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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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FOR ELIZABETH

Ancient rights and future comfort

This book analyses the character of British rule in nineteenth-century India, by focusing on the underlying ideas and the practical repercussions of agrarian policy. It argues that the great rent law debate and the Bengal Tenancy Act of 1885 helped constitute a revolution in the aims of government and in the colonial ability to interfere in India, but that they did so alongside a continuing weakness of understanding and ineffective local control. In particular, the book considers the importance of notions of historical rights and economic progress to the false categorisations made of agrarian structure. It shows that the Tenancy Act helped create political interests on the land and contributed to a growth of the state, fostering a national or public interest in India. But it also led to widening social disparities in rural Bihar, allowing individual property rights to exaggerate the inequities of a more collective socio-economic system.

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Society and Ideology: Essays in South Asian History
Dalit Movements and the Meanings of Labour in India
Institutions and Ideologies (with David Arnold)
Britain and India (with K.N. Malik)
The Concept of Race in South Asia
Local Agrarian Societies in Colonial India: Japanese Perspectives (with Kaoru Sugihara & Haruka Yanagisawa)
Meanings of Agriculture: Essays in South Asian History and Economics
A History of India
Empire, Identity, and India: Liberalism, Modernity and the Nation
Empire, Identity, and India: Peasants, Political Economy, and Law

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Preface

Many obligations have been incurred while this work was in preparation. First and last, I must thank my wife, Elizabeth, who gave up her own concerns to work as my research assistant in India for almost a year, greatly increasing the material I was able to collect. Her support over the long period during which the work subsequently evolved was exceeded only by her determination in the final stages that I should finish it off once and for all. Also to Benjamin and Thomas, my two sons, my thanks: this project is about as old as they are. It too (unexpectedly and after last-minute discovery) will turn out to be twins.

The work owes a debt to Clive Dewey, for his studies of British agrarian policy and the social and intellectual history of officialdom, and for his keen comments on my own efforts. I am pleased to note also the special contributions of 'Tom' Tomlinson, who (with his wife, Caroline) shared a period of research in New Delhi, and of Walter Hauser for invaluable advice on researching in Patna and on other matters. To Binay Chaudhuri's work too I have had repeatedly to return; once he summed up my own conclusions for me in ways which made me understand them better. In SOAS, K.N. Chaudhuri and John Harrison were always encouraging; more recently Terry Byres' themes and interests suggested lines of inquiry; at the end David Arnold pointed out some typographical errors and encouraged me to keep to the overall plan of the work. Five who have sadly since died played a part—three close colleagues at SOAS, Kenneth Ballhatchet, Nigel Crook and Burton Stein; Neil Charlesworth for his great ability to think in wider contexts and against current fashion; and Eric Stokes who was an inspiring example though an enigmatic critic.

Many other colleagues and students in classes and seminars have helped and criticised my ideas. For the middle phases of the work, I remember particularly warmly discussions with three of my research students—Sanjay Nigam, Bindeshwar Ram and I.G. Khan—whose interests lay closest to those of this book, and also with Chitta Panda while he was carrying out his research at Oxford, and with Rajat Datta on his many visits to SOAS from King's College London. More recently, while the appearance of this work was delayed because of my chairmanship of the SOAS Centre of South Asian Studies and other research and publishing projects, I had the chance to benefit from exchanges of views with another generation of my students, namely

Sanjoy Bhattacharya, Andrew Grout, Shompa Lahiri, Alex McKay, Pragati Mohapatra, Subhajyoti Ray, and Sanjay Sharma. Very late in the day, Suhit Sen helped by embarking on a project which at first looked quite akin to this one, on zamindari abolition. The recent period saw an expansion of some of the concerns of this project, particularly a stronger orientation towards the study of policy in the broader context of the growth and development of the state. It is thus related to other work, on law, labour and identity, which preoccupied me during this interval.

Personal or intellectual debts should also be noticed to the published work and contributions in seminars and/or private discussions of others too numerous to list; but most of them are included among the participants, of whom mention must be made, in the conferences in London in 1980 on the 'external dimension' in South Asia, the workshop on 'arrested development in India' under Dietmar Rothermund and Clive Dewey in Heidelberg in 1984, the 'peasant consciousness' conference at Bellagio organised by Majid Siddiqi in 1987, and the three associated workshops at SOAS on agriculture and economic organisation, organised by me, Kaoru Sugihara, Utsa Patnaik, Burton Stein, and Sanjay Subrahmanyam, in July 1992. In the late stages of writing I have benefited particularly from editing two books from these workshops, on Indian agriculture, where I found methodologies congenial to my own, and (jointly) of Japanese contributions to South Asian rural studies, where contrasting perspectives helped clarify my thinking. For similar reasons, I am indebted also to the London third-world economic history group, and especially to a long, fruitful series of informal three-man seminars held with David Anderson and Ian Brown on peasants in the colonial world.

Versions of parts of the present volume or its counterpart were read at several venues in SOAS, and also at the Centre of South Asian Studies, Cambridge, St. Antony's College, Oxford, at the Imperial History seminar at the Institute of Historical Research, London, at the British Association of South Asian Studies' meeting in Sussex, at the Economic History Society's conference at Exeter, at an informal seminar on 'stratification' at Leicester, at the Canadian conference on India and the National Congress in Montreal, at Professor Ravinder Kumar's seminar at the Nehru Memorial Library, New Delhi, at the Department of History and the British Council in Calcutta, at Osaka City University, and at the New Zealand Asian Studies conference in Auckland. All these occasions produced helpful comments. The editors and readers of several journals and collections of essays have commen-

ted on articles which foreshadowed or have been incorporated in parts of the book.¹ One article has been revised for inclusion in chapter ten. It is 'In search of dominant peasants. Notes on the implementation in Bihar of the Bengal Tenancy Act of 1885' in Clive Dewey (ed.), *Arrested Development in India. The historical dimension* (Manohar Publications, New Delhi 1988), pp. 188-222. Some shorter extracts or paraphrases, cited in footnotes, have also been included, notably from 'Law and agrarian society in India. The case of Bihar and the nineteenth-century tenancy debate', *Modern Asian Studies* 22, 2 (Cambridge University Press, 1988), pp. 319-54, and 'Ideas in agrarian history. Some observations on the British and nineteenth-century Bihar', Professor Eric Stokes Memorial Lecture (May 1989), *Journal of the Royal Asiatic Society* 1 (1990), pp.17-43.

I have depended greatly on the riches of the Library of the School of Oriental and African Studies, the India Office Library and Records (now the Oriental and India Office Collections of the British Library), the manuscripts and reading rooms of the British Library, the National Archives of India, the Bihar State Record Office, Patna, and the Bodleian Library, Oxford. Janet Marks, formerly executive officer in the SOAS Centre of South Asian Studies, helped with the preparation of the manuscript. Finally, I have received financial assistance on more than one occasion from the Research Committee at the School of Oriental and African Studies. My thanks to all of these.

Peter Robb, London, 1995

Sources and abbreviations

With exceptions included separately in the footnotes, this work is based mainly upon the records of the Government of India, especially the Revenue and Agriculture Department (or its equivalent), consulted in the Oriental and India Office Collections of the British Library, London, and the National Archives, New Delhi; upon the Ripon papers in the British Library; and upon the records of the Commissioner of Patna Division, held in the Bihar State Archives, Patna. A full bibliography

¹ Advance indications of the arguments of volume two may be gleaned from 'Bihar, the colonial state and agricultural development in India, 1880-1920', *IESHR* 25, 2 (1988), pp.205-35; and 'Peasants' choices? Indian agriculture and the limits of commercialization in nineteenth-century Bihar', *Economic History Review* XLV, 1 (1992), pp.97-119.

of these and secondary works will be included in a second volume. The departmental records are cited as 'R&A Rev B 7-8 (January 1897)' or the equivalent, showing (in order) the department, branch, series ('A' to 'D' or Deposit), proceeding number, and its date. The citations include 'keep-withs' and are mainly to the 'file' rather than 'proceedings' volumes, held only in the National Archives, New Delhi; however A-series documents, without 'keep-withs', have also been consulted in London. The Ripon papers are cited as Additional Manuscripts (Add.Mss.) of the British Library. The Patna Commissioners' records are cited with *basta* number, collection and file numbers (when available) and year. Where documents appear in more than one of these collections, only one is cited.

The abbreviations used are:

Agric	Agriculture (Branch)
Be	Bengal
CEHI	Dharma Kumar, ed., <i>The Cambridge Economic History of India</i> , vol.2 (Cambridge 1983)
CO	<i>Circular Orders of the Sudder Board of Revenue at the Presidency of Fort William</i> , edited by William Peters (1788 to the end of August 1837; Calcutta 1838), by G.H. Poole (September 1837 to the end of 1838; Calcutta 1839), and by W.H. Jones (September 1837 to the end of 1850; Calcutta 1851)
Coll	Collector
G/	Government of
H	Home (Department, Government of India; proceedings of)
I	India
IESHR	<i>Indian Economic and Social History Review</i>
IOL	Oriental and India Office Collections, British Library
LG	Lieutenant-Governor
NAI	National Archives of India
NWP	North-Western Provinces
MAS	<i>Modern Asian Studies</i>
PC	Commissioner of Patna Division
PCR	Records of the Commissioner of Patna Division
PSV	Private Secretary to the Viceroy
R&A	Revenue and Agriculture (Department, Government of India; proceedings of)
Rev	Land Revenue (Branch)
SR	Settlement Report
S/S	Secretary of State for India
V	Viceroy

Introduction

This is a book about agrarian policies in colonial India, what they tell us about the state, and something of their consequences. These are important subjects, for the history of the colonial state and India. Two great themes—the evolution of the state and the deployment of a ‘science’ of political economy—came together in the colonial debates over tenancy law. To consider them in combination offers some new perspectives, on subjects often discussed separately in the past. This introduction will begin with a brief consideration of the relation of land and political systems, especially as mediated through theories and rhetoric, and go on to consider the validity of approaching socio-economic questions by examining political ideas and policies, with particular regard to the imperfect transition in nineteenth-century India between the local and the general, between land-based and market systems.

Obviously there is nothing remarkable about looking to the land in order to understand the state. Political systems *may* be defined by the manner of control over people or in relation to a community (including democratic forms), or with regard to fluid resources such as capital and technology: developing polities, in multi-national unions or conversely in new city-states such as Singapore, are still territorial but shaped more by commerce and information than by interests in fixed property; they are late stages in a long changing emphasis. But otherwise the people have usually been led to the promised land, into formal territorial states; and for much of human history states have been forged and differentiated by the manner in which land is controlled—that is, in accordance with local power, rural property or taxation, and agriculture. Ultimately, in more complex political and economic systems, the role of land becomes symbolic, for example as the nation-state, a form defined by a demarcated territory and by the sovereign law, people and interests existing within it. Thus political historians take the importance of landed interests for granted. The link is obvious in feudal and quasi-feudal structures, but also in representative or elective systems focused around land and other immoveable property. In colonial India, land-based hierarchies, local communities and systems of rural production were central to the government, politics and economy.

Through many changes the continuing importance of the land has

been reflected, though its character and influence evolved. This was why, for example, political and moral messages were implied in the developing evocations of landscape in European art—in the snatches of countryside glimpsed from Italian towns as depicted in the Renaissance, in the heroic imaginary worlds of Poussin or Claude Lorrain, in the seventeenth-century Dutch masters and much later in the Hague School, in Gainsborough, Constable and Turner, in Caspar David Friedrich, in the nineteenth-century French of several schools, in the neo-classical, picturesque, romantic and impressionist movements generally. To a similar degree, land questions help describe the political system and how it evolved; considering them is one way of describing political change. We will find in the Indian case that, at the level of policy-making, intellectual contexts were of vital importance, and that political rather than economic goals often provided motive force. But we will also see, for example, what Clive Dewey has shown, that the ‘essentially *historical* study...of the village community pullulated with contemporary relevance’:¹ how theories on the manner in which land was held and agrarian production arranged gave birth to important policies and helped define the functions of the state. In nineteenth-century India, whether or not ‘modes of power’ (to adopt Partha Chatterjee’s phrase) were ultimately more significant than modes of production, both politics and economics coalesced around questions of land. Chatterjee, following Marx, discusses the impact of different forms of property; similarly Brenner’s influential arguments about feudalism rely on the varying dispositions of local power on the land.² Land relations and policies consistently affect the exercise and purposes of power, and their importance persists when much else seems to be changing.

It follows that any changes in land-holding or its taxation might foster wider transformations. The Henrician and Cromwellian revolution in sixteenth-century England has been attributed to the diffusion of the Church’s wealth (mainly land) among the middle and upper classes, as that transfer in turn demanded new laws which altered the nature and relations of parliament and the state. By the same token, patterns of land-holding tended to remain a bedrock of political systems. The Elizabethan parliament, as Neale pointed out, was not constructed to represent local interests, and thus indicated a move towards the enunciations

¹ C.J. Dewey, ‘Images of the village community: a study of Anglo-Indian ideology’, *MAS* 6, 3 (1972), p.292. Dewey’s work allows this book to limit its consideration of the European background to the ideas being deployed in India.

² Partha Chatterjee, ‘More on modes of power and the peasantry’, in Ranajit Guha, ed., *Subaltern Studies II* (Delhi 1983).

ation of broader or national concerns; but those local interests—the sheriffs, justices, and all the gentry, with their factions and patronage—still constituted the bulk of political life. The wealth of the country was in agriculture, and the state had little direct contact with individuals, even during the push for religious conformity. Accordingly, it was largely land disputes that fuelled the development of the legal and court systems, and helped define the public role of the gentry: litigation grew greatly, and did so in parallel with development of the state.³ Similar points might be made about nineteenth-century India.

The concentration upon land was not incompatible with the growth of commerce and other political interests. A persistence of local and seigneurial power had characterised the resurgent Spain of Ferdinand and Isabella.⁴ Despite its significant class of artisans, the small town in sixteenth-century France—Romans—described by Le Roy Ladurie was shaped politically by a profound involvement with agriculture and landed property, not just through its nobility but through the lending and trading of merchants and the bulk of the work undertaken by town-resident labourers. When the town's lawyers and professionals sought change, marking a political transition, they demanded an equalisation of liabilities and political power; but by that they meant an allocation which was proportionate to the shares held in land and other fixed property, not to income or capital.⁵ In colonial India, a superficially modern colonial administration and policy, and the market-oriented capitalist enterprise, both were shaped chiefly by the need to comprehend, pacify and demarcate the countryside, to extract land revenue or produce, to maintain social and political control through landed intermediaries, and to encourage rural production and consumption as essential components of imperial trade. Therefore, a basic premise of this book is that any significant changes in the role of the state will have been expressed (and may be discerned) in policies towards land.

It might be argued (with the physiocrats) that land became *more* important in the early modern period, despite or because of the growth of trade, and because of the acquisition and demarcation of territory by and on behalf of states. India seems to be a case in point in this respect too. For Europe the process occurred externally, as new lands were conquered and settled or dominated, and it occurred internally, through enclosures and other state-regulated private property, and through

³ J.E. Neale, *The Elizabethan House of Commons* (1949; Harmondsworth 1963).

⁴ J.H. Elliott, *Imperial Spain 1649-1716* (London 1963), p.72 and *passim*.

⁵ Emmanuel Le Roy Ladurie, *Carnival. A People's Uprising at Romans, 1579-1580* (tr. Mary Feeney; London 1980), especially chs. I and XIV.

territorial administration and representation, which helped promote a bureaucratic and legal centralisation, state claims to a monopoly of force, and unqualified sovereignty of state law—features which characterised the mature phase of land-related states, and which were also evident in colonial India. But the process was often slow or partial. In India, the advent of ‘private’ landed property, whether or not wholly an innovation of Western law, developed alongside as well as superseding more communal forms of land control. Similarly, in seventeenth-century England, there were claims for individual rights, but it has been claimed that the Commons and the law continued chiefly to recognise communities—little commonwealths. Gradually, the middle-classes, in growing comfort and more frequently in voluntary, individual association with others, began to outgrow the broader, compulsory, hierarchical communities of parish and village.⁶ By the eighteenth century, these local societies, concentrated by the power of landed property, were clearly beginning to break up or becoming ancillary to a new commercial order in the towns. But even this did not remove the importance of land questions. Local communities did not just disappear in Britain, let alone the attitudes they fostered, and the state was not set loose to re-form around wholly different principles. In England at least, the continuing economic and political power of landed wealth and social hierarchy has been repeatedly demonstrated, through every crisis of the gentry, and territorial principles remain embedded in the constitution and in law. One is reminded also of Fernand Braudel’s eloquent celebration of the diversity of France and its *pays*,⁷ or of Jürgen Habermas’s demonstration of the importance of property ownership to the development of a bourgeois public sphere (*bürgerliche Öffentlichkeit*).⁸

Of course the role of land issues changed over time, and the centrality of land policies and landed power has diminished. However in India the links remained less tenuous: even by 1900 the colonial state had not reached the stage of political or economic development of late eighteenth-century England. The growth of cities showed the trend, and

⁶ See Christopher Hill, *Society and Puritanism in Pre-revolutionary England* (London 1964).

⁷ F. Braudel, *The Identity of France*, vol. 1, *History and Environment* (tr. Sian Reynolds; London 1988), pp.37-41 and passim. Braudel stresses the limitations (and imperfect relationship) of national and political as opposed to ecological, cultural and historical boundaries, which seems (however) another way of making the same point, on a broader definition of the state.

⁸ Jürgen Habermas, *The Structural Transformation of the Public Sphere. An Inquiry into a Category of Bourgeois Society* (1962; tr. Thomas Burger with the assistance of Frederick Lawrence; Cambridge 1992), p.56 and passim.

some areas and activities were more commercialised or socially-mobile than others. But, with every sign of change, the rhetoric and political priorities for the colonial rulers became increasingly protective of a supposedly old, stable rural order. Their stance was like that of the conservative Jane Austen facing England's transformations in her day: Elizabeth Bennet's family was saved from disgrace, not by the often-vilified new money, but by the noble intervention of landed wealth. The East India Company often faced similar prejudice, and, though trade was clearly a valuable ally of property, it would long remain bereft of romance and fineness in the British imagination—not least, ironically, in India, an empire founded by commerce. Thus the Indian colonial state, in its relation to landed power, was partly protective, seeking to continue indigenous forms, particularly political and property rights. In the later nineteenth century, British nostalgia for 'older' forms of landed property became a luxury that flourished especially in the subject territories of the empire.

On the other hand, most of all when the colonial state sought reform, its vocabulary and expectations followed those of the European experience. It continually lamented the lack in India of the local agency of propertied individuals and of the assumptions of civil society on which it believed government could rest in Europe. Officials disagreed about the preferred form of that agency—aristocratic and peasant-proprietary models vying against one another—and they continually tried to create a centralised bureaucracy and law. But they also harnessed the collaboration of the locally-powerful, or sought to create effective local structures, as in the permanent settlement of Bengal, the use of headmen and district boards, and appeals to the village community or to communal and caste leadership. Even the army, that chief bastion and preoccupation of the rulers, could not escape territorial linkages, through its recruitment, pensioners' land-grants, and strategic thinking.

By the nineteenth century, moreover, the land impinged not only in terms of economy, power and taxation, but as a quantifiable and measurable object of knowledge, and a resource to be controlled and improved. As phenomenologists have asserted (from Husserl to Heidegger) the natural sciences aim at knowledge of the object in order to obtain mastery over it, and this attitude (which we will see here in terms of tenurial and other categorisation) was adopted in the social sciences also. Added components during the colonial era thus included the rise of scientific investigation and, specifically, changing notions of political economy. We shall see in this book how state interventions over landed property sought to reach ever-lower social or tenurial strata, and how this attempt was a part of an ever-extending categorisa-

tion, the attribution (as it were) of ‘properties’ defining a wider range of people and institutions. Thus the land was also a metaphor.

The changes implied, contrary to the implications of a static objectification, that land ‘control’ no longer was enough; land ‘use’ was necessary. This brings us to our second element, after land: ideas of the proper role of the state, operating within a bounded territory. Important to the issues to be discussed in this book were first the Scottish philosophers’ concern with social and not individual man, as a corollary to humanist individualism and several property rights, and an answer to such pessimism as that of the acute fifteenth-century observer, Aeneas Sylvius Piccolomini, who could see nothing good in prospect in 1454, since ‘Every *civitas* (city state) has its king and there are as many princes as there are households’.⁹ Important secondly was the emphasis (as in Hume) on observation and experience as the basis of scientific knowledge. Together these began to impose new duties on the state. Alexander Pope (in a note to the *Essay on Man*): traced the ‘Origine of true RELIGION and GOVERNMENT from the Principle of LOVE: and of SUPERSTITION and TYRANNY, from that of FEAR’; and, generally following Aristotle’s *Politics*, he attributed happiness, as the human goal, to collective or social will, which the state expressed:

So drives Self-love, thro’ just and thro’ unjust,
To one man’s pow’r, ambition, lucre, lust:
The same Self-love, in all, becomes the cause
Of what restrains him, Government and Laws (III, 269-72).

Such contrary influences of self-interest, through the individual and the collectivity, in private and public, will prove a continual refrain of this book. So will the role of government in expressing and resolving the tension.

In England, Blackstone had relied on natural principles, such as an original contract between man and the state, which minimised the state’s duty; but Bentham retorted in favour of the principle of utility—he too judged the commands of law not on the basis of an abstract moral order but in terms of what was most conducive to human happiness. Adam Smith tended to offer both of these: he believed in a need to balance the selfish and social propensities of man in order to produce propriety, useful to happiness. In ways analogous to Hume’s distinction between natural and artificial virtues—the latter being those which, without necessarily pleasing, *tended* towards pleasure—Smith held that some controls over human action were ‘natural’ or self-

⁹ Pius II, *Opera omnia* (Basle 1871), 656, quoted in Myron P. Gilmore, *The World of Humanism, 1453-1517* (New York 1952), p.1.

imposed, or attributable to a human tendency to approve what was proper or beneficial and that which would punish transgressors; these influences went beyond deliberate motivation so as to work indirectly, by invisible hand. But Smith also argued that there remained a need for sanctions which would ensure justice between individuals. He argued too for an evolutionary or historical model of economic and social growth, moving from hunting to pasturage to agronomy to commerce. Both his moral and his historical perceptions necessitated a role for the state. Civil government, including relations of authority and subordination, was needed in later stages of development to promote the security of private property. Where land was the principal form of property, landed estates would be the origin and focus of political power; but, though commerce, manufacturing and urbanisation created alternative sources and styles of power—independent republics—and loosened the control of landed elites over their dependents, yet they also increased the motivation of the landed to secure control over land and produce, if only to match their purchasing and political power with the new range of goods and opportunities available. Thus, by Smith's account, even to promote commercial wealth, it was necessary for the state to record and protect property, and to arbitrate between different interests in society. Such efforts inevitably implied intervention in landholding rather than in the practice of trade.

Bentham too stressed individuality, but wanted to make law standardised and universal. His was a scientific approach to *morality* (as also in J.S. Mill's *System of Logic*, 1843).¹⁰ Just as causation was a major issue of empirical investigation, so laws were considered to be instrumental, and judged by their utility. These ideas embodied several distinct messages for the state: that it and not a natural order should provide commands and sanctions, and that these had to be chosen with a view to producing specific effects. Individual happiness was the goal, but it had to be promoted by general measures, as contained in universal standardised law. Some argued that ends, being unascertainable, could not be a sufficient measure to judge particular means. John Stuart Mill pointed out that it was necessary and sufficient to identify a *tendency* towards good. Thus Mill, while lauding individual freedom of conscience and action, also endorsed the need for laws, assessed according to their propensity for good. Moreover, utility consisted in

¹⁰ This point is made by Mary Warnock in her introduction to Mill's *Utilitarianism*; see note 11 below.

the 'permanent interests of man as a progressive being'.¹¹ The state's role, in short, was to promote progress.

These are well-known ideas of political economy which were even better known to nineteenth-century colonial officials. Together they implied that the state, as a good husbandman, had a responsibility to define, protect and improve. Other branches of Western science provided methodologies, and stressed man's ability to control nature. Policy was invoked in order to achieve social ends, and judged by probable results as ascertained after empirical investigation. Because of the importance of land relations, the agrarian sphere was one in which such ideas were particularly applied in India. Accordingly, in the Western knowledge of India, one finds some continuities of political interpretation and official ambition from the late eighteenth to the twentieth century, a period in which it has been more usual to see marked change. Our task therefore becomes first to identify the varying means by which such constant ideas were expressed and accepted in policy, and secondly to assess their appropriateness and influence on India. This study will examine a working-out of Smith's insights, as furthered also by J.S. Mill, in the debates over Bengal tenancy law. In addition, as said, a conflict between utility and history was implied in Bentham's differences with Blackstone. It was not resolved by that eighteenth-century debate. India's colonial land laws provide notable instances in which the dispute continued: in this book it will be characterised as a difference between 'future comfort' and 'ancient rights'.

By assessing colonial impact, we discover how differences of understanding matter. In colonial policy, a distinct complexity was created by the perennial struggle between the power of precedent (here the legitimacy of the past) and the attraction of the new (here prospects of improvement). Thus the development of tenancy law was not a straightforward, unilinear modernisation. Yet it *was* part of the construction of 'modern' classifications, of capitalist production and markets, and of nations on the Western model. Though changes in agrarian structure were framed, as changes often are, in customary or traditional form, they were always regarded as necessary and inevitable. It mattered that *property*—that is, a concept of definite, unequal shares of the common stock of land and production—was identified and reinforced by the state as the basis of its criminal and civil law. Rights of such a kind also implied social *classes*. These rights were partly new, because India's previous forms and institutions were

¹¹ J.S. Mill, *Utilitarianism, On Liberty and Essay on Bentham* with selected writings of Jeremy Bentham and John Austin (ed. Mary Warnock; London 1964).

never so bound up with discrete, individual possession, or with the associated morality of rights. India had conceived differently of property and hence of classification; even under the Mughals, its legal and social norms, for example, were more fluid, interdependent and collective—there were local systems in which the state and people could not be wholly differentiated, systems which might be called a ‘moral economy’, if the term did not often imply a golden past of social equity, and focus attention too much on right and wrong, and too little on rights and relations and the means of securing them.

There were interesting parallels as well as differences between the circumstances of the British state, law and local power and those to be observed in nineteenth-century India. The land was at issue in at least four ways: from interpretations of what was legitimate in India, from the colonial power’s pragmatic need for support and revenue, from habits and policies imported from Britain, and from intellectual ideas. Modern state methods and goals developed in India. But they did so within a frame of rhetoric and calculation which were sometimes inappropriate. Part of the incongruity was peculiarly colonial. For example, it has been noted by environmental historians, who increasingly provide another perspective on the different ways in which states relate to land, that because India is diverse, ecologically-speaking, its political formations necessarily infringe ecological priorities and diverge from or conflict in some degree with the interests of the bulk of the population. The same disparity could be observed, worsening, in colonial times, whether or not it really originated then.¹² Nineteenth-century India too was an artificial construction: it contained a complex state which was created according to the demands of commerce and the dictates of information, introducing elements of the idea of the nation, but which remained pragmatically embroiled with the interests of the land, its proprietors, local hierarchies and production. This book will illustrate one example of this anomaly.

¹² See, for example, Madhav Gadgil and Ramachandra Guha, *Ecology and Equity. The Use and Abuse of Nature in Contemporary India* (London and New York 1995); see also their *This Fissured Land. An Ecological History of India* (Delhi 1993). The *political* implication of this is presumably in favour of localised governments or regions of economic interest under a minimal new world order, of the kind being predicted by a wide range of late twentieth-century commentators, including free-market technocrats such as Kenichi Ohmae.

II

The agenda just foreshadowed must imply a study of how economic or political practice and success are affected by ideological contexts. Interest is increasing in that question, among historians assessing the impact of colonial rule, and also among political economists. It is not a straightforward matter. We make a convenient dichotomy between ideas and experience, but nowadays it seems a major task to distinguish the one from the other, given that the only ‘experience’ we have is pre-judged and pre-arranged. Accordingly, Michel Foucault’s influence has led to many an attempt to identify the ‘epistemes’ or ‘discursive practices’ which define particular historical periods and situations. Of particular relevance here, it has been said that ‘all academic knowledge of India’ is (and must be) ‘tinged and impressed with, violated by, the gross political fact’ of conquest and Western hegemony.¹³ But, perversely, this has tended to discourage serious study of the mentality of colonial officialdom. Such a study has to go beyond easy typing and slogans. It implies subtle problems of observation and definition. Above all, our premise does not need to be that ways of thinking are wholly determined by power, thus rendered impotent and uninteresting in themselves.¹⁴ This book, about a region and a legislative enactment, emphasises the ideas of the historical record, as have earlier, rightly

¹³ Edward W. Said, *Orientalism* (London 1985), p.11, and 45: ‘I mean to ask whether there is any way of avoiding the hostility expressed by the division, say, of men into “us” (Westerners) and “they” (Orientals).’ For this Hegelian reference see also Ronald Inden, ‘Orientalist constructions of India’, *Modern Asian Studies* 20, 3, (1986), including, at p.433, a view that ‘there is a single reality, a single human nature’. Inden’s critique of modern writers, especially Dumont, is focused on their Utilitarian and Hegelian inheritance—see also Inden, *Imagining India* (Oxford 1990)—and especially the ‘old Hegelian proposition that caste...ever had the upper hand’; Inden himself refers to caste, after the thirteenth century, as the ‘distinctive institution of Indian civilisation’, but he wants something as generic as ‘human’ thoughts and acts to be the ‘real center of attention’, presumably at the expense of collectivities and localism (‘Constructions’, pp.438-40). It is not clear why exposing ‘objectivity’ as a universal conceit should render valid, *a priori*, any particular interpretation, such as the salience of power or the sameness of individuals.

¹⁴ Compare Irfan Habib, ‘Problems of Marxist historiography’ (from *Social Scientist* 16, 12, 1988) in *Essays in Indian History. Towards a Marxist Perspective* (New Delhi 1995), arguing against historical determinism, and that, when Marx said ‘that “ideas become a material force once they have gripped the masses”, he surely meant that consciousness once generalized delimits the range of ideas of individuals and social action’, a consequence in the capitalist era being that ‘the role of ideas...has been substantially enlarged’ (pp.3-4).

celebrated works of Indian history. That the ideas are actors in the drama is shown in the book's two objects of attention: reality as well as representations. It is possible to approach reality because the fact that there are systems of interpretation and historical assumptions does not mean that findings are non-verifiable. They may be both defensible and subject to challenge.

In this book the perceptions by the state and in the records provide a route into distinct interpretations of the society. Is it justifiable to concentrate on the state? In regard to the matters of property and tenancy to be discussed in this book, even indigenous accounts were often permeated by the constructs of colonial law and administration. But this did not signify a 'hegemony' of 'colonial' ideas, for the intellectual assumptions brought from outside had also been formed or were modified by the experience, within India, of particular problems and circumstances. Thus, interest in state ideology is needed to define its influence, but also ultimately to reduce the assumptions about its instrumentality or uniqueness. Paradoxically, history from below may be (as mostly it has to be) achieved by examination from above. To define the vantage-point on which we stand is to help reveal the different perspectives of the peoples and times we observe. Here rural conditions are measured against criteria external to the countryside and inherited from the past. Local variations of context and response are contrasted with, and viewed in the interstices of, the ideological constructions put upon them. From this beginning we can make some assessment of agrarian structure and the ways it was changing. It will be shown that the state was enlarging its capacity and to an extent its aims, but that its policies failed from weaknesses of conception and execution. What may appear state-centred here is mainly a focus on the gaps between colonial perceptions and Indian norms, a study of the officials' ideas and their consequences.

The Bengal Tenancy Act of 1885 had characteristics which marked the modern era, but this book does not endorse either of the usual versions of modernisation theory—not the one in which changes occur by mimicry (as of Britain by India) nor its antithesis in which 'natural' developments are impeded by the distortions and dependency of colonial dominion. Here we will treat the evolution of events and concepts as the outcome of a dialogue between various, changing, mutually-influenced voices.¹⁵ The amalgam which was the Act was pro-

¹⁵ Hence the book has something in common with other studies which base their explanations on mixtures of influence, on cultural accommodations, on 'traditions', imported ideas *and* new exigencies, on processes of continual negotiation. See for example Douglas Haynes, *Rhetoric and Ritual in Colonial*

duced in both Europe and India, from (to mention a few components) long-term changes in the structures of power in the Indian countryside, a history of state attempts to acquire and order knowledge and to harness rural resources, and theories of property, society and government evolving over more than a hundred years. The context of the Act also matters, even at the specific level, because expansions of the state's responsibilities and capacity ensured that it would have an impact outside the legislative chamber. Tenancy reform was actively prosecuted through administration, law courts, surveys and the record of rights—measures which contributed to the operational aspect of a revolution in government. Interventions shaped by the Tenancy Act helped re-define agrarian structures. Actual changes reflected its own misapprehensions, and also transformed the state's relations to the society. There was another dialogue, between colonial power, representing generalising theory, and indigenous practice, marked by contingent variety or a different logic.

