV & kw.

<sup>39</sup> Baring note, 14 April 1881, in keep-withs to Home Department proceedings, Add.Mss.43575, p.295.

<sup>40</sup> Cotton to Ripon, 9 October 1888, Add.Mss.43618.

basis for an informed and involved public.

Thus it was also the case that the tenancy debate itself, and the legal identification and recording of socio-economic classes, had to contribute to the building of interest-groups. These (whatever Baring or Cotton might suppose, in their ideal of a post-colonial polity) were necessary pre-requisites for political life and constitutional advance. The agrarian emphasis of British political policies depended on a degree of rural isolation. It would not be possible indefinitely to claim that the man who shouted did not matter. Already there were signs that new tactics would need to be developed to meet changing political conditions, as the articulate increased the significance of their own spheres of influence and began to break down the isolation of the countryside. The nineteenth-century political policies would leave an important legacy for this new age.

In the case of Bengal, the pro-landlord policy was out of step with the prevailing currents of thought. Hostility to the province undoubtedly played a part in all these exchanges, but substantive, almost doctrinal differences were the main cause of the dissension. The peasant strategy carried most conviction. Even in its later versions in Bengal, or as tried by Harcourt Butler and others in the United Provinces,<sup>41</sup> landlordism was the exception not the rule. This meant of course, as the peasant strategy could hardly apply to Bengal, that the central government was left virtually without a political approach for that region. On the other hand, the pro-zamindari backlash in Bengal, such as it was, did not fundamentally alter the realities set out in 1885. To favour the supposedly entrepreneurial peasant over the allegedly rapacious and idle landlord might well enforce adjustments at some levels of the agrarian structure. It might influence the resources which were most useful to rural power-struggles. But it would not transform the distribution of resources throughout the society, and was not intended to do so. Nor would encroaching economic change necessarily alter this picture. The valuable people at whom policy was directed, and around whom politics came to revolve, were not the poor cultivators. Political influence, whatever Ibbetson might have wished, increasingly went to those who could organise themselves around recognised interests or causes.

Bengal intellectuals, social reformers and landlords had been aware of this fact since at least the 1830s. They deployed both 'traditional' and 'modern' means to organise social and political interests, including the

<sup>41</sup> See P.D. Reeves, 'The politics of order', *Journal of Asian Studies* XXV (1966).

establishment of the Bengal Landholders' Society of 1838;<sup>42</sup> and such mixed methods were the model also for subsequent political activity. But many new classes of interest—castes and communities, landlords, professionals, tenants, workers—were devised or re-defined under colonial influence. As in the 1870s and 1880s, new rules, categories and disputes encouraged ever more elaborate mobilisations and articulations of interest groups. Because state interventions helped politicise relations and classes of people, they had the potential not only to change the terms and means of politics, but also to advantage or disadvantage different groups within Indian society. How far they would do so in practice depended on the type and effectiveness of the intervention. The next chapters continue this story with consideration of the introduction, imperfect perpetuation, and impact of the settlement and record of rights.

<sup>42</sup> See S.N. Mukherjee, 'Class, caste and politics in Calcutta, 1815-1838', in Edmund Leach and Mukherjee, eds., *Elites in South Asia* (Cambridge 1970), especially pp.70-8.

## Chapter Eight

### *Keeping the record*

In considering the introduction and implementation of chapter X of the Bengal Tenancy Act, one purpose will be to explore how it was that officialdom was persuaded to go further down the road to intervention; another to assess the limits. The very inclusion of survey and settlement proceedings in the Act was remarkable—partly because in Bengal there had been no tradition of survey work of this kind and for such purposes. It was remarkable also because the tide of opinion, at least in London, was strongly against the cost of the full reports which had marked the second generation of settlements in the Punjab and north India. The work was, administratively, a logical deployment of the skills developed in an earlier generation. Officials as Goldsmid and Wingate had set up separate and hence specialist teams of map and assessment makers, to effect economic change by relating demand, according to principles of political economy, precisely to the character and ability to pay of holdings, villages and districts. The later Bengal tenancy reformers shared their view (still often heard in the later nineteenth century, though it contradicted some of the protective and paternalist impulses of the same colonial officials who espoused it), to the effect that thrift and enterprise would be encouraged by high, definite, appropriate and stable rates of revenue and rent. However, (as said) the intention in Bengal was to record and entrench rights. Appropriate taxation was but one ground for a renewed search for information: an attempt to tap concealed wealth (an old motive) led on to the use of fiscal policy to achieve economic ends (a rather newer one). Thus survey and settlement work, and the keeping of records of land rights, reflected a practical impulse for reform, in a region where lack of information had repeatedly been identified as an impediment to government. From famine relief to taxation, to social equity and economic efficiency, Bengal and Bihar were allegedly impeded by official ignorance.

Intellectually, the settlement work was a consequence of a range of ideas about government and society, in which an awareness of distinctive characteristics, believed to reflect different stages of social evolution, gave importance to the obtaining of knowledge about India. In turn this cult of knowledge promoted the idea that government was good in proportion to its understanding of the nature and origins of social conditions, matters which could and should be elucidated in India by the

efforts of Victorian Englishmen.<sup>1</sup> Practically, the survey and settlement work was justified for their supposed effect as a tool of state management. Without this double justification from the pretensions of scientific government, the expense would have seemed out of all proportion.

An interest in local data and land records started with the first land revenue investigations after the Company's acquisition of the *diwani* of Bengal *subah* in 1765. During the early nineteenth century, it produced inconclusive discussions and reforms of village agency—patwaris and chaukidars—and of inferior levels of administration (for example kanungos). In the early nineteenth century an attempt was made to revive and re-deploy the village agency. In 1812 Francis Buchanan reported an efficient system of local police only in Shahabad where 1,419 watchmen (*pasbans*) had been appointed by zamindars and registered by the Magistrate, who also appointed chaukidars paid by the raiyats. In 1841 the Board ordered that village chaukidars everywhere should be awarded a standard three acres of average land or Rs.3 per month. But just as Shahabad was an exception, so too this rule was only applied at settlement, and its general influence seems to have been slight.<sup>2</sup> Similarly Buchanan found patwaris being appointed by Collectors from the most able members of families claiming hereditary rights to the post, and it is true that patwaris, regarded with kanungos as virtually useless in 1772, and impervious to attempts to revive them in 1783, do seem to have been more frequent and effective in Bihar than elsewhere under the permanent settlement. But even in Bihar they were unsatisfactory as a government agency. Their records were reported in 1787 in Tirhut as nowhere complete or regularly kept, nor always honest, and in Bihar as much as anywhere patwaris were identified as zamindar's servants. Thus the state was left without effective local representatives since it had abolished the kanungos in 1793. The Court of Directors called for revival of both kanungos and patwaris, in 1813, 1814, 1815 and 1819. After an inquiry in 1815, kanungos were 'restored' in Bihar (Regulation II of 1816) and government control, jointly with the zamindars, was

<sup>1</sup> See Richard Saumarez Smith, 'Rule-by-records and rule-by-reports: complementary aspects of the British imperial rule of law', *Contributions to Indian Sociology* 19, 1 (1985).

<sup>2</sup> Buchanan, *Shahabad*, p.345; CO, 9 June 1841. In 1808 and 1812 heavy penalties were provided for chaukidars who failed to carry out their duties; from 1837-54, equally ineffectively, control of all local police was transferred from the Commissioners to a Superintendent in Calcutta—Bengal District Gazetteer, L.S.S. O'Malley, *Patna* (Calcutta 1907). See also Palit, *Tensions*, pp.62-95. See chapter two for full references to these and following sources.

formally established over the patwaris (Regulation XII of 1817). But, as early as 1821, the Collector of Tirhut reported that patwaris did not submit genuine accounts to the kanungos, who were generally useless to the Collector and ignored by the courts; the kanungos made no contribution to raiyati interests. Their abolition was recommended in 1827.<sup>3</sup> Similarly under Regulation IX of 1833 patwaris' accounts were supposed to be filed with the Collector, but the penalty, of denying the zamindars the use of the law when accounts were not filed, depended on the government's promulgating the necessary rule (which it did not do).<sup>4</sup>

In this absence of effective local agency, the official experience of information-gathering was restricted very largely to three main areas, already mentioned: government or Court of Wards estates, the partition of landed property-rights, and land-revenue resumption proceedings. Each of these provided systems and precedents for the measurement, establishment and presentation of land and land-rights—that is, in these matters the making and keeping of a record became the major instrument of policy. Each of them also proved a severe strain on the officials, and was in various ways inadequate or unsatisfactory.

For government and Wards estates, as was noted briefly in chapter two, it was decided by the 1830s to concentrate on the improvement of *khas* management. The chief problem was that the management was generally 'so negligently and summarily performed as to leave great scope for extortion'; hence reform was signalled by a call for *jama-bandis* (rent-rolls, recording rights and dues) to be made 'absolutely indispensable'.<sup>5</sup> In 1833 too the Board of Revenue ordered registration of every *khas mahal* in sufficient detail to check abuses. They admitted with surprise what they had found out about the scale of the problem—some estates had outstanding balances from before 1793—and also the difficulty of reform when the interests of the Collectors' subordinates were pitted so strongly and uniformly against those of the government. Collectors were warned to ignore protestations from the *amla* about how difficult it would be to prepare the registers.<sup>6</sup> Four years later the Board was still patiently calling for information so as to prepare rules for the reform of *khas* management, and in 1838 further new procedures were ordered, asking for professional or at least a minimal survey as soon as possible, and a complete record of the number and rent-history of holdings and occupants. Each holding was to be let in farm to its

<sup>3</sup> Buchanan, *Shahabad*, p.349; Hunter, *Records*; Muzaffarpur SR.