Contemporaries were far from unaware of these discrepancies. They were often central to the debates, in India and indeed in Britain. A balance repeatedly had to be struck between models of change through competition, and of continuity through preservation. The elements to be resolved, as Dewey has shown,¹⁶ included still-competing attitudes to property: was it a bulwark against royal and feudal privilege, or a weapon of inequality? The Indian tenancy debates were deeply embroiled in the struggle between these two positions, sharpened on one side by the fears among the entrenched landed interest (especially after the Irish Land Act, 1881-2), and on the other side by the popular or socialist demand that private privilege be regulated in the public interest. The argument was fierce because self-interested but also because of its broad implications. It expressed a struggle between opposing tendencies of political economy: was citizenship best expressed in access to common resources, or by a guarantee of private property? And which of these forms was more progressive? On one hand there was a belief in the superiority of interdependent communities, a conservative stance still extant in leftist endorsement of the 'moral economy', and generally in nostalgia for more equitable, past ages. It encouraged measures to preserve essentialised communities—on the land, it meant establishing original rights and excluding 'outsiders'; it meant favouring collective institutions. On the other

India. The Shaping of Public Culture in Surat City, 1852-1928 (Berkeley 1991).

¹⁶ Dewey, 'Images of the village community'.

hand, there were the assertions of laissez-faire orthodoxy that progress, which was necessary and beneficial, would best be secured by the economic freedom of individuals. Following Ricardo, it was assumed that individual effort would secure economic development through the deployment of capital: applied to land, this argument meant definite rights and unfettered ownership, including free transfer. We will see in the Bengal Tenancy Act of 1885 an attempt to marry these perennial, opposing impulses.

Another theme too will keep recurring: how the impact of law and administration (the role of the state) and that of communications, capital and trade (the role of the market) were qualified or diverted because of the mismatch between them, as forces for change or instruments of generalisation, and the multifarious continuities of circumstance and practice, environment and culture within India. It is possible to regard this mismatch as a failure of transition. How to protect the weak and adjudicate between selfish interests had been debated (as said) by moral and political philosophers for hundreds of years, while the actual means of protection were in flux through social changes. In Europe the effect of regimes of exclusive private property had naturally been to undermine notions of contingent possession, that is of social obligations as a qualification of ownership, just as shareholders came to be regarded as the sole beneficiaries of modern companies; the social functions of private ownership were gradually lost or transferred to the state. In nineteenth-century India the legal system adopted the European norms of individual property, but the state's responsibility was even more feebly developed than in contemporary Britain. Laws and social practices were at variance, both between and within themselves. From time to time, there were attempts to counter the individualistic tenor of British law by imposing collective responsibilities on landlords or social leaders or communities (indeed these remained an important strategy of colonial rule); but generally the political and social requirements made of private ownership were diminished by colonialism and the growth of the state.

Again, in Europe local-community sanctions gradually became less significant than public ones, of state, policy, law, education and income redistribution. In India, where issues of equity had also been considered, and the British were attuned once more by the later nineteenth century to what they thought to be Indian solutions, yet the colonial period (building on changes over several centuries) certainly impaired *local* sanctions and accommodations, and gave preference to *general* forces, institutions and categories. Increasingly those rich in property and rights had them protected by distant, overarching forces, even in

absentia and without personal exertion; indeed such privileges were drawn from ever-wider sources and expressed in ever-wider realms. Equally-general measures began to be introduced to provide for equity, to mediate between selfish individual interests or to offer a safety-net for those under stress: one thinks of famine relief, state involvement in irrigation or communications, and legal reforms designed to protect rights. Thus even the colonial state began to claim a responsibility for the happiness of men. But because its measures remained partial, confused and contradictory, they fell far short of providing protection for the community at all levels. The public sphere broadened and deepened, while its content and operation remained contingent and various.

Habermas's conceptualisation of this important facet of modernisation is helpful to the explanation of what occurred in colonial India. The intrusion of law and the state, into property-holding, tenancy and eventually labour, and generally into production and exchange, can readily be described as an extension of the public sphere: it opened these areas of life to external scrutiny and regulation; it attempted to objectify and standardise them; and it tried to separate them out as distinct forms and functions. Where landholding rights and practices had reflected a multiplicity of relations that were neither wholly of the state nor the household, neither public nor private, or alternatively both of these at once, now the colonial government and law tried to reduce landholding to simple, definite and uniform categories that expressed relationships in property alone rather than any broader, personal, ritual or moral connections. Where rent had been multiple, various, contingent and ambiguous, the law treated it as fixed and contractual, and as subject to objective rules and judicial interpretation; where rent had denoted social conditions and standing, it now indicated the terms of a purely economic relationship. Similar measures were eventually to be extended to the rights of under-tenants and labourers; parallel understandings were applied very much more generally. There is no doubt that these were *changes*, for they were different from what had gone before and they moved Indian practice and perceptions in the directions which they indicated.

But they did not do so at once; they did so only very gradually; and the great, lingering if transitional discrepancies between the state's understandings and the manner and arrangements of Indian life were the origin of much of the damage done to India's peoples over the last hundred years or so of colonial rule. Habermas has identified the creation of the bourgeois public sphere as a particular moment of history. It occurred in western Europe from a long process of change

and adjustment, which did not remove all anomalies and survivals but established prevailing or distinctive forms of institution and behaviour. In India many of the lessons and assumptions of European civil society and the public sphere were applied, as in tenancy law, axiomatically to a country in which these adjustments had yet to occur, to places and peoples with their own genius which, if they approached European forms at all, did so at the stage of what Habermas called 'representative publicness' (*repräsentative Öffentlichkeit*).¹⁷

The elaboration of a public-private dichotomy was one way in which the resolution of debate represented by the Bengal Tenancy Act of 1885 marked a political evolution: it widened the terms and range of state intervention, the categories within a *putative* public sphere. There was a progression, in the period under review, from official attention to structures to attempted manipulation of processes of agrarian life. The progression is reflected in this book, which considers agrarian structure and the Act of 1885, and in a proposed second volume which will discuss agricultural production and the state in Bihar.¹⁸ On the other hand, as said, official measures were often inappropriate or half-hearted; by the 1880s they were again hesitant, restricted by fears of disturbance in India, and by theories of Indian society and the Indian past. (The failure has some relevance at the end of the twentieth century when political and economic systems, and means of social protection or equity, show the strain of yet-further generalisations, of globalisation.) In colonial India private property was offered as a boon to collaborators, often freeing them from local responsibility; while the shortcomings of countervailing general forces for the protection of the weak exaggerated the disparities of entitlement and status which existed between rich and poor, landed and landless. This broad lack of synchronisation had impact in addition to the fact that many of the colonial policies were anyway inappropriate to India.

A profile will be attempted here of the complex changes which resulted from the interventions of the state, and from its failure to intervene. It is necessary to map with some precision the areas of local resilience and autonomy, and alternatively where change was felt—

¹⁷ Habermas, *Public Sphere*, pp.5-14.

¹⁸ See also Eugene F. Irshick, *Dialogue and History. Constructing South India, 1795-1895* (Berkeley 1994), for some striking parallels (though also some differences) on the influence of law and policy, interacting with indigenous forms, constituting 'sacred' land (like that of America!). Unfortunately I did not discover Irshick's work until after this book was written, but see especially his chapter 2, on the importance of constructed past, and his Conclusion, on the connection between such change and citizenship or identity.

because, as this study emphasises in regard to rural Bihar, India was very disparate, with a range of influential connections between the locality and the outside world of trade and power.¹⁹ The tenancy law altered the balance of resources and also reacted with an already-differentiated society.²⁰ Its rational construction of the countryside through British colonial understandings (and hence actions) was significantly at variance with existing, indigenous ways in which agrarian conditions might have been perceived.

By examining the disjunction of policy and practice, ideas and reality, this book (finally) will assess an evolutionary theory—the changes from hunting-and-gathering to factory-farming—which has dominated thinking in regard to land use. It was a theory which found settled cultivation in all respects superior to nomadism. It meant that social justice was sought in legal protection of land rights; that supposedly optimal tenurial forms (especially secure freeholding) were necessary to sustained agricultural investment; that technological control and political sovereignty over land seemed the *sine qua non* of progress. Tenurial reform took precedence over agricultural reform, security of property over attempts to improve production methods, credit or marketing. The evolutionary theory also meant that earlier (in our case pre-colonial) land systems were assessed negatively, as inefficient and irrational, lacking the potential for development. Allegedly they had no individual ownership, little differentiation and capital accumulation, few technological or other means of increasing output. As ‘careless’ and communal modes of production, they produced social stagnation and environmental degradation, for want of an individual interest in maximisation or conservation. Thus, in forests, slash-and-burn cultivation was more damaging and less rational than logging; thus pastoralists were bound (if population grew) to over-exploit common land; thus farmers were unwilling to invest in agricultural improvements while collective obligations and interdependent practices were vested in their landholding. On the other hand colonial experience and insecurity also made social and economic conservatives of many a bureaucrat; the past and the

¹⁹ For this argument see Peter Robb (ed.), *Rural South Asia. Linkages, Change and Development* and *Rural India. Land, Power and Society under British Rule*, Collected Papers on South Asia, nos 5 and 6 (London 1983), or the second edition of *Rural India* (Delhi 1992).

²⁰ Similarly, in the second volume it will be argued that the relations of production and exchange were not merely an imposition by the extractors of surplus—the rentiers and creditors—but also a necessary response by them to persistent local practice, related to environment, social norms, beliefs and values.

indigenous were also specially valued.²¹ Thus it was, in Western assessments of non-Western regimes, that respect for historical rights and custom competed with the demands of economic efficiency.

It is increasingly being realised that this may have been an unnecessary opposition. As this book demonstrates, in a major Indian example, the Western assessments of custom and pre-colonial practice were often merely projections of European concepts and expectations.²² It is not obvious that several property and capitalist agriculture offered the only formula for securing the well-being of large populations: even if particular forms of landholding were lacking, it was possible for pre-colonial societies to achieve improvements or protect environments through communal regulation, cooperation and self-denial. Land could be artificially rationed, even where it was in surplus, in order to preserve social and political hierarchies or to distribute risk, and because of the costs of reclamation or the variability of soils and water-supply. It was partly through ignoring such appropriate and evolving expedients, that European interventions produced neither equity nor prosperity for the majority in tropical countries. What they did produce, even when supporting custom and history, was reduced flexibility, a paternalist 'protection' and control, and a preference for commercial over subsistence goals. These are specific and important changes, indicative especially of the growth of the state, but not necessarily 'progress'.

²¹ It is instructive to compare this with the rise of environmental worries through colonial observations of damage in tropical and island locations, and Western encounters with non-Western knowledge and practice, as argued in Richard Grove, *Green Imperialism. Colonial Expansion, Tropical Island Edens and the Origins of Environmentalism, 1600-1860* (Cambridge 1995). The desire to conserve Indian social institutions had some similar origins, and limits.

²² The African literature has been richer in these arguments; the colonial debates on Africa echoed those on India over a later and shorter timespan. A useful starting point is the introduction by Thomas J. Bassett, in Bassett and Donald E. Crummey, eds., *Land in African Agrarian Systems* (Wisconsin 1993), pp.3-31. See also David Arnold and Ramachandra Guha, eds., *Nature, Culture, Imperialism. Essays on the Environmental History of South Asia* (Delhi 1995).

Chapter One

Property, classes and the state

He [Sir Ashley Eden, Lieutenant-Governor of Bengal] would like to see the Bengal ryots, as a class, secured in the enjoyment of those rights which the ancient land law and custom of the country intended them to have, protected against arbitrary eviction, left in the enjoyment of a reasonable proportion of the profits of cultivation, and, in short, placed in a position of substantial comfort, calculated to resist successfully the occasional pressure of bad times.¹

These ‘ancient rights’ and this ‘future comfort’ were like talismans of one aspect of British thinking about agrarian policy in India during the nineteenth century. They were the professed goals and the guiding principles not only for the Bengal tenancy law to which Eden was referring, but also across a wide range of other initiatives. They should not be taken at face value, but do suggest clusters of issues or routes of inquiry by means of which it is possible to assess the ideas and impact of the British and to approach the realities of conditions in the Indian countryside. On such a basis (and though much has had to be left out),² this study seeks ultimately to relate agrarian structure to a critique of colonialism, and indirectly of theories of modernisation and development. It has two main characters: rural Bihar as seen in agrarian structure and the relations of production, and the British as revealed in their intellectual assumptions and policies towards India. Change in Bihar is explained by means of an analysis of British perceptions. The intention is not to give a comprehensive account of agrarian conditions. Rather the attempt is to uncover the object through the categories and ideas imposed upon it, the veil both of the past and of the present.

It is also argued that perceptions themselves produced intended and unintended effects. Through the enormous elaboration of Indian law, an apparent effort to close all eventualities and to fix all interpretations, the executive power of British rule was striving (in part) to legitimise and facilitate interventions by the officers of the state, to a degree

¹ Government of Bengal (Alexander Mackenzie, Chief Secretary) to Government of India, 15 July 1880, R&A Rev A 16-46 (July 1883).

² I have dealt briefly with some other aspects elsewhere, for example in *Evolution of British Policy towards Indian Politics* (New Delhi 1992) and (ed.) *Society and Ideology. Essays in South Asian History* (Delhi 1993) and *Dalit Movements and the Meanings of Labour in India* (Delhi 1993).

beyond what was thought possible or desirable in a society such as Britain, with its organised and recognised private interests. Indian resistance to the state existed alongside opportunistic co-operation or expectations of state intervention, and Indian protest was sometimes admitted and even feared—indeed British policies helped define a range of political interests—but Indian opinion was not allowed the same voice as supposedly legitimate interests within Britain. The ideas of officials were thus peculiarly important in the colonial setting.

In this volume, the centrepiece is the Bengal Tenancy Act of 1885 and its attempt to ‘reinststate’ the original privileges of agricultural producers in the form of occupancy tenants. The ideas which it embodied, about societies and India in particular, and about the proper goal of British rule, were of wider significance than would be supposed from a consideration of tenancy alone. The Act was particularly important for Bihar, then administratively part of the Lower Provinces of Bengal, because the tenancy reform owed much to certain officials with Bihari experience, and because aspects of the legislation were conceived with particular reference to the needs of Bihar. It will be shown, however, that it fitted them peculiarly badly. In due course, a second volume will consider the promise of British reformers to improve the physical and economic conditions of the people of Bihar, through state action and the virtues of trade; that study will be centred on the production of commercial and other crops but, again, will be informed by an assessment of policies and the ideas which lay behind them. Thus, if the first theme is a specific one about rural Bihar, a second major thread of the discussion traces the nature and development of British rule in India. The period chosen, though not appropriate in all respects, is convenient for one important variable, the state’s land policy. The starting-point is the permanent settlement of Bengal land revenues in 1793, and the effective cut-off the provincial economic, banking and agricultural inquiries of the 1920s.

It is hoped that the findings of this study may range wider than the place and period to which they are applied. However, it should be emphasised that the detailed examples are mainly confined to Bihar’s old Patna Division of Champaran, Darbhanga, Muzaffarpur, Saran, Shahabad, Patna and Gaya, and to the last few decades before 1900. The concentration upon Bihar needs no excuse, given that Patna Division was more populous than the Bombay presidency, but Bihar also provides valuable illustrations both as the extreme case it was claimed to be at the time, and because it was nonetheless extremely various. The concentration on the latter part of the nineteenth century follows from the attention paid to the debates and implementation of

the Tenancy Act of 1885, and is partly justified too by an argument (to be developed below) that the passage of the Act advanced and epitomised aspects of the making of the nation state in India. It marked an important step in a *general* expansion of state responsibilities. This of course was a long-term process, deriving (as Foucault and others have observed) from political and scientific developments that permitted or required the state to optimise and transform rather than to control and exploit the society which it governed: a *continuity* in such aims and in the terms of understanding will be stressed in this book.³ Nonetheless, in these matters, as contemporaries recognised, the 1880s in particular were years of radical reform and ambition, despite the many instances of continuity or temporising. Focused under Ripon, as far as government was concerned, and also exemplified by the Famine Commission and the Local Self-Government Act, this period was analogous to other significant forward-looking decades such as the 1790s and 1830s.⁴ Not just landlords' self-interest, officials' ambition and lawyers' arrogance, but a larger struggle about the purpose and role of the state, explain the length and vehemence of the debate over Bengal tenancy.

Why a piece of legislation was passed is a question admitting of many different answers. Many statutes in colonial India, and not least the 1885 Act, were derived from a peculiarly wide range of traditions and pressures, internal and external—because of colonialism and its idea of India as *tabula rasa* in legal terms, and in contrast with laws evolved largely within 'national' jurisdictions. Policy was affected by political considerations, in both India and Britain, and by legal and other precedents internationally and over time. However in this study the aim is quite restricted: it is not so much to elucidate the politics and policy-decisions as to set out the main ideas popularised by the tenancy debate, and to assess their impact. Those questions are quite complex enough. Surrounding the 1885 Act was rhetoric—properly so called because of the arguments' particular stylised forms—which encapsulated changes occurring over a long period, in the understandings of property, economy and the tasks of government. The legislation matters partly because colonial India was so bound by rules, and increasingly focused on the state. (Again, this was a by-product of colonialism and its experiments in building institutions so as to retain and extend executive authority.) The debate helped create a picture of

³ See especially M. Foucault, *The Order of Things. An Archaeology of the Human Sciences* (tr. of *Les mots et les choses*; London 1970.)

⁴ See Briton Martin, *New India, 1885* (Berkeley and Los Angeles 1969).

rural society that continues to have influence. Explaining the intellectual frame of the Tenancy Act provides a way to investigate its consequences.⁵

Intellectually what is possible and what desired for governments are constituted through perceptions, ideologies and moral imperatives. In operation as in the records, colonial policy was affected by priorities as they were then thought to be (not what we may now think they were). Decisions were taken within limits or along lines determined by a series of different but overlapping agenda. These were ideational (in the Platonic sense) as well as pragmatic, existing independently as ideal constructs, though they also shaped perceptions, categorisation, and reality itself. The absolute principles included notions of duty and arguments about 'individuality', 'progress' and 'equity'. (We might compare the case for action against slavery or *sati*.) Specific concepts related to the laissez-faire state, and to theories of property, rent and exchange. Overarching ideas included rationalist or Benthamite views of law and government, classical economic doctrines, and a historicism which was ultimately Augustinian in its view of the origin of human institutions.

Among the practical calculations were included career development for officials, and the enthusiasms which arose from their expertise or experience. Individual careers were influenced by fashion, as for example among Indian civil servants, when (at a time of worries about famine and social change and property rights) Antony MacDonnell made his mark through his Bihar food supply report or his minute on Bengal tenancy, or Denzil Ibbetson sealed his career by masterly exegesis of revenue, social forms and land transfer.⁶ Obviously impor-

⁵ It follows that, though official ideas are the core of this work, it is not a study of ICS mentality. Clive Dewey, *Anglo-Indian Attitudes. The Mind of the Indian Civil Service* (London 1994), has argued that such a study requires attention to commonplace as well as philosophical ideas, and also to the conditioning which produced the ideas, and to their consequences in practice (pp.7-10). Dewey's answer to the resulting complexity was to take two contrasting examples, on whom sufficient information was available and whom he held to be typical; his subject was the nature of the ICS. This book will cover the 'repetition of simple axioms', their application in practice, and the consequences, in one area of policy; it assumes that Indian conditions as well as British conditioning affected policy, but it will not be concerned to illustrate either. Its subject is Bihar and the developing role of government.

⁶ See A.P. MacDonnell, *Report on the Food-Grain Supply and Statistical Review of the Relief Operations in the Distressed Districts of Behar and Bengal during the Famine of 1873-4* (Calcutta 1876) and Denzil Ibbetson, 'Memorandum on the restriction of the power to alienate interests in land', an exposition incorporating some minor amendments by Alexander Mackenzie, in

tant were political goals—the need to protect, accommodate and co-opt Indian institutions, the safeguarding of governments and budgets, and the partisanship of colonial economic and strategic policy. For much of this book, the state is imagined to operate within a web of such goals and strategies, in combinations which changed from person to person, issue to issue, and time to time. The suggestion is (as said) that by studying the main features of British policy, in these terms, and in parallel with an understanding of Bihar conditions, it will be possible to define the nature of colonial errors and impact.

II

The 1885 Act's categorisations and prescriptions represented those of a 'modern' state—definite categories with rights located within them, as species of property; categories and rights defined by function, and justified by use. The state intervened to regulate and encourage these rights, and thus reflected changing ideas about government. Coming together were strands of Western theory and of Indian conditions and statecraft. The British exported many of their attitudes and systems, and incorporated much into standard forms in the empire as they had within Britain. Their views and debates about India undoubtedly often reflected agenda for Britain. In addition suitable priorities *for India* also influenced institutions and the expectations of the state—arguably in both countries, just as imperial experience helped define British identities and concerns. Some practices of expanding government—bureaucracy, rules, departments, inquiries, precedent, records—were developed in tandem at home and abroad, with mutual influences.⁷ Eric Stokes's pioneering work alerted us to these possibilities.⁸ The cross-currents were assisted by the fact that, more than the French, the British tempered their universalism, at least after the loss of the American

Selection of Papers on Agricultural Indebtedness and the Restriction of the Power to Alienate Interests in Land (Calcutta 1898), pp.1-253 and 304-445. Perceptions are not important only for understanding an alien state and its records. Rather, as a second volume will demonstrate, a chart of inhibitions and imperatives can be drawn equally for peasant decision-making: a deconstruction of the record will be equally necessary to uncover the ultimate subject of that volume, the choices of the peasants.

⁷ Possible consequential Indian impact on the *conduct* of British affairs, especially in the civil services, and to a lesser degree on the *roles* of institutions (the Crown, church, army, parliament, law, business, finance, classes and eventually citizenship), would be a subject worthy of examination by a British historian.

⁸ E.T. Stokes, *The English Utilitarians and India* (Oxford 1959).

colonies and the acquisition of an 'alien' India, with a partial sense of exclusivity (keeping Britishness and British institutions to themselves) and a corresponding image of India (for example) as needing the invention of special measures, especially in governance. Such inventions and distinctions were never wholly achieved, yet they were required by Indian as well as imperial expectations, priorities and conditions. The two strands of policy-making were internal reasons and imported doctrines. They came together in India to produce a growing acceptance of the duties of government and a consensus on the likely course of social development. Thus conservative debates about historical legitimacy and India's special needs were accompanied by a radical willingness to act, in order to 'put things right'.

At this time, the role of history, which had been a prominent device for legitimating policy since East India Company days, was given an added importance. Obviously, too, the state evolved along the same trajectory as a particular view of history.⁹ There was a general intellectual tendency related to the development of theoretical and organised (as opposed to practical or mimetic) knowledge. This was not a wholly sceptical system: it debated with but also depended upon authorities, of Christian revelation, ancient knowledge, Indian precedents. Indeed, ideas of essential categories and rational causation inevitably privileged supposedly original forms—that is, the past. But other developments compounded this effect, not least the increased salience of texts as a result of modern languages and printing. A text standardised, fixed and recorded; by lasting and duplicating, it was predictive of the future, the very role which theory attributed to the past, through essentialism. Accordingly, in matters of land and tenancy, we find an increased emphasis on the written record and the distinct type, and a priority given to 'original' rights.

More pragmatically, too, though within the same ideas of causation, history mattered more and more because policy was being developed in response to supposed failures and inadequacies, including errors of previous administration. By the later nineteenth century it was thought that losses and disruption (literally breaches of category, and a lack of historical progression) were resulting from what had been assumed to be progress, whether of trade or law. Contrary to what is sometimes claimed, this did not subsume everything in a single, Eurocentric line of evolution. Doctrines of specificity (as in race theory) had

⁹ See Prasenjit Duara, *Rescuing History from the Nation. Questioning Narratives of Modern China* (Chicago 1995), which relates ideas of the objectified nation-state to Hegelian, linear, evolutionary history, in contrast to complex, rival models of community and of history, in India as well as China.

undermined the earlier search for universal principles, a search which had included Indian examples.¹⁰ As a result whatever was proposed had to be 'appropriate', producing fierce debate about India's past and India's supposedly inherent qualities, as clinching arguments.

At the same time there was a scarcely-concealed eagerness to reforge India, allegedly in the interests of its future. In the late nineteenth century there was a severe crisis of confidence, certainly, but it was unlike those which preceded it (from fear, weakness and ignorance) or those which were to follow (from disillusion and cynicism). In the sphere of agrarian policy, the spirit was still that of James Mill who believed in the socio-economic benefits attainable through law and administration. Among its prophets were Richard Jones and John Stuart Mill, revisionists and critics who nonetheless accepted that remedies could be found through further interventions. To a greater degree than in the past, all sides of the argument—autocrats as well as liberals—endorsed rationality and knowledge, and expressed confidence in improvement. In short, the colonial government of the 1870s and 1880s, in these respects at least, seemed the very model of a modern administration—that is, of the kind of state that has had its heyday between that era and the 1970s. At the end of that period, in the face of international corporatism and environmental threats, and with the collapse of centralised states which had taken bureaucratic command to an extreme, a new transition began, born of doubts about science, reason, meaning, and about state probity, intervention and competence; formerly, it was just those elements which had been held dear, and in which confidence had been reinforced, after a struggle, through the advocacy of the 1885 Tenancy Act.

More specifically the Act was framed by common features of classical political economy. These were first the central role attributed to individualistic property and capital as engines of economic progress, and second the insistence upon social classifications as the means of deciding by whom such capital might best be deployed. If there was to be development, in the form of increased productivity in agriculture,

¹⁰ See, for example, C.A. Bayly, 'British orientalism and the Indian "rational tradition", c.1780-1820', *South Asia Research* 14, 1 (1994), which describes British attempts to mine and incorporate Indian knowledge. The rational tradition of *nyaya* (among those discussed) also was not a system of scepticism but one based on the authority of the sastras (p.8). See also Nicholas Dirks, 'Colonial histories and native information: biography of an archive' in Carol A. Breckenridge and Peter van der Veer, *Orientalism and the Postcolonial Predicament* (Delhi 1994) and B.S. Cohn, 'The command of language and the language of command' in Ranajit Guha, ed., *Subaltern Studies IV* (Delhi 1985).

then (it was agreed) within society there had to be concentrations of property, and its gainful employment. This implied social differentiation as well as, or prior to, efficient divisions of labour. In regard to tenancy, the dominant ideas explained how possession or ownership should be attributed to rural classes. Official analyses were based on macrostructures and generalisations, produced from ideology and experience. Differences of opinion arose largely over the class which might best manage the accumulation, which class would best promote social order and the productive use of capital. In India at least it was also apparent that the state would have to intervene in order to help produce whatever conditions were thought to be conducive to progress.

The preferred means of regeneration fluctuated between its being socially-led, for example by landlords or proprietary peasants, or being dependant on law and government (under James Mill's influence), or being focused on production and trade (developed through capital works). But by the later nineteenth century there was not much argument about the underlying processes to be expected in any of these cases. The tenancy debate was part of an extended though sometimes undeclared assault on collective property and custom, illustrated by an assertion of Henry Maine, that 'Nobody is at liberty to attack several property and to say...that he values civilisation'.¹¹ The tenancy issue is useful for embodying one of the most extensive of all applications of this socio-economic theory to India.

There were two theatres of debate. The first expressed the divide between advocates of radical change and supporters of appropriate law—or, in a sense, between individual and collective property. Advocates of the latter saw to it that the notion of the village community in particular ran through agrarian laws and policies as a repeated theme, from the eighteenth into the twentieth century. It appeared in early surveys of village boundaries, in the village police law (Bengal Act VI of 1870), in the Punjab Alienation of Land Act with its idea of properly 'agricultural' castes, in the co-operative societies, in union boards, and so on. In the 1885 Tenancy Act it surfaced when 'prevailing' rent-rates were debated, and when local custom was allowed to determine whether or not tenants had the right to alienate land.

But these gestures to 'appropriateness' were very inconclusive, and in the cases of rent-rates and land transfer irrelevant in the long run.

¹¹ Sir H.S. Maine, *Village-Communities in the East and West* (London 1876), p.230. Maine claimed that civilisation was 'a name for the old order of the Aryan world', which, though perpetually dissolving and reconstituting itself, yet slowly and unevenly 'substituted several property for collective ownership'.

The reason was a function of legal culture, that colonial laws did not—could not—respect custom. To be recognised effectively the village community had to be subsumed within some unit of revenue or general administration: much was written on the conflation of the estate and the village, the *mahal* and the *mauza*. As we shall see, a ‘prevailing’ rent-rate simply could not be found under strict definitions of legal consistency. Custom (being contingent, ambiguous, evolving) could not be endorsed by a system of law that depended upon rules and precedents. In such a system, what purported to be custom, or indeed indigenous law, survived only as definite provisions indistinguishable (except in rhetoric and supposed origin) from other aspects of the formal law. Custom survived outside the colonial spheres, of course, but, within them, did so only when codified. (This applied, in official discourse, to social constructs such as caste and religion as well as to village community and land rights.) When not codified, not reproduced in rational categories on the Western model, as was the case for the landlord’s customary right to forbid the transfer of tenants’ holdings, custom tended to wither away under the scrutiny of laws of evidence and of courts predisposed to respect statutory instruments. Gandhi’s sentimental non-materialist village economy would founder against some similar rocks.

This being the case, the real field of battle in the tenancy debate was a second one, which concerned the type of individual in whom property should be vested. Everyone did not agree that the best means of achieving ‘civilisation’ had been enunciated by Sir Ashley Eden. Conflict between appropriate and analytical jurisprudence was important, but central to the tenancy debate was a closely-fought contest between pro-peasant radical conservatives and pro-landlord conservative radicals. The landlords’ party advocated ‘universal’ social and legal rules, as embodied in the new precedents and rights which had been created in India. The peasant lobby supposedly privileged ‘tradition’ while seeking social reform. But both in fact supported the universal validity of several property, as good students of Maine. In some ways this was a replay of the situation 70 or 80 years earlier, when pro-raiyatwari critics of the permanent settlement disputed the social level at which private property should be granted, and purported to defend Indian traditions against aristocratic arrogance, while leaving largely unheard a more fundamental debate about Indian practice, between collective and individual, contingent and fixed property

rights.¹²

If choosing the class on which individual property should be concentrated was *the* issue in 1885, it was also fundamental to the nature of colonial interventions in Indian society. It explains why a tenancy act was thought necessary in the first place. The East India Company had had to construct methods of rule distinct from existing Indian and British practice, though informed by both. Its chief dilemma was that it needed agents and brokers whom it distrusted. Intermediaries were attacked and dispossessed in the interests of generalised authority, but also recruited and favoured (intentionally or inadvertently) in the construction of working systems of rule. The British had to reconcile their allies' demands and expectations with their own assumptions and priorities. Europe supplied principles and regulations, but India required pragmatism and flexibility. Through all this, the state constituted people as subjects for whom it admitted responsibility, according to definitions of what was public and what private.

III

The definitions were influenced by Indian demands and expectations, by special conditions, and by the very idea of state responsibility. A state might favour settled populations and road-building, as the Company did in India. It would do so from calculations of its own advantage—revenue, security and so on—but also from theories about how economies or societies worked best, in this case the benefits identified from increased production, information, and trade. Such ideas were not fixed or unrelated to influences and demands upon the state. Experiences in India, often expressed as pressure from Indians on officials, from local to higher levels of government, and from younger to older members, certainly caused modifications in policy. Thus, in a famine, the public task would be temporarily enlarged to include the providing of work and food; in an epidemic, health too would become a public matter. After each crisis, such tasks might once again be left to private enterprise; but enlarged expectations, continuing discussions, and new institutions and rules often remained to facilitate state involvement in future.

In these circumstances, different voices were heard at different levels of government, and outside it, because many read Indian conditions and state responsibilities differently. In the 1830s the Company,

¹² See Burton Stein, 'Idiom and ideology in early nineteenth-century south India' in Peter Robb, ed., *Rural India. Land, Power and Society under British rule* (London 1983 and Delhi 1992).

under James Mill's influence, was concerned to build institutions of government, law and taxation. At the same time, and with added emphasis from the 1850s, it was willing also to develop infrastructure. Material improvement (unlike moral interference) was relatively uncontroversial, and in any case was thought to be, like the reform of government, a way to achieve moral as well as economic regeneration. Trade, by this account, was an unqualified boon, as was order. Improved and safer communications would promote civilisation. There were, as at all times, contrary voices, cautioning against, say, the minor disadvantages of metalled roads,¹³ or the major dangers of disrupting Indian custom. But the prevailing mood was optimistic: Indians were susceptible of improvement.

The public good of road construction, for example, was constantly held out by Company officials for strategic and revenue reasons as well as for the encouragement of trade and the prevention of famine.¹⁴ Because in the 1830s the state's responsibility tended to be limited to infrastructure, famine conditions were regarded primarily as a good opportunity to improve the roads and other facilities by flushing out labour. Only later did such improvements, by providing work, become more of an excuse for the relief of famine distress. It follows that at this time the Company mostly sought to provide the instruments for improvement, and not to intervene directly as so to further the economic well-being of the population as a whole; *laissez-faire* doctrines made this limit upon policy seem obvious. Thus there were road-building, Ferry Fund committees, attacks on local tolls, and attempted suppression of Pindaris, *thagi* and dacoits, and so on—all in the Company's and the public interest.

However, from the first in isolated respects, and later more generally, more extensive interference also took place. Disagreements about this trend underlay the tenancy debate. Indian state interference and responsibility paralleled that in Britain, as in sanitation, labour regulation or education, where they were prompted partly by the impact of—

¹³ Perceived disadvantages suggested to me by Sanjay Sharma from his work on the NWP in the 1830s include the short-term losses to banjaras and other traders dependant on pack animals, and the effect of metalled roads on barefoot pilgrims. Only later came arguments that trade itself could be disadvantageous, for example by diverting producers from subsistence to commercial crops. I am also indebted to Sharma for the evidence on which I base my characterisation of famine relief-work in the next paragraph. Such evidence will be presented by him in a forthcoming London PhD dissertation.