<sup>4</sup> CO, 16 January 1837.

<sup>5</sup> CO, 21 October 1831 and 25 August 1832.

<sup>6</sup> CO, 20 August 1832.

occupant for a definite period, advances were to be made to free the cultivators from the moneylenders, a liberally-paid patwari was to collect rents, and the whole was to be under the supervision of a Deputy Collector with no other responsibilities.<sup>7</sup> The scheme was optimistic to the point of being fanciful, in terms of what was, and indeed what the government must have known to be, practicable.

Early attempts were made to compile registers of these lands for Bihar—in 1784 (following Shore's recommendation), and also in 1791, 1795 and 1802. Some of the revenue-free tenures, for example those dating from before 1765, could be confirmed under Regulations XIX and XXXVII of 1793; but little advantage was taken of this opportunity (a mark of the unimportance of unenforced laws). All the early attempts at regularising the position failed. Francis Buchanan, describing conditions in Shahabad in 1809/10, concluded that no documents in the Collectorate were entirely satisfactory on the subject of free estates, 'by much the greater part of the lands having never been measured even by conjecture'. After 1822 (Regulation VII), the requirement of a cadastral survey changed the basis of the operations; and efforts began to be made to examine the tenures in detail. The procedures were slow, each estate at first involving the completion of no less than fourteen forms, and there was little progress until Regulation III of 1828 allowed officers to be placed on special duty for resumption work, and until, after 1833, professional survey parties and appeal procedures were provided to relieve the Collectors of the main burden.<sup>8</sup>

Even then special measures had repeatedly to be applied to the worst-affected areas, including almost all of the districts of Bihar—the secondment of extra European and Indian officers, and the formulation of a special plan after 1834 to enforce the resumption laws in that province. Earlier, in 1832, faced with delays and consequent corruption in the proceedings, the Patna Commissioner ensured that the revenue sheristadar was made personally responsible for keeping a register and preparing six-monthly reports, on the argument that duties not given to one individual quickly fell into disuse; the proposal was generally recommended in 1834. In 1838 the Board of Revenue itself admitted that it could not cope with the increase of work; it had to be relieved of some other duties by the revival of the office of Superintendent and Remembrancer of Legal Affairs. In 1837 it had ordered that attention be focused on lands actually claimed as rent-free, and not on 'towfer', lands attached to permanently-settled estates—this to sweeten the

<sup>7</sup> CO, 23 January 1838.

<sup>8</sup> Muzaffarpur SR.

zamindars and to reduce the workload.<sup>9</sup>

In 1839 improved procedure, devised for Purnea and Malda and recommended to the Collectors, involved the subtraction of revenue-paying lands (according to the patwari's records) from the area of the whole village (established by measurement), the remainder being investigated as if it were rent-free land. The advantage of the method was that it resulted, even counting larger holdings alone, in the retention of very much less *lakhiraj* land than measurements by the amins—in four villages 4,637 acres instead of 13,891, and in six villages (or 259 holdings) 32 holdings of over a hundred bighas instead of 83. From the official view, this was a devastating comment on the accuracy of the *amini* procedure adopted elsewhere, and was only obtained because the covenanted superintending Deputy Collector had remained camped on site.<sup>10</sup> Well might the Board exhort its officers to local investigations and vigilant supervision.

Partition was another area in which the British officials found themselves out of their depth. In the absence of any accurate records and because of obstruction by some or all of the co-sharers, *batwara* proceedings tended to be unduly protracted and hence liable to favour the corrupt. In 1828 government dispensed with detailed internal surveys unless asked for by the parties—as long as the total revenue was secured, the proprietors could adjust the shares among themselves. But such a withdrawal, while helping in one direction, could worsen the situation in another: as the British were well aware, *batwara* proceedings were often fraudulent, marred by collusion which allowed, in the interests of the estate as a whole, the gross over-assessment of one part, later to be relinquished and usually left on the government's hands. (Buchanan claimed that patwaris under the control of the Collectors were the only check on the fraudulent apportionment of revenue at *batwara*—and such patwaris did not exist generally in the 1830s even if they had done in the past.) In 1828, in proposals for dealing with fraudulent *batwara*, the Board disagreed among itself, a majority favouring automatic attachment by government during partition, but the acting President arguing that this, as well as unpopular, would be ineffective because of the extra duties (and opportunities) which would devolve upon the amin charged with collecting from the attached land.<sup>11</sup> In short,

<sup>9</sup> CO, 21 January, 17 June, 5 and 26 August 1834 and 16 May 1837; Bengal Revenue Letter, 12 September 1838, L/E/3/42.

<sup>10</sup> CO, 14 March 1839.

<sup>11</sup> CO, 7 July 1829 (orders, 18 August 1828, Board of Revenue, 25 July 1828, Acting President, 23 August 1828); Buchanan, *Shahabad*, p.349.

the government reached the stage of defining problems, but did not have the means of ensuring final solutions. It floundered about, finding that one cure seemed merely to uncover new problems, and that desirable measures were cancelled out by undesirable consequences.

Thus, in 1829 the Board had sought the views of the 'most intelligent zamindars'; in 1835 they called for their opinions once more. On the one hand they saw the need to protect the interests of the more 'honest or less powerful' co-parceners, a realisation which not only preserved the *batwara* law but even gave rise to consideration (as in 1836) of whether or not the process should be made easier. Yet, on the other hand, the difficulty of collection and the outstanding balances increased between 1830 and 1831, and clearly partitions added to the work of the revenue authorities without reducing the pressure on the land. The government blamed the revenue shortfalls on the growth in the number of proprietors through inheritance. In fact the growth in the number of estates was far more significant. As early as 1827 Collectors had been forbidden to sell portions of estates for arrears in order to avoid unnecessarily swelling the size of the roll, and it was just such an increase which later made collections more difficult. In 1835 too, as if to make partition more suspect, the Board announced their belief that it was being used to avoid sales for arrears.<sup>12</sup>

A feature of early attempts at reform was the emphasis on at least trying to put right those things which actually came into direct contact with the government. Thus in 1840 came the suggestion that *khas mahals* might serve both as sources of information for the government and as models for the surrounding countryside—apparently the start of the pilot schemes which were to be a common (and apparently ineffective) device later in the century. In this case the project involved the reform of the local police, making village watchmen paid servants of government. The same year education had been provided for minors under the Court of Wards, after a dispute on the Board of Revenue on whether or not the government should make such 'authoritative interference'.<sup>13</sup> But as a general rule, beyond the points of direct control, capacity and not scruples limited what was done.

We see this conclusively by consideration of the survey and settlement as a weapon in the official arsenal for the defence of the tenants in Bengal—the most important of the nineteenth century. Even in the

<sup>12</sup> CO, 22 May 1827, 17 September 1833 and 25 May 1835; Bengal Revenue Letter, 11 August 1837, L/E/3/40, IOL.

<sup>13</sup> CO, 22 December 1840; Bengal Revenue Letters, 2 April and 7 May 1840, L/E/3/1, IOL.

earlier years, it is clear that a survey could make the hand of the government felt. In Chittagong in 1837, to take one example, some disturbances during survey were attributed to a 'small body of malcontents, connected with the existing or former Judicial and Revenue Establishments of Government', who had abused their power in order to gain possession of untaxed land.<sup>14</sup> In general there must have been some effect from operations running at a rate of nearly 5,000 cases a year in the late 1830s, particularly in areas (such as Bihar) which had more than their share.<sup>15</sup> In 1837 the government appointed a committee to examine ways of improving survey procedures, satisfied (as the Resolution put it) that the cost of surveys for 'the larger estates and more particularly, of extensive tracts of country open to assessment, will be abundantly repaid by more accurate knowledge of their extent and value...', and that 'advantage should be taken of every opportunity to increase the stock and secure the exactness of the Geographical and Topographical information at the command of Government', not least in order to facilitate the work of the courts in suits over landed property.<sup>16</sup> This represented the current orthodoxy, originally established through the efforts of Colin Mackenzie, and foreshadowed the thinking which was to lead to Bengal surveys from the 1890s.

However, the ambitions after 1837, though wider than at some other times were still very limited. The proposed changes coincided with a stream-lining of the process under the influence of developments in the North Western Provinces. There the government had abandoned the full internal survey of estates, extending instead the land-use records made by native agency.<sup>17</sup> In Bengal this reversed the previous situation, in which non-professionals (that is, revenue officers) had sketched in the externals, while professional surveyors had recorded the details, and instead placed most weight on the professional survey of external boundaries. Thus only in the most peripheral sense could the survey be said to have increased the stock and accuracy of the government's information. Reinforcing the point were the facts that in Bengal the work was supervised not by local Commissioners but directly by the Board, and that it was of inferior standard—or thus the senior member of the Board described it in 1838, contrasting it with that of the 'able and experienced' settlement officers of the North-Western Provinces.<sup>18</sup>

<sup>14</sup> Bengal Revenue Letter, 3 October 1837, L/E/3/40, IOL.

<sup>15</sup> *Ibid.*, and see 5 September 1837, for Patna Division.

<sup>16</sup> Bengal Revenue Letter, 3 August 1837, L/E/3/40, IOL.

<sup>17</sup> India Revenue Letter, 18 August 1838, L/E/3/42, IOL.

<sup>18</sup> Bengal Revenue Letter, 22 March 1838, L/E/3/41, IOL.

Indeed even the simplest parts of the operation were not invariably carried out—in 1838 the Board had to insist that every *mahal* and *mauza* be recorded during a survey (sometimes two or three had been lumped together)—and in general the Indian Deputy Collectors who were chiefly responsible for the work were considered unreliable and ‘deficient in activity’.<sup>19</sup>

What applied to individual surveys (for resumption and so on) was carried over, when a survey of the whole of Bihar and Bengal was proposed (1841) and the first overall British survey of Bihar conducted (between 1842 and 1849). A professional agency recorded boundaries and non-professionals prepared field maps showing estates (not holdings) within each village. Such general surveys and investigations, from James Rennell (1766-72) to the revenue survey maps of 1847-63, had always been designed mainly to fix external borders, as in the most elaborate example, the *thakbast* surveys of the 1820s to 1840s, which contained population and other details but no information on subordinate rights. The settling of estate boundaries—though perhaps encouraging land transfers to non-agriculturalists—was undoubtedly a boon, at a time when proprietors were generally in dispute with their neighbours. But the accuracy of even this much of the work was later called in question because of a confusion between villages and estates. More important, as details were kept to the minimum (to reduce popular suspicion, extortion by subordinates, and delays in the work), the results were useless in respect of landlord-tenant relations, and virtually so for general statistical purposes.<sup>20</sup> Much the same could be said of an even more refined surveying system, introduced in 1850/1, which combined internal and external marking prior to survey with internal plotting by chain and compass to show the part of each *mahal* belonging to each estate: what it gained in accuracy compared with the eye-sketches which had previously been the basis of the internal surveys, it lost in completeness because of the abandonment of field-by-field measurements.<sup>21</sup> In short effectiveness could be increased in the main only by compromise, by limiting what was attempted.

Into this history of failure came the reformers of 1885. They could not promise immediate benefits to the state treasury. In temporarily-settled areas, settlement officers tended to argue for limited increases in revenue, and even for reductions in real terms. As we have seen, the

<sup>19</sup> CO, 20 March 1838.

<sup>20</sup> Muzaffarpur SR.

<sup>21</sup> *Report on the Survey Operations of the Lower Provinces, 1st October 1851 to 30th September 1852* (Calcutta 1854).

discussions of the benefits of a permanent settlement for temporarily-settled areas were couched, between the 1860s and 1880s, partly in terms of the chance to avoid these expensive and vexatious operations. In the instance of Bengal, there was obviously no financial case to be made for the provisions under the 1885 Act. Nor was there much experience of the use of surveys, except on individual estates, so as to improve returns. As said, there was some experience of surveys to reduce boundary disputes. But in the permanently-settled areas, no law provided for revenue surveys (of *rights*) before 1875 (Bengal Act V). The *diara* (alluvia) survey instituted after 1847 (Act IX) applied only to Dhaka Division, and to the special and repeated need there to re-establish boundaries affected by fluvial action. There was compulsory registration of landed interests for those in possession, but even under the consolidated Act VII of 1876 the purpose was to identify the responsible revenue-payer for each estate. Under the Sales Law and other regulations, there were voluntary provisions for the registration of co-sharers, of mortgages and of protected tenancies, but no subordinate rights *had* to be recorded, until they began to be listed, on a summary valuation, because of the tenants' liability for road and public works cesses (Act IX of 1880, superseding Acts of 1871 and 1877).

Bengal surveys thus identified the responsible revenue or tax-payer; they were used to facilitate resumption and partition; and they regularised the running of government estates or those under the Court of Wards. Their public purposes were limited, as was commitment from the public purse; for government or Wards estates the expense was approved by the officials on the unimpeachable but essentially private ground that the result would increase the income and secure the future of the landlord. This reminds us of our earlier finding that, although the British claimed that they had established a legal hegemony in India, their writ reaching to every subject, who was equal in the eyes of the law, yet in practice they had to come to terms with the residue of a multiplicity of local jurisdictions, and thus intervened mostly to assist allies. Their predecessors had been even more powerless to penetrate such barriers; under the British, interventions remained infrequent, and surveys tended to be regarded as no more than a means of resolving troublesome disputes over boundaries, or of serving, at the users' expense, certain specific administrative needs, as with revenue sales or the partition of estates. A public good could be invoked, even the wish to intervene against a particularly rapacious landlord, but generally this was seen only from the point of view of taking prudent measures to avoid public disorder.

By contrast, C.L. Tupper, in his report on Bihar, had insisted that a

full survey was essential to the social and economic well-being of a whole community. His Punjab expectations meant that this rationale raised no questions in his mind, but he was aware that there was no similar expectation in Bengal. Therefore he checked his proposals with T.W. Holderness, and, on his advice, set out the NWP procedures as a model for Bengal. He wanted settlement officers who would start by correcting the patwaris' papers, and raising rents that seemed too low, on the basis of field measurement and soil classification. He argued that such a system already worked well in the permanently-settled areas of Banaras division, and that 'even an imperfect record of rights may be a source of great strength and stability to the tenants' interest'.<sup>22</sup> Holderness agreed: though the record would annoy the zamindars and any raiyats concealing excess holdings, for most people it would be 'a great relief to be freed from the perpetual struggle in which their hitherto undefined and indefinite counterclaims have involved them'. Tupper supported the need for records in another note of 10 August 1880, written in the Revenue and Agriculture Department. Buck had drawn the moral, and Holderness again elaborated the point. In 1840, he remarked, Thomason had made a 'fair and moderate assessment' of Azamgarh district, but neglected 'to draw up and record an accurate record of rights'. The result, according to J.R. Reid's settlement report, was twenty years' warfare between landlords and tenants, and 'numberless abuses' of raiyats' rights. Patwaris became instruments of fraud; even the Court of Wards was inconvenienced for want of accurate *jamabandis*.<sup>23</sup>

A far more general set of considerations came into play in Bengal after the 1885 Act. Landlords and tenants were still expected to pay towards the survey operations, a legacy of the past and another example of the creeping additions to state dues which zamindars claimed to be violations of the permanent settlement. The Bengal government, of course, continued to worry about the political unpopularity of such charges, and to try to make savings by invoking local Indian agency for record-keeping and surveying. But the thrust of the work was for an avowed public purpose and the bulk of the costs rested upon government. Why was the Bengal government persuaded that survey and settlement were needed? The decision may be regarded as another in the long series whereby additional state costs and responsibilities were admitted to replace earlier local or collective arrangements, and to

<sup>22</sup> Notes, 14 December 1881 and 19 January 1882, Add.Mss.43584.

<sup>23</sup> Notes on G/Be to G/I, 15 July 1880, R&A Rev A 16-46 (July 1882) in Add.Mss.43584.

establish instead definite, general categories of rights.

An earlier example was the involvement of the state in embankments and drainage policy. The permanent settlement had removed the various payments which had been allowed to zamindars for irrigation and protective works (by deductions from their revenue dues), while supposing that such tasks would still be performed. The inevitable consequences were neglect, official complaints, local disputes, and various enactments and procedures allowing or requiring the state to intervene in water management (summarised in Bengal Act II of 1882). Similarly, the main reason for surveys and records of rights under the 1885 Act was that they were accepted as a remedy for the evils against which the Act was designed. If the permanent survey had erred, according to the new orthodoxy recorded by Baden-Powell, it was partly because it was not preceded by a survey: it had been made for named estates with persons deemed to be in possession and willing to accept the terms, with measurement, mapping and records of rights ruled out for reasons of time, capacity and doctrine.<sup>24</sup> Similarly, if the problem was famine and poverty, then the received wisdom was that Bengal had proved woefully unprepared over the preceding decades because of its administrative tradition. The permanent settlement had left it with inadequate knowledge of its subjects, and without the village agency to remedy this defect. And finally, by 1884 when the settlement and record of rights provisions were secured in the Bill, the advocates of the reform had experienced some set-backs, under Rivers Thompson, to their more radical proposals, and were ready to espouse a method of regulating rents and protecting tenant rights which was not open to theoretical objections. At least they were ready to do so when convinced that there were no insuperable financial or political objections: Tupper's example of the permanently-settled areas of Banaras division was the important one here.<sup>25</sup>

## II

Yet this decision too had its limits. Another motive raised in discussion of the advantages of a survey was that accurate village records would be helpful in 'disclosing the agricultural condition of the country'. This implied the further agenda already mentioned, and thus raised all the doubts which surrounded the institution of a state agricultural corps. The

<sup>24</sup> Baden-Powell, *Land Systems*, vol.1, pp.407-9.

<sup>25</sup> C.L. Tupper, 'Memorandum on the rent question in Behar', 20 October 1881, R&A Rev A 16-46 (July 1883), with letters and notes by NWP Collectors, December 1881 to January 1882.

decision to embark on a survey and settlement was also a *limitation* of the goals of government, because it restricted interference to the recording of agrarian structure. In the politicisation of the rent question, as occurred in Bengal in the 1870s and 1880s, the issues included the appropriate types and role of government, as well as the competing interests in the countryside. A survey too raised such questions.