¹⁴ On roads and civilisation, see also Peter Robb, 'The impact of British rule on religious community' in Robb, *Society and Ideology*, pp.157-65.

that is, to further or to mitigate—industrialisation and urbanisation. Similar arguments were heard for India as a more distant sufferer from the same processes. Trade, law and other changes were no longer assumed always to be mutually beneficial for imperial ruler and Indian subject. Within these changes, romantic and historicist reactions gave an added emphasis to the need to respect community and custom.¹⁵

As the nineteenth century wore on, more extended reforms were sought for India also because stereotypes and, frequently, racist assumptions portrayed the problems of India in bolder tones. Intervention became greater partly because of a growing pessimism about India. Further regulation had ever been encouraged by suspicion of Indian alternatives, from courts to culture, magnates to clerks, with *sati* and *thagi*, and so on; the greater the suspicion, the more need there was to intervene. At the same time, by the later nineteenth century, external models of government and infrastructure, their benefits already questioned by some in Europe, seemed even less suitable to India, which was more clearly conceived as a radically different and even unknowable society. But this too implied that fundamental, whole-society change was necessary if things were to improve.

For all the racism of the age, few agreed that India was ultimately irredeemable. To have conceded that would have been to destroy much of the rationale of British rule, and greatly to reduce the covenanted civilians' flattering image of themselves. It would have left them with few roles to play, other than those of exploiter and policeman. Some unsentimental men were attracted by this, as by authoritarian elements in Utilitarian and Liberal thought. But even these people, such as James Stephen, assumed that the British purpose in India was still to facilitate its development, albeit along idiosyncratic lines. The remainder of the British in India asserted in one way or another that they had more to offer than the force of arms. As a result, the major thrust of policy, for want of imagination if for no other reason, never followed the genius of a peculiarly Indian way, as Maine's attack on abstract universal theorising might have suggested. Though measures had to be taken to moderate the effect of the 'dissolving force' of Western civilisation, yet that force could hardly be removed or its supposed benefits denied to Indians. So much was implied by Maine's comparative method, and also demanded by the most articulate among those Indians audible to the British.¹⁶

¹⁵ See Clive Dewey, 'Images of the village community', *MAS* 6, 3 (1972).

¹⁶ See Stokes, *Utilitarians*, esp. pp.277-322, to some of which this paragraph offers a slight qualification; 'dissolving force' is a phrase of Sir Alfred Lyall's.

One branch of British thinking in this era held on to the filtration model whereby civilisation would be inculcated through elites operating within a system of law and capitalism. This was the burden of the pro-zamindari arguments, which extolled the landlords' social and economic role and their benign treatment of their tenants. Another branch of thinking, though not analytically contradictory of the first, was diametrically opposed in its political agenda. This second line produced arguments for the greater involvement of Indians in their own government. As an avowedly educative process, these proposals could still appeal to those who called for appropriate development; some officials discovered Indian democratic traditions as a riposte to theories of Asiatic despotism. In practice proto-democratic gestures remained hesitant and grudging, even among some Indians, as they risked diluting British authority in the executive sphere (which it had been decided to retain inviolate), and led ultimately to a validation of Indian demands for self-determination and independence.

A third, and in large part triumphant, branch of thinking directed the British towards social engineering, in various aspects, of which the Bengal Tenancy Act was one. We will be tracing the course and limits of this victory. At the most basic level, it occurred because almost everyone assumed that India needed to be and could be improved, and because British rule itself was subject to its own order in which categories were not to be breached or confused. The state was required to respect individual property, and not to act out of character as defined in prevailing doctrines. Thus the idea of free trade demanded distinct spheres for merchants and rulers, and treated (for example) the fixing of prices even in times of scarcity as a confiscation of property. In this manner doctrinal differences fuelled the tenancy debate, even though the disagreements often seemed diagnostic rather than fundamental. But by the same token, being in possession of an empire, the British in India were required to demonstrate its morality by action, by making of it a type of earned rather than idle property. Law and order were not enough; empire had to be put to work. The British perceived their rule as being active in contrast with a passive India.

The Bengal Tenancy Act concerned the properties of individual classes as well as of the state. In the end, of course, the two could not be reconciled. Any act of protection had to involve a complementary act of confiscation or restriction. This was the level at which specific doctrine mattered. In the tenancy debate the choices were expressed in a distinctive conception of individual rights and agrarian classes, both purporting to be justified by history. They continued the long struggle between indigenous and imported understandings of rural society,

between aristocratic models, capitalist reformations and cultivators' property, all regarded as having their proper sphere and function. Now the idea of the peasantry was in the ascendant, and since then has often framed academic studies of agrarian societies and colonial impact. Yet the pro-peasant revolution was (and is) incomplete in India. Political and other considerations argued against the wholesale expropriation of the landlords, who remained, indeed, part of the economic scheme provided they were enterprising. In the colonial period it was the capitalist role which had priority, and proprietary peasants were favoured because (and only so long as) they were believed to be able to perform that role. Thus the underlying trends also mattered. They set the state's rights and duties ultimately above those of all subjects. They pressured the British to try to formulate measures which would re-design Indian social relations. The Bengal Tenancy Act is shown to be one outcome of this pressure because it not only tried to secure rights for occupancy tenants, but also set out the characteristics which were supposed to define the whole range of land-holding and land-using classes, from landlords to under-tenants.

None of this would have happened without what began in the eighteenth century: the identification and reification of categories whereby the officials and the laws could generalise. Classifications were supposed to be 'natural' because they were distinguished according to the nature of each type, and hence they were thought to be organic. But in fact they were peculiarly legalistic under the colonial system: they were created and found their existence in rules, prescribed practices and formal records. The proprietary peasant had to be categorised in order to become an object of policy: hence the need for an Act which defined his legal character. The law constructed categories which, in other senses, were not natural (reflecting reality) but artificial. All classes were described in terms of their properties, and all were expected to express their character through the use of the properties which they thus possessed—so that tenants were land-holders paying fair rents, able to enjoy a definite and known proportion of the fruits of their labour. The classes were supposedly fixed, which explained the importance of pretended history to those who wanted to reform them. Categorisation was *caused* by its defining incidents. Conversely possessions and rights derived from categories. This rational categorisation was a particular and not a necessary way of proceeding.

IV

We will return to this subject, but first it will be useful briefly to intro-

duce the second main element of this analysis, the consequences of tendencies in policy and ideas, and particularly that part of our inquiry concerned with the failings of concepts and aggregations. Classification, as applied in colonial India, was a culturally specific device for ordering knowledge. In British India the meanings of 'tenant', 'money-lender' and so on were artificially confined and distorted, almost by the language itself, in the face of a more complex reality, with serious implications for theory and practice. Our problem, however, is not merely the pathology of European colonialism, though that might seem sufficient; it is also the general unreality of categories and the fact that terms carry hidden norms and expectations. Beyond the commonplace of errors by nineteenth-century administrators, there is another, continuing difficulty of 'classing', which is inherent in the 'sciences' of law, government and anthropology which they advanced and we still pursue. How can we measure the 'errors' without also assuming that, according to production relations, property, culture and interests, there were significant similarities within different 'types' of household, in our case in the Bihari countryside? This too is a problem to which we will need to return.

The chief object of the Bengal Tenancy Act was the so-called peasant proprietor. He is also our main subject. Yet for much of India it is not true to say that his was a dominant mode of land control, that most land controllers were 'peasants'. The peasant was regarded as an original and necessary form, and we go on using the term in a loose sense. But we do not find everywhere, and certainly not in Bihar, the social homogeneity necessary to ownership by 'peasants', any more than (in a second volume) we will find a preponderance of family-farm production or a general lack of involvement in the market. On the contrary, if we examine the peasant landholder of Bihar, we discover that peasant holdings commonly did not represent autonomous units of ownership.¹⁷ We find a variety of levels and kinds of land-holding, especially roles for intermediaries. Social differentiation was a context for the employment of labour and the production of crops for sale.

Analysis along these lines helps produce a dynamic view of the way the society functioned. It was the existence of differentiation, and particularly of a strongly-placed middle sector, which meant that, when

¹⁷ In volume two the same points will be made about production: how far there can be generalisation, and that commercialisation did not necessarily imply the replacement of old hierarchies of socio-economic relations, and that—partly because of various failures to maximise output, and the resilience of internal limits for agricultural production—the economic surplus continued to be extracted by unequal exchange, manipulated by existing social power.

the British attempted to foster peasant proprietorship for all, they actually further skewed the distribution of opportunities and entitlements. They did not do away with existing rights and interests, because these were fragmented across many social levels. They did not simply create an engine for economic aggrandisement, not even for the rich and powerful. But they sharply increased tendencies which already existed.

It was not only the social structure which was misapprehended. The prospectus for change was also inappropriate. This brings us back to the overarching intellectual basis of policy, to the officials' ideas. The developmental beliefs of the British in India rested primarily upon an interpretation of how Britain had prospered. An agricultural revolution resulted, by this account, from secure property, technological change and labour replacement; nineteenth-century scientific investigations built on the work of earlier amateurs; international trade was the economic centrepiece, and industrialisation the consequence. In agriculture, 'Farmer George' was a symbol of the desired enterprise: improvements depended upon enclosure, management skills, specialisation, and improved crops, methods and implements—whether by direct labour (in India the model of the zamindari home-farm or *sir* land) or by substantial tenants assisted by capital and expertise (the model of the peasant proprietor).

When the grip of *laissez-faire* theory began to loosen and state intervention increased, the understanding of the means of economic change altered little. Nor did the Indian pro-peasant lobby dissent from a belief in the instrumentality of property, capital and trade. Yet the tenancy reformers were worried about the protection of past rights, and therefore did not try very hard to reproduce in India the conditions which had allowed enclosures, the dispossession of British smallholders, and the mobilisation of capital for agricultural improvement. Certainly, they endorsed the cause of the smallholder as an ideal proprietor. But the peasant of the Indian literature was somehow also to be an agricultural entrepreneur of the English type—as if no attention were paid to the size and character of the average holding in India. Drawing on the radical tradition of their mentors among political economists, consciously or unconsciously, members of the pro-peasant school also seem to have based their plans on the experience of Britain, whereby increased production supposedly resulted from extensions of cultivation and market-orientation, mainly on the part of landlords and large tenants who employed labour.¹⁸ Perhaps they supposed that even-

¹⁸ In a second volume it will be shown that the nineteenth-century practice of state intervention fitted well with this model, being largely restricted to the provision of law, better communications and freer trade, but so too did the

tually their policies might produce something like this in India; but they would have done so only had there been fewer problems of scale, less-entrenched interests, less inattention and a greater bureaucratic success at making policies work on the ground.

The official prospectus, whether or not it had merit in regard to Britain, and whatever its endorsement in the classics of political economy, does not after all constitute a universal nostrum. Very early, social as well as physical scientists regarded India as special case. It remains one which mounts a rather wide challenge to some modernist assumptions of development. Yet, while recognising this peculiarity, even depending upon it to justify their actions, the colonial officials proposed strategies which made sense only in universalist terms. The state's law and administration were trusted, in concert with inevitable economic instincts, to promote the desired revolution in production. Even in prevailing circumstances, such measures might have had a beneficial effect on output (if not necessarily general well-being) where a significant proportion of larger holdings could be created—for example in new canal-colonies or by schemes of consolidation and redistribution. They were much less appropriate to crowded regions densely layered by conflicting rights—in short, to Bihar. Arguably the varied fate of parts of India under colonial rule related in some measure to the differing degrees of compatibility between local institutions and policy initiatives.

In nineteenth-century India, the insistence upon property, in tenancy law and agricultural improvement, obscured the need to attend to actual units of production, and worries about fragmentation of holdings took a higher profile than attempts to improve the independence of farming households. Determined efforts were made to protect recognised tenants from unlimited demands and from insecurity of occupancy (the 1885 Tenancy Act and its clones), just as the Punjab Alienation of Land Act later tried to restrict landholdings to 'agricultural' castes. Much less concern was expressed about the known multiplicity, complexity and dependency of most actual land-holdings, or about providing the means of achieving viable cultivating holdings and conditions for producers. On the contrary, British law and administration (in some contradiction of the tendency of developmental thinking) tended to generalise and then protect a confusion of local rights. In such conditions British efforts would constitute a pressure towards social and economic differentiation without offering the prospect of

attempts to define and spread the best agricultural methods and to introduce better machinery; even agricultural education had the farm- if not the estate-manager in mind rather than the smallholder.

overall growth. In a similar fashion, the importance accorded to capital investments which would replace labour, defied the realities of agricultural employment—and credit—and hence the priorities of agrarian society in many parts of India. Parallel neglect of yet further elements may also have distorted or prevented change. No serious interest was shown in the wide transmission of information (for example through education) or the improvement of internal demand through the fairer distribution of wealth. There was limited understanding of rural social and land structures, just as of agricultural decision-making and the relations of production, in particular with regard to the intermediate levels.

V

It has been explained that the subject of this book is an evolution in the state in relation to an agrarian economy. A premise is that study of the state may cast light on to social change and economic development. The immediate concern will be with land tenures. But it has also been suggested that we may see the state's involvement as a significant part of a far wider project, the creation of modern forms of national identity. In many recent studies this has been related to the establishment of boundaries, to representations and symbols, and to institutions.¹⁹ The first draws attention not only to mapping, frontiers and territory but also to legal sovereignty, language, ethnicity and other standardised categories. Significant representations are found in histories, museums, ideologies, architecture, rituals and stereotypes, the symbols drawn from religion, myths, maps and metaphors (many complex and mutually reinforcing, in the way that the land as 'Mother' or 'Father' combines its nurture with its people's fictive sibling relationships). The institutions are of course those of the state, political parties, media, professional organisations, law and education, constructing a public space. These and other instruments of identity work by providing the sense of collective interests (in economics, international relations, and so on) and of common experience (language, education, propaganda, representative democracy, warfare, industrialisation, urbanisation). Less commonly noted is that these imply norms—that is, propriety in behaviour and in gender, family, social and economic roles, which in recent times have defined a broad

¹⁹ See particularly Benedict Anderson, *Imagined Communities: Reflections on the Rise and Spread of Nationalism* (2nd ed., London 1991), and Partha Chatterjee, *The Nation and its Fragments. Colonial and Postcolonial Histories* (Delhi 1993).

collective identity notionally comprised of individuals rather than social groups. Contestations about the many changes in such relations—social, religious and political reforms—contributed to nationalism in India.

The process had many aspects, but changes in property law, agrarian relations and state interference also played their part. It was not entirely accidental that Indian political organisation and aspirations—as in the first meeting of the Indian National Congress—coincided in 1885 with the culmination of the great tenancy debate. For similar reasons, the familiar story of what was happening to the state, the people and the country in general offers a kind of metaphor for the evolution of agrarian policies and the agrarian system. Though this parallel has not hitherto been explicitly drawn, it exists—and particularly at the level of categorisations. The state was defining its subjects; it was also defining agriculturists. The state was exploring and changing roles; it was also interfering more in rural society.

To consider such developments at a general level is to attempt an overview of the contribution of British rule to the nature of the Indian state. Though much has been written about colonial government, this overview has yet to be provided—²⁰ and there has been surprisingly little attention to such questions in more general literature on the impact of imperialism. The recent synthesis by Cain and Hopkins provides some background, for example in its discussion of ‘public virtues’ emerging in place of ‘private interests’, and of the ‘military fiscal state’, the development of ‘national interest’ in economic policy, the extension of the ‘gentlemanly order’ to India, and the survival there of ‘gentlemanly norms’ after the first world war. But this work (of

²⁰ Among existing works, and in addition to more specific studies, and to very numerous, more or less contemporary accounts by former officials, one should note Michael H. Fisher, *Indirect Rule in India. Residents and the Residency System 1764-1857* (Delhi 1991), Stokes, *Utilitarians*, Peter Penner, *The Patronage Bureaucracy in North India. The Robert M. Bird and James Thomason School 1820-1870* (Delhi 1986), B.B. Misra, *The Administrative History of India 1834-1947. General Administration* (Bombay 1970), Francis G. Hutchins, *The Illusion of Permanence. British Imperialism in India* (Princeton 1967), Bradford Spangenberg, *British Bureaucracy in India. Status, Policy and the ICS in the late 19th Century* (New Delhi 1984), D.A. Washbrook, *The Emergence of Provincial Politics. The Madras Presidency 1870-1920* (Cambridge 1976), ch.2, Dewey, *Anglo-Indian Attitudes*, R. Hunt and J. Harrison, eds. *The District Officer in India, 1930-1947* (London 1980), and David C. Potter, *India's Political Administrators 1919-1983* (Oxford 1986). There is also relevant material in many volumes of the *New Cambridge History of India*, especially those by Peter Marshall and C.A. Bayly.

economic history) says relatively little about the role in British imperialism of modes of government: indeed, because it stresses the importance of a ‘particular kind of economic development, centred upon finance and commercial services’, and denies, on that ground, the policy and cultural separation some have seen between business and government (such as Robinson and Gallagher’s ‘official mind’), it seems bound to play down the development of the state as an independent actor.²¹ In this regard it is typical of recent studies of imperialism, as of works from a non-metropolitan perspective.

What will be offered here is little more than a prospectus for further study, since only one aspect will receive full attention. But let us start from the obvious proposition that, as the East India Company’s revenue policies confirm, there was a revolution in government in India in the nineteenth and twentieth centuries—not absolute change in all aspects, but major qualitative change in many.²² C.A. Bayly uses the expression ‘imperial revolution in government?’, with reference to the late eighteenth century; he refers to the expansion and centralisation of British taxation under Shelburne and Pitt, coupled with necessary reforms in office procedure and personnel, but finds the active role of the state much more in evidence in other parts of the British empire, including India (especially the salaried, professional, accountable executive officers, with their language of ‘civic virtue’, introduced by Cornwallis). Bayly introduces the ‘imperial’ aspect briefly, in the need in Ireland for the British state to take a more direct role for reasons of political exigency.²³ Government developed because it began to do different things. Three elements characterised the revolution: a new

²¹ See P.J. Cain and A.G. Hopkins, *British Imperialism: [vol.1] Innovation and Expansion, 1688-1914*, p.12 and chs.2, 4 and 10, and [vol.2] *Crisis and Deconstruction, 1914-1990* (London 1993), p.300 and ch.8.

²² Parts of this chapter were originally prepared for a seminar in Osaka City University, during a visit to Osaka and the University of Tokyo in October 1993. I am grateful for comments and questions from those present on that occasion. In referring to a ‘revolution’, I adopt the usual terminology, to suggest something of the magnitude of the change rather than a sudden, complete or violent upheaval; the crucial aspects are administrative reform and broader socio-economic goals. See Oliver MacDonagh, ‘The nineteenth-century revolution in government: a reappraisal’, *Historical Journal* 1 (1958) and *Early Victorian Government, 1830-1870* (London 1977); though Benthamite and reforming influences were important, MacDonagh stresses the practical rather than ideological impulses for administrative change. See also, agreeing with this, Hew Strachan, ‘The early Victorian army and the nineteenth-century revolution in government’, *English Historical Review* xcv, 377 (1980).

²³ See the sub-heading in C.A. Bayly, *Imperial Meridian. The British Empire and the World 1780-1830* (London 1989), p.116.

concept of territorial sovereignty, new bases for authority, and a new range of state responsibilities. Implied were the establishment of borders around and within the state, enlarged purposes and tax-base of government, and new machinery of administration, especially bureaucracy in local government.

In these respects, the Indian experience partook of an international one. By the nineteenth century many European nation-states were already defined through internal coercion (surveillance, policing, regulation), by ceremony, language, literature, and commerce (representing an internal consensus or coalescence), and by external rivalry—strategic, economic or military. Specific ideological features had developed. There was established a model of a state with histories and institutions expressive of borders, undivided authority, and national goals. The legitimacy of rule depended on actions and consent as well as myths, on the temporal more than the divine. The model had been exported. In India it was apparent even in the eighteenth century that English conquerors thought that everything must have place and boundaries, and that a single fount of authority, or sovereignty, was desirable or the norm. By the same token knowledge was assumed to be perfectible, and society capable of management and improvement. The past was seen as a continuum, producing the present, and thus the future could be changed through intervention. A similar binary and hermeneutic idea was applied to the state, which was distinguished not only from its subjects but from its personnel and institutions as individuals, just as the subjects, though collectively defined by the state, were also separated one from another in discrete groups. Specifically this evolving nation state depended on the labelling, the counting, the settled location and character, of national peoples. Parts of the process have been interestingly defined as narrative and enumeration.²⁴

In producing such categorisation, under colonial rule, opinionated judgments and partisan calculations played their part; both propriety and property were considerations. The rulers thought it their task to decide and dispose; these duties belonged to the state. They expressed a British sense of *possession* within Indian borders. Its vehemence is perhaps surprising, and difficult to reconcile with some of the stereotypes of colonial rule.²⁵ From the first the British distinguished between ‘their’ territory and people and those of others. At the turn of

²⁴ Sudipta Kaviraj, ‘The imaginary institution of India’, in P. Chatterjee and G. Pandey, eds., *Subaltern Studies* VII (Delhi 1993).

²⁵ The alternative is of detached officials engaged together in a process of exploitation; compare Spangenberg, *Bureaucracy*, for example on the rapid turn-over of appointments.

the nineteenth century when terminology was still fluid, Europeans born in India could be called 'natives', so strong already was the sense of belonging to a locality.²⁶

In large part, the idea of possession was obviously intended to promote control. This was reflected in the choice of allies and agents, and in attempts to break through intermediary power-structures and areas of ignorance so as to establish complete sovereignty or knowledge. In terms of indirect rule, the 1885 Act related land and classes in one of the swings of the pendulum, characteristic of agrarian policy in India, between favouring those assumed to be receivers or intermediaries and those regarded as producers. But because land revenue played such a large part in the income of states in India before the present century, there had been a long series of efforts by rulers—towards the end of which stood the 1885 Act—not only to co-opt local chiefs but to reach past them to the cultivators themselves. The Mughals and their successors, including the East India Company, attempted to create an agrarian system based upon key local managers, appointed, placated or incorporated at different levels. The system was monitored by a parallel apparatus of state officials, penetrating to greater or lesser levels of the society; the localities did contain generalised norms and some universal features. But in most political and fiscal spheres local autonomies vitiated the centralising efforts of the state, either to know or to manage their local affairs. The resistance is often seen as representing the force of community, but can also plausibly be regarded as focused by local controllers, whether hereditary or appointed. From at least the eighteenth century such managers had been increasingly locally-rooted, because appointees became hereditary and immoveable, or because old and emergent petty chieftains gained in relative strength and wealth, or because revenue-collecting rights were alienated to commercial men to whom higher levels of the state were in hock, or because newcomers, usually themselves locally strong, were invited to bid for revenue posts (for example, as *ijaradars*, or revenue farmers) in order to bring in higher and higher quotas. These developments were replicated at different levels of society.²⁷

²⁶ Thus Colin Mackenzie (in his letter books of the Mysore survey, 1799-1810, in the Survey of India memoirs, NAI) would refer to his young sub-assistant surveyors as 'Native' or 'Native European', even though he also almost invariably used 'Native' to mean Indian, and though he knew the crucial importance of unquestioned European parentage, for example for military cadetships.

²⁷ This subject might be pursued in, for example, Andre Wink, *Land and Sovereignty in India. Agrarian Society and Politics under the Eighteenth-Century Maratha Svarajya* (Cambridge 1986), esp. pp.67-85, J.R. McLane, *Land*

In the late eighteenth century the East India Company had the same problems of distrusting its servants and lacking the means or the information to penetrate through all the layers of the society. It decided to make a virtue of the localisation of power, but also to codify and fix it by conferring distinct, permanent but alienable rights on identified persons. The Company tried to get back to the supposedly legitimate local controllers (where they did not constitute a military danger), as a reaction against the fluidity introduced by increasing localism, whether by newly detached state officers or by newcomers. But pragmatism, as ever, qualified this early introduction of theory and historical legitimacy into Indian policy. In the end the Company was content to settle with the best allies it could find. In Bengal it chose zamindars. Thinking that it was thus endorsing or creating a chain of being, a constitution of checks and balances, and a concert of interests, it began to dismantle the old dual systems of local management, most notably the state's village accountants who by this time (and perhaps always) were able to evade effective control. The new system had a twin advantage. It reduced the opportunities for obstructive Indian officials, whose knowledge was at once envied and mistrusted, and it reduced the temptations for Company men, merchant-adventurers whose self-interest was being newly defined as corruption in order to turn them into public servants. The Company's immediate goals were anyway limited at this stage to the maintenance of order and the protection of its trading monopolies, though already it professed long-term ambitions for the expansion of trade (mutually beneficial of course, according to theory) by means of the security of property and profit in the hands of individuals.

The Company claimed legitimacy through continuity or conquest, but it never fully commanded the old channels of communication or of loyalty. To enforce its will, it relied at first and ultimately on armed force. And it did not question its own concepts of sovereignty, of social and territorial integrity, of the state's monopoly of force and law. Hence, almost at once, from the 1770s, it began to construct a new law and a bureaucracy to supplement the social intermediaries, just as in (if not in advance of) the parallel developments in England. This machinery, being impersonal and based on records and rules, was to prove more effective than any previous institutions at extracting fixed revenues and at standardising legal, economic and political structures throughout the Company's dominions. The process continued during

and Local Kingship in Eighteenth-century Bengal (Cambridge 1993), esp. pp.3-24, and Bayly, *Imperial Meridian*.

the remainder of Company rule, assisted by the rapid and fairly comprehensive rejection of its initial counterpart, minimalist government and an aristocratic model of society and development for India.

We have already noted that state intervention was encouraged because India provided a challenge and an opportunity. The usual assumption, in the Indian case generally, is that changes were imposed from outside, by British rule; but there was a sense in which India and the conditions of colonialism also made demands upon the state. Colonial rule was imposed in the midst of incompatibilities and misunderstandings. The rulers had to invent when they could not adopt, or could not accept, what already existed, and often invented even when they thought they were conforming. They had to re-think. Thus the administrative reforms of, say, Pitt may be situated in a gradual acceptance of needs and the evolution of Britain; those of Warren Hastings or Cornwallis resulted from necessary improvisations as a new administration tried to gather in the reins of government. The result was always an amalgam of British pre-judgments with perceptions of Indian possibilities. One sees this again in the government's complicated search for allies and agents of economic progress in the later decades of the nineteenth century. In the end it seemed inevitable that the state's writ should extend below the initially-chosen collaborators, to seek the support and to promote the well-being of lower sections of the society.

As a result, however much officials identified with places in order to control them, they were bound also to personify places in terms of interests. A much later but typical example shows how officials were imbued with the idea of *rights* deriving from *ownership*. H. Edward, the District Engineer of Shahabad in Bihar, was writing to the local Commissioner in 1896, having heard that the Maharaja of Benares proposed to build a masonry dam across the river Karmanasa (the boundary between two districts and provinces). Edward thought the scheme laudable and useful, but remarked that the Karmanasa rose in Shahabad, and that Shahabad had 'rights in the river which ought not be to be appropriated by others without protest'. The officiating Commissioner of Patna (J.A. Bourdillon) was if anything even more proprietorial, and pointed out to the Lieutenant-Governor of the North-Western Provinces that 'the people of its [the Karmanasa's] right bank have claims not less than those possessed by those who reside on its left bank'. These rights were respected: the NWP government

promised that nothing would be decided without consulting Bengal.²⁸

Such attitudes and responses attest a perhaps unexpected colonial aspiration for pursuing an active socio-economic agenda. As advanced by the Tenancy Act and other agrarian investigations and reforms, this represented a late stage in the expansion of the state. Modern government had begun with an elite's concern for the external defence of a realm. It grew with the development of a public interest in internal order and protection. But it gained yet more functions when it devised a national interest in trade, beyond the rulers' own need for a surplus to tax, and thus in a national economy (itself an ideological construct). Then it assumed the task of knowing and mediating between all its subjects, embellishing social and political norms. Finally it assumed a responsibility for the welfare of its citizens both individually and collectively. Thus arose the claim of the nation to encompass and serve all its people.

In this sense there was no hiatus, in terms of public concern for national welfare, as opposed to methods and theories, when policies of administrative and legal standardisation and economic *laissez faire* intervened between the early establishment of East India Company rule and the interference and social engineering of the late nineteenth- and twentieth-century British raj. Though the officials of the time wished to restrict the growth of the state, and to free up trade and individual enterprise, yet they also endorsed the state's role as protector of the weak, as regulator of the powerful, and, if necessary, as mobiliser of social and economic improvement. Bentham wanted clarity and certainty in law. The reason was so that it could be understood by and accessible to *all*. James Mill despised India's past partly because he held it to be a tyranny of inherited and unchanging status.²⁹ Thus it was that respect for 'liberty' and 'individualism' paradoxically celebrated the broadening and standardising of the nation—as John Stuart Mill observed in his essay 'On Liberty' (1859)—and hence extended the tasks for the state. Thus it was too, and as part of the constitution of subjects as individuals existing in classes, that the supreme importance of a contract supported by law came to be regarded as a universal measure of the level of civilisation in preference to the sanctions of religion or custom, the view proposed by Henry Maine in his *Ancient*

²⁸ R&A Rev B 7-8 (January 1897). A theme of the subsequent volume will be the extent to which *departmental* bureaucracy and expertise, equally conceived in terms of possession, divided and even nullified this sense of general, regional responsibility.

²⁹ See Javed Majeed, *Ungoverned Imaginings. James Mill's The History of British India and Orientalism* (Oxford 1992).

Law or Village Communities of East and West. By the time late nineteenth-century officials were casting round for justifications to promote what they regarded as needful interventions for the public good, they had no shortage of authorities and European examples with which to combat the contrary reflexes of non-interference and laissez faire. The choice at one level was (as between Grandees and Levellers)³⁰ between the nation as oligarchy—this is unity by hegemony—and the nation as democracy, that is, unity by inclusion. It was no accident that the Utilitarians and radicals of the early to mid nineteenth century were opponents of oligarchy, and that they espoused the goal of the greatest benefit for the greatest number. Similarly some reactions against dislocations produced by industrialisation and urbanisation in Europe, or by law and commercialisation in India, gave rise to a new attachment to community, collective action, and a benevolent and protective state.

The administrative revolution was thus not only a question of improved methods. It was a matter of different goals: new methods were needed for a government required to take responsibility for the entire activities of its realm as part of a presumed (and eventually an electoral) compact with the people as a whole. On one hand were particular problems in India. On the other hand were ideas about the proper tasks of a 'modern' government, decided on a theoretical basis and in comparison with other countries. This was the context for the reassessments of agrarian policy in the last thirty years or so of the nineteenth century in India. Interference in agrarian relations was considered an acceptable and politically important function of the state (as in the Irish Land Acts). It required development of the administrative system.

VI

The regulation of tenancy during the nineteenth century was, then, an aspect of a wholesale definition of India, its classes and peoples. It was a movement, as will be shown, away from informality towards formality, and away from local towards external mediation. It should not be regarded as an isolated quirk of colonialism. It occurred, and was so important, because it was merely one step in a modern project of defining everything. It was informed, as national identities were, by what might be called statistical imperatives—the idea that whatever could be measured and numbered had distinct existence and legitimacy. It was expressed also in law and in records, and thus was closely

³⁰ See J.P. Kenyon, ed., *The Stuart Constitution 1603-1688. Documents and Commentary* (Cambridge 1966), pp.291-324, and especially the Putney debates of 1647.

related to the concept of a bounded state which was reinforced or even introduced in India under colonial rule. To explore this context is to establish a fuller understanding of the debates on tenancy and landed property.

Nineteenth-century writers and rulers were quite explicit about the frontier, a specific form of bounded category, and what they saw reflected in it of the different stages in the evolution of states. In the most primitive, there might be personal allegiances but there was no impersonal citizenship within a particular territory. More recently social scientists have made similar distinctions.³¹ The modern state, it was believed, has exact, known and permanent external borders, and within them there is an undivided sovereignty, and laws to which even the state itself is subject. (Here we come back again in effect to the notion that a nation embodies all the people—and thus to the *responsible* state.) In pre-modern states, by contrast, frontiers were zones of overlapping or intermixing sovereignty, and state jurisdiction was stronger at the centre, or in some matters, than on the periphery (geographically or in terms of function). There were fragmented states (in which jurisdiction and functions were divided, though often replicated in ever-smaller arenas); or military states dependent on booty and personal allegiance to a strong leader; or feudal states; and so on.

In just this way, Henry Maine saw the evolution of settled and ordered communities, 'held together by the land that they occupy' or which 'they till in common', as a kind of elaboration of single families,³² but also as an historical process determined by the genius of the 'Aryan' people. In Baden-Powell's variorum this became a full-blown race doctrine that traced different types of village community, and the mapping of areas without them, to the ancient spread of Aryan peoples across South Asia. In the south, for example, the change was, with conquest and caste, 'effected by the individual, but repeated and cumulative, efforts of the Brahmans'; in the north by the influence of the Aryan Rajputs. The relevant distinction about land was also made by J.B. Lyall, in one of the many ethno-historical speculations of the great nineteenth-century settlement reports. The key difference, he held, was between landholding 'in the shape of an ancestral or customary share of the fields around the hamlet', and landholding 'rather in the shape of an arbitrary allotment from the arable land of the whole country': thus

³¹ For example, Ainslie Embree wrote an influential article on India's transition; 'Frontiers into boundaries: from the traditional to the modern state' in R.G. Fox, ed., *Realm and Region in Traditional India* (Duke 1977).

³² See H.S. Maine, *The Early History of Institutions* (London 1876), pp.77-82.

it was that settled villages and estates were rational as well as fixed in place.³³

The British attempted to apply the 'modern' principles of boundaries to India. They investigated and surveyed endlessly. Above all they sought completeness, whereby there would be no gaps in the map, and certainty, so that each place was located according to standardised and objective measurements, and also in rank, time and culture. Then the British established laws and responsibilities which were universal within the realm as defined territorially. That is to say—just as in the nation-states of Western Europe in the nineteenth century, so in British India the boundaries were drawn precisely, both externally, mapping out the land, and internally, mapping categories, functions and rights. As a consequence, the British tried to insist upon settled populations (or at least regulated movements) within these limits, and on equally definite rights and responsibilities for all. These transformations went well beyond the comparable efforts of earlier states, and were turned into one of the major excuses for imperial expansion.

A telling instance is the way that, at the end of the eighteenth century, Mysore was known as Tipu's territory, or Hyderabad as the 'Nizam's Dominions', that is as a personal fief (in the fashion of the Belgian Congo later), rather than as an institutional state; the inhabitants too were usually the rulers' rather than the territory's people. Gradually, however, more impersonal nations and locational identities evolved. In the case of Mysore the emphasis changed quite suddenly at the partition of 1799.³⁴ The East India Company had its people, but in the sense of subjects, literally those subject to its law. Nothing in the British imagination equated this relationship with that which the kinsmen, followers, serfs and mercenaries were held to have to the Indian chiefs. This was surely so, unambiguously, not just from British constitutional ideas, but because the Company had begun its rule as a band of merchants and adventurers in an alien and largely unknown land. 'Tenant' and 'landlord' were descriptive and functional categories of this same kind—like citizens, subject to law, or in Hobbesian terms creatures of the sovereign's will. Commentators reminded their readers from time to time that the Arabic term *ra'iyat* meant, as Baden Powell put it, 'subject', 'protected', and 'hence any landholder subject to the Crown or a landlord'.³⁵

³³ Baden Powell, *Village Community*, chs.III and IV, and passim; Lyall's Kangra Settlement Report of 1874 is quoted on p.133.

³⁴ See, for example, Colin Mackenzie's reports; note 21 above.

³⁵ B.H. Baden Powell, *The Indian Village Community* (London 1896), p.6.

Of course earlier states had sought to regulate people, for example as they moved within their territory; but what in eighteenth-century India were called 'passports' or *dastaks* were really designed to secure security and assistance for the traveller from the host population and local officials, in conditions where there would otherwise have been few if any facilities available. In the late nineteenth century, by contrast, a passport made a statement about the holder's identity in an attempt to render his own state's protection extraterritorial.³⁶ The national subject was a necessary concomitant of the impulse to define tenants and other such narrower categories of people. The passport implied an intervention to delimit that identity in a manner parallel to the way a written record, lease or receipt established and fixed the incidents of landholding or tenancy.

In short, boundaries, like classes of people, were very serious matters for the colonial rulers. From the first, too, administrative doctrines were developed which dealt with the question of the state in terms of property and its disposal. The word 'public' is forever in the official minutes, not least in the eighteenth century, as a kind of disembodiment of the interests and rights of the state. The term puts the impersonal state, like the law, beyond time, away from individual caprice, and in a relationship of mutuality with its lands and inhabitants and their rights and interests. The impersonal definition in turn of the citizens (the distinction between the Nizam's *people* and the Company's *subjects*) was a necessary prerequisite for the admission of institutional state responsibilities towards all citizens, as distinct from the personal favour or even religiously sanctioned duties previously expressed towards those with whom a ruler had relationships of various kinds and degree. And thereafter, whenever adjustments had to be made, whether in legislation or in administrative procedures, a lan-

³⁶ See for example Benjamin Heyne, 'Cursory remarks on a tour to Hyderabad in 1878', Survey of India Memoirs, M160 (vol.3), NAI; on one occasion Heyne was not permitted to cross a river without his passport from the Nizam. Such a passport, whereby a ruler secured safety and support *from* his people for an official, merchant or traveller, was the mirror image of later passports whereby states sought to secure support *for* its people abroad. In 1881, marking this transition, when the issuance of passports to *hajj* pilgrims was being discussed in the Indian Foreign Department, it was assumed that passports marked extraterritorial state responsibility (for example, to repatriate indigent holders) and hence could not be issued to all; on the other hand, it was still asked if passports could be issued to non-British subjects, such as Afghans, embarking at Indian ports; C. Grant concluded that such informal passports would be meaningless; see keep-withs to Foreign Department Proceedings, 1881, in Add. Mss.43575.

guage of rights and ownership immediately forced itself into the pragmatic and political calculations. For example, once quasi-permanent financial settlements were introduced between the provincial and central governments (later reformulated in the unpopular Meston award of 1919), the local administrations, always aware of themselves as legal entities, immediately responded to the consequences and opportunities in terms of their role as holders of property.³⁷

In very many instances the officials appealed to concepts of value, expressed in legality, rationality and the public interest. As value is so often the stuff of debate, influencing outcomes, and thereby the nature of the regime, it is not enough to see it only as a convenient fiction covering economic or personal ambition.³⁸ The properties of the state (what characterised it) were expressed in its actions; it acted to protect, improve or augment its property (what it possessed). Thus, even in apparently trivial matters, a new state was being constructed in India. There was quite clearly a consensus on the separate responsibilities of the bounded state, and even an idea of state property being in trust for the people (or what the government construed to be their interests). The nationalist demand did not arise in isolation but in a context of thousands of unwitting concessions to its fundamental premises about the state. The same was true of the concept of tenants' rights. Like zamin-

³⁷ Financial administration was centralised in 1833, and devolved arrangements did not really begin until Sir Richard Temple's reforms in 1870. Quinquennial contracts began in 1882, under Sir Evelyn Baring, the terms revised in 1887, 1892 and 1897, mostly to improve the centre's position; in 1897 J.W. Westland thought the results bad and demoralising for the provinces, and proposed the quasi-permanent settlement (formalised in 1904); Meston's award was necessitated by the 1919 constitutional reforms. See Misra, *Administrative History*, pp.373-7.

³⁸ For example, in 1905, the Government of Bengal proposed to sell its old Board of Revenue building to the Government of India, and the Finance Department agreed terms. The Governor-General, Lord Curzon, intervened to dispute the local government's right to the building, which, he held, belonged in law to the Secretary of State, irrespective of any provincial settlement. Sir Andrew Fraser, the Lieutenant-Governor of Bengal, protested that Bengal should not be denied the value of the building, and Curzon agreed that the province might be compensated for the cost of putting its officers elsewhere. By 1907 it was agreed that, though technically ownership could not pass, it would be consistent with the principles of the quasi-permanent settlement for the Government of India to pay the full market price for the building, while calling it compensation. R&A Rev A 52 (June 1910); see notes by W.S. Meyer, 4 March, E.N. Baker, 4 March, D. Ibbetson, 8 March, Curzon, 22 March 1905, and E.D. Maclagan and G.F. Wilson, 23 May, and J.S. Meston, 28 December 1907, and various demi-official letters.

dari before it, tenancy became a bounded category, fiercely defended, and generative of common interests and institutions.

If we relate the concern for boundaries to the sense of state ownership and responsibility within territorial units, we see that there was an evolving process whereby public space was being defined and enlarged. In pre-colonial times the distinction between public and private can hardly be said to have existed. Where there were communal service arrangements, usually reflected in the possession of land, they extended naturally and indistinguishably to the performance of duties for and on behalf of the rulers. A headman and accountant would commonly have to see to the collection of revenue; local watchmen and others might be charged with providing for the provisioning of visiting emissaries of the *sirkar*. Moreover the linkages of society and government were expressed far more through regularities in the roles and relations of people than through territorial contiguities and exactitude, though these sometimes existed in theory. As a result everything seemed to be at once public and personal, not least matters of family and social practice.

But in the colonial period, for all the British efforts to conform with custom and not to disturb local arrangements, these interpersonal ties were increasingly substituted or supplemented by objective categories and borders of jurisdiction, and the effect was to begin to separate out different kinds of relationship, the 'public' from the 'private'. Production, commerce, ownership, religion, custom and so on began to be regarded as private matters, while law, government, macro-economics, professional standards, education, knowledge, even health, were public. The demarcation between the two spheres could be conceived differently, but the key fact was that they were distinct, and indeed antagonistic; alternatively the state's public responsibilities were considered to include the protection of private interests.³⁹ Partly because of that point of overlap, paradoxically the state took upon itself to define and regulate social categories more thoroughly and centrally than had been necessary within the public/private nexus of the past.

VII

What emerged was a different concept of rights. Its basis was a central

³⁹ New responsibilities and opportunities for the state provoked continual demarcation disputes. The introduction of the telephone for example caused the Indian Telegraph Department—guarding its fief and trying to optimise its productivity—to object to private lines; see the Council debate and Public Works Department memoranda, Add.Mss.43574, pp.531-5; and also note 22 above.

feature of rational categorisation: emphasis on the integrity of forms. Categorisation of the nation, for example, assumed a *whole* bounded unit of territory, with a *pure* language and *norms* of behaviour, for a *common* people and interest, expressed in a *single* history and set of customs and characteristics; and all of these together, by their mutual support, were reified as *one* identity or *race*. In recent centuries, for example, standardised languages (subsuming spoken dialects and other variants) have gained functions, particularly through printing, and helped identify places and people.⁴⁰ Connection with and support of such identities came to be necessary for 'modern'-ness and legitimacy. Each was formed aggressively or defensively, on terms promoted by rivalries of definition. Some of the identification was objective (resulting from broad forces of standardisation), and some subjective, depending on human agency through ideologies and organisation; both processes involved distinguishing and marginalising peripheral and heterogeneous elements. And because of these categories' unifying origins and goals, and their territorial base, it was inevitable that the growing state should have a key role in their support, an instrumentality alongside those of ideology, religion, warfare, print, travel, trade and so on.

'Landlord' and 'tenant' were categories of modern usage, because they were supposedly classes of men of known character, derived from a territorial right of a single type and origin, over a definite land-unit. In nineteenth-century Bengal there were nationalist myths related to the nurturing Mother of the land, and also to heroic Rajput legends (struggles for land) which were popular because they allowed the 'marginal' Bengali Hindus to partake of a shared Indo-Aryan heritage.⁴¹ Similarly, in myths of tenancy and landholding, as already mentioned, settled agriculture was regarded as the fount of civilisation, and as derived from an Aryan past and peoples (despite their once pastoral and nomadic character) and from the order which they had supposedly imposed on the untamed land and on non-Aryan tribes.

These colonial categorisations were instances of foreign imposition, but not that alone. They also often developed or gave new roles and definitions to existing institutions. We need to consider, therefore,

⁴⁰ See Jürgen Habermas, *The Structural Transformation of the Public Sphere* (1962; tr. Thomas Burger; Cambridge 1992), e.g. pp.159-75, on the role of literary culture in the extension of the public sphere.

⁴¹ Since this was written I have seen Norbert Peabody, 'Tod's *Rajast'han* and the boundaries of imperial rule in nineteenth-century India', *Modern Asian Studies* 30, 1 (1996); while referring only briefly to Tod's nationalist legacy, this casts valuable light on it by locating and analysing his categorisations.

whether the alien ‘tenancy’ was like the English language, imposed and shallow in impact, leaving existing evolution and structures relatively little changed, or whether it was more like a re-invented Hindi written in Nagri script—an indigenous form that was changed in character and function, standardised and differently distinguished from comparable forms, and supported by the British to the extent of seeing off many of its rivals. We cannot answer that question yet. In preparation, however, these discursions upon category have been intended to show that there was a common process involved in the deployment of theory, power, legislation and state interference in nineteenth-century India. A border was fixed, a binary type defined, a public sphere created, and a state responsibility admitted. That process explains the evolution of the tenancy law of Bengal, and without it the evolution would make little sense.

The admission of the state’s socio-economic responsibility, and the terms on which it was applied, depended upon the establishment of borders. As the state grew it was bound to enunciate general laws and duties, and to draw on constituencies that would do the work it deemed important. Key ‘interests’ were identified—in India, the prince, the soldier and the cultivator would be reconstituted as ‘subjects’. The result was a dialogue between two different views of social category, between past rights and future hopes, and between Brahmanical, Indo-Mughal and Anglo-Indian institutions. The great Bengal tenancy debate of the 1870s and 1880s established the alleged historic legitimacy of agrarian class, as a principle, potentially for all levels of society and production. Hitherto it had been applied on and off to the landlords, but had been effectively denied in the theory (though not the practice) of the alternative administrative and revenue systems based on all cultivators without distinction (raiyyatwari) or on village units (mahalwari). Both of these eventually encouraged individual property, but neither of them sought to concentrate it in a particular class.

The first instalment of the new dispensation concentrated on a supposedly or would-be proprietary peasantry. As with the landlords in the past, this was a class, defined by law, and designed in hope of its economic dynamism. For some officials, landowning and religious or social status were twin components of success in a condition of equilibrium; but, as said, others argued that progress was needed and property had to be used for cash-cropping and market relations to produce useful citizens and hence civilisation. By the 1870s, the proprietary peasantry was the chosen vehicle of this dynamism, for one school of thought, in preference to an hereditary aristocracy (which also had its keen advocates). The stage was set for a major change not just in the

object of colonial attention, but in the purpose of state policy.

The outcome, in the Bengal Tenancy Act of 1885, thus represented a shift from the protection of 'ancient rights' (which is what it pretended to be) in favour of the prosecution of 'future comfort'—that is, of economic and social development by social improvement, an attempt to succour what was thought to be the strategic level of an enterprising society, the upper peasantry. History provided a skin which covered the substance of reform. The surreptitious shift from an endorsement of existing interests towards the furtherance of supposed needs did not represent a new ambition; but it was one newly applied and extended. Also in the 1880s, there had been the so-called Ilbert Bill, proposing an extension in the powers of Indian magistrates, potentially over Europeans. It stood in the long tradition of legislation in India that was avowedly universal in application and principle. But it was extravagantly debated (mainly outside government) on the basis of the antagonistic interests of nationalities or races. A similar distinction had been made in the Vernacular Press and the Arms Acts, though, as in other measures, it had remained concealed there under a fiction of inclusivity. The Bengal Tenancy Act, sometimes called the second Ilbert Bill because of the violence of the feelings it aroused, also depended upon a division of the whole of the rural population into distinct classes and irreconcilable interests, which it was the law's job to regulate.

The Act was thus explained by three related elements: the definition of categories, the idea of public responsibility, and the growth of the state. These were to some degree substitutes for investigation or understanding of Indian conditions. Thus we will find, in the later chapters of this book, that the Act was based on false categorisation, particularly of landlords and tenants, zamindars and raiyats. It was applied to a society in which both were various and differentiated. The distorted standardisation was deliberate, because of the emphasis on property (hence on the transferability of land, the control of rents, and so on) and on capitalist farmers rather than cultivators, on the supposed controllers of production. On the other hand, the new law was made effective by courts, settlements and records, which, though faulty and partial, defined rights more directly, communicated concepts to the countryside, and helped frame and substantiate future claims. The changes benefited those able to secure regulated conditions on the land; that is, they did not benefit most dependant smallholders, sub-tenants, share-croppers or landless labourers. In addition, the policies, already political in their administrative and theoretical implications, further politicised land questions and thus helped perpetuate the privileges

which the law had endorsed. The questions henceforth would not cease to be political, and thus the tenancy debates of the 1870s and 1880s marked one of the starting-points in India for class and even national demands—of, within, and against the state.

In Europe, according to Habermas:

Property rights became restricted not only by...interventionist economic policy but also by legal guarantees intended to restore materially the formal equality of the partners contracting.... Protective clauses in the interest of the tenant turned the lease into a relationship restricting the landlord almost as if it involved the use of public sphere.⁴²

In India this same infraction of private law, this infiltration of private property by the state, also took place, under the pretence of preserving and protecting an ancient property in the tenancy. But it did so by external imposition and not out of an indigenous social and economic transformation; it did so where neither private property on the Western model nor bourgeois law already prevailed, in the sense that they were not yet fully internalised as Indian ideas in Indian culture. Habermas claims:

The concentration of power in the private sphere of commodity exchange on the one hand, and in the public sphere...on the other, strengthened the propensity of the economically weaker parties to use political means against those who were stronger by reason of their position in the market.⁴³

In India such changes *did* encourage the use of political (and judicial) means of redress, in the longer term even by the socially and economically weak; but it did so slowly and imperfectly, for want of means and ideologies of cohesion among the weak, and because the intervention of the state disproportionately benefited the strong and the aware, the possessors of information. Politico-legal weapons were also readily adopted by the strong as another means of coercing the weak, and by the relatively strong to challenge those who were stronger still. This was surely the case in Europe too, but for a different reason—there the revolution was bourgeois in origin; in India it was colonial.

⁴² Habermas, *Public Sphere*, p.149.

⁴³ *Ibid.* p. 145.

Chapter Two

Official will and administrative capacity

If the colonial state was gradually becoming a kind of pervasive, impersonal, sovereign, territorial state—developing in short into a new kind of state, defined by its borders and its self-knowledge of categories and classes—then, meanwhile, of course, the system of administration also was undoubtedly being transformed. This too is important to an understanding of the question of agrarian policy, because it has never been enough merely to make policy and to legislate. If there were real as opposed to rhetorical interventions in the Indian countryside, there must have been an administrative as well as a legal revolution. A later part of our consideration of the Bengal Tenancy Act will concern this question of the means of intervention, the changing capacity as well as ambitions of the state.

The issue is relevant because of the long-lived argument that the permanent settlement of the land revenues in 1793 transformed the agrarian structure of Bengal, whereby the zamindars gained an exclusive legal right of property as landlords, and the settled or *khudkashta* raiyats lost their privilege of occupancy and became tenants-at-will. In the celebrated words of the Fifth Report on the East India Company in 1812, the permanent settlement had effected a ‘great transfer of landed property, by public sale and...dispossession’, and also had denied rights of property of other kinds and sectors. The report claimed that ‘much uncertainty still remained, in regard to the rights and usages of the different orders of people connected with the revenues’, and yet that the government of Shore and Cornwallis had ignored this complexity and been, instead, wrongly ‘impressed with a strong persuasion of the proprietary right in the soil possessed by the zemindars’.¹ We will be considering this question at length, because it is the core of the great nineteenth-century tenancy debate in India, and of the assessment of the impact of the Tenancy Act of 1885. Here we should merely note that it implies a capacity to effect fundamental change on the part of the East India Company and its laws. In the same way, any assessment of changes in agrarian structure brought about by the 1885 Act must depend on a measurement of the state’s capacity and

¹ Fifth Report from the Select Committee on the Affairs of the East India Company, 28 July 1812, I, pp.16-21 and 54-62.

impact.

The usual view is still that the permanent settlement was detrimental to the condition as well as the rights of the cultivators. Yet Eric Stokes reminded us, in a slightly different context, that ‘undue attention to formal statements of policy aims...has grossly misled historians.... For all the paper planning at head-quarters...the British...had neither the financial means nor the technical instruments’ to effect real change, in this case through a ‘development programme’. There was no ‘effective action’ until the 1860s.² Stokes did not dwell on the point—his main interests lay elsewhere—but it seems worthwhile not to be satisfied with the simple negative but to explore it further. What would have been the available institutions and instruments? Were they capable of executing colonial policy? This issue of administrative capacity is the subject of this chapter. It asks what were the nature and results of this paucity of ‘means’ and ‘instruments’, in the case of Bihar after the permanent settlement. The answers lie in the circumstances of India and its government. We will then consider evidence that this capacity may have changed by the late nineteenth century, in line with the new concepts of the state just outlined. Without this discussion, we would be taking for granted the impact upon the peasantry of the Company’s supposed neglect, and failing to establish the means whereby the 1885 Act could have had influence.

The question of will—priorities, and imported ideas—was undoubtedly important in assessing the impact of policy, but it was not a sufficient explanation. True, the East India Company understood its function to be (at least before 1790) to engage in commerce and collect revenue in order to ‘yield a fund with which to trade’.³ Later, it was greatly influenced by a need to raise money in support of the army, and thereby for the perpetuation of its rule.⁴ Later still, its first priority, the prompt collection of revenue, was laid down in circular orders with brutal frankness: unlike in statements intended for higher authorities, and in the optimistic enthusiasms of individual officials, the orders did not bother with any secondary objectives such as justice and public welfare.⁵ The contrast with the later protestations of goals of ‘improve-

² E. T. Stokes, *The Peasant and the Raj* (Cambridge 1978), p.30.

³ W.W. Hunter, *The Annals of Rural Bengal* (London 1897; 7th ed.), p.368.

⁴ Alamgir Muhammad Serajuddin, *The Revenue Administration of the East India Company in Chittagong, 1761-1785* (Chittagong 1971), p.212.

⁵ CO, 7 September 1835. The revenue system was set out in about ten major regulations in 1793. Tenant rights were avowedly protected by sections 7 and 8 of Regulation I, by the rent provisions of Regulation VII, and by restrictions in

ment' seems rather stark, but perhaps it was exaggerated by the imperatives of the budget. More important may have been the fact that the position, character and number of British administrators in India restricted what could be done, and that even less was expected of Bengal officials than of those of other areas. For example, the establishments provided for Commissioners of Revenue, when they were appointed in 1828, were significantly smaller in Bengal than in the Western Provinces.⁶ Collectorates in Bihar too were understaffed, and repeatedly in the 1830s and 1840s had to be provided with special help, even for the ordinary preparation of accounts.⁷ Of course that very disparity between these and other parts of British territory shows that, at one level, the problem *was* one of will rather than opportunity; but opportunity was also then curtailed. The level of staff and resources was decided by financial shortages, by fears that sudden movements by the state would disturb the populace, and by theories of minimal government. Indeed, it is in this area of theory that the decisions of the 1790s were subsequently pilloried. The *zamindar* was supposed to have taken on the roles of care and improvement, as the price for his privileges. By that contract, the Bengal official remained primarily a rent-receiver, isolated behind his permanent guard of soldiers, forbidden to lower his dignity (for example by wearing native dress), forbidden to act without sanction, forbidden to employ the police for revenue purposes. He was responsible directly even for minute concerns in his office (such as public works expenditure over Rs.500), yet he was incapable in practice of coping with anything other than routine. A more unlikely engine of change can hardly be imagined.⁸

Regulation XVII (distrain powers). Rights in respect of rents were modified by Regulations IV of 1794 and V of 1812, of distrain by Regulation VII of 1794, and by transfers of Regulation VIII of 1819. See below, chapter three, and G.H. Huttman, *An Abstract of the Regulations enacted for the Assessment and Realization of the Land Revenues in Bengal, Bihar and Orissa from the year 1793 to 1824 inclusive* (Calcutta 1826).

⁶ CO, 30 December 1828 and 17 February 1829. Here, and frequently in this book, Bengal is used to mean the Presidency of Fort William—that is, including Bihar.

⁷ Bengal Revenue Letter, 12 September 1838, L/E/3/42, IOL. Except in quotations, in this book the term 'Bihar' refers to the modern region; the old spelling 'Behar' is reserved for the district of that name, most of which later became Gaya.

⁸ CO, 7 February 1826, 20 November 1829, 21 September 1830 and 29 February 1832. The functions of Magistrate and Collector, separated in 1793, could be held by one man after Regulation IV of 1821, and were formally united in 1831.

Yet, as argued in chapter one, even without the influence of Utilitarian ideas the administration was bound to become enmeshed in India—far more deeply than was proposed in Cornwallis’s ideal of a distant, limited revenue-collecting government. Administration took officials (not necessarily Englishmen) into the heart of rural society. It did so directly in sales and in estate-management (the latter in *khas* or government-held property). It did so indirectly as arbiters in partition, resumption and settlement proceedings. Why then did the Company long remain so peripheral to the major problems and developments of that society? The main reason was that the great preoccupations of the first eighty or ninety years of British rule in Bengal were not with the improvement of India but with the perfection of the administrative system. This attention was born of necessity not choice.

The system rested, as is well-known, upon rules and as far as possible previous sanction. But for four or five decades after the permanent settlement, even the collection of revenue (*tauzi*) posed problems, and nowhere more than in Bihar. In the north with a tradition of lawlessness and a multitude of small zamindars, a few farmers had been made responsible for the collection of revenue. In the 1780s the Collectors of Saran and Tirhut opposed a settlement with the zamindars as unworkable. It is true that when the area was ordered to conform with the rest of Bengal, collections actually improved, chiefly it seems through the use of tahsildars (local revenue officers or intermediary rent-collectors). Francis Buchanan, writing in about 1810, also reported this system to be in use for subdivided estates in Shahabad. But at the same time, in 1811, six tahsildari offices in Tirhut were responsible for 1,263 landholders, 646 of them paying less than Rs.100.⁹ It goes too far, therefore, to say with W.W. Hunter that revenue collection, difficult in 1782 when the internal pacification of Bengal was incomplete, was a matter of routine by 1807.¹⁰ Tahsildars in Bihar were often thwarted by zamindars and patwaris, or were themselves corrupt. Large zamindars, from whom collections were made directly, often had to be threatened or coerced before they would pay in full.¹¹

In short, even though initially arrears were relatively low, the reve-

⁹ C.J. Stevenson-Moore, *Final Report on the Survey and Settlement Operations in the Muzaffarpur District 1892-1899* (Calcutta 1901), hereafter ‘Muzaffarpur SR’; Francis Buchanan (Hamilton), *An Account of the District of Shahabad in 1812-1813* (Patna 1934), p.348.

¹⁰ Sir William Wilson Hunter, *Bengal Ms. Records* (London 1894), vol.I.

¹¹ See, for example, on Hathwa raj, Anand Yang, *The Limited Raj. Agrarian Relations in Colonial India, Saran district, 1793-1920* (Berkeley 1989).

nue system remained unperfected long after the permanent settlement. First, much effort was spent on the development of the sale laws to replace the old system of imprisoning defaulters, and the more the administration relied on sales the less punctual was the payment of revenue. Regulation XI of 1822 clarified the law, but it was still administered leniently (regardless of Bihari conditions), because the Board of Revenue believed that the sale law had caused the breakup of some of the big zamindaris in Bengal. The Board's control was relaxed by Regulation VII of 1830; but not until the 1840s did the postponement of a sale come to be a matter of comment. Secondly, just as the sale law was being refined, the position of the revenue authorities in Bihar was worsening in comparison with that of most other areas of Bengal, because of the high incidence there of the other major preoccupations of the day—the partition of estates (*batwara*) between co-sharers, prevalent from about 1814, and the resumption of invalid revenue-free holdings, carried on between 1830 and 1850. The revenue roll increased enormously as a result, without a compensating increase in staff or efficiency. In Tirhut, for example, where there had been 1,351 estates in 1790, there were 3,018 in 1850. (There were to be 31,893 by 1895.)¹²

Not until the late 1830s is it possible to say with complete confidence that the revenue collection was a relatively stable and improving aspect of administration. It was helped in particular after 1839 by 'searching inquiries into every item of collection and balance' instituted through quarterly returns from Collectors to Commissioners. Even then it was not perfect, as occasional *tauzi* frauds and irregularities revealed. In 1838 the Board of Revenue asked for suggestions on how to check *tauzi* collections properly without placing a further crippling load on the Collectors; it had to urge rigorous and efficient realization of the revenue, reminding the Commissioners that they were responsible (promising support if subordinates were at fault); and to warn against consolidation of the various estates of one owner, and against omissions or removals of estates from the roll. In 1841 it still had to instruct Collectors not to transfer treasuries to the control of Deputy Collectors without sanction.¹³

One central problem which had had to be resolved was the problem of supervision. The picture, in this period, is of a government struggling against odds to establish a method of operation. The means

¹² Muzaffarpur SR; and see Huttman, *Abstract*.

¹³ CO, 9 January, 29 May, 7 and 21 August 1838, 25 February 1840 and 24 November 1841.

of control, which were being elaborated and refined between 1790 and the 1840s, comprised three major elements: the fixing of responsibility, the use of financial penalties, and the institution of regular checks. Various measures contributed to the first of these. After 1813, partly to prevent Collectors leaving too much to their subordinates, the office of *dewan* was abolished in the Collectorates, which were then divided into departments—treasury, *tauzi*, *sherista*, *abkari* and so on—each with a separate head. Collectors were required to supervise the whole. In 1833 the *sheristadar*'s general responsibilities (for example for authenticating documents and accounts) were also stressed. In 1836 it was pointed out that the *sheristadar*, in common with all officials, had a duty to report on malpractices—ignorance would be taken not as a defence but as proof of incompetence.¹⁴

Fixing responsibility was accompanied by attempts to mobilise self-interest. Later this took a positive form—in a short-lived scheme of six-monthly reports on covenanted officers (1834-6), and then by general exhortations and the extension of the principle of advancement by merit.¹⁵ But initially the main sanction lay in the fear of punishment rather than the hope of reward. From 1788 Collectors were liable to be fined for failure to submit *tauzi* accounts. Throughout the period outstanding balances of revenue could be (and were) deducted from Collectors' salaries, though in justice this was suitable only for genuine short-falls, to punish inefficiency or corruption. (By the late 1830s the establishment of regular scrutiny of accounts had greatly reduced the number and amounts of such balances.)¹⁶ Officials were required also to provide securities, either in cash or more usually in property, and in one of two forms—'malzaminee' (to cover the actual sums involved) or 'hazirnamee' (to ensure the official's appearance to answer a charge of embezzlement). A *batwara amin*, for example, was paid a percentage according to the revenue of the estate to be partitioned—one third in advance, one third during the work, and one third on completion. In 1819, having observed that *amins* often pocketed the first payment with no intention of undertaking the work, the Board of Revenue ordered that they should be required to furnish security to cover the first two instalments of their fee.¹⁷

But such a security, which really covered the risk, was a luxury

¹⁴ CO, 17 December 1813, 19 April 1833, 27 January and 24 March 1836.

¹⁵ See CO, 2 May 1834 (with Governor-General's minute, 15 January 1834) and 24 December 1836.

¹⁶ CO, 4 June 1788 and 9 January 1837.

¹⁷ CO, 16 April 1819.

dependant on the availability of an uncomplicated bond and the involvement of relatively small sums, conditions which could not be guaranteed in all spheres of government, more especially as its functions grew. By the 1830s, the system seems to have been under strain even in the technical aspects. In 1835 Collectors were warned not to accept as security property within the jurisdiction of the Supreme Court at Calcutta, and the next year they were exhorted to make sure that titles were properly investigated. In 1837 they were reminded of their personal responsibility to reimburse the government if there were any deficiencies when their subordinates' securities had to be realised—they and not the government would then have to sue the individuals concerned.¹⁸ The problem of covering the risk was more serious. In 1836, for example, treasurers were made subject to a scale of securities, starting at Rs.25,080 for collections of Rs.10,000, but ranging up to a maximum of only Rs.50,000 for collections of Rs.2,800,000 or more. In Wards estates, too, the sums involved were often well beyond the resources of any individual whom the government could afford to employ. Securities came to be 'bought and sold' so that officials who ostensibly provided them became in fact 'puppets in the hands of the wealthy individuals' who put up the bonds.¹⁹ In the early 1830s for example over an estate worth nearly Rs.4 lakhs per annum, there arose a controversy between the Board and the government—the former worrying about the impossibility of demanding 'malzaminee' in such cases, the latter content with 'hazirnaminee'. The controversy showed that the system was rapidly becoming out of date for regular administration, though still useful where tasks were farmed out to non-officials (as in the case of stamps and excise).

A better answer was administrative reform. Bengal had the example before it of the Western Board. In 1833, with its own arrangements in mind, that Board assumed that the Wards question was academic. It imagined that actual cash was in the hands of treasury tahsildars who remitted all but small amounts to the *sadr* (central) treasury, with the result that embezzlement was unheard of in well-managed districts. In Bengal there was no effective tahsildari system and embezzlement was relatively easy through collusion between the Collector's subordinates. But, if the solution was less straight-forward, it could still be essentially similar: proper settlements and properly maintained records

¹⁸ CO, 10 April 1835, 8 February 1836 and 6 February 1837.

¹⁹ CO, 1 April 1834.

would provide bureaucratic checks on the collections.²⁰ As time went on such checks became the most important of the government's three methods of control. Increasingly at the heart of the system were records and periodic returns. Sanction before the event was important, but subsequent checks were vital.

The 1830s thus saw a flurry of activity as a chain of reports became established as the major weapon for controlling subordinates. The records had been notoriously unreliable. Even the Board of Revenue, though admittedly after moving office, admitted to confusion and corruption due to its 'ill-contrived system of conducting details'. It introduced a new system of regular and punctual entry and checking.²¹ More particularly, the returns were thoroughly overhauled. There were a few additions—annual returns of resumed estates, monthly returns of unreported sales and so on—but most attention was paid to simplifying the process to make it more effective. As a result of a committee in 1836 (later made permanent), the channels of report were streamlined, uniformity of format was insisted upon, and the number of returns reduced. Thereafter most land revenue accounts went direct from Collectors to the Revenue Accountant. Lithographed forms were provided, with uniform dates according to the English calendar set out for each return. A total of 189 returns was reduced to 64.²² This marked an important stage in the development of regular administration. In common with many reforms it was far from being a final answer—less than two years later the Board warned against changes being made in the periodic returns without reference to the statements committee—but it was a start on the basis of which further revision could be undertaken. In 1842, for example, a second effort was made to reduce the bulk of the returns and the labour of producing them, to ensure that they were ready on time, and to standardise the principles on which local and central reports were based.²³

Various means were also suggested for simplifying accounts. In the

²⁰ Sudder Board to Bengal Government, 16 August 1833, and Western Board to Revenue Department, Government of India, 1 November 1833, CO, 1 April 1834.