It was an instrument which met ideas and needs we have already identified. Seeming altruism, especially ideas about the purpose of British rule appropriate to the Victorian age, was again an important part of the motivation, though of course political and economic self-interest was also involved. A survey and settlement explicitly expressed the new willingness to intervene on behalf of raiyats, at least in order to define rights and reduce agrarian disputes. It too was required largely because earlier government measures and legal decisions were at last beginning to bite. It too suggested a renewed belief that the government was capable of acting to affect agrarian relations at lower levels. It too was regarded as a particular response to outbreaks of famine, in a context in which, by the last quarter of the nineteenth century, the government thought it at last had the capacity to begin improving the condition of the rural population. A survey, settlement and record of rights provided the basis and means of that improvement, a possible culmination, as has been argued in earlier chapters, for a kind of interventionist progression—from the permanent settlement and its focus on zamindars, through the patnidari regulations which recognised equivalent land-owning rights for large intermediary tenure-holders, on to attempts to protect the ‘contract’ interests of tenants at land sales, and then to the measures designed to ‘restore’ the ancient privileges of settled raiyats, in the guise of the ‘actual cultivators’. In the twentieth-century the search for actual cultivators went still further, with measures directed at under-tenants, share-croppers and bonded labour.

More radical still were arguments for direct state interventions in agricultural production and in the development of the economy. A survey might or might not be intended as a step towards this further role. There was doubt because prevailing theories influenced policies, but did not wholly prescribe their trajectory. As said, in the argument over any link between tenant rights and future prosperity, both sides depended upon deductive rather than empirical reasoning. The officials did not generally debate the details of economic advance in the presidency, in the sense of trying to relate the expansion of cultivation or the development and marketing of new crops to specific social or political innovations. Almost the only exception was that they considered that the tea industry had depended upon European enterprise backed up by govern-

ment. Nowhere, for example, was there any extensive analysis of the relationship between property-ownership and commercialisation, any more than there was a firmly established causal connection between limited, individual property-ownership and mass poverty. Historians too have tended to take the connection or the lack of it from *a priori* reasoning. The divisions between officials—and between historians—were thus partly a matter of preference, as between landlords and peasant proprietors. Where observation backed up these attitudes it provided ammunition rather than explanation. This absence of scrutiny was, as said, not universal; careful attention to detail was shown, for example, in examining indigenous types of tenancy, as in many other spheres. The selective lack of exact observation indicated a reluctance, in some quarters, to treat seriously any questions of actual production. For some officials the reliance upon structure, one with a long pedigree in India, was quite deliberate.

What this implies is that the extent of state intervention continued to be contested, as an ideological question as well as a political one. Here we reach a divide, among the reformers, which is also the division between this volume and its successor. We can capture a flavour of the debates by reconsidering briefly the issue of state's involvement in agricultural production, as the step beyond its regulation of agrarian relations. S.C. Bayley, ever seeking historical legitimacy, traced such involvement back to Akbar and to the importance of the land revenue in Indian finances. For the British, as mentioned in chapter three, the question was raised by Mayo in 1870 when he set up an Agricultural Department 'to take cognizance of all matters connected with the practical improvement of the agricultural resources of the country'. In 1871 local governments were urged to set up model farms in every district; in Bengal seven were established in 1873, some proving short-lived, and an Economic Museum was founded in Calcutta. In 1873 weekly agricultural returns were instituted from the localities. The 1880 Famine Commission revived the subject; it too proposed both the *diffusion* of agricultural knowledge, and the *collection* of information about agricultural conditions. Ripon's government suggested starting at the centre with a new Director of Agriculture, to help devise further programmes, and by way of example to the provinces. The Secretary of State's Council generally preferred provincial to central appointments in agriculture—for example rebuffing Ripon's request for an agricultural chemist in 1883—but it was agreed that E.C. Buck should be appointed Agricultural Secretary in 1881. Elliott commented: 'he must not try too many things at once: he is in danger of putting so many irons into his fire that he puts out the fire'. Elliott saw the tasks of the Secretary as reactive:

touring India, collecting statistics, setting up teams to gather them, and being able to predict output, import needs and so on. But Rivers Thompson hoped for expert appointments and that 'a real and active policy of agricultural development is contemplated'.

Buck wanted to be very active. He proposed, for example, that government should 'assist in maintaining a more satisfactory relation between agricultural capital and agricultural expenditure'—in regard not only to government loans but also agricultural banks, following an experiment in NWP by Crosthwaite. Cotton was appalled. He warned that even an expanded system of government loans would be positively mischievous because 'antagonistic to private enterprise'. G.E. Ward thought government credit schemes 'calculated to retard the growth of intelligence and self-dependance'. Rivers Thompson had argued the opposite: that the government, as effective joint owner of revenue-paying land, and in the interests of the 'prosperity of the cultivating classes', had an 'immense responsibility in developing its vast estate'. Bayley, echoing him and playing another favourite card of reformers, wrote that the need for state intervention was now recognised in 'every civilised country in the world' in matters formerly left 'entirely to private enterprise'.<sup>26</sup> But in 1883, when Thompson proposed a training school for record-keepers, Bayley did not oppose this but thought it premature. Thompson was starting at the 'wrong end', he claimed. Thompson thought of record-keeping as a means of improving agriculture; Bayley saw it primarily as a device for maintaining rights.<sup>27</sup>

Later a tension continued between those like Eden who believed that agrarian structure (once reformed) would act unaided, and those like Buck who believed in direct intervention (agricultural colleges, experimental farms, state-sponsored credit, and so on) to promote improvements in productivity and the value of output. Eden, following an established Bengal line, had regarded the Agricultural Department as a 'sham' and favoured its abolition. Taking up Elliott's position he suggested that a roving agricultural commissioner to investigate and advise would suffice; moreover: 'if Buck had only had an experience of three months in each province before he began instructing others, he would not have written the reams of nonsense which first created a most

<sup>26</sup> See Bayley to Primrose, 16 June [1883], Add.Mss.43612; G/I (H) to S/S, no.19, 13 March 1881, and notes by A.R. T[hompson], 17 October 1881, E.C. Buck, 26 February 1882, C. Crosthwaite, 16 March 1882, H.J.S. Cotton, 13 April 1882, and G.E. Ward, 15 May 1882, Add.Mss.43584; Kimberley to Ripon, 24 January and 8 February 1883, Add.Mss.43523; Elliott to Ripon, 26 June and 7 July 1881, Add.Mss.43605.

<sup>27</sup> Bayley to Primrose, 16 June [1883], Add.Mss.43612.

unfavourable opinion of the department in the public mind'.<sup>28</sup>

Marking a similar divide, the 1880 Famine Commission had even recommended a system of supervised village accountants under a Deputy Collector, but the Government of India thought such a parallel establishment for agriculture and statistics would undermine the district officer. The 'economic condition and well-being of the people', they explained, was 'one of the highest and most essential functions of the chief district officer', embracing, 'directly or indirectly, almost every branch if the executive authority'; to transfer such functions was to run the risk of 'divided government'. This, though interesting for its endorsement of state responsibility, was more remarkable as a defence of the generalist role of the district officer: it amounted to a refusal to embark on close or extensive state activity in order to meet the professed goal.<sup>29</sup> Predictably Eden too was opposed to a local agency for such purposes; his preference was to rely instead on the rent Bill—that is, on the improvement of agrarian structure rather than of agricultural production. But nine months later, following Buck's appointment and a despatch from London asking for proposals relating to agricultural departments, district administration and research, the Revenue and Agriculture Department had changed its view: it resolved that a 'systematic prosecution of agricultural *inquiry*', as the Famine Commission proposed, must 'precede any attempt at agricultural improvement', and that for this purpose the provinces needed a 'permanent organization for the maintenance of a thorough system'. They proposed not only the collection of statistics, but also investigation to check any causes of agricultural decline and to urge upon cultivators the greatest possible efficiency; the 'Native community' should also be involved, so as to tap 'local reasons which justify practices that may seem strange and illogical to an European observer'.<sup>30</sup>

The debates over agricultural policy show that the 1885 Act was a transitional stage on the way towards whole-society remedies; it provided concrete categories within given politico-economic theories. It seems that the first intervention, through law and settlement, was bound to promote a second, the direct involvement in conditions of production—as indeed was already being advocated before the 1880s. The next stage was to seek practical remedies in terms of credit, improved crops,

<sup>28</sup> C.H.T. Crosthwaite and E.C. Buck, memorandum printed 17 May 1882, Add.Mss.43584, and Eden to Ripon, 13 November 1882, Add.Mss. 43592.

<sup>29</sup> G/I (H, R&A) to S/S, no.19, 14 March 1881, with Add.Mss.43584.

<sup>30</sup> S/S to G/I, no.55, 16 June 1881, and Resolution of G/I, R&A, 8 December 1881, with Add.Mss.43584.

scientific methods of production, and marketing. But these further steps required renewed policy-debates, and bore even greater political implications. Agricultural bureaucracies and government credit were too much for some officials to stomach, and the same could be said of a record of rights, and more generally of the collection of information as part of a project of agricultural improvement. All these questions were potentially related, as also was the issue of local agency. What was highly controversial was the extent to which the potential should be admitted; the question of how far to intervene was in dispute not only before 1885, but again from the moment the Tenancy Act was passed.