²¹ Bengal Revenue Letter, 9 May 1837, L/E/3/39, IOL.

²² CO, 21 August 1832, 14 March, 27 July and 5 September 1836. With six returns omitted for deferred decision, totals retained (and dispensed with) were: from Collectors to Accountant 16 (19) and to Commissioners 21 (73), from Commissioners to Board 15 (19), and others 12 (15); or daily 1 (0), weekly 1 (2), monthly 11 (22), quarterly 8 (28), half-yearly 2 (24) and annual 41 (49).

²³ CO, 20 February 1838 and 11 May 1842.

cumbersome system before the late 1830s, perfectly regular but temporary or technically unsanctioned outgoings were included in the inefficient balances. They included advances in legal suits, the cost of food for imprisoned excise or revenue defaulters, *takkavi* loans, and various payments for salaries, contingencies, Wards establishments and settlement proceedings. In 1836 the Board spoke of the failure to achieve regular adjustment of such balances under their proper heads as a 'growing evil'. Thus the rigid interpretation was relaxed, and at the same time irrecoverable balances of more than ten years' standing were written off.²⁴

In the acute problem of control represented by corruption, direct sanctions similarly gave way to emphasis on administrative improvements. There were some new orders. Civil officers were forbidden to contract debts to zamindars (in 1827) and were required always to state that their nominees for appointments were not creditors (Regulation XXI of 1814 with a reminder in 1823). Remarkably late in the day, in 1833, it was provided that records should be kept of all amounts realised through fines, and of resumed and rent-free estates. (In the last case registers were to be kept under lock and key.) And in 1835, too, after embezzlement at Monghyr, treasurers were ordered to receive money only at the public office, and to employ certain stricter accounting methods.²⁵ The battle against corruption would never be won, but, having made substantial improvements in the higher (European) levels of the administration, the government now had the ability to minimise dishonesty among subordinate officials. In 1837 for example the Court of Directors questioned whether existing checks were sufficient, and argued that embezzlement had occurred partly for want of supervision by the Collectors. They had in mind a discovery in Murshidabad that there had been no receipts whatever by 1836 from an estate of 12,000 bighas declared liable for revenue in 1827, a fraud possible only by collusion among 'all the influential Omlah' and at best woeful ignorance on the part of the sheristadar. Further inquiry in the Collectorate revealed similar concealment of 56 *taidads* (registration documents) for lands over 100 bighas, totalling 17,478 bighas, as well as 1,649 *taidads* for smaller estates. In such cases record-keepers were prosecuted; but a greater likelihood of apprehension was the only real basis for improvement.²⁶ Again the 1830s saw attempts being made. For example in

²⁴ CO, 26 October 1836 and 9 January 1837.

²⁵ CO, 4 June 1822, 23 May 1823, 7 August 1832, 17 December 1833 and 20 February 1835.

²⁶ CO, 23 and 30 January 1837 (report by Murshidabad Collector).

1833 the Lower Provinces' Board simplified its settlement returns, avowedly to enable Collectors to check statements received from native subordinates, among other ways by comparing rent figures for neighbouring estates. It was borrowing the Western Board's system, and following a general reaction against over-complex surveys. The maxim even in an age of growing employment of Indians, was that 'nothing can possibly be gained, whilst much risk and certain expense will be incurred, by allowing the Ameens or Tuhseeldars to proceed otherwise than under a complete conviction that their European superior is following closely upon their tracks'.²⁷

More generally in 1833, Collectors were ordered to organise their offices efficiently and in particular to check on arrears of business in each department; in 1834 they were ordered to delegate matters of detail, so that they had time for proper supervision.²⁸ The encouragement of the use of English and the abandonment of Persian were also directed in part at making supervision easier. The vernacular (Urdu in Nagri script in the case of Bihar) was phased in over twelve months from February 1838, as the language of record in both judicial and revenue departments, and at the same time new rules were promulgated for the organisation of Collectorates. The two changes were intended so to improve and simplify matters as to allow a reduction in staff and the consequent improvement in the salary of the sheristadar as head of the native establishment. (At the same time, however, a team was set to work to investigate the accounting system, and consider whether in future the accounts should be kept in English.)²⁹ Similarly it was to help against abuses of power by subordinates that measures were taken in 1834 to clear and then to prevent the excessive accumulation of summary suits on Collectors' files—all but the most recent were to be transferred to the courts and thenceforth only those admitted which the office could manage.³⁰

From the late 1830s moreover the machine was working well enough for efficiency to be sought through a new emphasis on the devolution of responsibility. In 1837, for example, the Government of India complained that Bengal reports on temporary settlements were being checked three times (by Collectors, Commissioners and the Board) and suggested that it would suffice if Commissioners had the

²⁷ CO, 12 November 1833.

²⁸ CO, 31 December 1833 and 21 November 1834.

²⁹ CO, 16 May 1837, 6 February 1838 and 26 February 1840; Bengal Revenue Letter, 4 August 1837, L/E/3/40, IOL.

³⁰ CO, 3 June 1834.

final say whenever they were in agreement with the Collector. In fact, the reports were being revised by the Board alone, except for a sample retained by the Commissioners; but nonetheless the government's suggestion was adopted, subject to a right of appeal to the Board.³¹ In 1840 the Board was empowered to remit all nominal balances, to allow refunds of less than Rs.500, and to sanction partition establishments subject to government orders half-yearly. Commissioners were allowed to remit nominal balances of estates purchased at auction, and interest where the principal had been paid, to make transfers in land revenue accounts (for example to correct errors), to refund sums collected from wrongly-resumed estates, and to make various other minor refunds or payments. By way of compensation, rules of 1840 provided that members of the Board of Revenue should make circuits of districts. In 1841 the moral was drawn: Commissioners were ordered to insist on Collectors taking full responsibility up to the limit of their legal competence. They were told to prefer personal discussions to lengthy correspondence, and to send up reports in minor matters, or in many other cases merely a Collector's letter with a covering note, and not to include masses of unimportant material as they had been wont to do.³²

Devolution would increase efficiency and give time for proper supervision; but obviously these advantages had to be weighed against continuing doubts about the probity of government servants. In addition to the worries about Indian officials, even Collectors were dismissed for corruption or reprimanded for irregular conduct in this period—and it added to the seriousness that the British, steeped in ideas of legality, considered themselves bound by their own rules, so that dishonesty or carelessness of government servants could result in irrecoverable loss to the revenue.³³ Certainly reforms by the early 1830s had shifted the main worry about higher administration gradually from corruption to inefficiency. But a problem in some form remained, in the sense of putting a limit on devolution.

³¹ CO, 27 October 1839 and 2 June 1840; India Revenue Letter, 9 October 1837, L/E/3/40, IOL.

³² CO, 6 May and 15 June 1840 and 13 January 1841; Bengal Revenue Letter, 22 January 1840, L/E/3/1, IOL. The origins of the devolution seem to have been the problems with resumptions (see below): in agreeing to extra staff at Patna the government told the Board that it was 'very desirable that the Rules of Practice should be immediately revised, with a view to increase the extent of discretionary authority entrusted to the Commissioners, and to relieve them from the burthensome duty of constant reference to the Board' (30 August 1836, with CO, 25 October 1836).

³³ See for example Bengal Revenue Letter, 3 August 1837, L/E/3/40, IOL.

Mismanagement, fraud or insubordination were reported in Monghyr in 1837, in Shahabad and Patna in 1838, and in Patna and Behar in 1839 and 1840/1—mainly involving Collectors or sheristadars. Indeed in Behar district, from which eight parganas had been transferred to Patna in 1837, conditions were so bad that after the censuring of H.V. Hathorn, the Collector, in 1840, it was not enough merely to replace him; proposals had to be put forward for a general overhaul of the revenue administration.³⁴ In such circumstances, if there were extensive devolution, what guarantee would there be that even essential work would be done—for example the operation of the sale law, regarded as the most ‘uninteresting and harassing’ aspect of the job? Even in 1861 when Sir Steuart Bayley was Collector of Shahabad, he is supposed to have told John Beames, on the occasion of the introduction of the new penal and criminal procedure codes: ‘We shall all go on the old system as long as we can. Government will perhaps find out..., and will issue circulars..., but it will take six months or a year.’³⁵

Moreover, the only sort of devolution which could have made a major difference to the capacity of the government would have been devolution from Europeans to Indians. There was some recognition of this. The question of educating government wards called forth an obeisance to the ‘important objects of raising up a class of public servants of superior moral and intellectual qualifications to the present’. Indeed in 1838 while asking if Indian officials should be given some additional responsibilities, the Board wrote that the very extensive judicial and revenue powers with which they had already been entrusted was a sign of the government’s confidence in their integrity. In fact, however, the British distrust of Indian officials was an insuperable hurdle. Official thinking concentrated on measures to restrict, not on how best to deploy the Indian employees. In 1837 the Board suggested formulating rules of procedure for Commissioners dealing with those accused of corruption. In 1838 a Deputy Collector of Murshidabad was convicted to four years’ imprisonment for the theft of official funds, and Auckland urged the ‘utmost caution’ in making appointments. In 1841 the government called for reports on the numbers of Indians employed, and later that year set out rules to control the selection of uncovenanted Deputy Collectors. In 1842 the Court itself ordered that a

³⁴ Bengal Revenue Letters, 7 March 1837, L/E/3/39, and 9 May 1837, 2 January and 1 June 1838, 4 September, 13 November and 25 December 1839, 22 January, 16 April and 17 June 1840, L/E/3/1, IOL.

³⁵ Tirhut Coll to PC, 12 November 1839, Muzaffarpur SR; John Beames, *Memoirs of a Bengal Civilian* (London 1961), p.131.

register be kept of Indians dismissed for misconduct, to prevent their being subsequently re-employed. (One such case involving the sheristadar at Saran had come to light only after newspaper reports.)³⁶ And, even in this period, instances may be found of the familiar British plea that an Indian official of one religious community might prove unacceptable to members of another.³⁷

Studies of the theory of Indian government see several discontinuities in the early periods of British rule, and attribute some reforms to Benthamite zeal for efficiency. This account does not deny the importance of such ideologies, but supplements them with a different rationale—competence and necessity—wrought in Indian conditions. On both accounts, then, throughout the first fifty years of the permanent settlement, it was necessary to tamper radically with the administrative structure: it became centralised and regularised, but also had to devolve powers in the interests of efficiency. It was a continual because a largely unsuccessful process.³⁸ We find a similar picture in some of the practical concerns of the government which were over and above revenue collection, but themselves in effect continual adjustments made in the interests of revenue.

II

In various practical aspects of administration, policy took the form of expedients to meet the felt exigencies, in each case at once reflecting incapacity or corruption, providing for intervention and regulation, and creating further problems or damage. An obvious example is that of government estates. By the 1820s a shift in opinion had ruled out the

³⁶ See Bengal Revenue Letters, 28 October 1841, L/E/3/1, and 11 August 1837, 2 January and 22 March 1838, 23 March and 25 May 1841, L/E/3/41, IOL.

³⁷ See for example Bengal Revenue Letters, 11 August 1837, L/E/3/40, IOL.

³⁸ The argument here, implying government weakness in the localities, is not the same as that of (for example) Anand Yang in ch. 6 of P. Robb, ed., *Rural India. Land, Power and Society under British Rule* (London 1983; Delhi 1992), which alleges a *persistent* lack of influence, from the feebleness of local agency (kanungos, patwaris and chaukidars) forcing British rulers to rely instead on the blunt instrument of occasional military force. Yang's portrait of the local agency is accurate, but it underestimates the improvement and growth of administration even in Bengal, and the changing capacity of the colonial state to intervene by other means. In distinguishing different aspects and periods, this chapter assesses that development, as much as it recognises failures. See also P.G. Robb, *The Evolution of British Policy towards Indian Politics* (New Delhi 1992), ch.2.

disposal of such property in perpetuity; but direct or *khas* management was equally distrusted because of its dubious efficiency. The Court of Directors favoured leases for a term of years, especially to raiyats.³⁹ Very soon, however, leases also came under suspicion: the government, the Court complained, had not provided a single check on the abuses of power by proprietors, *mukaddams* and farmers alike. The remedy could not be a return to *khas* management, for that, unless there were a raiyatwari settlement, would leave land and people at the mercy of an official whose interest was 'to collect as much, and pay as little as he can', and who was unhampered by any definition of each individual's liability.⁴⁰ About the only method left was to give long leases to suitable contractors following a detailed settlement; but this was no solution either, in that it depended on the prior remedy of the very disabilities which had prejudiced the success of other methods. From the 1830s the improvement of *khas* management returned to favour. In 1832 there was a stricter insistence upon previous sanction for any farming leases on Wards estates, and this proved to be preparatory for a more considered reform ordered in 1833. But improvements proved elusive (as will be discussed in later chapters). In this, as in other matters, a large proportion of the problems facing the government was the creation not of external conditions but of administrative failures.

Proceedings for the resumption on to the revenue-roll of rent- and revenue-free land caused even greater strain and abuses in administration. They in particular demonstrated the wideness of the gap between the desirable and the possible. The enormous extent of such lands in North Bihar had been noticed at least as early as 1783, and indeed it was believed that as much as ninety per cent of assessed land had been thus alienated in 1658.⁴¹ Such tenures were considered objectionable on practical as well as fiscal grounds (in Buchanan's view they encouraged 'neglect and sloth')⁴² and eventually more concerted efforts were made to reduce their number. The work proved too arduous for the Bihar officers. In 1839 new and more lenient rules were introduced (in line with the North-Western Provinces). The government pointed to the great relaxation thus achieved, when responding to protests from the Bengal Landholders' Society. Lands

³⁹ CO, 15 June 1824.

⁴⁰ CO, 21 October 1831 (Court Despatch, 22 December 1830).

⁴¹ Muzaffarpur SR.

⁴² Buchanan, *Shahabad*, p.344, and *An Account of the Districts of Patna and Behar in 1811-12* (Patna n.d.), vol.I, p.269.

automatically not liable for resumption included, for example, not only those held since 1765 or, if under ten bighas, since the decennial settlement (1789), but also those assigned for permanent purposes (whether or not in perpetuity), and those registered as rent-free where registers existed. (Non-registration would not itself justify resumption where there were no registers.) In addition, resumptions were somewhat discouraged where produce had been continuously applied to religious or charitable purposes or where there had been more than thirty years' rent-free occupancy—in any such case resumption had to be reported to government. Large and permanent additions to the revenue were still expected to be gained from the operations—Rs.519,669 were reported to have been added in 1840—but by 1842 the Board, calling for information about outstanding resumption cases so as to devise a means for accelerating the process, was apparently anxious to see an end to the business.⁴³

By this time, it is true, the measures were drawing to a close in the Bihar districts, and had been reasonably successful: in Tirhut district, for example, 1,665 square miles of land (worth Rs.677,387 in revenue) had been resumed by 1850, leaving only 108 square miles as *lakhiraj*.⁴⁴ The local implications of the pressure of work, however, had been a failure to know, let alone properly to supervise, what was being done in the government's name. The Board, and even the Collectors, did not at first appreciate the vast extent of property which resumption threw temporarily into the hands of the mufassil authorities. When, in the early 1830s, the Board set about to compile a full report on the proceedings, they were 'entirely disappointed' because Collectors' reports were generally characterised by 'errors and incompleteness'. On investigating further, the Board decided that this confusion was a fair reflection of the real state of affairs, one of neglect and mismanagement. Resumption proceedings had been 'converted into an instrument of intimidation and extortion'. Officials had two main sources of profit. Firstly they could threaten to institute proceedings, or take bribes once proceedings had begun, with little fear of their manœuvres coming to

⁴³ India Revenue Letter, 3 February 1840, and Bengal Revenue Letters, 13 August and 7 December 1840 and 26 May 1841, L/E/3/1, and 5 September 1838, L/E/3/42, IOL; CO, 16 September 1842 (rules, 14 October 1839). See also Chittabrata Palit, *Tensions in Bengal Rural Society. Landlords, Planters and Colonial Rule 1830-1860* (Calcutta 1975), ch. 3.

⁴⁴ Muzaffarpur SR. See also Bengal District Gazetteers: L.S.S. O'Malley, *Darbhanga* (Calcutta 1907), claims 1,066,000 acres were resumed there between 1830 and 1850.

the Collectors' notice, such was the camouflage available in the form of undecided cases—in 1832, for example, in Patna district 135 and in Behar district 661 suits were pending. Secondly native officers were often permitted to administer resumed lands (pending settlement) almost entirely without supervision, with a resultant loss both to government and to the proprietors, most of whom were entitled to a permanent settlement. In one case declared costs of administration actually exceeded receipts.⁴⁵

Though the worst effects of this inefficiency, in terms of government revenue, were painfully put right by the 1840s, the implications for the justice of the proceedings were not so easily disposed of. 'Errors' were found of such magnitude as to show that the government revenues had long suffered, but also almost certainly that revenue and resumption policies were affecting people unevenly, according to the success of efforts to corrupt the amins or to local power and prestige. The fact was that resumption work in the 1830s showed up the extreme administrative weakness of British government, in terms of accuracy and justice rather than collection of revenue, in a province where it had been established on its present system for forty years. The only permanent answer in this case was the end of the resumption work.

Revenue collection and a few related tasks manifestly exhausted the government's resources. The cause was partly and especially at higher levels the complexity and intractability of the problems in comparison with the government's capacity. The cause was also at the local level the fact that day-to-day jobs were disproportionately onerous. Communications were poor. In 1854, for example, there seem to have been a mere seven miles of *pakka* roads and thirty bridges in the whole of Patna Division, where in all only about 1,300 miles of road were even vaguely known to the Public Works Department. Most of those must have had little chance of being repaired at public expense.⁴⁶ Arrangements for transport and official provisions were accordingly primitive. They depended upon individual effort. Not only did they have to be organised, they had to be attended to in order to check corruption. John Beames provides a graphic description of the total dislocation of his work caused by the movement of troops through his district as late as 1865.⁴⁷ Even carts needed by government had to be requisitioned from private individuals, and we find subordinates 'seizing triple the number

⁴⁵ CO, 20 August 1832 and 17 December 1833.

⁴⁶ *Statement Showing the Roads in the Province of Bengal under the Department of Public Works* (Calcutta 1854).

⁴⁷ Beames, *Memoirs*, ch. XII.

required, extorting handsome douceurs from the more respectable not to press their carts, and to a smaller amount from the less wealthy to release theirs after impressment—‘modes of proceeding’ which, in this case in Kanpur in 1842 but, we may assume, elsewhere as well, were ‘too well known to require any detail’. Such abuses were bound to result when so many official activities were *ad hoc* in character.⁴⁸

Moreover, to the degree that it was dependent on a few individuals, the government was also peculiarly vulnerable to vagaries of personal ability, health and knowledge. Auckland, touring in Rohilkhand in 1838, found that the trials following agricultural unrest had been seriously delayed, in part through sickness among the officers involved. ‘The system of the Indian Government,’ he noted, ‘is exceedingly liable to derangements from causes such as these.’ The Bihar districts were notorious for being unhealthy and for a consequently rapid turnover of staff.⁴⁹

The conclusion must be that their circumstances played a large if not always conscious part in deciding the activities of the rulers. Auckland’s despatch already quoted devoted close attention to details relevant to regulating the administration and preserving the revenues, but seized almost with an air of relief on occasions in which clear remedies might be proposed for perceived ills (in his case canal-building). Conversely, in an almost simultaneous despatch from Bengal, the government reported that chaudhuris in Assam were collecting from the raiyats the interest charged on arrears of revenue—indeed making a profit. But on this occasion the government gave no thought to preventing this abuse; they merely proposed dropping the demand for interest.⁵⁰ The contrast is instructive. We have seen that when extra tasks had to be done extra staff might be provided. But this was not only subject to the sanction of the Court of Directors, it also put a strain on the Company’s finances, so that most extras had to be self-financing, at least in prospect. This was a government which could do little more than preserve the façade, and which could contemplate improving the lot of its subjects only through large-scale and apparently self-contained projects such as irrigation and railways—not so much a choice as the dictate of administrative failures. Much of this remained unchanged even as the administration improved under

⁴⁸ CO, 20 June 1842. Taking a census of carts and rotating the requisitions, were recommended to Collectors to avoid abuses.

⁴⁹ Auckland to Court of Directors (Judicial and Revenue Department), 13 February 1838, L/E/3/41; Bengal Revenue Letter, 9 May 1837, L/E/3/39, IOL.

⁵⁰ Bengal Revenue Letter, 23 January 1838, L/E/3/41, IOL.

Bentinck and Dalhousie. Nothing was done to reduce the dependence on a tiny, imported, expensive elite, on a government designed for distant minimal rule. The greater use of Indians was a mere palliative which did not extend the range of the government's activities. These and other reforms, though important for the future, did little more than keep pace with the increasing complexity of routine business, and in some cases refinements of the system actually reduced the government's expectations and its involvement with the people. The moral is that the Company had the capacity neither to intervene directly nor to monitor the effects of its actions. If this had changed by the end of the century, the rulers may have been moved not so much inclination as by possibilities.

This picture is reinforced by examination of the little the British did do about the condition of the people in Bihar and Bengal in this period. We shall return to the question of impact in more detail; here, considering official will, it will suffice to indicate that, despite all the measures introduced, the rulers did not seem to be trying very hard. Collectors were given few definite responsibilities and the peasants were left at best to the courts. Rules of practice set out in 1829 did not even mention the raiyats. Collectors were to investigate grievances and also to keep the peace, by force if necessary, under orders of 1788; in theory they could have intervened to enforce the regulations designed to protect tenants under the permanent settlement.⁵¹ That was all. Yet the colonial dream of a 'progressive' India was quintessentially rural. Where there seemed 'any prospect of success', Collectors and Commissioners were expected to be in touch with agricultural societies for the encouragement of the growth of more valuable crops, such as cotton and tobacco. They were supposed also to see to the establishment in every district of 'good seminaries for giving instruction' in agricultural practice.⁵² This policy had little impact, and, in so far as it did impinge, it introduced significant distortions, with consequences for the capacity of rural populations to resist crises of climate or extortion, because the official effort was directed towards items of trade rather than subsistence. It was noticeable that the East India Company largely retreated from the sponsorship of grain production—formerly an important aspect of the *takkavi* offered by Indian states—while retaining a willingness to support crops such as cotton, sugar and opium, which directly or indirectly helped fill its coffers.

Calculations about the need to secure increasing revenue seem

⁵¹ CO, 21 May 1788 and 17 February 1829; see Huttman, *Abstract*.

⁵² CO, 2 March 1832 and 1 August 1837.

generally to have restricted interventions to redress rural grievances. These certainly were recognised readily enough. The government could set out the evils inherent in the indigo planters' system of giving advances to cultivators—who could be permanently trapped and, if they reneged, subject to illegal pressures, against which the courts were of little use. The government also knew the best solution: to abolish the advances. Yet it refused even to intervene in disputes, thinking its native officers unfitted to arbitrate between European planters and cultivators, and instead strengthened the planters' hands, and even told Collectors to help them further, in the vain hope that the planters' goodwill would prevail over their self-interest if they were given a free hand.⁵³ Why? Like the treatment of zamindars which it closely resembled, this policy was an admission of weakness, not an attitude born out of the permanent settlement. By this time disillusionment with the zamindars and subtle modifications of the settlement were common even in Bengal. In 1838, for example, the government refused a remission of revenue in Midnapur because relaxation would have a bad effect on the zamindars whom it considered 'very improvident' as a class. On the other hand the Board recommended leniency, contrary to the principles of 1793, in order to encourage agriculture in another case where problems were exceptional and long-term.⁵⁴ The strategy and preconceptions of the permanent settlement had been rejected. Action against zamindars and in favour of raiyats was inhibited by caution, political expediency and self-interest.

Even in this period, very many remedies were aired, much intervention on the behalf of the raiyats proposed.⁵⁵ Here we come back to the crucial point of administrative incapacity. In 1831, approaching the nub of tenant rights, the Court of Directors praised the example of a Collector who had given *pattas* (written leases) to individuals to prevent extortion by revenue farmers; in 1837 a fully-fledged scheme was launched to cover all government raiyats.⁵⁶ In 1832, a case in Behar district prompted the Board to endorse, in a limited form, the practice whereby, before the sale of a temporarily-settled estate, inquiries were made as to its circumstances and agricultural population and the situation of those liable for the revenue. In 1840 there were discus-

⁵³ Extracts from Governor General in Council, Judicial Proceedings, 9 June 1830, with CO, 29 June 1830.

⁵⁴ Bengal Revenue Letter, 22 March 1838, L/E/3/41, IOL.

⁵⁵ Some of the relevant regulations will be discussed in chapter three.

⁵⁶ Court Despatch, 9 March 1831, with CO, 10 July 1832; CO, 30 May 1837. The Collector was probably in Tirhut.

sions about what to do on resumed estates about *shikmi* raiyats (those with hereditary rights to cultivate at fixed rents) and the suggestion was made to extend Regulation VIII of 1819 so as to give protection during transfers to all hereditary under-tenures, and even to make a register of all tenures. The Court of Directors too called for principles to be observed, as for example they did in 1840, by regretting the failure in the settlements in Patna and Tirhut to assess the raiyats' produce, labour and farming capital.⁵⁷ But all these schemes were still-born; there was no way they could be given general effect.

Similar shortcomings were revealed when concern was expressed about tenant rights which were at risk during land sales. Estates could be sold for their own arrears (not those of their proprietors' other estates, as the Board had to point out in 1834), and sales had taken place on two dates in the year, with considerable discretion for Collectors, under Regulation XI of 1822. After Regulation VIII of 1830, all estates in arrears were put up for sale monthly, a change which made difficulties for individual zamindars, but which removed the ambiguity and delay which had been thought to encourage abuses in the past. But there was still a good deal of worry about irregularities and cases of corruption among officials in the mid-1830s, and equally the number of properties advertised but not sold, or sold and then relinquished to the defaulter, indicated that zamindars were using the system for their own ends, chiefly to injure tenant rights. The government knew this well enough. In 1838, for example, it declined to reinstate a sale which had been irregularly cancelled (at the request of the purchaser but without the owner's consent) on the grounds that it was thus saving the under-tenants from 'vexation and loss' through the abrogation of their leases, without injuring the original owner, whose arrears had been met from money deposited by the purchaser. The government could do little, however, in the admittedly 'very common' instances in which the purchaser withdrew in collusion with the zamindar, or in which the sale went through but at a higher price than would have been gained privately, because the estate was unencumbered, having been sold for arrears. The general principles were refined further in 1841 (Act XII) but estates were still to be sold (on fifteen days' notice) free of encumbrances; not until 1859 was protection provided for all the parties involved, and even this was of little use as by then sales were rarely caused by inability to pay the revenue and almost always provoked for ulterior motives. At the end of the century villages were found where

⁵⁷ CO, 4 August 1832; Bengal Revenue Letter, 17 June 1840, and India Revenue Letter, 6 April 1840, L/E/3/1.

raiya did not know their rights and rents had been increased at sale by as much as 168 per cent.⁵⁸

That verdict means that large-scale administrative measures could not be undertaken to improve the lot of the mass of the rural population. It means that there were very limited chances to protect them from the results of policies, such as the legal changes of the permanent settlement, coupled with the expanding impact of the courts, which endorsed or extended the property rights of zamindars. A sense of helplessness even to prevent abuses arising out of their own actions seemed to grow rather than to diminish among the British as the century wore on. Revenue officials were closest to the problem. In 1833 the Collector in the Sunderbans was struck by the poor condition of the people and blamed it on the taluqdars (intermediate tenure-holders). They lent out what they had collected in rents, leaving the zamindars to borrow or rack-rent their own raiyats in order to meet the revenue demand. If the taluqdar were forced to pay up, he would merely levy an additional cess on his raiyats. The cultivators lost out whether directly under the zamindar or not. The government was not convinced that any solution to this problem could be found while the raiyats remained poor or improvident and were forced to borrow; the Board saw no hope of ending the system either, though it thought that powers might be taken to help the zamindars to collect in the first place, as existing regulations did not cover these estates.⁵⁹ This typifies the dilemma facing would-be reformers: either the problem was too large altogether, or (at best) it could be tackled only in specific cases or through agents whose goodwill could not be guaranteed. The particular situation was not found in Bihar, but similar points were often made there about thikadars, lease- or mortgage-holders who acted in the place of zamindars under a system of farming out the collection of rents.

The development of revenue theories meant that by the 1830s it had come to be accepted that the so-called hereditary raiyats were entitled to protection. Exhortations to record their lands at settlement (in the Persian though not the English record) were tempered only by the fear of 'creating' privileges.⁶⁰ The whole of this theoretical apparatus and debate, however, was circumscribed by the government's weakness. It was thought unwise to fritter away property 'among a multitude of

⁵⁸ CO, 31 May 1833 and 19 June 1834; Bengal Revenue Letter, 2 January 1838, L/E/3/41, IOL; Muzaffarpur SR.

⁵⁹ CO, 31 May 1833.

⁶⁰ CO, 12 November 1833.

needy cultivators' (as Bentinck would have it), and indeed prejudicial to the interests of government if those cultivators should be 'thrown entirely on their own resources and removed from all connection with their superiors'.⁶¹ In the 1830s, in the aftermath of criticisms of the permanent settlement, this was no longer a simple assumption from physiocratic theory or aristocratic prejudice. Rather it was a recognition of the shortcomings of government in Bengal. The rulers could only govern, let alone bring about reform, through their relations with small numbers of people—zamindars or perhaps government raiyats. To seek to change the people at large would require vastly more sophisticated administrative machinery than was at hand. Thus, when the Bengal government referred to the interests of the 'higher classes of the agricultural community, and, *through them*, of their tenantry', the idea may seem primarily social or philosophical in origin; but it also had solid basis in the difficulties of Indian government.⁶²

The limitation was still more obvious for positive measures. Thus the arguments about differential rents for different crops were carried on at the highest levels of government in terms of economic theory, but in the Bengal resolution of 1838, advancing the view that no extra should be charged on lands producing more profitable crops, it was argued that the want of capital among the raiyats was the deciding factor, forcing the government to wait until agriculture had improved as a whole.⁶³ Doctrines probably convinced local men more readily in the negative sense, as when *takkavi* was branded as a 'practice which ought to be discouraged'. But even that was also troublesome, and the inconvenience to the Collector of having to report every advance he made was no doubt as powerful a disincentive as official disapproval.⁶⁴ The fact that later changes of attitude accompanied changes in priorities does not prove that either change was necessarily the product of the other. And what may be true of the North Western Provinces, where a system was being introduced, is not necessarily true of Bengal, where a system was being repaired. The conclusion is that a lack of capacity in the government reduced both the speed at which changes were felt, including any dispossession of the raiyats, and the chances of applying effective remedies as problems were discovered.

⁶¹ Ibid., Governor General's minute, 29 February 1832.

⁶² Bengal Revenue Letter, 11 March 1837, L/E/3/40, IOL (emphasis added).

⁶³ Resolution, 26 March 1838, CO, 17 April 1838; see E.T. Stokes, *The English Utilitarians and India* (Oxford 1959), pp.126-32.

⁶⁴ CO, 17 July 1829.

III

Clearly the British were not constructing some kind of ideal bureaucracy in India; even romanticised accounts have admitted its imperfections and celebrated its rebels,⁶⁵ and there is now an alternative historiography which stresses the weakness of the system,⁶⁶ or the extent to which it was captured by local elites.⁶⁷ Turning to the late nineteenth century, a fair question is whether the bureaucratic reforms actually worked. The management of money was the most sensitive matter, and one in which we have already noted early short-comings. At the end of the nineteenth century, the procedure for treasury returns, whether for land revenue or cesses, was that each clerk (on a salary of about Rs.20 per month in 1900) would enter payments in a ledger, and balance them in a separate register. The totals would be checked by a supervisor (on about Rs.30) who would prepare district returns. Clerks at this level were often not competent to work in English. The totals would be checked again by the head clerk, and passed by him, entered on a prescribed form, to the Treasury Officer, usually a member of the ICS. These procedures were frequently reconsidered, and from time to time new manuals were issued.⁶⁸ But still frauds occurred. In a case in Shahabad district, Bihar, in 1896, entries were found crediting amounts not paid, repeatedly in favour of the same estates. Discovery followed investigation of a large discrepancy between the closing and opening balances at the change of financial year on 31 March 1895. Arguably this proves that the system did work. On the other hand, as was said at the time, the local accounts were shown by the incident, as in a similar case in Hooghly, to be 'extremely badly kept', often without regular balances, or with discrepancies between items and totals. It was thought that they had probably been 'entirely unreliable' for years.⁶⁹

⁶⁵ See Philip Woodruff [Mason], *The Men Who Ruled India*, vol.1, *The Founders* and vol.2, *The Guardians* (London 1963), and Beames, *Memoirs*.

⁶⁶ Notably B. Spangenberg, *British Bureaucracy in India* (New Delhi 1984).

⁶⁷ For example, R.E. Frykenberg, *Guntur District, 1788-1848* (Oxford 1965).

⁶⁸ For example the separate register for balances was introduced in 1891. See petition of Dhanukdhani Proshad, late road cess *tauzi navis* (treasury clerk), Darbhanga, R&A Rev B 17 (January 1902). Reforms by Charles Elliott had resulted in all ledgers being kept in English to facilitate checking; this inevitably caused problems with subordinate staff; see R&A Rev B 55-6 (June 1898).

⁶⁹ Shahabad Coll to PC, 11 April, and PC to Board of Revenue, 12 May 1896, PCR 366, 12/1 (1896/7).

The conclusion might be, therefore, that the system did not work.

One problem was that security bonds were still used to ensure the honesty of some government employees and agents. Overwhelmingly they were based upon landed property, cash or bonds being practically unknown; and, as had been understood years before, this was liable to place the officials under an obligation to some landed backer.⁷⁰ Over fifty years earlier it had been recognised that this was unsatisfactory, partly because the sums at risk far outstripped the value of any security officials could provide, and partly because of the invitation to corruption. Some officials in the 1890s thought the system should be finally abandoned, bringing all levels of the administration under the same sanction of bureaucratic checks rather than financial penalty. This was partly because even ICS officers remained liable for frauds perpetrated by their subordinates.⁷¹ Obviously the imperfections of supervision still defined a limit to the revolution in government, in terms of ideals as well as procedures; they may suggest that it was still relatively shallow in its impact.

Fraud might subvert the intention of policy as well as weaken administration. For example, in the 1880s, it was decided (without devoting large resources to back up the policy) that loans should be provided for agricultural improvement.⁷² A case in Saran district, Bihar, in the 1890s showed how an official in charge of dispersing loans was to able to abscond with payments which should have been

⁷⁰ PC to Board of Revenue, 5 December 1891, PCR 354, 8/1 (1891/2). The advantage of land bonds came at the point of enforcing any forfeiture: attaching land was far easier administratively, raised fewer worries about the conduct of government agents acting without supervision, and required less local knowledge, than proceeding against moveable property. See Gaya Coll to PC, 15/16 May 1893, on the Public Demands Recovery Act, VII of 1880, PCR 358, 12/9 (1893/4).

⁷¹ For a complaint about instances of such claims being enforced, see Officiating Coll of Saran (Pawsey) to PC, 27 September 1884, PCR 341, 14/1 (1884/5). The same file remarked that it was impossible for any office to function 'where the native staff is disloyal'. In this case, marking another self-imposed limit on the government's operation, but also its modernity, the Board of Revenue refused, on grounds of lack of evidence, to uphold the dismissal of a *peshkar* suspected, in a notoriously corrupt office, of having forged documents, even though dismissal had been recommended by successive Collectors and the Patna Commissioner. The *peshkar* was reinstated on full pay, including for the period of his suspension.

⁷² See P.J. Cain and A.G. Hopkins' economic explanation of this, in *British Imperialism*, [vol. 1], *Innovation and Expansion, 1688-1914* (London 1993), pp.332-47.

made to persons against whom proceedings initially were taken for recovery of the debt, and who, receiving nothing, had renewed their application thinking it had been unsuccessful.⁷³ We might see this as an extreme example of how Indian enterprise could subvert the extended state introduced by the British. Secondly, vigilance against fraud in itself spawned measures which ran counter to the original purpose of particular policies. The Board of Revenue rules on loans policy required not only central *takkavi* registers which were supposed to be inspected daily (discouraging the officials), but also rigorous investigation of each application (discouraging the applicants).⁷⁴ Again, it may be said that bureaucratic conditions were restricting the extent of state intervention (a phenomenon not unknown in more recent times).

In some sense all state employees are engaged in the furtherance of their own careers, and this was most obvious, perhaps, for expensive, imported civil servants in a situation of colonial rule. But, even in India, the benefits were usually indirect and systematic, and not incompatible with the ideals of service and duty espoused by the ICS.⁷⁵ By contrast, if officials were able to use their office corruptly for direct personal advantage, then the public character of the administration was being subverted. And, at the height of the imperial system in India, petty officials *were* able to execute frauds, as we have seen, and also to extort bribes for the favour of carrying out their normal duties. The sheristadar of the court in Behar district in the 1850s, Munshi Amir Ali, became the sole or part-proprietor of some 200 villages, during a period of not more than twelve years on a salary of Rs.50 to Rs.80 a month; he achieved this not by embezzling from the government, but merely by taking bribes and manipulating the deposit and court registers, in association with two accomplices, one a Muslim and one a 'shrewd' Hindu.⁷⁶ The implication was that some officials sought their

⁷³ Saran Collector to Bengal Accountant-General, 18 April 1893, and reply, 17 August, PCR 358, 1/27 (1893/4).

⁷⁴ See Robb, *Rural India* (1992), pp.131-5.

⁷⁵ See T.G.P. Spear, 'Stern daughter of the voice of God: ideas of duty among the British in India', in W. Doniger O'Flaherty and J.D.M. Derrett, eds., *The Concept of Duty in South Asia* (London 1978).

⁷⁶ Behar Coll to PC, 29 January 1857, Bengal Revenue Consultations 12 (March 1858). This may be the same Amir Ali whose fortunes later collapsed under a mountain of debt; see Robb, *Rural India* (1992), pp.135-6 and 150. However D. Washbrook, *The Emergence of Provincial Politics* (Cambridge 1976), argues that in Madras the claim that petty officials benefited from the state connection 'confuses potential powers...with the ability to fulfil them' (p.45).

chief rewards through but outside their office; and it would hardly be surprising if this had frequently been the case, given the relative paucity, for Indians, of rewards within the service. Similar lack of incentives or prospects of advancement had characterised pre-colonial bureaucracies as well; and this was the very problem addressed, especially by Cornwallis in the later eighteenth century, for English Company servants, through a ban on conflicting interests and the payment of more generous salaries.

Clearly too there were limits to what could be changed even in the large and growing areas which government controlled directly. For example, on government land, the rulers still had to choose whether to farm out the management, often to local people, or to administer it directly by paid officials. The same issue arose in regard to large private estates, with which the British intervened to ensure social stability and continuity in the face of threats posed by minority, insolvency or incompetence. (Something the same could be said too of princely states, especially in times of regency.) For estates, the instrument of policy remained the Court of Wards, providing for the secondment of officials (either full-time or from the district establishment) with a brief to establish more effective management. Here, and in the *khas mahal* (government estate), the tendency continued as before, in the 1830s: both to set up bureaucratic procedures and to enlist local agents. Commonly (though reluctantly) estates were farmed out to intermediaries, and village accountants (patwaris) and head raiyats were often paid a commission on the rents they collected:⁷⁷ this was contrary to the tendency for bureaucratic reform, but reproduced a pattern of estate management long established in India.

Even in the later nineteenth century, then, bureaucratic reforms did not mean establishing a wholly effective system, free of corruption or of various local influences. Neither the purposes nor the means of administration were wholly Westernised—though many areas, including the ICS, were jealously reserved for British personnel, methods and ideals.⁷⁸ Nonetheless the government significantly changed over

⁷⁷ See office note, 20 July 1892, PCR 356, 10/18 (1892/3). In Gaya district approximately 4 annas per *bigha* ($\frac{3}{5}$ acre) was paid to leading raiyats; in Shahabad a cess was recovered from tenants for the patwaris at a rate varying from $\frac{1}{2}$ or 1 anna per rupee to $\frac{1}{33}$ of the rental collected. As a step to more bureaucratic methods, however, some patwaris were paid a monthly wage rather than a commission.

⁷⁸ Queen Victoria's proclamation of 1858 promised equal opportunities in government service for all her subjects—a promise linked by some to the rapid

the century, and an instrument of the changes was the development of the administration itself. The acquisition and ordering of knowledge and the framing of rules gradually coalesced into a set of bureaucratic principles and structures. Printing was vital, and the more extensive use of the English language assisted in easing supervision. But the key was a system in which tasks and responsibilities were precisely allocated and checking was simplified.⁷⁹ Information flowed into offices according to established routines, with actions logged at every stage. Secondly, definite spheres of delegated authority were established; and a sense of duty was inculcated deliberately in the services which carried out these tasks.⁸⁰ Career hierarchies were provided—promotion rather than punishment being the goad to efficiency. At least some rewards for good service were of long standing—for example pensions and land grants to Indians employed in civil, military or even advisory capacities by the eighteenth-century East India Company, or by its Mughal and other predecessors. But by the end of the nineteenth century, even in the terms of service for subordinate officials, successive, more systematic reforms had provided for advancement, even including promotion to posts normally reserved for covenanted servants.⁸¹ Proposals for district administration by the Bengal government in 1906 were criticised for having ‘too many appointments in the lowest grade’. The Government of India favoured grades on fixed pay, with incremental salaries for those with no hope of future promotion; it had introduced reforms (in 1905) with the object of improving prospects for the clerks generally, and thought this goal more important than minor economies.⁸² Shortly afterwards, though timidly, ‘improved prospects’ for Indians came to include targets for the proportion of Indians in the higher services, and in the officer cadre of the Indian army—reforms which were necessary, as argued by the time of the Montagu-Chelms-

pacification of India after the revolt of 1857 (see Lyall, *Dominion*, p.358) but very slow to be given effect in the ICS, usually on the excuse of a need to recruit suitable, gentlemanly officers.

⁷⁹ See above, and Robb, *Evolution*, ch. 2.

⁸⁰ One interpretation of this ‘common view’ is offered by Cain and Hopkins, *British Imperialism* (London 1993), vol.1, ch.1: ‘The move to meritocratic recruitment was intended both as a device to maintain and advance gentlemanly status and as a method of rigging the market...once patronage had ceased to be...socially acceptable’ (p.27). Nowhere was this more true than in the ICS.

⁸¹ See Robb, *Evolution*, pp.66-9.

⁸² Office note, 9 July 1906, H Establishments A 113-17 (December 1906).

ford report, even at the risk of some loss of efficiency.⁸³

These bureaucratic reforms should not be taken to imply that office work was highly regarded in the ICS, where a semi-mythical tradition of horse-back rule undoubtedly had more glamour than the shifting of endless paper. In a little noticed influence on the value placed on the 'man of the spot', the development of the empirical sciences meant that observation and experience, and hence 'field work', were regarded as superior or at least necessarily prior to theory, by colonial officials as by their successor sociologists. Attitudes may be deduced from H.H. Risley's remark about J. Bolton, onetime Commissioner of Patna Division, who was 'rather an authority on revenue work and office procedure generally', and so much so that 'Mischievous people were known to describe him as a "first-rate Sheristadar"'.⁸⁴ On the other hand, we might think that the Indian sheristadar was a key player in colonial governance, and hence important to the impact of British rule.

A crucial point, perhaps, is that the bureaucratic revolution was carried out even by men who professed to have little taste for administration. It gained momentum from legal and institutional reforms, starting in the eighteenth century. Indian legal codes and procedures were standardised from the 1860s, the work of Macaulay and Maine, against some opposition from those who argued for the appropriateness to India of personal rule by district officers. Separate codes persisted for particular categories of people, including personal law on the basis of religion, and yet they too were codified, clarified, recorded and made subject to precedent, in just the same way, in principle at least, as were the administrative decisions.⁸⁵

A consequence of this system was the separation of different government functions, and the professionalisation of those responsible

⁸³ See P. Robb, *The Government of India and Reform* (London 1976), p.56. This did not mean that the supposed character of the service was not to be preserved: there was to be no 'rapid swamping' so as to reduce its 'qualities of courage, leadership, decision, fixity of purpose, detached judgment, and integrity' (Report on Indian Constitutional Reforms 1918, para.314).

⁸⁴ Risley note, 11 March 1906, H Establishments A 113-17 (December 1906). Excessive innovation was also suspect: Sir D. Barbour complained the union boards scheme 'sprang from the brain' of a Bengal secretary; though he probably meant Sir C. Macaulay, and I suspect Sir A. Mackenzie, P.P. Hutchins assumed he referred to the 'creative' MacDonnell. However, though that less than admiring epithet was often applied to him, MacDonnell rose very high. See H. Local Boards A 2-5 (February 1893).

⁸⁵ See D.A. Washbrook, 'Law, State and Agrarian Society in Colonial India', *MAS* 15, 3 (1981).

for them. The revolution in government also reflected a revolution in attitudes to knowledge and to its practitioners. Perhaps especially in India, government came to be regarded as a science, with many separate disciplines. Departments grew, with particular tasks and know-how. Training came to be important—for recruitment, advancement, and also for carrying out the increasingly complex functions of the state. Inter-departmental feuds erupted; bureaucratic fiefdoms came to be defended. Change was inevitable, to match other revolutions, because the generalist government officer became unable to cope with the weight and complexity of business and information; there could no longer be the one fount of all state power and actions—even though something of that generalist tradition persists in India even to this day, in the district officers of the Indian Administrative Service, inheritors of the role of the Indian Civil Service.⁸⁶ From the mid-nineteenth century, the district officer's actual tasks were increasingly hemmed in by the jobs performed by other agencies—the police, the courts, the engineers, the medical officers, and so on—and they came to reflect the residual priorities of the government of the day. In the twentieth century they were strongly political in character.⁸⁷

The evidence of fraud or incompetence in the late nineteenth century has to be read rather differently from similar evidence earlier in British rule. The methodology, number of employees, range of activities, experience and precedent, in the normal functioning of the system, were quite different by 1900 from what they had been in 1830. This is not to say that the effort was commensurate with the needs—most of the 'modern' functions of government were notoriously underfunded. But it goes against common sense to conclude that there was no real difference between the bureaucracy of late nineteenth-century India and its predecessors. Some of the reports of advantage taken by Indian subordinates—and they are more frequent earlier in the century (as well as again after independence)—might be read as a transitional feature of a system that was markedly gaining in power. It is plain, though not readily quantifiable, that both the activity of the system and the extent to which it was monitored grew very noticeably

⁸⁶ See D. Potter, *India's Political Administrators* (Oxford 1986).

⁸⁷ This qualifies the common picture of the gentlemanly amateur surviving in the ICS, as recently summarised by Cain and Hopkins, *British Imperialism*, [vol.2], *Crisis and Deconstruction, 1914-1900*, pp.178-80. I will show in volume two of this study that this division of responsibility and change of emphasis had serious consequences for the ability of more interventionist government to effect improvements in the Indian countryside.

as British rule continued: this is not merely an illusion of the archives created by the extensive printing and the systems of record-keeping which were part of the change. And in the final analysis, even had there been no qualitative difference in performance and efficiency, the mere enlargement of the bureaucracy would be sufficient to justify the term 'revolution'. This is to say that it provided effective means of implementing policy, but (as we shall see) without being efficient in response to Indian conditions or to emerging problems.

IV

The shortcomings of government were not constant, and the early bureaucratic advances provided a base on which the state could expand. We may approach the issue in a different way, by considering the chief foundation of the expansion, which was undoubtedly the establishment and improvement of the system of taxation. In Bengal, as already mentioned, a permanent settlement with landlords was endorsed in Pitt's India Act of 1784; its permanence was debated especially after John Shore's decennial settlement of 1789 until the decision by Pitt and Dundas, under Cornwallis's urging, to which effect was given in March 1793; it provided titles of land-ownership to zamindars and indirectly to taluqdars (recognised subordinate or intermediary revenue-payers). The decision not to apply a permanent settlement to the annexed parts of Mysore was taken around the turn of the nineteenth century, and this developed into the system of temporary settlements with the raiyats which was applied elsewhere in the Madras and Bombay presidencies, and finally formalised in 1855. For the ceded and conquered districts of north-west India the decision was taken in 1811. Holt Mackenzie's minute of 1819 formed the basis of the alternative periodic (usually thirty-year) settlements with villages or estates (*mahals*), provided under Regulation VII of 1822. Thus revenue settlement and hence land-property rights for 'landlords' as opposed to 'cultivators' or 'village communities' ceased to be the norm less than a decade after 1793, even though the final rejection of a permanent settlement came only in the 1880s and the issue was still being debated early in the twentieth century. The questions of who should own the land and what should be the term of revenue settlement were of course distinct, though associated in people's minds and in practice.

Considering for the moment only the more-or-less matching growth of state interventions and expenditure, there is much independent evidence of a gradual if uneven expansion in the tasks of government in India. We may ignore the early anomaly of the East India

Company's involvement in trade, and legacies in the form of the opium trade, the salt monopoly and so on, and also the undoubted withdrawal of the British rulers from some expected functions, especially with regard to religion. These are large and possibly significant exceptions, of course; but without them the direction of the movement in revenue policy can be readily discerned. Centralising states seek when they can to achieve three things in this regard: to widen the fiscal base, to contact and control the real payers (the producers of wealth) and to relate demand to an objective standard such as income. But nowhere in the eighteenth century, not even in Britain, had the goal of a 'modern' system of state revenue been achieved.⁸⁸ The peripheries of the nation, geographically and socially, were barely taxed; collection was carried out largely through intermediaries; and the levels of taxation did not relate to many actual measurements. This implied limits on direct taxation, which was liable to meet with resistance—the notion of consent having been introduced—while indirect taxation (which had the measurement built in) represented a fairly small proportion of the total. In India too, in the situation which the East India Company inherited, the land tax, which constituted the great bulk of revenue, was not collected in the main from producers, and, for all the bureaucratic forms, central states' access to them had actually declined in many areas during the eighteenth century, with the growth of hereditary zamindaris, revenue-free land and revenue-farming. Outside Bengal, the amount and basis of the demand supposedly rested upon objective measurement in the past, for Todar Mal's surveys as for Domesday Book, and there were elaborate manuals relating to assessment, crop estimation and so on. But in practice the payments were decided mainly by negotiation and coercion. Thus they were uneven across territory and inequitable between payers. North Bihar, for example, was much more lightly taxed than South Bihar, partly because of its large proportion of revenue-free holdings; and everywhere high castes usually paid less than low.

The permanent settlement of the Bengal land revenue was thus to an extent just another quasi-feudal response by a weak state. The settlement deliberately refrained from seeking a relationship between the state and the cultivator; it effectively dismantled the local revenue administration; it had none of the eagerness of some later revenue surveys to base demand on the capacity rather than the output of soils, in order to discourage sloth. It was a system of revenue appropriate to a

⁸⁸ The following paragraphs are drawn from P. Robb, 'Ideas in agrarian history', *Journal of the Royal Asiatic Society* 1 (1990).

government which depended on inherited institutions and was still fearful of the competence and probity of its own direct employees, not least the Europeans—and which, for those reasons, intended to operate in the localities as its predecessors had done, mainly through quasi-independent intermediaries paid by means of rights over land.

Yet the permanent settlement also marked the beginnings of a transformation in the revenue-base of the state. First, it abandoned for ever the decentralised auctions of the farming system, and fixed the liability to pay upon the land itself, and hence upon its owners, known persons whose identity the state recorded and controlled. Second, though it deliberately refrained from relating payments to capacity, except in the broadest terms and at one moment, and indeed often set the amounts with regard to previous ‘treaties’, it nonetheless made them quite definite and permanent, thus removing almost all of the previous element of negotiation: there were arrears under the Bengal system but few remissions. Third, it allowed for some evening-out of the incidence of the demand, not at the outset, but through the subsequent resumption of a large proportion of revenue-free holdings on to the revenue rolls. In taxation therefore the British—in so far as they could give real effect to the system they instituted—had already in 1793 regulated the payers (meaning the zamindars) and fixed the demand, and they were soon to extend the revenue-base through resumptions. The boundaries of state control had thus been extended.

The pattern of linking taxation to property was continued across all aspects of revenue. The excise ‘farm’, the market-controllers’ lease, the ferry-operator’s tenure all produced contractors who, like zamindars, were state collectors having a property in their collection. Significantly the term for the *abkari* or excise right was the same as for a landed estate; it was *mahal*. Other rights, which were also offices, were named as if they were tenancies in land. This was the old decentralised mode of government, but it was also one whereby particular rights were defined and identified. Clearly that process was applied to the land itself. We have already noted some of the shortcomings of early surveys, but now we should also remark the significance of the order to which they subjected land and rights. British surveyors placed marking stones and prepared maps, and British laws defined categories of land and tenure. The definitions, however resisted or subverted in practice, acquired a special authority, and over time inevitably influenced behaviour. Designated forest lands were used differently; in a number of ways *khas* or state land was distinct from private, and a zamindari from a raiyati holding. These state-based categories were not the only ones

or even the most important; nor were categories of this type peculiar to British rule. But their range and effectiveness were markedly extended throughout the nineteenth century. The same normative definitions were applied, with varying impact, to peoples, castes, customs, crops, resources, canals, taxes. Moreover the British were not neutral. They had preferences in regard to behaviour, expectations about acceptable occupations; especially they favoured the settled agriculturist, and at some points the peasant proprietor.

Of course it would be ridiculous to present the permanent settlement as a blueprint for an interventionist state. But it contained elements of this possibility, in substance, and also in form, considering that it was a body of regulations enforceable in courts, producing a corpus of rights and property permanently recorded in writing. It sowed the seeds also for later capacity, in that it was partly designed to educate and control the employees of the state. The British had recognised from the first the importance of information: a lack of it had inconvenienced Clive, but this began to be remedied under Warren Hastings, and the process continued more or less throughout the nineteenth century, reaching its apogee in the settlement reports, finally introduced to Bengal districts from the 1890s. The permanent settlement forestalled too, in Bengal, the probable initial revolt against increasing taxation, already felt in some senses during the eighteenth century, by establishing a counter-vailing interest in property. By contrast, later attempts to tax the landed interest further, for supposedly local purposes such as roads or police, were strongly resented in the countryside, and contributed to the undermining of the compact between zamindar and raj.

There seem to have been five distinct stages, in India as also in Britain, which marked a development towards a 'modern' fiscal structure. First, there was the institution of fixed property which provides security against the payment of tax—here the example was land in recorded ownership in place of personal liability, forced sales in place of imprisonment or torture. Secondly, there was a limited but definite demand, whether permanent as in Bengal or on a periodically-fixed scale as in so-called temporarily-settled areas. The intention was to free the income of both tax-payers and the state from the uncertainties of negotiation or force. Thirdly, there was an attempt at standardisation of payments between individuals or regions in comparable conditions: this was different both from the uncertain payments, and from the tendency for taxes to be higher in areas or from persons over which the ruler exercised closer sway. Indian states had repeatedly tried for this standardisation; the British succeeded for longer and more fully than

their predecessors. Fourthly—and this really marks a second level of development—there was an expansion in the importance of alternative sources of revenue: more indirect taxes, taxes on consumption, taxes on income, user-payments for state services, and so on. In India the land revenue declined markedly in importance in favour of such alternatives from the late nineteenth century onwards.⁸⁹ Fifthly, there was a great widening in the range and number of tax-payers, necessarily accompanied by a certain shift towards graduated or progressive taxation. This consolidated standardisation by linking tax to the ability to pay. British officials tried to ensure this in much of India, outside Bengal, by calculating land revenue according to the qualities of different soils, and after careful economic assessments. In Bengal something of the same was attempted when setting the liability, of zamindars and raiyats, to local cesses. Other taxes, especially at first, were collected on the basis of estimated income, and pressed more on the poorer members of the commercial and professional classes. However, their avowed intention was to apply the tax-burden more equitably, as well as to raise necessary income. The same impulse led to the measures to spread taxes in the twentieth century, and the monitoring of the burden on particular areas and sections of the population. The variable incidence of taxation per head in different provinces was, indeed, one motive for the relative shift away from land revenue.⁹⁰ It follows from all this that, though formerly taxation may

⁸⁹ Land revenue increased markedly from the mid-nineteenth century onwards, but decreased as a proportion of the total, the main increases being in duties, excise and income tax; an illustration of the change may be seen in five-year averages of gross revenue received: in 1861-5 land revenue was Rs.19.7 crores, customs 2.4, income tax 1.4, salt 5.1, excise 1.8 and opium 7.4; the corresponding figures in 1891-5 were 25.2, 2.7, 1.7, 8.6, 5.4, and 7.4, with railways added at 20.4; in 1921-5 they were 35.3, 41.8, 18, 7.4, 18.9, 3.8 and (railways) 29.3. Excluding railways, where there was little net revenue, the percentages of the total in these periods from land revenue were thus 52, 49 and 28. (Calculated from Misra, *Administrative History*, pp.364-5.)

⁹⁰ The main example of progressive taxation was the shift in revenue described above; see *ibid.*, pp.359-63. Licence and income taxes were a long time in coming—the first attempts were Act I of 1861 (repealed in 1862) and after 1867 a licence tax on trades, which became a certificate tax, and then in 1869, extended to the professions, an income tax at 2 per cent or more on incomes over Rs.500. Again dropped in 1873, licence tax was revived in 1877, and income tax became permanent in 1886. The figures for all taxation per head in 1881 were thought to be: Bengal 24.12 annas, NWP 30.84, Madras 40.85 and Bombay 56.01. Excluding land revenue they were, in the same order, 15.24, 11.24, 19.99 and 24.58. See *ibid.*, p.372. There were also discrepancies in ex-

have been extremely high for some payers and though these excesses declined over time, yet the *total* income of the state vastly expanded as the system developed.

The revenue base did not remain unchanged, in the face of such late nineteenth-century expansions, quite apart from the increase in the numbers of payers through the partition of estates. In Bengal the new local taxes from the 1870s were claimed avowedly from tenants as well as from landlords, an extension of the net which was further augmented by the hesitant introduction of forms of income tax, initially on a far from objective basis, and then of course by the eventual shift towards indirect taxes: in that context the history and significance of Indian excise may not be as dull a subject as it sounds. Meanwhile, elsewhere in India, because of the rejection of the zamindari settlement at the time of the Fifth Report, a similar widening of the revenue-payers had occurred much earlier, within the land-revenue systems themselves, and there settlement work was precisely intended, at least from the 1840s, to relate demand to the capacity to pay.

The legal reforms of the 1850s and 1860s, and again in the 1880s, thus provided important scaffolding for an expanding state. New recognition of the complexity of Indian society added significant nuances and doubts. But perhaps a growing assumption of economic responsibility was the key: there was a move from building the infrastructure (public works intended to pay their way), to social responsibility (famine relief and public works of a protective kind). There was a move from support for external trade to internal socio-economic management. More broadly, there was a move from purely military goals alongside an acquiescence in the status quo of the society and economy, towards social management and improvement—protective laws, social reform, education, health, economic development. It is not suggested that these programmes succeeded, and indeed there are many interesting questions to be answered about their relative failure. And yet they did change what people, including the colonial rulers, expected the government to do.

There is good evidence for believing that in the earliest cases, as of course during the twentieth century, resistance to British rule was fueled by attempts to extend the amounts and scope of taxation. The evolution in taxation, obviously, was merely the counterpart of the revolution in the state's purposes and justification. It matched the changes in the jurisdiction of government within borders, and the shift

penditure—military and irrigation spending greatly increasing the total, for example, in the Punjab and parts of NWP.

from oligarchy towards democracy. In the case of India the greater definition of the state and the nation, and the widening interference and ambitions of the state, encouraged or reinforced the nationalist demand for self-determination. It was not admitted by nationalists, but this meant higher rather than lower taxation, with a view to the state's mobilisation of 'national' resources; the colonial state's inability to do this was one of the strong economic arguments against it.⁹¹ If the nation's management was the job of the state, it was said, it would be done better by those who (supposedly) represented all the people. It was sometimes uncertain whether the problem was one of colonialism or merely an imperfection of Indian government generally; but British rule came to be blamed for many failures and omissions. Such political repercussions added to ideological ones, to make state expansion highly controversial throughout the nineteenth century. The great rent law debate, as will be shown, was a crucial working-out of this controversy.

V

We began this discussion by noting that any will to improve India needed to be matched by administrative capacity. It was evident that capacity did indeed increase, a conclusion which will assume importance again when we consider the impact of the 1885 Tenancy Act through survey, settlement and written records (as was clearly appreciated even by the illiterate). It will be shown that, whereas land rights had once been lost for want of documentary proof, in resumption proceedings, later they were claimed and furthered, for some sections of the population having access and awareness, through copies of property registers or of formal leases. Many other, related aspects of this growing capacity of the state, and the use of its institutions by Indians, could also be adduced—most noticeably, perhaps, the large extensions of the court system and the huge aggregation of lawyers and legal disputes, focusing at this period upon rural property.

The process was not just mechanical. The expansion of the capacity of the state, as said at the outset, was in part also an expression of its will. Thus far the argument has related the expansion of the state to understandings of border and category, and ideas of possession and use. We have then asked how far the colonial state had the capacity to give effect to its impulses, and concluded that it had no great capacity,

⁹¹ It was made, for example, by H.N. Brailsford, *Subject India* (London 1943).

especially before the 1830s; to express this positively, it gradually became better able to intervene. Together these two sets of arguments start to explain the growth of the state in India. A major purpose of greater taxation, even in British times, was to enable the government to increase its activity, and the second means to this end was the reform of the bureaucracy. The different goals and procedures which undoubtedly *were* introduced, despite operational weakness, were important in themselves, and by no means shallow in their actual or potential impact. The colonial state had established itself by and for taxation but also for trade, and, as it largely ceased to be a trader itself, in order to promote the trade of others by general 'improvements'.

Latterly there came an erosion of confidence. India was after all unknowable. Its problems were all inter-related. There were renewed fears of social upheaval, which were often quite specific in the policies which they influenced, as, for example, when the uprisings of 1857 were traced to Christian missionaries' attempts at conversion or to government attacks on an existing rural order, or when property and contract law was held to promote indebtedness and the alienation of land. After more than a hundred years, British rule had to be regarded (by officials as well as economic nationalists) as part of the problem. Yet, though preventive and ameliorative measures were tried, in effect the past could not be reversed (as in the case of zamindari rights), and the core of colonial rule, including revenue policy and trade, could not be repudiated. The rhetoric, rationale and self-interest of British government demanded that they could not. Hence remedies took the form of renewed interference; they confirmed the direction and nature of the expansion of the state.

Bureaucratic changes should be associated with practical and technical possibilities, with the development of the state and the nation, and with political philosophy. There is no question but that they occurred in India because of British rule. This is one sense in which colonialism constituted a revolution in government. How far was what happened—even in terms of that revolution—a result of Indian conditions as well? It should not be supposed that radical elements come from outside, from the West, and conservative ones or continuities from India. This would be to accept one of the major imperialist denigrations of India. Of course sometimes that kind of argument *can* be made: as with regard to the way the frontier tribes (and incidentally topology) prevented the establishment of clear state borders and forced the strategy of the thick frontier, or the transitional zone, or of buffer peoples and territory, upon the British in India. But it is quite

misleading to suggest that the Indian system was incapable of change, or of forcing the kind of response from the rulers which would extend the role of the state. Indeed it can be argued that the expectations in India, though for a different kind of state, were also often for a wider range of state roles than was the norm in Britain when British rule began in India. It would be a valuable project to investigate the extent to which these expectations and more broadly the needs of ruling India, changed the character of government.

At the very least it is plain that colonial government in India was affected by the fact that it had to take account of the need to recruit servants, to woo supporters, and to meet expectations among Indians. It is easy to find occasions when this large avowedly modernising government drew back from confronting Indian norms and beliefs—over caste for example—or when the new educated breed of British civil servant, who was busily engaged in what he regarded as scientific government (or for that matter technological innovation), expressed either his inability to change India or his amazement at how well India coped without him. In short the character of the state in India was decided partly because it was ‘colonial’—importing solutions but also having to make special adjustments—and partly because it was anyway so largely Indian. This is to say two things. First, the reasons for the interventions discussed in this book, consequent upon the Tenancy Act, are too complex to be reduced to, say, a colonial search for collaborators, or a desire to help produce raw materials (and consumers) for English factories. Clearly they were also not, in any simple sense, merely a sop to keep oppressed and impoverished people quiet; the British seemed rather to envisage considerable if gradual changes in the society they professed to be preserving. Second, an *effective* intervention (both in form and execution) depended upon local agencies which were, in the end, beyond the reach of an alien government. The nineteenth-century extension of government went so far as to permit colonial interference, but not so far as to allow it wholly to mobilise or re-model the countryside.

Of course some aspects of the revolution in colonial government were brought about by the need to confront problems of alienation, adaptation and incorporation, and indeed to construct a new role and justification for rule in the midst of a range of conflicting interests, and to invent for Indians a reason why they should accept—even welcome—colonial rule (as some of them did). With some exceptions, such as James Fitzjames Stephen, the British claimed to be offering efficient and equitable government and economic policy, in order to gain Indian

consent to their rule. This was true of those who held that British policy had to be responsive to Indian sentiment and practice, and also of the radical reformers who believed India had to be shaken out of a agelong sleep, with no sentimentality about its institutions. It was true of pro-peasant groups who had perforce to envisage widespread change, and also, though more narrowly, of those who argued that India had to be held by force and minimal interference rather than good government—for even they had to appeal to the self-interest of important groups, as in Lytton's appeals to the landlords and princes.⁹² But Indians adopted what might be called a 'pick-and-mix' approach to British law; this implies that there was a need for the British to sell their rule and institutions to the Indians. It also follows from this that, although one school of thought attributed the empire to conquest, another (and an influential constituency of opinion in Britain or, this century, internationally) wanted it to be empire by consent—on 'trust' in the phrase later adopted by the United Nations. Certainly it needed at least as much consensus as force; and consent marked its successes and its limits.