One key problem was that local records could be efficiently collected only by a responsible local agency, which did not exist in Bengal. To introduce one raised difficult political issues: could the government interpose itself in each village and estate between the zamindars and their tenants? A letter in 1883 from the Bengal government, signed by MacDonnell, on the subject of statistics and agricultural improvement, left no doubt as to the hackles raised and the confrontation required by such an intervention. True to the habitual emphasis on precedent, the letter recalled that (as we have seen) the government had long struggled to reinstate a local agency in Bengal, starting with Regulations I and VIII of 1793. MacDonnell claimed it had not succeeded because 'it was not in the interests of the zemindars that the Government should acquire information which might justify interference between them and their ryots'. The opposition was so effective that in 1827 kanungos were abolished except in Orissa. Patwaris were still supposed to exist, and Regulation IX of 1833 required duplicates of their records to be filed in the collectorate; but investigations in 1837 found that patwaris too had almost disappeared. Their formal abolition was considered in 1849 though not carried through. In 1863 the Commissioner of Patna noted the disorganised state of the register that was supposed to be kept of patwaris, and asked about improvements; George Campbell took up the question in 1871, freshly impressed by the need for information after his work on the Orissa famine commission. Various attempts at reform were made, but to no avail. Though a local branch for statistics was set up within its Finance Department, and weekly district returns were made from the 1870s, the Bengal government continued to have to rely on the subordinate police for information which was collected elsewhere by junior revenue officials; the local knowledge of the district officials was held even to be declining as their burdens increased, and because of the transfer of rent suits to the civil courts. Again, except for the reorganisation of kanungos which had taken place in 1869 in Orissa, the government was thwarted by the zamindars, who 'loved darkness better

than light, not so much because their deeds were evil, but because the casting of any light upon the internal economy of their estates was an interference with the exercise of a power which they claimed to be absolute—a claim the government had not had the courage to resist until 1859. Seldom were the zamindars more clearly painted as the opponents of progress and justice than in this compact and selective history of the failure of local agency in Bengal.

Following Baird Smith's famine report in 1861, the Bengal letter went on, a statistical committee had been set up. Its report in 1866 called for elaborate sets of statistics; but (wrote MacDonnell), in Bengal, where there were 'no means of ascertaining facts', the exhibition of facts 'could be of no great value' and 'there were no facts worth the name to exhibit'. The implication seemed to be that information was an end in itself; but the point of the complaint was really that a lack of information indicated how no one in Bengal was responsible for the supervision of the agricultural condition of the country. Rivers Thompson's conclusion was that, though action would have to await the passage of the Tenancy Act, Bengal needed a very large increase in facilities for administration; agricultural statistics must underlie all real information on the condition of the people, and 'without a field survey, there can hardly be agricultural statistics worth the name'. He saw that survey as an 'essential preliminary to the revivification of the patwari system', the intention being to turn the village officers into government servants. He remained worried that the zamindars would resent any reform as trespassing upon their rights.<sup>31</sup>

On instructions from the Government of India, the Bengal 'Canoongoes and Patwaris' Act was introduced in 1885. It provided for qualified patwaris organised in circles and supported by a cess. It was designed, particularly for Bihar, to keep the record of rights up to date, once it had been prepared in a survey and settlement. Zamindars would be required to file their accounts, which the patwaris would verify. Introducing the Bill, MacDonnell explained that the registration of land rights was the true remedy for agrarian troubles. Repeating the arguments of the Bengal letter, he claimed that the local officers had originally been state servants and (quoting the Board of Commissioners in 1815) 'the means of defining the rights of the peasantry and adjusting with facility such differences as may arise between landlord and tenant'. He concluded: 'We have been engaged for ninety years in a futile struggle to obtain...the elementary facts of rural economy... essential to all

<sup>31</sup> G/Be (Rev) to G/I, no.309T-R, 1 June 1883, Add.Mss.43615.

efficient administration.’<sup>32</sup>

The establishment of such a system—given the sorry history of efforts within Bihar to improve the standing and training of patwaris—was considered essential to the success of the survey policy provided in the 1885 Tenancy Act. But the zamindars, as MacDonnell later recalled, having ‘failed in their efforts to defeat the Bengal Tenancy Act, ...redoubled their exertions, both in England and in India, to prevent the Government from giving effect to the settlement (chapter X) provisions of the Act and from creating an agency in Behar to maintain the record-of-rights’. The Governments of India and Bengal, at this stage, were agreed that ‘an elaborate survey and record-of-rights are a pure waste of money, unless due provision is made to keep the information they furnish up to date’. The Secretary of State decided to share this view, in the midst of the controversy, but by the unexpected expedient of stopping both the Patwaris Act and the experimental Bihar survey promised by Dufferin’s government as the first step towards a general record of rights. The survey of Bihar was not approved, therefore, until 1892.

### III

The keeping of the record was even more difficult than the procedures for creating it. A retreat from pro-peasant policies started even as the Tenancy Act and the surveys were being enacted. We may foreshadow that discussion—and note other changes in individual officials’ commitments and perceptions—by considering some Bengal measures just before and after the turn of the century, chiefly from the perspective of the Government of India. In the mid-1890s the meaning of the 1885 Act was undergoing radical change, as the procedures for survey, settlement and record of rights were brought into operation. At the same time the Bengal government introduced a range of measures as palliatives for the zamindars. The local government’s appeasement was resisted by the Government of India. For example, when an amendment to the Public Lands Recovery Act made ‘concessions to the landed interest’, not only were the concessions rigorously scrutinised, but it was proposed that the Bill should be transferred to the imperial legislature, where it would be ‘less amenable to local influences’. Events proved that this would indeed have been wise, from a pro-tenant perspective. In particular Bengal proposed to extend to the zamindars the right to use the certificate procedure (whereby the aid of the courts could be invoked to ensure payment of dues) to recover, for example, a raiyat’s share of the

<sup>32</sup> R&A Rev A 6 (April 1885) and 8 (August 1885), and Proceedings of the Lieutenant-Governor of Bengal’s Legislative Council, 31 January 1885.

road cess. In practice this power might be used indirectly to recover rents. When the Bill had first come to the Revenue and Agriculture Department of the Government of India, in 1893, the local government had reported a difference of opinion with the High Court, which favoured restricting the certificate procedure to the recovery of purely public demands which could be ascertained from government registers; the local government had argued that this would preclude its use for government and Wards' estates, and instead advocated allowing it except in any case 'involving a question of right or title'. In the Government of India Sir Philip Hutchins had had some doubts about the suitability of this restriction but was ready to leave the question to the local Council where 'its intricacies' would be 'thoroughly understood'. But when the Bill came back from Bengal, the restrictions on the certificate power had been entirely removed (in committee, in response to non-official opinion) to the great surprise and alarm of the Revenue and Agriculture Department. The Bill now seemed to contravene a ruling of 1892 that the certificate procedure was not suitable for private individuals except where no question was at issue 'save the mere fact of payment or non-payment of a definite and admitted sum'. A.E. Miller tried to use this to put a stop to the Bill, but the Governor-General's hands were tied, in that great and public resentment would have been caused if he had vetoed the Bill on this point, especially considering the discretion allowed by Hutchins. Later Miller tried to sabotage the provision by proposing that any private use should be paid for by the government, but this offended against habits of financial caution and did not find support. Thus the centre lost this round. It was a peripheral confrontation, but illustrates the nature of the wider campaign, the issues and the weapons involved.<sup>33</sup>

Bengal had had an ally on this issue in Alexander Mackenzie, now a member of the central government; he thought it enough to tell the local officials that the centre would have preferred the principle of 1892 to have been embodied in the Act. Elgin had followed this advice. Almost immediately afterwards, Sir Charles Elliot, now Lieutenant-Governor of Bengal, approached Mackenzie again, privately, seeking support for a proposal to allow landlords to use a summary certificate procedure for the recovery of rents in any areas to which the Land Records Maintenance Act applied. This Act, supposedly designed to provide for the perpetuation of a correct record of agrarian rights and ownership, after the main survey was completed—and the subject of the next section of

<sup>33</sup> R&A Rev B 11 (August 1895), containing Legislative A (May 1895); see also A 12-14 (April 1896).

this chapter—had resulted from enormous pressure by the centre on the local government; as we shall see, it was generally agreed, outside Bengal, that it had been deprived of what few teeth it had had, in response to the complaints of the zamindars in the legislature. If Elliot's new proposal were to be accepted, therefore, the position would be that, even though the zamindars effectively controlled the government's records under the new Act, the onus of proof (that money was not payable) would rest on the tenant. The intention was avowedly to provide landlords with such facilities for recovery of rent as were consistent with the interests of tenants, a sentiment which provoked repeated exclamation marks on the central files and no doubt some snorts of derision in the office. That the idea should have come from Elliot or with his support, when he was regarded in Bengal as the centre's emissary sent to impose North Indian tenancy policies on the province, emphasised the political motive which was involved. 'This', replied Ibbetson when Mackenzie asked for his views, 'is another of the sops ... offered to the Bengal landlords in order to bribe them to accept the survey and settlement of rights'. Indeed, as the Under-Secretary (F.G. Sly) noted, Bengal had made no attempt to justify their proposals in terms of need, such as by statistics showing the unusual difficulty of rent collection in Bengal, where in fact landlords had far wider powers than elsewhere in India, but had been content to demonstrate that the changes were desired. Moreover, Bengal had had to blur the distinction between public and private purposes by seeming to imply that it was only fair, if government had powers to extract revenue from zamindars, that zamindars should have the same powers to extract rent from tenants. The local government was being disingenuous. The implication that the proposed powers met the usual criterion (no dispute about rights) because they would be available only where there was a record kept up to date under the Maintenance Act, rested on what was seen at the centre as a deliberate pretence that that Act had a chance of being effective. It was thought on the contrary that there was very little chance of the records being properly maintained, even if correct at the time of preparation, and that certainly they could not be relied on as proof that definite amounts were due in particular cases, for the information would have come from the zamindars and would record transfers of interest and not changes in rent. Accordingly Mackenzie warned Elliot that the Government of India would never sanction his scheme.<sup>34</sup>

The survey proceedings themselves and the long struggle over how the record was to be subsequently maintained, constituted of course the

<sup>34</sup> R&A Rev C 15, December 1895.

major front along which the centre tried to change the policies of the Government of Bengal. A peripheral theatre of this war was the wrangle over the amendment of the 1885 Act, which accompanied the first of the district surveys in North Bihar. We will first take up the latter story, in the cold weather of 1894/5. The government at the centre was convinced that existing procedures in Bengal would make nonsense of the survey—there was no way they could be used to carry out a settlement of the whole province with reasonable speed and efficiency. MacDonnell, acting as Lieutenant-Governor in November 1894, retorted by stressing the differences between Bengal and North India. Though convinced by his experience in Bihar of the need for tenancy reform, as acting Lieutenant-Governor he also championed the cause of Bengali methods against some aspects of the peasant school's remedies. In particular he argued that the courts must be left to deal with rent suits, as they had for a hundred years; he resisted the 'restlessness of men trained up in a school where the executive officer counts and the judicial officer is at a discount'. The moves which were favoured by Elliot, a man 'trained...where the village agency is reliable and under the control of village opinion', would not work (MacDonnell claimed) in the different circumstances of Bengal; the involvement of the civil courts was essential if the province were to develop 'on its own lines and in accordance with the spirit of its people'.<sup>35</sup>

Returning to this minute eighteen months later, Ibbetson, secure in his Punjab experience, was to scrawl in the margin that the Bengal system, 'Now that it is tried for the first time on a large scale, ...break[s] down hopelessly'. To Ibbetson and his department it was axiomatic that a settlement officer could not proceed judicially if he was to complete his work satisfactorily. Ibbetson did not mean (and thought that here MacDonnell misunderstood him) that there would be no recourse to the civil courts on appeal against decisions, or that summary procedure would be used to fix fair—that is, future—rents. Rather he envisaged the settlement officer's drawing up a draft record of the existing situation without judicial inquiry, dealing at that stage with the thousand-and-one objections, most of them 'never intended to be seriously pressed, or...based on a misunderstanding which a little explanation removes'. Two great advantages of this method were that government could issue general instructions to settlement officers, and that each objection and dispute could lawfully be decided in part on the basis of the officer's

<sup>35</sup> R&A Rev A 10-14 (November 1894). For the discussion in the following paragraphs, see also R&A Rev A 8-15 (March 1898), A 15-30 (January 1897), and A 21-2 (February 1896).

experience and knowledge of other cases, evidence which he would be bound to suppress if acting judicially.

On a related matter Ibbetson expanded upon the advantages of the 'accumulated knowledge' the settlement officer was able to bring to bear. He wrote in favour of fixing rents as part of a general survey, and, though he accepted that the courts should deal with individual disputes, he did so out of no strong conviction of the courts' abilities, and merely to avoid overburdening the settlement officers—their knowledge, Ibbetson thought, would probably enable them to reach 'better' decisions than the courts even in individual cases. Later he went rather further, implying not only that the courts were less well-informed but also that they were liable to be unjust by favouring the zamindars who, being 'wealthy and intelligent', had an advantage in judicial procedure. His senior colleague, J. Woodburn, also dismissed the courts as adjudicators or protectors for the tenants: they did not discriminate enough in his view, with the result that 'rents under them stagnate which is not wholesome even for the tenant'.

It is obvious that the disagreement here was not just on matters of detail in connection with settlement procedure. Rather it reflected two different ideas of government—on the one hand the North Indian tradition of direct, personal rule through one official, supposedly inherited from the Mughals or the Sikhs; on the other the Bengal experience of divided responsibility between executive and judiciary and between different executive levels all subject to laws and regulations, arising ultimately from the 'checks and balances' of the eighteenth-century constitution. It reflected moreover two different views of India—the 'real' one (as the British conceived it, in the terms discussed above) and the one which could emerge under the benevolent influence of the West. In so far as they existed, the 'own lines' and 'spirit of its people' in accordance with which Bengal should be left to develop, in the view of MacDonnell, were the product of a century of British rule.

In this context the political aspects of the controversy were debated, and MacDonnell felt he was defending the true spirit of the 1885 reforms. A touchstone was the question of the zamindars' powers over their tenants, particularly in regard to enhancement of rents. This became a heated issue particularly because price rises coincided with the gradual interpolation of the government and the laws between the landlords and the peasants. The Government of Bengal formulated new rules under the Bengal Tenancy Act in 1894, making considerable alterations, the tendency of which was considered in the Government of India to be of 'very doubtful character'. For example, the mere admission by a raiyat was to be sufficient proof that there was no occupancy

right—‘a most dangerous provision’ which would defeat the purpose of the Act, because it failed to take account of the landlord’s power of coercing his tenants. The Government of Bengal, moreover, as noted already, believed it desirable to improve the definition of the ‘prevailing rate’ to which reference could be made in order to raise low rents—in its view, the present rule on the subject was ‘unworkable’.

To Ibbetson, however, this was as it should have been. The prevailing rate had been retained as a ground for enhancement mainly because it had existed previously, as the *pargana* rate, and landlords were unwilling to give it up. But it had been meant to be ‘unworkable’ in the sense of being inapplicable in most cases. The danger of a wider definition was that ‘prevailing’ would come to mean ‘average’. In that case, as Sly explained in his note on the subject, ‘The landlord by individual enhancement suits would be able to continually raise the average, until all the ryots paid at the highest rate paid by any tenant in the village’. By 1896, nonetheless, as we have seen, the Bengal government had come to favour defining the prevailing rate as the rate at or above which the majority paid in a given estate or village—even Mackenzie, now Lieutenant-Governor, agreed. The definition was proposed only for areas of low or moderate rents, but there would replace something which could hardly ever be known, namely what rate prevailed when rates could rarely be strictly comparable over even a modest area, with a new concept which could always be ascertained: rents might be raised for any tenant who paid less than most of his fellows. This might seem to avoid the dangers of an average rate, but in fact it would make it just as easy to raise rents, given, as Woodburn pointed out, ‘the experience in Bengal and particularly Behar...that tenants are habitually cajoled or coerced into enhancements of their rents, which might be withstood at law’.

A similar difference of opinion arose over the use of excess area for enhancement. Mackenzie was content that its discovery at survey should justify an increase in the rent. The central officials, however, calculated that the excess depended not only on the survey, which might be presumed accurate, but also on what was shown on the *jamabandi* papers (rent-rolls), with which the survey was to be compared; thus Bengal seemed to be proposing an automatic right to enhance rents, without further proof or enquiry, as if they had forgotten that landlords’ records were notoriously false and partial. Indeed the prospect of gaining extra rent in this way had been, as Ibbetson observed, ‘one of the strongest reasons held out to the Bengal zamindars to reconcile them to the Behar survey’. Ibbetson insisted that the onus should be on the landlords to specify and prove excess lands even after measurement. He

argued that two additional conditions had to be satisfied—the area would have to be of the essence of the rent agreement and in excess of what the parties believed it to be. No increase should be allowable, for example, if the raiyat rented a certain field at a specified rent rather than at so much per bigha.

Clearly confrontation on this issue too was not simply on the merits of the case. It was between those anxious to preserve the existing order by appeasement of the zamindars, and those seeking to impose a new order by giving the raiyats the power to resist and by creating an administration which could watch over them as they did so. M.D. Chalmers went so far as to suggest that, since the settlement system worked admirably in Northern India, the more they could ‘approximate to it in Bengal, the better’; the further implication was that the political system ought to fall into line as well. By such an analysis, to offer liberal conditions for enhancement, say, so as to placate the zamindars over the survey and settlement, was to perpetuate outmoded and ineffective methods of control, just when they might have begun to be replaced.

The argument eventually crystallised around a point of strategy. The local government had prepared two Bills governing settlement procedure, one intended to make significant changes and the other involving a minimum of adjustments. It was inevitable that the first Bill would be preferred at the centre. As we shall see, the Revenue and Agriculture Department was convinced that the Bengal system had had ‘a fair trial and...failed’, that under it settlement officers (if they observed it fully) turned out too little work and ‘that not of good quality’. The second Bill, in Ibbetson’s view, would merely legalise what was already happening and under which work had ‘come to a stand still’. In Bengal, however, the first Bill was opposed by both the zamindars and the High Court. During 1896 pressure to abandon it mounted from the local government. Mackenzie wrote privately to Woodburn that the second Bill was the only one he thought he could get through his Council in time to be of use in Orissa, where settlement proceedings had begun.