Certain consequences had flowed from the colonial centralisations, in areas of rule which in India had formerly been fragmented, dispersed or localised. State responsibilities for general well-being had been recognised to exist, but were partly distributed among local magnates and intermediaries. In this respect Indian and eighteenth-century English expectations had shared some common ground. During the nineteenth century, objective forces disrupted such local arrangements. Local hierarchies were partly detached from the state, as it created distinct, generalised and centralised public spheres. Economic, military and political change reduced the importance and resources of some of the landlords, village heads and moneylenders, or changed the basis of their operations and power. Once their capital had been particularly local and located—consisting of social prestige, followers, land, systems of exchange, often reinforced by the elites' cultures and religious beliefs. In the colonial period, external records and powers became more active in guaranteeing local rights and profits, and the imperative for local legitimacy was somewhat reduced. The locally powerful were also to some extent challenged by externally-based officials, traders, and moneylenders, and by less localised systems of wealth and power. Greater profits could be garnered at longer distances. Trade could be safely conducted, credit obtained, wealth stored

⁹² See Stokes, *Utilitarians*, pp.281-7.

and consumed, and labour reproduced, more readily beyond the immediate localities. For some there arose instead dangers in being too closely drawn into particular places; and many had less incentive than before to enter into interdependent systems of mutual support. Though (as said, in the introduction) it is not altogether helpful to call this the loss of a moral economy, because of what that implies about the basis of the old regime, yet it is at least apparent that some social tasks were no longer so necessary to local power as once they had been. Inevitably, then, out of specific changes within India, the state sought to re-enter the localities in the form of bureaucracy and generalised law, and to extend its sense of responsibility and its interpretation of its own interests.

What form did the social engineering take? Here we return to the importance of definition. The idea was that settled, hierarchical systems were both efficient and moral. Interruptions of the norm were dangerous: whether from disease, or crime, or famine (which disrupted the usual expectations of climate and subsistence). Mobility was worrying as contagion was. The rootless Pindaris supposedly had no 'proper' social and political structures, and hence no morality, because they plundered and did not work.⁹³ We may compare the ancient or post-Revolutionary fears of the mob as formless, irrational and amoral, or of the 'undeserving' poor as disorderly, feckless and dangerous. Agriculture (more than mining or manufacture) and trade were twin fountains of civilisation. Hence improvement was sought through property, and the socio-economic reformers were far from endorsing change or fluidity. The intention was to give settled and substantial people a definable stake in production, law and the state. We now turn to the elaboration of such ideas which led to the great debate over land law, the Bengal Tenancy Act of 1885, and changes in agrarian structure.

⁹³ See for example Capt. Geo. Sydenham, Agent to the Governor General, Berar, 'Memorandum respecting the Pindaries towards the end of the year 1814', 5 October 1814, Survey of India Memoirs, M208A, vol.55, NAI: being (Sydenham explained) 'a heterogeneous Mass', 'accustomed to continual scenes of Blood and Rapine', and extremely mobile, the Pindaris 'naturally acquire the most evil Dispositions & the most licentious propensities'.

Chapter Three

A necessary reform

In 1885, A.P. MacDonnell likened the fate of those condemned to a 'thorough study of the rent question' in Bihar and Bengal to that once faced by a criminal who was offered a choice between instant death and a perusal of Guicciardini's history: 'The criminal weakly chose the history, but repenting of his choice, after years of torture, craved immediate execution'.¹ MacDonnell spoke feelingly at the end of long years of controversy, in which heat was not proportionate to weight. And the rent question was not only tedious but also complex. At some risk therefore, this and the following chapters will examine the main ideas thrown up in the debate. The main purpose is not to explain the politics or even to describe the decision-making, but to identify analyses of rural society which continue to have influence to this day.

It has been claimed that the British were uninterested in recording who held land so long as they were able to collect the revenue, and became interested only when problems arose which seemed likely to threaten their collections.² We shall see later that there was resistance in Bengal to the institution of a fully public system of land transfer and a state-controlled register of mutations. But the history of revenue administration was central to nineteenth-century constructions of knowledge about agrarian India, to the operation of law, and hence to the rationale for the Bengal Tenancy Act of 1885. In particular the identification, regulation and encouragement of the landholder, not only as revenue-payer but also as producer, was the centrepiece of British land policy.³ The 1885 Act extended this process of definition,

¹ Government of India Legislative Council Proceedings, 14 February 1885, Revenue Proceedings A 8, August 1885. The remark was attributed to Macaulay; the reference presumably to Francesco Guicciardini's *Storia d'Italia*, the celebrated history of Italy in his own times, 1494-1534.

² Dietmar Rothermund, *Government, Landlord and Peasant. Agrarian Relations under British Rule 1865-1932* (Wiesbaden 1978), p.41 and also chapter 7 which discusses the 1885 Act.

³ A good overview and introduction, relevant to this and the following chapters, remains Thomas R. Metcalf, *The Aftermath of Revolt. India, 1857-1870* (Princeton 1964; 2nd ed. New Delhi 1990), especially chs. 4 and 5. Specifically on the background to the 1885 Act see M. Finucane and Syed Ameer Ali,

once again involving policy-makers directly in assessments of Indian society. In these senses it continued work which began between 1765 and 1793, when the Bengal system evolved from attempts to determine rights and obligations sufficiently for a revenue settlement to be made.

The Company's assumption of responsibility for the *diwani* in 1772, the formation of a Board of Revenue, the inquiries known as the Amini Commission, the experiments with five-year and annual settlements, and with 'farming', supervisors and collectors, all may be regarded as part of an educative process preparing for the permanent settlement under Cornwallis. The lessons were in the possible forms of a system, rather than in the data for assessment. For example, in 1769 supervisors were instructed to investigate lands and revenue, but withdrawn in 1773 when such minute investigations were forbidden. Cornwallis's settlement was supposed to accord with the laws and customs of India.⁴ The theory of landholding had by this time been much discussed, notably by Philip Francis in the 1770s. However, though Cornwallis was instructed in the Act of 1784 (24 Geo.III, cap.25) to institute further inquiry into land rights, and though the decennial settlements of 1789 and 1790 were expected to reflect and facilitate this process, the Court of Directors required the settlement to be made with landholders, and for any other rights merely to be maintained. The practice of the Bengal settlements was pragmatic. Landholders were found, in some cases by coercion. Only then, from their various roles, was there constructed a single legal form, a property right. It was conditional upon the payment of revenue at rates made permanent by the decision of 1793. This settlement applied to all land, other than some of that accruing to the state after 1793, and any still deemed to be exempt from revenue-payment after a new scrutiny of such entitlements (promised in the proclamation of 1793). As described elsewhere, much formally *lakhiraj* (revenue-free) land was gradually resumed on to the revenue

A Commentary on the Bengal Tenancy Act (Act VIII of 1885) (second edition, edited by J. Byrne, former Assistant Settlement Officer, Bihar; Calcutta [1911]), introduction. See also M. Finucane and B.F. Rampini, *The Bengal Tenancy Act being Act VIII of 1885* (Calcutta 1886). The *Commentary* also draws heavily for its introduction on a minute of MacDonnell, 20 September 1893 (in fact written by Finucane), and on works by Baden-Powell, Field and others noticed elsewhere in this chapter.

⁴ See Finucane and Ali, *Commentary*. An illustration of the vagaries of the settlement (and of subsequent development) is C.D. Field's observation, in *A Digest of the Law of Landlord and Tenant in the Provinces subject to the Lieutenant-Governor of Bengal* (Calcutta 1879), that the ratio of rent to revenue varied between 2:1 and (on one Bhagalpur estate) 378:1.

rolls, and mostly within the terms of the permanent settlement. A centralisation of legal authority took place, focused both upon the regulations of the Company, and in the person of recognised land-owners and revenue-payers, the zamindars. The initial destruction of local revenue and accounting offices and officers (patwari and kanungo) probably played a part in these concentrations of power.

The boundaries of estates, as of zamindari rights, were assessed rather than established in 1793. But thereafter the state proceeded to define borders more precisely. Though formal registers were not successfully introduced, other than in the revenue records, administration of various kinds (the sales, partition and resumption surveys and proceedings) did tend towards the measurement and definition of estates. Reflecting this development, it was eventually spelt out that the state owned any land which fell outside the recognised estates. This had apparently been assumed to be the case, since an original right of state ownership was often referred to in justification of the revenue demand; but it was not provided explicitly until Regulation III of 1828. By that time, therefore, all land had come to be subsumed (theoretically) under British law, either as public land or as private land governed by a permanent or temporary settlement. Private land was, in turn, defined according to the rights held over it. The most important distinction, taken up in 1885, was between zamindari private or home-farm land (*khamar, sir* or *zerat*) and raiyati land, that held by tenancies and on which occupancy rights could accrue.

The next standardisation and extension of power came through the definition of subordinate rights. These were slower in falling under comprehensive state purview, but they too were set out progressively in many regulations. Large numbers of different tenures were identified. The revenue-collecting right, or *malikana*, was also distinguished from other incidents of land-owning; and in some cases where persons were not or no longer recognised as zamindars or owners, residuary payments continued to be made to them and came, under Company law, to be regarded as a form of property. In 1885 the term 'tenure' was reserved for intermediary and quasi-proprietary holdings. Many of these had also been recognised in earlier regulations. The most important were the taluqdars. The origins of the term are obscure and its meanings various; it figured in the regulations of 1793. Taluqdars, as persons entitled to hold land, became in effect subordinate but quasi-independent landowners: their number included village headmen and holders of army jagirs (land-grants to pensioners and invalids). Some service tenures were also recognised. Other 'dependent' tenures were

clearly not in any sense proprietary under the British law; the bulk of them derived from indirect management of estates. Mortgages, local agents and managers would be paid for, by zamindars, through the grant of such tenures. However some of the more permanent forms of such managing leases (*patni*) were recognised and protected by Regulation VIII of 1819; *patnidars* were larger leaseholders, intermediary between landlords and tenants, who were able to establish title pre-dating the permanent settlement.⁵

The legal rights of subordinate landholders—that is, tenants—also evolved, and indeed the main development of the law was towards an ever-greater precision first in the kinds of title and then in their incidents and character. It became apparent, as also in the massive papers in the 1870s and 1880s, that there had been no clarity on these land-rights in the 1790s. The Regulations of that date did not pay very particular attention to the situation of those they were making ‘tenants’. It was noted that raiyats were already in possession of land; but the recognition was limited by a certain understanding of proprietorship. Cornwallis believed he was *creating* the landlords, and that henceforth they would more certainly possess their proper character and entitlements. Thus the landlord could make leases by contract, as he pleased, except in a few instances where other property rights intervened. The zamindar was being re-made, and the Regulations remarked, in passing, that there were some existing agreements which would need to be incorporated into the new legal regime. To confuse matters further, a few assumptions from British law, such as the presumption that property rights accrued after twelve years of occupancy, were added into the mixture at the same time.⁶

⁵ See Sirajul Islam, *Bengal Land Tenure: the Origin and Growth of Intermediate Interests in the 19th Century* (CASP 13; Rotterdam 1985), which relates the growth of intermediate tenures not only to the land law but also to land reclamation and agricultural extension from about 1820 to 1880. For a valuable discussion of taluqdars and *patnidars*, see H.J.S. Cotton. ‘Memorandum on land tenures in Bengal’, prepared at Ilbert’s request for the Select Committee on the Tenancy Bill, 31 January 1884, with Cotton to Primrose (PSV), 29 February 1884, Add.Mss.43584. Cotton regarded the registration of 1,221,417 *dar-patnidars* (sub-tenure-holders) as a mark of relative prosperity, especially in Jessore, Bakarganj and Chittagong, and of the ‘wide dissemination of a permanent interest in landed property’.

⁶ There were Sadr court judgments often cited: SDD 1846, p.358, and SDD 1849, p.413. See Keshub Chandra Acharya, ‘Strike but hear: a treatise on the rent question in Bengal’ (Bhowanipore, 1884). The debate in the courts was whether the twelve-year rule applied only to occupancy or to rents as well; it was settled as occupancy alone in 1856 and confirmed in the 1859 Act.

Much ambiguity thus surrounded tenants' holdings. However they were generally divided, according to colonial revenue officials, into *khudkashta* (supposedly having residential status in the same village as the holding) and *pahikashta* (supposedly belonging to a different village). In some senses the *khudkashta* raiyat is the precursor of the occupancy tenant of the 1885 Act. Many of the other terms for tenants also persisted under the Company's law, and from time to time gained formal definition. More generally, the incidents of tenancy came to depend, in law, upon a series of rules. Of the more important examples, the first was an entitlement to receive a formal lease or *patta*. The second was a liability to pay rents on penalty of the distraint of property, including standing crops and, in most cases, the means of production; absconding raiyats were liable to arrest. This was the infamous *haftam*, Regulation VII of 1799 (*qanun haftam*, the seventh regulation).

Gradually the number and range of regulations multiplied. In the early nineteenth century, amidst growing opposition to the zamindari settlement from officials in other parts of the Company's Indian territories, attention came to be given to providing some protection for tenants, particularly when estates were sold. But the general view of this period was that the position of the tenants had been sacrificed to the desire to protect the land revenue (enforced by sales for arrears) and otherwise to please the landlords, especially by increasing the value of land. H.T. Colebrooke's Regulation V of 1812 (*qanun panjam*) removed existing restrictions on the form and length of leases, modified the law of distraint, and set out rules for enhancement. Ten years later, Regulation XI of 1822 sought to protect certain anterior rights and tenancies and existing rates of rent from the effect of land transfer, while otherwise ensuring an unencumbered title to the purchaser. It was later regarded as having put landlords in a position of 'abnormal superiority' over their tenants. But when it was repealed by Act XII of 1841 this arguably weakened the slight protection offered to tenants. The new law still gave unencumbered title to land-purchasers, with liberty to raise rents and eject tenants, except that it reserved the position of certain named categories of tenants (*kadimi*, or *khudkashta*) holding at fixed rents, of other fixed-rate tenures dating from before 1781, and of registered tenancies at fair rents for specified areas and less than 20 years.⁷ The purpose of all this was to push up land prices

⁷ These provisions were repeated in Act I of 1845, and again in Act XI of 1859, which ruled out ejectment for occupancy raiyats and restricted enhance-

and to encourage purchasers, so as to help guarantee the revenue through the Sales Laws, a motive strengthened by the Company's war debts after Wellesley. Later C.D. Field regarded these laws as meaning that land-sales disturbed all that tenants had thought stable, though his colleague J. O'Kinealy thought few raiyats had actually been affected, at least at revenue sales. The laws cannot themselves have been the sole instruments of change, but they appeared to coincide with marked increases in rates of rent for the majority of tenants, especially after 1822. Some official disquiet was expressed at the conditions of the cultivators in Bengal, and what was regarded as the growing enmity and litigiousness between classes in the countryside.

However it was primarily a desire for Benthamite consolidation which prompted the first of Bengal's major tenancy acts, Act X of 1859. Introducing the Bill, G. Currie said it would 're-enact in a concise and distinct form the provisions of the present law'; later C.P. Ilbert thought its most controversial sections had been introduced as an 'afterthought' and 'on a misconception of existing facts'.⁸ It provided for the deposit of rent with the authorities in case of disputes, for the survey and measurement of land, for fixed rents and occupancy rights of tenants in some circumstances, and for rent enhancement on particular grounds, restricted so as to give effect to the right of occupancy. Jurisdiction was transferred to revenue officers (acting as courts). Almost unnoticed at the time, the Act sought to define different types of land and of rights, for landowners and, especially, classes of tenants. Fixed-rate tenants had to have held at the same rents since 1793 and occupancy tenants to have held their land continuously for twelve years.⁹ Thus, though there was overlap in actual cases and in terms of definitions, Act X was a modern Act in that it attributed rights to historical actions (available to all who qualified; open to proof in court of law), rather than to status, either granted or inherited. The right derived from the provisions of the legislation, as interpreted, and from the evidential record; and was not something inherent to a claimed social category, nor for that matter (in *theory*) dependent upon particu-

ment, amplifying the terms of Act X of 1859. See Finucane and Ali, *Commentary*, introduction.

⁸ Finucane and Ali, *Commentary*, introduction. See also 'Note on the rights and status of the cultivating classes by Mr. Mackenzie', 6 January 1880, *Report of the Rent Law Commission* (2 vols; Calcutta 1880) [hereafter *RLC Report*], appendices.

⁹ O'Kinealy's argument was that this was derived from an NWP order and not much discussed in Council; Finucane and Ali, *Commentary*, introduction.

lar balances of power. Act X was unlike *haftam* and *panjam*, and the various modifications of the Sales Law. It was trying to be comprehensive and definitive, where they had merely presumed to clarify the position of existing rights and relations of classes of landholders under certain new provisions of law.

The earlier measures had been held to have various deleterious effects, on landlords or tenants according to point of view. As said, they had probably helped a general rise in rents, though the details of this are obscure. Act X was bound to produce a far wider range of reactions. Soon landlords were complaining that it had made their position impossible, and supporters of the raiyats were arguing that it had reduced all of them, in effect, to the level of tenants-at-will. The difficulties derived from the new basis for claiming and contesting rights. Occupancy raiyats were now held to be as defined in the Act; this generalised a number of earlier privileges but based the occupancy right specifically on twelve-years' occupancy. It followed that anyone who did not fit this criterion was not an occupancy tenant. Much the same could be said for rents. The Act provided that rents were to be presumed fair, with a burden of proof to the contrary upon the landlord. But to provide such proof it was necessary to show only that higher rates were generally being paid by others of comparable status on adjacent, similar land. Another way of raising rents was to demonstrate that the tenant was actually holding more land than he was paying for. Another ground for enhancement was any increase in the holding's productivity (effectively in the value of output) which was not attributable to the efforts of the tenant.

In face of these regulations, landlords claimed that it was no longer possible to raise their rents; some of the technical rules of enhancement were found unworkable, and, despite attention in the two most famous rent cases of the 1860s, the provision relating to the increased productivity of the land was hardly used. Supporters of the tenants demonstrated that all the means of enhancement were open to abuse. It was doubtful that the rules limited rent increases for occupancy raiyats, but, even if they did, they then provided a strong incentive for the landlords to avoid the accrual of occupancy rights. The twelve-year rule allowed what a known (named) status did not, namely the manipulation of tenants as individuals so as to deny them rights.¹⁰ Favourite devices,

¹⁰ This development parallels many; for example in Company treaties ceded territories were identified by name, and only subsequently would exact measured boundaries be established. See also the Bengal Administration Report for

especially in Bihar, were moving them from one set of plots to another, or falsifying the zamindari records, so as to avoid providing proof of a sufficient period of continuous occupancy.

II

By the 1870s these problems were being considered by government in a changing intellectual and political climate. The state was now attempting to penetrate and co-opt large sections of the population—which is also another way of interpreting the Bengal Tenancy Act of 1885. And at the same time as it involved more collaborators, the state's functions were increasingly specialised, and it felt the need to achieve measurable benefits, to change Indian behaviour, and to shape awareness in 'correct' ways. For example, merely because public health had been added to the list of state responsibilities, the administration was not suddenly competent and adequately-staffed to manage the health of the population. But it did become concerned about the provision and regulation of doctors, or the promulgation of appropriate medical knowledge; and these developments made the desired circles of involvement ever wider. When there was a cholera outbreak in Darbhanga gaol in 1896, volunteers were inoculated with a patent antidote, and a convict overseer was given a reward, contrary to standing orders, for helping with the work.¹¹ The case showed an aspect of the extension of the public sphere. It also played to the stereotype of the West as scientific, knowledgeable, and fostering modernisation and improvement in India.

Between 1880 and 1920, administrative reforms at the local level became a focus of attention, with attempts to improve reporting, policing, local courts, revenue administration, and to raise local taxes, as part of a powerful drive to locate British power and government more firmly in the countryside and with the involvement of rural people. Public health, as it happens, was an important part of this impulse. Politically, the bodies which were set up attempted to formalise some of the consultation which had long been sought with people regarded as having high status and influence. These efforts built on the Local Self-Government Act of 1885, and on earlier attempts to refine the machinery of very local administration. The need was to associate Indians in the new arenas of government, just as it had been in the

1892-3, pp.92-3, which described the Act as having 'rather added to the difficulty than removed it' (in Finucane and Ali, *Commentary*, introduction).

¹¹ H Jails B 75 (December 1896).

initially favourable response of some of the British to the formation of the Indian National Congress, or in the attempts to widen the fiscal base by extending local taxation from the 1870s. Contributing also were conservative ‘pro-peasant’ policies evident in the Bengal Tenancy Act of 1885 and its counterpart in Awadh, and also in the Deccan Agriculturists Act of 1879, the Famine Commission reports of 1880 and 1901, and the Punjab Alienation of Land Act of 1900. Consolidations of these efforts included the Decentralisation Commission of 1909, the Public Services Commission of 1912, and the Montagu-Chelmsford report of 1918. Above all, the structures were intended to do what, in the 1880s, was generally agreed to be difficult, namely to interest Indians in matters of local public policy—famine relief, roads and education, for example. This need for allies was crucial to the shortcomings as well as to the advance of the colonial system.

If the enterprise was to create public space, then its borderlines on one view may delimit the change, while from another perspective they are margins at which its influence was spreading. The structures of the British state were enmeshed in the countryside and in local life. One possible conclusion is that the structures therefore were ‘shaped’ by Indian society at these moments of contact.¹² The mirror image of that argument is that the contacts marked points of entry for new concepts and practices of the state. Of course both these propositions may be true. The British extended the net of institutions somewhat against their own inclinations and assumptions. We find that they were more often reluctant than eager to widen the scope of the state, but that it grew nonetheless, under pressure from perceived need and also perhaps from Indian demands. The government attempted to reach out into the country at large by institutionalising some of the collaboration and local agency it commanded.

If the 1885 Tenancy Act sought to improve the position of settled tenants, we may conclude that it gave effect to an impulse that had not been necessary or feasible in any earlier period. The Tenancy Act of 1859, which had had similar elements, was widely held to have been either ineffective or counterproductive. The 1885 Act was launched when certain rural rights seemed to be threatened by British courts and administrators, and by socio-economic and demographic developments. Probably agrarian conditions had long been oppressive for large sections of the population—as in much of Bihar—and were in no sense simply a product of British laws. But by the 1870s and 1880s legal

¹² D. A. Washbrook, *The Emergence of Provincial Politics. The Madras Presidency, 1870-1920* (Cambridge 1976), p.45ff.

changes did seem slowly to be having practical impact, as in the land market.¹³

Circumstances were right for intervention not only from developments of the state, but also, it seems, in response to Indian conditions or demands. Certain rules were applied by the officials. They would not support, say, religious endowments; they would not provide gratuitous relief in famines so as to interrupt trade; they would not permit dues to be collected in restraint of trade; and so on. The list is endless. But just as long is the story of exceptions to the rules in practice—and of Indian pressure on the rulers to break their own guidelines. Increasingly the breaches extended rather than reduced state involvement. Every market was permitted in practice to impose its own taxes and tariffs, and local officials also found ways of supporting new markets, just as they gave funds surreptitiously to religious endowments when it was politically expedient to do so. In famine relief, they provided money aid, forbade hoarding, and even imported grain (at least in the early nineteenth century) on occasions when such action was asked for by Indians who defined it as a normal function of the ruler: only later did the higher authorities enforce their doctrine of not interfering with merchants, or being neutral in religion, or forbidding local tariffs and taxes.¹⁴ And in many of these instances—and notably on famine in the late nineteenth-century codes—policy gradually shifted nearer what might be called the original Indian expectation. The fixed distinction between what the state would do and what it would not proved to be moveable. Perhaps this helps explain why, for example, free trade and *laissez faire* were *espoused* more thoroughly than they were *applied* in India,¹⁵ and why state intervention spread

¹³ See Jacques Pouchepadass's essay in Robb, *Rural India*.

¹⁴ For instances of intervention with markets and endowments, see Robb, *Evolution*, pp.126-8 and 166-9; more generally for interference with religion see chs.4 and 9. On famine, see Sanjay Sharma, 'The 1837-38 famine in U.P.: some dimensions of popular action', *IESHR* 30, 3 (1993), pp.339-42. This is relevant also to the humanitarian as well as political and economic motives for intervention. Sharma's subsequent and so far unpublished work on yet earlier famines reveals debates among Company officials, under pressure from Indians, about the proper limits of state intervention.

¹⁵ This was argued in a well-known but unpublished thesis by T.D. Rider, 'The Tariff Policy of the Government of India and its Development Strategy, 1894-1924' (PhD; Minnesota 1971). See also (and it is relevant more generally to this discussion) Clive Dewey, 'The end of the imperialism of free trade' in Dewey and A.G. Hopkins, *The Imperial Impact. Studies in the Economic History of Africa and India* (London 1978). For an account of a shift of attitudes at the other end of the century, from 1800 to 1820 when acceptance of *laissez*

almost inadvertently from agricultural improvement to economic and social engineering—over land tenure, credit, regional economic planning—and on to price controls and eventually the mixed economy as devised by Nehru.¹⁶ Even in the colonial period, much of this might be shown to have been prompted by Indian demands—petitions, protests, campaigns—at all levels of society, from princes anxious to protect their privileges to beggars lobbying local officers for relief in times of scarcity.

A parallel argument can be made on the basis of more negative consequences of colonial rule. There were many instances of crises during British rule in India, some of them certainly attributed to the changes ushered in by the British. Collectively these too may be regarded as creating a pressure which forced different responses on government. Not only did Indian nationalists castigate British trading, investment and fiscal policies in India, but the influential officials of the Famine Commission of 1880 added pressure in much the same direction. They reported just as the Bengal Tenancy Act was being formulated, and helped focus the attention of the reformers particularly upon Bihar. But there was nothing new in such influence. Edmund Burke had made a connection between the avowedly exploitative character of early Company rule in Bengal and the great famine of 1769-70: he used the example to propose a doctrine of state responsibility, as indeed had Henry Verelst, from a perspective within India, as Governor of Bengal in the 1760s, when he urged the Company to take a long-term view.¹⁷ Another great Company man, Charles Grant, saw the positive mission in evangelical terms, but also sought to expand Indian trade as a basis for justifying British rule and extending the means for ensuring improvements.¹⁸ Early nineteenth-century

faire replaced conservatism with a willingness to innovate, see Neil Rabinoy, 'The control of fate and fortune: the origins of the market mentality in British administrative thought in South Asia', *MAS* 25, 4 (1991), pp.737-64.

¹⁶ See P. Robb, 'Bihar, the colonial state and agricultural development in India, 1880-1920', *IESHR* 25, 2 (1988), and Primit Chaudhuri, 'The origins of modern India's economic development strategy' in M. Shepperdson and C. Simmons, eds, *The Indian National Congress and the Political Economy of India 1885-1985* (Aldershot 1988).

¹⁷ Cf. P.J. Marshall, ed., *Problems of Empire: Britain and India 1757- 1813* (London 1968), pp.52-77 and 145-84, and H.V. Bowen, *Revenue and Reform. The Indian Problem in British Politics 1757-1773* (Cambridge 1991), pp.112-13 and *passim*.

¹⁸ Ainslie Embree, *Charles Grant and British Rule in India* (London 1962) pp.88-113, 172-7 and 266-71.

experiments with cotton or tea, say, were interventions necessitated equally by Company dividends and Indian problems as perceived by Englishmen. The very diagnoses of India's failure commonly drew government into extending its role.

How much more potent then were experiences of the kind drawn upon by Burke: the commitment to public works which can perhaps be traced from Lord Auckland's confrontation with famine in the 1830s,¹⁹ or the yet stronger interventions of the later famine codes which can be attributed, in part, to the equally harrowing experiences of Antony MacDonnell when investigating conditions in Bihar. Famine policy, even in the 1870s, included notable qualifications of *laissez faire*. In 1873/4, a fairly interventionist local government in Bengal under Campbell wanted *inter alia* to prohibit grain exports, while the Government of India espoused the 'utmost freedom of trade as the best preservation against famine', and warned against artificial reductions of prices or any shaking of the confidence of the mercantile classes. Faced with this conflict, the Secretary of State for India (Argyll) expressed the belief that 'the operations of commerce and the ordinary processes of supply and demand could not be relied on', and that 'active intervention of Government was necessary'. Though the 'powerful agency' of commercial enterprise was not to be thwarted, yet, also, 'excessive reliance was not to be placed' upon it 'for the introduction of food, and still less for its transit to and distribution in stricken districts'.

This made it less than clear what the 'powerful agency' was good for. The Government of India too, though professedly opposed to intervention, was advocating vigorous public works, agricultural loans, advances for grain imports, special measures on the railways, relief committees, increased medical provision, and the encouragement of emigration. And, significantly for the argument of this chapter, in 1869 the NWP government had made it a formal duty of district officers to prevent deaths from starvation, even when private charity proved inadequate.²⁰ The importance of such a resolution lay not only in the aspiration, but in its status as a task imposed by regulation, in an administration governed by rules. The distinction is important, because it helped lay to rest the non-regulation system of government favoured by Dalhousie and most obviously associated with the Punjab system devised under John Lawrence. Here was a socially-conservative

¹⁹ See Sharma, 'Famine', p.339.

²⁰ See abstract of correspondence between Government of India and Secretary of State, on the drought in Bengal, 1873/4, L/E/5/69, IOL.

scheme of governance (to be discussed in more detail later) which saw the peasant as the engine of progress, under a personalised rule that was cheaper and supposedly more appropriate than one hemmed in by regulation (though of course there *were* very definite structures and rules in the Punjab system). It began the great interventions of the state, paradoxically, in terms of facilitating peasant agriculture, by irrigation and railway-building. But it had always been on a collision course with the parallel, Utilitarian enterprise to reform Indian government, law and society. What decided the outcome of this conflict was the growing size of the bureaucracy, the complexity of India, and the seriousness of the problems which were increasingly confronted. The pro-peasant measures of the later nineteenth century had to be legislative and regulatory in form.

Clive Dewey has suggested that the 'paramount desire of successive Secretaries of State' was 'to maintain the solidarity of the empire' (meaning to ensure that the English people continued to value the connection with India), and that it was the first non-co-operation movement of 1920 which 'made "the happiness of Indian leaders" the great knockdown argument in official circles'.²¹ In a broader sense, however, and looking beyond Secretaries of State (whose views were often contested by British officials in India), it seems that Indian happiness was a consideration far earlier, if only for the reason that Adam Smith had suggested, that '...the revenue of the sovereign is drawn from that of the people. The greater the revenue of the people, therefore, ...the more they can afford to the sovereign. It is his interest, therefore, to increase as much as possible that annual produce.' Smith argued, against the East India Company's monopoly, that to do this required 'the most perfect freedom of commerce'.²² But the converse of his proposition was also true: that the sovereign was bound to intervene when the people's income was being reduced. In such a case, most sharply felt during a famine, which also increased state expenditure, governments were obliged to interfere even with commerce. And what is more, the records do not sustain the suggestion that the motivation was purely economic, however much the balance sheet may have mattered in the end. The fervour of, say, a Nicholson for co-operative credit related both to intellectual conviction *à la* Raffeissen and also to his surveying of conditions in agrarian Madras.²³ Concern about de-

²¹ Dewey, 'Imperialism of free trade', pp.63-7.

²² Adam Smith, *Wealth of Nations*, ch.7, pt.3.

²³ Nicholson was appointed by the Government of India in 1892 to look into the possibility of agricultural banks by surveying conditions in Madras; he re-

forestation, and hence interventionist forest policies, grew first because of arguments about the impact of vegetation on rainfall, and because of actual experiences of drought.²⁴ The great device of nineteenth-century policy-making was after all the inquiry, which produced 'expertise' and, very often, grand interconnected schemes of reform. Thus the great Settlement Reports and Famine Commissions reviewed land revenue, agriculture, irrigation, trade, prices, communications and information systems. Typical on famine was F.C. Danvers who drew on theories of political economy and the history of Britain, as well as experience of India, to argue that India needed not only capital investment in land but greater wealth which could 'only be introduced by the development of industrial enterprise and manufactures'.²⁵ Similarly, in order to meet the government's 'duty' (Ripon's word) to guard against famine, one strategy favoured by a railway enthusiast, pointing to the possible disadvantages of irrigation, envisaged improvements in transportation as the best means of 'storing' food: proceeds from the export of agricultural and non-agricultural goods would 'free the masses from their bondage to the local food production'.²⁶

The implied agenda for the state stretched well beyond agrarian structure—further than many influential officials would countenance—but land law had to meet the same priorities. Attention to agriculture remained the key, even for those who would go no further than set up structures by law and communications. Mayo had suggested creating agricultural departments in 1869, taking up a suggestion by Colonel Dickens in 1867 after the Bihar and Orissa famine, and following the model of European governments. Early agricultural departments had mixed fortunes: there was opposition to them on grounds of expense, and on arguments about double government—against removing so vital a subject from the concern of district officers. But by the 1880s it was being generally agreed that nothing short of revived and separate

ported in 1896. Duperneix was similarly deputed in NWP and reported in 1900. See R&A Rev B 14 (June 1896), and Robb, 'Bihar', pp.210-16.

²⁴ See Surgeon-General Edward Balfour, 'The influence exercised by trees on the climate and productiveness of the peninsular of India' (a matter first raised by the Court of Directors of the Company in 1847); the conclusion was that exposing soil to the sun did make droughts and floods more prevalent; L/E/5/69, IOL.

²⁵ F.C. Danvers, 'A century of famines', 27 December 1877, L/E/5/69, IOL. The case for industrialisation was heard more commonly later in the century.

²⁶ Note by Col. A. Fraser, 17 May 1881, keep-with to Public Works Department proceedings on railway construction, Add.Mss.43575.

departments would suffice to instigate agricultural reforms, 'rather to improve production than to avert famine or administer its relief'.²⁷ Direct attention and specialist expertise were now seen to be required; we shall return to this issue later.