Mackenzie blamed his difficulties partly on the High Court which ‘never was so weak and bad as...now’, and which was headed by a man (Petheram) who, near the end of his term in office, could not be made to push for a quick decision on the first Bill. The second Bill, however, the Court would probably accept. Moreover, later exchanges with Mackenzie suggested that the High Court was a secondary problem: ‘We must recognise that in Bengal’, he told Woodburn in August, ‘there is an intense jealousy of the Executive; and even if the landlords agreed...we shall have Surendranath Banerjea and all the Congress and landless men howling’. Woodburn was at first inclined to abide with Mackenzie’s

decisions, but Ibbetson dissuaded him, arguing that they had to have something worth fighting for. He could not understand, for his part, why the landlords should be opposed, considering how much they had to gain through the reduction in delays and the relaxation of restrictions, which would result from the main proposal. Nor could he see why the first Bill should take longer to pass than the second; he suspected that Mackenzie's depression and reluctance had something to do with 'boils and blains', from which he was suffering (by his own account). Fears of Banerjea and a 'howling' Congress do not appear to have been thought worthy of comment in the secretariat; only the Viceroy, Elgin, mentioned the subject again.

In October 1896 the idea arose (as in 1885) that the measure had better be undertaken in the central legislature, lest the Bengal Council emasculate it as it had the Records Maintenance Act. Woodburn, however, preferred the provincial legislature so that there could be an outlet for opposition which otherwise might find more violent expression. The government accordingly supported the passage of the first Bill in the Bengal legislature, with an option to the local authorities to limit it in the first instance to Orissa if that would make its passage easier. By the end of 1897, however, the Bills having been published, Mackenzie was in a stronger position to argue about the dangers of opposition. He had a long talk with Ibbetson in December and finally convinced him that it would be impossible to make all the changes involved in the first Bill for permanently-settled estates. Ibbetson resigned himself to this conclusion: 'If the landlords...prefer to retain the present cumbrous and ineffective method of enhancement, I do not see that we need very strongly to object'; though the result would be to protract the survey operations, this cost too would fall largely on the zamindars.

Earlier Elgin had accurately characterised this conflict as one 'between Upper India and Bengal opinion'—he had objected to legislation at the centre because it would have had the appearance of imposing the views of the one on the other (as was in fact occurring in the secrecy of the files). The prime mover had been Ibbetson, keeping his superiors in line. He even noted at one point, on the question of enhancement, that 'The interests of the raiyat...are far more important to protect than those of the Government'; he meant that the administration's financial interests, in its role as a landlord, could be sacrificed in order to gain the social and political benefits of protecting the tenants. The outcome, after all his pressure, the eventual fate of the proposed legislation in 1898, was superficially a defeat for Ibbetson and the more uncompromising aspects of the peasant school of thought—but only superficially. At a deeper level what was happening in the 1890s was an

adjustment whereby the interference of the state in agrarian relations was being qualified by political considerations and administrative preference. Interference continued all the same. The main affront to zamindari interests was the survey and settlement operation itself; the Bengal victory on points of law might therefore be dismissed as incidental to the underlying trend. The debates confirmed the centre in its determination to put Bengal right eventually; they did not convince it that Bengal must be allowed to find its own way.

During the 1890s those at the centre of government continued to stress the comparative worthlessness for British purposes of the zamindari interest. Ibbetson dismissed its opposition to the tenancy law as still incomprehensible and, though he admitted the landlords' influence in India and England, went on to echo Bayley from 1885 (quoted earlier): 'I believe that none of these zamindari associations really represent any body of reasonable opinion based on an understanding of the matter'. Similarly, in Bengal, Finucane, now Secretary to Government and formerly (as Director of Land Records and Agriculture) in the vanguard of Bengal's conversion to rural intervention, informed Ibbetson that some of the landlords privately regretted their opposition, and one had told him: 'Well, you see, we are not quite free in such matters. When Surendra Nath Banerji comes down and tells us that it will be unpatriotic for us to extend the powers of the executive what can we do?' Mackenzie too remarked to J. Westland, the Finance Member, that the landlords had said as much to him, and that he would not accept their change of front. Westland concluded the reason was 'that he had to meet a body of official opinions in favour of the Civil Court procedure, and finds it easier to change his policy in deference to the expressed opinion of the landlords, than to force his policy against High Court opinion and the like'. Be that as it may, it is clear that even in Bengal the zamindars were being seen as acting not so much in defence of their legitimate interests as out of anti-executive sentiment; and in that case the victory in 1898 was for a new kind of opposition to British rule rather than for the old kind of alliance. Mackenzie had not after all won the battle for the zamindar policy, for even in the eyes of Bengal officials the landlords were tainted by the influence of politicians, a warning that pleasing the landlords might not always be such a major consideration of policies in the future.

#### IV

When the Bihar survey was starting in 1893, E.C. Buck regarded it merely 'as the first (and an imperfect) edition of the annual series', on

which Bengal would need expert advice, as they had so little experience. The decision to go ahead with the surveys was therefore preceded by elaborate but abortive consultations on an accompanying measure for maintenance, drafted by Elliott, abandoned by him as unworkable, and then revised by MacDonnell when he went on leave. MacDonnell was now pessimistic about the chances of achieving any thorough scheme, but thought the minimum necessary to be a procedure for correcting the records, especially the village map, on the spot, and a cess to cover the costs. His scheme along these lines was submitted to a process of consultation with Bihar revenue officials, planters and zamindars, and then at a conference of experts from all provinces and representatives from Bihar. The plan was accepted. Elliott then returned to office, decided that it was too difficult to carry against opposition, and suggested that he would devise an alternative. Two rival schemes were sent to the Secretary of State in 1894, MacDonnell's which he described as 'admittedly adequate', and Elliott's which he called 'admittedly a doubtful experiment'. Ibbetson called it 'shadowy in the extreme'. The Secretary of State opted for the experiment, thus deferring, in MacDonnell's view, both a confrontation with the zamindari opposition and, probably, any effective remedy.

Elliott duly produced a Bill which further weakened his original scheme. Ibbetson savaged it:

The new machinery is now confined to tenants' rights, proprietary rights being left to the existing Registration Law, wh[ic]h has proved to be wholly ineffective. The presumptive truth of the record, which would have offered a very strong inducement to registration, has been abolished. The landlord is no longer asked whether he accepts a transfer by a tenant, so that the mutation entries may all relate to invalid transfers; & the Collector will have two sets of records of tenant rights, one from the point of view of the tenant, and another from that of the landlord.... What he is going to do with them, we don't know.... We may safely predict that the scheme will fail.

MacDonnell then concentrated on saving what there was of an existing patwari system in Bihar:

In every province in India we are laboriously bringing our village organizations into efficiency, having recognized the truth that, unless we have a proper village agency, we cannot come into touch with facts, or appreciate the real necessities or feelings of the people. Surely we ought not, in Behar of all places, and at the bidding of the classes who make our work there so difficult, to disband and abolish, without first providing an efficient substitute, the organization which has existed since we first took hold of the the Province and which we have turned to excellent account in various emergencies.

He argued that Elliott was coming under great pressure to abolish the

patwaris altogether, as he himself had come while standing in as Lieutenant-Governor. He wanted the Government of India to strengthen Elliott's hands by instructing him to preserve the patwaris. J. Wilson supported this, entering a notable attack on the zamindars and Bengal:

The most glaring defect of our administration in Bengal is that after...we handed over the ryot body and soul to the zemindar, we took no measures to preserve the village organization, on which depended the strength of the ryot's position. We passed laws declaring that this or that part of it remained, and that the burden and duty of maintenance was part of the zemindar's obligation under the settlement, but we took no measures to see those obligations were in any way observed.

From that day to this it has been the one constant aim of the zemindar party to shirk these obligations. To their rights they hold with grim tenacity, and charge the Government with breach of faith the moment it talks of anything remotely resembling an intention to enforce even its reserved rights against them.... The patwari system is one of these obligations....

'In the face of these facts', he too saw 'the strongest objections to the abolition of the Patwari Regulations', and hoped to preserve them so that they might, one day, form the basis of a new system to enable the government to 'do its duty by its ryots'.<sup>36</sup>

The true voice of the zamindars could be heard in the local proceedings. From Muzaffarpur—that 'acknowledged capital of agricultural interests in Bihar' (to quote the Government of India)—it was reported: 'On every side I have heard approval expressed of the proposed scheme. ...Europeans and natives...are unanimous in rejoicing that the patwari's day is over and hope for good results...'. The manager of Hathwa raj in Saran also agreed eagerly to patwari abolition, while arguing that any official scrutiny of *jamabandis* would 'only serve to strain the relations [of landlord and tenant] which have hitherto been amicable on the whole'. The Tirhut Landholders' Association professed themselves agreed on the need to maintain a record of rights, but wanted it to be 'cheap and simple'—by which they meant that transfers of tenancy should have to be registered to be valid, but not that zamindars' *jamabandis* should be filed, for that would be 'a very hard burden and cause great harassment to zemindars'. Samastipur planters were very

<sup>36</sup> For the preceding paragraphs, see R&A Rev A 16-46 (July 1883); E.C. Buck, 'Maintenance of records of rights in Bihar' and note, 10 October 1893, *ibid.* A 11-34 (November 1893); demi-official, C.E. Buckland to Buck, 24 January 1894, *ibid.* A 23-34 (January 1894); notes by A.P. M[acDonnell], 3 and 19 August 1894 and 7 January 1895, Elgin, 15 August, A.E. M[iller], 25 August, J. W[ilson], 28 August, and D. I[bbetson], 31 December 1894 and 4 January 1895, *ibid.* A 17-20 (January 1895); and notes by Ibbetson, 6 May, and Miller, 7 May 1895, *ibid.* B 17-19 (July 1895).

strongly of the opinion that to re-institute kanungos would merely be to provide another lever of oppression to the zamindars, who would bribe them. The whole scheme of record-keeping would be 'irksome', added Babu Gauri Shankar, the manager at Bachour, a notoriously ill-managed estate belonging Rameshwar Singh of Rajnagar, brother of the Maharaja of Darbhanga. Bell, the manager at Darbhanga raj, thought the proposed scheme unworkable, and, having outlined his own difficulties in acquiring information, concluded that the 'only way in which a record of rights in a village can be maintained is by information supplied by the zemindar', in whose interest alone it was to have a 'correct record'! Otherwise the maintenance would 'be felt as a more severe infliction than the cadastral survey itself'.

The official view from Muzaffarpur was different: 'experience of the lethargy and habits of suspicion of the Indian ryot points to the conclusion that some years will have to elapse before he fully understands the advantages offered to him'—that is, the chance of registering his interest (for a fee). From the Collector at Darbhanga, with support from Saran, came the advice that only compulsory registration *for tenants* would bring home 'the fact that the Government is in earnest'.<sup>37</sup> Cotton reported to Ripon that the 1885 Act was a good and beneficial law; but that the Bihar survey was 'exciting a great deal of interest and irritation' in the affected area, and was not only very unpopular with both landlords and raiyats but likely to increase rents; and that 'the preponderance of opinion appears to be in favour of making no attempt to undertake so vast a work' as to maintain the record in future. They were, he concluded, 'already within measurable distance of a fiasco'.<sup>38</sup>

<sup>37</sup> See R&A Rev A 16-24 (January 1894), including Proceedings of General Conference, Calcutta, 3, 4 and 6 January 1894, and G/I to S/S, no.8, 26 January 1894; Muzaffarpur Coll to PC, 13 and 21 October, Ram Dhany Sahay, secretary, Turhut Landholders' Association, to PC, 18 October, Samastipur subdivisional officer to Darbhanga Coll, 22 August, Babu Gourishunker to Darbhanga Coll, 29 October, Bell note, [7 July], Darbhanga Coll to PC, received 3 December, Manager, Hathwa raj, to PC, 17 October, Saran Coll to PC, 12 December 1892, and L. Hare, 'Keeping up the Record of Rights', 14 February 1893, PCR 357, 17/5 (1892-3). Interestingly E. Macnaghton, general secretary of the Bihar Indigo Planters' Association, while agreeing that there was no need for an *official* record of rights, argued (to PC, 26 September 1892) that it would be 'most desirable that the existing law regarding the issue of rent receipts should be strictly enforced'.

<sup>38</sup> Cotton to Ripon, 6 June and 10 September 1893, Add.Mss.43615. Cotton had never favoured the survey: '*plectuntur Achivi* is always my experience', he wrote, referring to Cicero and Horace: *quidquid delirant reges plectuntur Achivi* (that is, whatever errors the kings commit, the people suffer for them).

One of the issues around which the controversy settled concerned the periodicity of the surveys, as a last resort for regular maintenance. Early in the twentieth century the Government of India, which still really wanted a scheme for continual updating, was asking for biennial revisions, and Bengal was holding out for ten-yearly intervals. Ibbetson had responded indignantly when that idea had first surfaced in 1896: 'We have always maintained that Sir Charles Elliott's scheme did *not* provide for the maintenance of the record-of-rights; and here we have it admitted. What is proposed is to prepare the record anew every ten years! The proposal seems to me monstrous...'.<sup>39</sup> In 1903 it was still recognised that a long gap meant, in effect, no revisions at all, or very delayed and irregular ones at enormous cost; but by then the local government was arguing that the settlement itself had achieved the object of protecting the tenants (a matter which will be taken up in chapter ten). On the other hand, whereas in 1894 it had been reported that only about half of the *proprietary* mutations were registered in Bihar, in 1902 an inquiry had concluded that two-thirds of the entries from the original survey in Muzaffarpur were already obsolete, so that the record was almost worthless. In the Government of India, Mac-Donnell's limited scheme for patwaris was dusted off and re-costed. There was a strong view that it should be introduced without further ado, but Curzon, missing the point or thinking it a lost cause because of the Secretary of State's likely intervention, insisted that they were bound to consult Bengal, 'the more so as a cess is involved, which the zemindars will not like at all'.<sup>40</sup>

Miller had pointed the moral in 1903. Both Elliott, a former settlement officer 'of the old Northwest school with his sympathies probably in favour of the tenant or petty proprietor', and Sir John Woodburn, a one-time settlement officer from Awadh 'with some tenderness for the big landlord', had gone to Bengal, he noticed, favouring a permanent record, but had become 'genuinely convinced that revisions at long intervals of time' would be sufficient. Miller was all in favour of annual maintenance if it meant instituting an effective local agency, useful for other purposes, but he advanced the 'unorthodox' view that Bengal's objections should be respected. They should not be set down to igno-

<sup>39</sup> Ibbetson note, 29 August 1896, referring *inter alia* to P.C. Lyon, Director, Bengal Land Revenue and Agriculture Department, to Secretary, Board of Revenue, 18 April 1896: 'It does not appear to me...that the Act provides for the maintenance of records-of-right'; R&A Rev A 6 (September 1896).

<sup>40</sup> Notes by R.E.V. Arbuthnot, 7 May, J.B. Fuller, 25 May and 5 July, C.M. R[ivaz], 6 June and 8 July, Finance Department, 18 June, H.J. McIntosh, 21 June, and Curzon, 17 July 1901, R&A Rev A 1-2 (August 1901).

rance or fear of unpopularity: 'It is difficult for us, who have been brought up under a system where the maintenance of records is an accepted feature of Indian administration, to realise the actual difficulties that may occur'. Ibbetson continued to insist on converting Bengal opinion, which he remarked had opposed the survey too but now recognised its value; but his case was yet again being lost.<sup>41</sup> The zamindars had their way.

The central government continued to urge that there should be some means of maintenance, and special revisions began in 1907 to facilitate the institution of a system of review. In due course, in 1908, the Bengal government sent in a proposal to postpone the revision of the record of rights in Bihar. By this time the Government of India (with the approval of the Secretary of State) was committed merely to a fifteen-year revision programme, and secretariat officials professed themselves surprised that anyone should have thought of diluting this arrangement still further. The usual worries were expressed that landlords would take advantage of a 'decayed record' to enhance rents and oppress their tenants.<sup>42</sup> Any pretence that there would be permanent maintenance was finally abandoned in 1911, but Bengal were ordered to start a revision in 1912 of the north Bihar survey, which had taken ten years and cost Rs.50 lakhs. Again in March 1912 the Bengal government made a plea for delay, which was supported by the new government of Bihar in May. Though revisions in fact did begin a little later, at this stage the Revenue and Agriculture Department—which had already proved reluctant to share the costs—decided to give up trying to force the pace; all attempts to insist on revisions were dropped even in regard to Orissa (where revision was also due). At first it had 'generally been recognised that a fresh agency must be created' to maintain the record, but in the 1890s a plan for special staff to visit the villages annually had quickly been scaled down, becoming a mere reinforcement of the existing registration department. By 1913 worries had been expressed about the powers any

<sup>41</sup> Notes by J.O. Miller, 10 December, J.P. Hewett, 24 December 1904, Ibbetson, 4 February, Curzon, 26 February, and Andrew Fraser, 17 May 1905, demi-official from Fraser to Hewett, 17 December 1904, and to J. Wilson, 24 July 1905, R&A Rev A 30-1 (August 1905). Interesting (though in Ibbetson's view 'almost meaningless') comparative statistics emerged in this debate: Bengal had one ICS officer per 1,574 square miles, 881,811 people, and 1,496,020 revenue payers; the equivalent figures for NWP were 1,128, 437,539 and 3,104,460. One suggestion was that the difference made a proper village agency impossible to supervise.

<sup>42</sup> Notes by J.H. Kerr, 6 December 1908, R.W. Carlyle, 16 January, and J.O. M[iller], 19 January and 2 February 1909, R&A Rev A 5 (April 1909),

such staff should have in respect of 'contracts' under the 1885 Tenancy Act: any arrangements, after all, would 'involve constantly recurring interference between landlord and tenant, the advisability of which is open to serious question on political grounds'.<sup>43</sup>

This sounds like a complete abandonment of the policy of interference in response to political pressure. It was certainly a retreat from the 1880s and the heady days of pro-raiyat policies. The story, however, is more complex. Land questions had become ever more political, and the Bengal government, like all governments in colonial India, had had to become gradually more responsive to expressions of public opinion or political interest. The state had not abandoned its agenda of interference. Rather the accommodation of political pressure had forced that interference along certain lines. The survey and settlement proceedings *were* carried out, in all of Bihar. As will be discussed shortly, the institution of that record could and did increase the certainty and hence the transferability of tenant rights. The Bengal government was not merely discovering a convenient fiction when it reported that the very fact of survey had changed perceptions. The twentieth century wore on, and land rights *were* increasingly registered. But the British had created no more than a 'private enterprise' system for recording mutations. This meant that the state was not really present, in the maintenance of registers, to protect the weak. Rather it had provided machinery to record and entrench the successes of the strong.

<sup>43</sup> See R&A Rev A 26-31 (July 1913). This keep-with includes an office summary whose appendices, with references, sum up the entire case since 1885. The quotation is from J.H. Kerr, Secretary, G/Be, to G/I (R&A, Rev), 5 March 1912.