We have remarked that some of the concerns clearly related to the impact of colonial rule and trade upon India. We might add the example of the economic dependence of North Bihar on indigo and opium, a situation directly attributable to British rule, which forced the government to try to assist the region in the early twentieth century—a policy that gave bureaucratic strength to the cause of the state's agricultural experts, already established in a specialist branch of government from the 1870s, and also led directly to the formation of India's leading institute of agricultural science and technology.²⁸ But it does not matter to this argument whether colonial policy directly created the crises of the Indian economy, or whether they were problems exacerbated by the transitions and distortions inadvertently introduced under British rule. The fact that India was changing and that challenges were being thrown up, in itself obliged the government to try to do more, either to facilitate 'progress', or to mitigate the worst of the problems which arose—and this is true not only of famine but of social change, urbanisation, the growth of trade, endemic disease, population growth, religious upheaval, transport, and so on. In turn this state involvement generated further demands from Indians that the state should intervene, and also of course, as nationalist thinking developed, led to strong complaints that India's difficulties were actually caused by the failures of the state. Similar debates today indicate that the Indian revolution in government continues.

III

The Bengal government began to consider amending Act X under pressure from landlords. But the judgment of the Chief Justice, Barnes Peacock, in *Hills v. Ishore Ghose*, a famous case in 1862, was that the Act did not prevent enhancement up to the full market rate, which meant in effect that (as Peacock believed) all tenancies were held by virtue of a contract with the land-owner, whose ownership was unfettered.²⁹ Though Peacock himself suggested amendment of the law

²⁷ Notes by C.L. Tupper, 9 September (2 notes), C. Grant, 1 October, C.U. Aitchison, 2 October, F.P. Hutchins, 30 October, and J. Strachey, 22 November 1880, and others, Add.Mss.43575, pp.499-530.

²⁸ See Robb, 'Bihar'. The example will be discussed in volume two.

²⁹ W.R. Special Number 1862-4, 156.

in 1863, his judgment delayed the introduction of a new law, especially as it had been in favour of an indigo planter; relations between planters and raiyats were already suspect. The government waited for further legal judgments. One came when Peacock's ruling was reversed by a full bench of fifteen judges in the Great Rent Case of 1865, *Thakurani Dasi v. Bisheshur Mukherji*.³⁰ But this provided no answer to the problems of rent enhancement. It merely reaffirmed that enhancements should be proportionate to the value of production, as was provided in the Act, and already proven to be useless either to curb or to facilitate increases in rents.

On the basis of his experience in the North-Western Provinces, William Muir wrote in 1865 that everywhere in India there was 'a right of hereditary occupancy at the customary rates', but that it needed protection where there was also a proprietary interest.³¹ As this became entrenched as the official orthodoxy, agrarian disturbances, especially in Pabna, and famine reports of terrible conditions, especially in Bihar, shifted the weight of opinion in Bengal. The government began to accept the need for a measure which would give some protection to tenants, by removing the loop-holes and ambiguities of Act X, and making a comprehensive provision for agrarian relations. The work was started by George Campbell when he became Lieutenant-Governor. He had a reputation as a reformer, and had written on the Irish land question. But his main contribution was the levying of new local cesses upon all holders of land. Some claimed that this violated the permanent settlement, but payment was due from tenants and landlords alike. The amounts payable were to be calculated from zamindari rent-rolls, which thus became, for this purpose, public documents. The new taxes added to zamindar's complaints, and to the numbers who argued for state intervention through a new rent Bill to regulate the exactions landlords were making upon their tenants.

A Bill was drafted in 1876 by Campbell's successor, Richard Temple, to make a definitive statement of agrarian rights as an answer to peasant protests, but, after various further inquiries, Ashley Eden (who took over in 1877) abandoned Temple's Bill, except for undisputed clauses restricted to facilitating the collection of rent arrears, passed as an Act in 1878. Instead Eden appointed the Rent Law Commission, which started work in 1879 and reported in 1880. Though given the limited task of amending Act X of 1859 to improve the procedures in regard to rent, this Commission was designed from the first to lead to

³⁰ BLR, supp. vol. (FB) 202; BLR, FB 326; 3 WR Act X, 29.

³¹ Quoted by Rivers Thomson, 7 April 1882, Add.Mss.43584.

broad reforms and as a device of public education rather than official enlightenment; its report was always intended for publication.³² Meanwhile a Bihar Rent Committee, of officials, zamindars and planters, had also called for a recasting of the law to prevent abuses.³³ The Rent Law Commission included a draft Bill, which then formed the basis of further discussions. In the Government of India, C.L. Tupper was set the task of summarising the background. C.U. Aitchison considered the proposed Bill raised all-India questions and was 'perfectly revolutionary and such that no Legislative Council...will pass'; A R. Thompson, then with the central government, also thought parts 'extreme', that raiyats could be protected by less radical means, and that opposition in Britain and 'almost every part of Bengal' would delay enactment. E.C. Buck, however, thought Tupper had demonstrated 'the necessity of a thorough reform', and Eden was determined to press on, not believing the Bill as unpopular, even among zamindars, as Thompson feared.³⁴

Modifications and refinements were made after consultation in

³² Government of Bengal (Mackenzie) to G/I (R&A), 3 April 1879, in *RLC Report*, vol. 2. The members of the commission were H.L. Dampier (president; member of the Board of Revenue), H.L. Harrison (initially; Secretary to the Board of Revenue), C.D. Field (judge of Burdwan, on special duty to draft the bill), A. Mackenzie (Secretary to the Bengal Government), J. O'Kinealy (Legal Remembrancer), Brojendra Kumar Seal (Subordinate Judge, 24-Parganas), and a little later Mohini Mohun Roy and Peary Mohun Mookerjee, representing the zamindari view. See *ibid.*, p.3. See also Bengal Supplementary Administration Report 1882-7 (Rivers Thompson), pp.94-9; also extensively quoted by Finucane and Ali, *Commentary*, introduction. See also Finucane and Rampini, *Tenancy Act*, introduction.

³³ The members were F.M. Halliday (Patna Commissioner), J.F. Browne (judge of Patna), C.F. Worsley (Muzaffarpur Collector), G.J. Hodgkinson (Saran Collector), G. Toynbee (Patna Collector), W.B. Hudson (Champaran indigo planter), D.N. Reid (Saran indigo planter), G. Anderson, (Darbhanga indigo planter), Bemola Churn Bhattacharjee (Gaya Deputy-Collector), Bhoop Sen Singh (Government pleader, Gaya), Joy Prakash Lall (manager, Dumraon raj, Shahabad), Harbuns Sahai (pleader, Arrah), and M. Finucane, secretary. See 'Report of the Behar Rent Committee', *RLC Report*, vol. 2 (hereafter BRC Report). The Committee met to discuss various submissions, proposals from the Bengal government, and rival draft bills, specially for Bihar, prepared by Finucane and Worsley, the latter following the 'more scientific and lucid arrangement' of NWP laws; the Rent Law Commission adopted the same approach. BRC Proceedings, *loc.cit.* (the quotation is from 9 November 1878).

³⁴ Notes, 10 August, 30 November 1880, 6 January and 31 October 1881, with R&A Rev A 16-46 (July 1883), in Add.Mss.43584; Eden to Ripon, 2 April [1882], Add.Mss.43592. Thompson was consistent in opposition; see his dissent from G/I despatch no.6, 21 March 1882; note, 7 April 1882, Add.Mss.43584.

India and Britain. On the Secretary of State's Council, 'Much fear was expressed that... [Ripon's] Government would introduce the "three Fs" throughout India'.³⁵ Rivers Thompson, who succeeded Eden, was not only opposed to aspects of the revised Bill but also less effective in securing agreed proposals.³⁶ He was bypassed, and in March 1883 Ilbert sought leave in the central legislature to introduce the Bill, now approved in almost all respects in London.³⁷ It was referred after two days' debate to a Select Committee, on the motion of Steuart Bayley. The Committee met between November 1883 and March 1884. Four members dissented from its report. The Government of India's conclusions were drafted in the Revenue and Agriculture Department by Bayley, a staunch supporter, subject to amendments by E.G. Patrick and T.W. Holderness. Bayley added a note at this stage to keep Ripon straight on the rights of resident raiyats.³⁸ A revised Bill was published and sent for comment to officials and others, including Divisional conferences. In September 1884 the Government of Bengal proposed various amendments. About this time there was concern over the fate of the Bill on Ripon's retirement, but, in November 1884, Dufferin was busy studying it so as to see it quickly through to enactment.³⁹ That month the Select Committee resumed, bringing its total number of meetings to 64, and accepted the main principles of the revised Bill, with some dissent. Bayley moved on the Select Committee report; after a two-day

³⁵ Kimberley to Ripon, 21 March 1883, Add.Mss.43523. The reference was to Irish land law providing fair rents, fixity of tenure and free transfer.

³⁶ Eden was a 'little disappointed' that Bayley did not succeed him as Lieutenant Governor; to Ripon, 2 April [1882], Add.Mss.43592. Compare James Gibbs (from London and the Secretary of State's Council, reflecting a general view), to Ripon, 1 April 1882: 'Thompson's appointment was a matter of course as I understand it, and will be acceptable to the Baboos. I doubt his being so strong as Sir Ashley'; see also Gibbs to Ripon, 10 August 1883; Add. Mss. 43611. However Thompson's room for manoeuvre was also vitiated by vilification in the Indian 'native' press; the first meetings on the rent Bill occurred on 21 November 1883 in the midst of the Ilbert Bill controversy; S.C. Bayley to Primrose (PSV), 25 and 26 June, and to Ripon, 28 June and 20 November [1883], Add.Mss.43612.

³⁷ Kimberley to Ripon, 13 July 1883, Add.Mss.43523. In India a penultimate text was approved by the Viceroy, Bayley and Ilbert, and sent on to Bengal for comment, but not referred back to the Revenue and Agriculture Department in the usual way; notes by Buck and Bayley, 24 October 1883, with R&A file 46 of 1883, Add.Mss.43584.

³⁸ Bayley to Primrose, 18 April [1884], Add.Mss.43612.

³⁹ Kimberley to Ripon, 30 July, 18 September and 7 November 1884, Add. Mss.43525.

debate the government saw off a stalling demand for re-publication of the Bill. Clause-by-clause debates followed on five days between 2 and 11 March, when the Bill was passed. It became law on 14 March 1885. Most of it came into force in November.

The three main issues of contention had been the basis of the occupancy right, the transferability of raiyats' holdings, and the regulation of rents. On the first of these, the strong position was, as proposed by Eden's government, that the right should accrue to the land not the raiyat (in place of the existing twelve-year rule). In London, the Secretary of State, Kimberley, in order to sound out opinion on his Council after a long period in which the issue had 'happily slumbered', referred these rent-law proposals to a committee comprising F.B. Halliday, John Strachey, Eden, Maine and Muir, the last 'prepared to go to the stake' in opposing it. Halliday, having once been converted, also turned violently against the attachment of the occupancy right to all raiyati land, and accepted Eden's challenge to draft an alternative proposal adhering to the twelve-year rule. Eden fought what he called a 'hard battle', but on the point of attaching occupancy right to all land he admitted defeat, conceding that 'the public would [not] have accepted such a violent change in the present climate'. He was referring to a sense that things were going too fast in India, as they had in England and Ireland; and a fear of political excitement not only in India but in England influenced the members, the situation not helped when a negative paper from Rivers Thompson greatly disturbed the Council. Making the best of his defeat, Eden argued that his alternative, a right of occupancy for every raiyat who held any land in a village or estate for twelve years, 'really makes every settled ryot in Bengal an occupancy tenant'. He confided to Ripon his impression that, for his colleagues on the Secretary of State's Council, 'the mention of twelve years seems to make them quite happy'; they had not seen 'how nearly what they have done, comes to what you preferred'—because the landlords would not be able to exclude occupancy rights by moving tenants from one *village* to another as they had manipulated holdings under the 1859 Act.⁴⁰ The outcome was still that the simplest but most radical solution was ruled out.⁴¹

⁴⁰ Eden to Ripon, 2 April, 9 and 23 June, 7 July, 12 August, 13 November [1882], Add.Mss.43592; see also Kimberley to Ripon, 4 and 18 July and 14 and 18 August 1884, Add.Mss.43525.

⁴¹ The Secretary of State refused it in September 1882; in October the Government of India re-argued the case. The Secretary still demurred but agreed not to veto the provision; and then the Government decided not to proceed against his objections.

Eden had leapfrogged the next possibility, espoused by the Bengal government in the final stages of legislation, that an occupancy right would be provided in his current holding to any raiyat who had held any tenancy for twelve years in the one district. A more restrictive possibility would have been for the qualifying tenancy to have had to be within the one estate (one zamindari as recognised in the revenue records).⁴² Finally, in the Act as passed, the right was located as Eden suggested, within each village, a conclusion which (as we shall see) accorded with current notions of Indian social history.⁴³ There was a presumption that all holdings were occupancy holdings until the contrary was proved; and, further to encourage investment, occupancy raiyats were entitled to register and to receive compensation for productive improvements.⁴⁴ On the other hand there was defeat for a provision espoused in the Bengal government under Rivers Thompson that even non-occupancy raiyats should have security of tenure for five or ten years on an initial lease, and be entitled to compensation at ejection—instead they were allowed six-months' notice. Secondly, in the original Bill a occupancy raiyat was to be permitted to transfer his holding subject to a right of pre-emption for the landlord. Thompson's government proposed free transfer of occupancy holdings in Bengal and wherever it was 'customary' in Bihar. In the Act the right of pre-emption was struck out and transferability allowed everywhere subject to 'custom'. Finally, the reformers were anxious to construct a system whereby rents were set by rule, and therefore to resist demands that they might be established by private contract. If they could be made without reference to legal restrictions, it was assumed, they would be made after coercion of the tenants. Restriction was achieved in the Act by permitting an increase by contract of no more than two-sixteenths of the existing rent (the Bill had proposed a limit of six-sixteenths). The original linking of the ratio of rent to the value of produce (limited in the Bill to one-fifth of the gross produce for occupancy raiyats, and to five-sixteenths for others) was deleted, as were a rule that no suit for

⁴² This was the Bihar Rent Committee recommendation; BRC Report. When the Legislative Council ruled out 'estate', discussion moved to definitions of village; but the Bengal government still objected to any limitation of occupancy rights by area; see Ilbert note, 20 October 1884, Add.Mss.43584.

⁴³ The 1885 Act provided that villages were to be defined from the revenue survey plans, which, however, were concerned to show the boundaries of *mauzas* (revenue estates); this will be discussed below.

⁴⁴ These provisions (sections 76 ff.) were adopted from the NWP Rent Act, but also borrowed from the Agricultural Holdings (England) Act 1883, 46 & 47 Vict., cap. 61; see Finucane and Ali, *Commentary*.

enhancement should increase rents by more than 100 per cent, and the proposed tables of locally-prevailing rent-rates, with classification of soils and so on, by which rents could have been fixed for 10 to 20 years.⁴⁵ Nonetheless the intention was to make enhancement more attractive by suit than by contract.⁴⁶ Field had argued that the 1859 Act already ‘compelled zemindars to resort to the Courts for the exercise of their rights’; but, as the Muzaffarpur Collector, Worsley, explained, Bihar landlords preferred ‘a cheap and high-handed mode of procedure to that presented by law’.⁴⁷ Later Finucane and Rampini, noting that proprietors were generally remiss in registering their interests, thought that in future failure to do so might jeopardise their success in law suits.⁴⁸

Put briefly, then, the Act divided the land-holding society into landlords, tenure-holders, raiyats (fixed-rate, settled or occupancy, and non-occupancy), and under-raiyats. It applied to all agrarian land, including government estates,⁴⁹ and was generally designed to encourage landlords and tenants to submit their relations to the scrutiny of the law. After much discussion of the principles of classification, by function, a tenure-holder was declared to be someone who held more than 100 bighas.⁵⁰ Fixed-rate raiyats held either at an unchanged rent, or at an unchanged rate of rent.⁵¹ An occupancy raiyat was one who had a right

⁴⁵ Tables of rates were partly restored in Bengal Act III of 1898; this will be discussed further below.

⁴⁶ The main changes were identified in similar terms to these in the Bengal Administration Report for 1892-3, pp.92-3, and on that basis also in Finucane and Ali, *Commentary*, introduction.

⁴⁷ See Field, *Digest*, pp.228-9; and Worsley’s marginal note on MacDonnell’s ‘Draft bill for Behar’, disagreeing with MacDonnell over the unworkability of the law of distraint, *RLC Report*, appendices.

⁴⁸ Finucane and Rampini, *Tenancy Act*, on section 158, which allowed courts to ascertain the incidents of any tenancy on the application of either the landlords or the tenant; it replaced an earlier, seldom exercised right for tenants to sue for the issue of a *patta* and *kabuliyat*.

⁴⁹ *Ibid.* The conclusion was drawn from section 3, defining ‘estate’ so as to include *khas mahals*, and from the fact that the Act repealed Bengal Act VIII of 1879.

⁵⁰ This presumption was provided by section 5 (5), of the 1885 Act, on the recommendation of the Rent Law Commission and by analogy with sections 6 and 7 of Regulation XIX of 1793 which distinguished between revenue-free holdings of more or less than 100 bighas. A bigha was approximately 0.33 acres.

⁵¹ Chapter IV of the Act did not explain how fixed-rate status was established, though this was contentious in the case law. *Guzashta* rights in Shaha-

of occupancy by custom or practice before 1885 (thus preserving all existing rights), but in addition (as noted) a settled raiyat was one who had held *any* land in a village continuously for twelve years. Rivers Thompson had entered a stout defence of the twelve-year rule when dissenting from the idea of attaching the occupancy right to all land, and his view prevailed.⁵² On the other hand, not only was the legal presumption that all raiyats had held their land for twelve years until the contrary was proved,⁵³ but also the occupancy right could not be waived by contractual agreement.

To make the right effective, such tenants were liable to pay only 'fair and equitable' rents, and could not be evicted for arrears of rent; instead their holdings were liable for sale in execution of a decree for the rent, a similar provision to the one, in the Sales Laws, for zamindari estates which defaulted on the revenue. Procedures were provided for the commutation of produce-sharing to money rents,⁵⁴ the idea being

bad, for example, were specifically mentioned in eighteenth-century government papers, and frequently thereafter, as a form of fixed-rate tenure. This was confirmed in *Lal Sahoo v. Deo Narain Singh*, ILR, 3 Cal.781, 2 CLR 295, but not in *Juttoo Moar v. Mussamat Basmuttee Koer*, 15 WR 479, or *Missamat Tetra Kooer v. Bhunjun Roy*, 21 WR 268. See Finucane and Rampini, *Tenancy Act*; and also Harbans Sahai (22 February 1878) and Joy Prakash Lall (1 March 1879) to Patna Commissioner, for BRC, *RLC Report*, appendices.

⁵² Note, 7 April 1882, Add.Mss.43584. Citing the authority of William Muir from 1865, he argued that the period had been carefully chosen in 1859 as according with Hindu and Muslim as well as British and Company law. E. Currie's draft of the 1859 Act had proposed three years, and was criticised as too narrow (being confined to resident raiyats) and too broad (based on too short a qualifying period).

⁵³ Settled status was presumed (section 20, 7) and heritable (section 20, 3), and also lasted so long as any land was held in the village (section 20, 5) and when land was recovered which was not voluntarily surrendered (section 20, 6). Under section 21 (1) of the 1885 Act, the land had to be held *as a raiyat*—that is not as an under-raiyat—and occupancy rights accrued only in respect of such land; but a similar presumption on other rights also applied in some cases to produce-sharing or even *utbandi* (year-by-year) tenants or to those with holdings on zamindari 'private lands'. The purpose was to avoid narrowing the range of those with occupancy, as was supposed to have been done by Act X of 1859, though Finucane and Rampini, *Tenancy Act*, argued that several cases in fact had favoured a custom of occupancy: *Hills* and *Thakurani Dasi* (see notes 29 and 30 above), and *Rajah Leellarund Singh Bahadoor v. Niroput Mahtoon*, 17 WR 306.

⁵⁴ Commutation (section 40) was based, according to Finucane and Ali, *Commentary*, on the English Tithe Acts. The procedure was not much used at first, but became more common after the settlement operations.

that produce sharing was oppressive and discouraging to enterprise. (The distinction was in terms of the way rents were calculated, and not of whether they were actually paid in kind or in cash.) Contrary to the recommendation of the Rent Law Commission, a power of distraint was retained to assist landlords in collecting their rents; it was not to be exercised summarily but only through the civil courts, with protection for the tenant.⁵⁵ Rules of enhancement were provided, whether by registered agreement (a maximum of 12.5 per cent in 15 years) or by the courts, chiefly after local inquiry into the rents paid by comparable occupancy tenants, or in line with rises in the average prices of local staple foods.⁵⁶ Non-occupancy raiyats too were offered some protection in the way of enhancement and ejection, on the argument that no cultivator in India should be left entirely at the mercy of the market and of contract. Section 61 of the Act allowed a raiyat to deposit his rent with the authorities (for a fee) much more readily than the Bengal Acts, VI of 1862 or VIII of 1869—for example when he had reason to believe that a landlord (disputing the amount, say) would refuse it, or when previously he had not been given a receipt. Similarly section 69 allowed the Collector to authorise the appraisal or division of the crop for produce-sharing rents. Many of these measures, especially the registration of improvements and the deposit of rents, required direct and close intervention by government officials or the courts. This was deliberate, reflecting in part an assessment that there were no adequate alternative forms of protection. In Bihar, for example, where village officers were creatures of the zamindars, attempts to revive the patwari system had been abandoned as the Rent Law Commission deliberated.

⁵⁵ The power of distraint had come from English law, and was first permitted to landlords by Regulations XVIII of 1793 and XLV of 1795; by Act X of 1859 the power was limited to crops on the rented land. In 1877 Eden singled it out (the Rent Law Commission agreed) as one of the abuses to be remedied; this will be discussed below. In 1885, under section 121, distraint could not be for recovery of rent in excess of that payable in the preceding year, unless a legal enhancement had been provided, or for parts of a holding sublet with the landlord's approval; by section 123, courts were empowered to institute further inquiries, and to depute an officer to carry out the distraint; by sections 124 and 126, tenants were permitted protect the value of crops which were subject to a distraint order, for example by harvesting them; by section 186, as the Bengal government had wanted, improper distraint, though also resistance to lawful distraint, were made criminal offences. See Finucane and Rampini, *Tenancy Act; RLC Report*; and G/I R&A despatch no.7, 21 March 1882, in Add.Mss. 43584. Distraint will be discussed further below.

⁵⁶ According to Finucane and Ali's *Commentary*, the price lists (section 39) were little used. See below where the proposal is traced to Field.

By contrast the Commission proposed compulsory registration of intermediate holdings and mutations, superseding the inoperative voluntary system of the 1859 Act. It will be argued later that the most significant intervention of the 1885 Act was section X, which provided for survey and settlement and a record of rights.

The purpose, spelt out in a special administration report, was to create a 'system of fixity of tenure at judicial rents'. It was argued that the 'ancient agricultural law of Bengal' had been founded on such fixity 'at customary rates'; that it had gradually proved unsuited to changing circumstances; that attempts had been unsuccessful to substitute 'positive law' for 'customary usage'; and that consequently in some areas, where land was scarce, landlords were all-powerful, while in other areas, with lower populations, tenants refused to pay any rents except on their own terms. The new Act therefore would give each raiyat 'the same security in his holding as he enjoyed under the old customary law' (hence the onus of proof on a landlord who denied occupancy rights), would 'ensure to the landlord a fair share of the increased value of the soil' (ascertained from price lists kept by government), and would 'lay down rules by which all disputed questions between landlord and tenant' might be 'reduced to simple issues, and decided upon equitable principles' (notably by applications 'to determine the incidents of a tenancy' and by rent settlement and a record of rights).⁵⁷ Thus would the tenant gain 'some share in the material progress of his country', while the landlord or auction-purchaser, aided by 'the executive agency of Government' in the 'reasonable enhancement' of rents, would have the means of realising the 'profit of capital invested in the land'.⁵⁸

Legislation is bound to assume or seek to impose uniformity, a tendency extended when administration and courts are systems of record and precedent. In regard to landed property, the laws (including those from before British rule) represented progressive standardisations. The permanent settlement standardised the status of proprietors, especially when read with the enforcement of an initially high revenue demand and the analytical predilections of the courts. In Act X of 1859 the British believed they were resolving a conflict between proprietors and tenants, and codifying a wider range of relations in land. (At first the courts, on assumptions which they assumed to be universal, still opined that all rights in land derived from its exclusive owner, the landlord.) In 1885—although, following the Rent Law Commission, there was no

⁵⁷ *Bengal Supplementary Administration Report* 1882-7.

⁵⁸ *RLC Report*, vol.1, p.94.

attempt to impose a full system of written contracts on relations which were mediated informally or by custom—yet, in terms of agrarian structure, the attempt was no less than the regulation of an entire society into the four main categories which were defined (proprieters, intermediate rent-receivers, raiyats and under-raiyats), with their characteristics and privileges set out. This confirmed what H.J.S. Cotton had already proclaimed in 1884, in his memorandum on land tenures, that the old distinction between *khudkashta* and *pahikashta* was now ‘obsolete’. On the other hand, he discussed as still existing many more distinctions of tenure than were confirmed by legislation in 1885—as well as many terms applied indiscriminately.⁵⁹

Of course any standardisation appeared as a tendency, not an achievement. Confusions remained. For example, a ‘holding’ was land held by raiyats (not tenants); it could not be land held by proprietors, who had ‘private lands’, or by tenure-holders, who had ‘tenures’. But the definitions of the Act provided that a landlord was not necessarily a zamindar but rather any person immediately under whom a tenant held land, and to whom he paid rent. In the view of Finucane and Rampini, by this definition the ‘landlords’ included rent-receiving raiyats, with their ‘holdings’. Nor was the three-fold division of tenants, inspired by the Rent Law Commission, more consistently maintained. The 1885 Act sometimes conflated and sometimes appeared to distinguish between ‘tenant’ and ‘raiyyat’, as in the Hindi and Bengali translations where the latter term was used but also *asami* or *praja*. As a result it was not always clear whether some general provisions on ‘landlords’ applied also to raiyats, and whether some on ‘tenants’ applied also to under-tenants.⁶⁰ Some implications of this curious and interesting confusion of languages and terminology will be considered later, in a discussion of custom and law.

⁵⁹ Cotton, ‘Memorandum on Land Tenures in Bengal’, prepared at Ilbert’s behest for the Select Committee on the Tenancy Bill, 31 January 1884; also sent to Ripon at his request: Cotton to Primrose, 29 February 1884, Add.Mss. 43584.

⁶⁰ Finucane and Rampini, *Tenancy Act; RLC Report*, para.10. Bengal Act III of 1898 clarified some of these ambiguities.

Chapter Four

The great rent law debate

From this overview we now move to more detailed consideration of particular positions on the tenancy reform, a series of comments on illustrative texts, the most important being the *Digest* of C.D. Field, an anonymously-published two-volume compendium called *The Zemindary Settlement of Bengal*, the Report of the Rent Law Commission of 1880, the two-volume report by the Government of Bengal from 1881, various government despatches (especially from Ripon's government in March 1882), and the later legal analyses by Finucane and Rampini, and by Finucane and Ali.¹ These sources reflect and typify the intense controversy that surrounded the introduction of the 1885 Tenancy Act.

Questions of revenue, property in land, and tenancy were continually discussed during British rule, but the argument over a rent Bill in the 1870s and '80s was perhaps the most sustained and wide-reaching of all the debates. The Ilbert Bill controversy has its place in the standard history of Indian nationalism, for what it showed both of the nature of British colonialism, and of the power of organisation. The land law, as the second great *affaire* of the 1880s, also produced mountains of documentation.² Thereby it enunciated theories of classes and of the state

¹ [R.H. Hollingbery], *The Zemindary Settlement of Bengal* (2 vols.; Calcutta 1879); Field, *Digest*; *RLC Report*; *Report of the Government of Bengal* (1881); Government of India to Secretary of State, 21 March 1882 [hereafter March despatch], and other papers, R&A Rev A 16-46 (July 1883); Finucane and Rampini, *Tenancy Act*, and Finucane and Ali, *Commentary*. For some of these records, including drafts and notes, see also Add.Mss.43584. For full citations of these and other frequent sources on the 1885 Act, see chapter three.

² The Bishop of Calcutta thought the extraordinary British reaction in Bengal was 'not really caused by the [Ilbert] Bill but...is the result of measures taken during the past few years against the Europeans in favour of the natives', a feeling that Ripon 'came out merely to put the native on the gadi'; offensive measures presumably included the pro-raiyat Tenancy Act, the Local Self-Government Act, the Arms Act, and the repeal of the Vernacular Press Act; Gibbs to Ripon, 23 March 1883, Add.Mss.43611. Conversely, the *Calcutta Review*, surveying the quarter, thought the Ilbert Bill furore had attracted attention to the tenancy debate in England; *Calcutta Review* LXXVII, CLV (1883), p.222. The comparable importance of the Tenancy Bill among Indians has been less noted, though see B.B. Misra, *The Indian Middle Classes* (Oxford 1961), pp.344-7.

which were in some ways formative. Protagonists disagreed on history and political economy. They read eighteenth-century conditions differently; were opposed in their impression of the present; and disagreed about the best policy to ensure general well-being. For convenience they may be divided into two camps, one which professed to favour the interests of raiyats, and another which made a case for the zamindars.

All statements of theory and principle in support of policy may be regarded, no doubt, more or less as rationalisations. In obvious or indirect ways, participants in the great rent law debate were using specific analyses to justify positions taken on more general, even subliminal grounds. The officials who supported the pro-raiyat position delved into regulations and memoranda of the 1790s and were not surprised to find justifications for a system of proprietary cultivators: they believed it essential for prosperity and economic progress. Arguments in favour of anterior property rights for the raiyats drew *inter alia* upon James Mill's criticisms of the permanent settlement.³ The whole may seem to derive from the peculiar combination of *British* colonialism (with its passion for separation, categorisation and ranking, its preference for the particular over the general), with *Indian* rural society (with its layers of complex, ambiguous and collective interests, its rivalries and tensions).⁴

Rationalisations reveal underlying assumptions, and may be part of a process of forming and changing views. C.D. Field's *Digest* of rent law and the report of the Rent Law Commission were major events in this sense, informing opinions on the nature of agrarian relations over a

³ See, for example, Mill's *History* (Wilson ed., vol.1, p.205) on rents and the principle of the 'sovereign state'. See also 'The policy of the new rent law for Bengal and Behar by a district officer', *Calcutta Review* CXLIII (January 1881), and 'A memoir on the land tenure and principles of taxation in Bengal by a Civilian', discussed in Babu Ashutosh Mookerjee, 'The proposed new rent law for Bengal and Behar', *Calcutta Review*, April 1883 (pamphlet reprint, Calcutta 1883).

⁴ Facile though they are, there may be something (at least as a topic for further research) in such comparisons, for example between on one hand French colonialists who, being passionate about universals, like French nationalism and intellectuals, subsumed everything in a potential Frenchness (leading to solidarity, save for acculturation, among each subject people, but violent metropolitan resistance to decolonisation), and on the other hand British imperialists who, like their class- or regionally-obsessed countrymen, became ever more acutely conscious of difference (producing nationalists and communalists, but a less contested relinquishment of power). Perhaps Indians fitted well with the British model because of their own obsessions with status and otherness of various kinds, for all that these were altered and hardened by colonial rule.

quarter of a century and beyond. They fulfilled a role similar to that of the classics among north Indian settlement reports or the Famine Commissions of the same period. A new consensus grew. As noticed already, the 1880 famine report in particular was obviously from the same stable as that of the Rent Law Commission, and with the report of 1901 may be said to have delineated a particular period in British rule. Ripon himself was important in securing the terms and passage of the Bill. His diaries just prior to his viceroyalty are filled with shooting and high mass, but they also evoke an interest in agrarian questions beyond that to be expected of an average English landlord. In July 1879, for example, Ripon met a representative of the Farmers' Alliance and then mused on the desirability of compulsory reimbursement for tenants' improvements. In the late spring of 1879 he had read Caird's 'English Agriculture in 1850 and 1851'; that winter he turned to Hume's 'Agricultural Reform in India' and Arnold's 'Free Land'.⁵

More important, a kind of personal and political alliance developed among those who advocated reforms to create or benefit tenant 'proprietors' and the constructive official interference with agriculture. It stretched from E.C. Buck, Secretary of the Government of India's Revenue and Agriculture Department, to Michael Finucane, secretary to the Rent Law Commission and Bengal's first Director of Land Records and Agriculture. A key figure was a personal friend of both Buck and Finucane, namely A.P. MacDonnell, whose own early hopes of advancement were encouraged at a time when he was writing a long memorandum on the Rent Bill in 1885, and who was to see himself in 1893 (when acting Lieutenant-Governor of Bengal) as defending the reformers' legacy against subservience to the landlords on the part of Charles Elliott. In 1906 Finucane was still appealing to the true path of protecting the raiyats.⁶ Not all these people agreed on every aspect. As we shall see, there was an older liberal tradition represented by Eden and Bayley which believed in the efficacy of structural and legal reforms, and a parallel set of agrarian radicals, such as Buck and Finu-

⁵ Add.Mss.43642. The references are to James Caird, *English Agriculture in 1850-51* (London 1851), Allan Octavian Hume, *Agricultural Reform in India* (London 1879) and Robert Arthur Arnold, *Free Land* (London 1880).

⁶ The MacDonnell Collection in the Bodleian Library, Oxford, gives some impression of the situation among officials; for this and the following paragraph, see his letters to his wife, 'Sunday evening' and 28 August 1885, Mss. Eng.hist.d.213; other correspondence, *ibid.*, 235 *passim*, and Finucane's memorandum on the 1906 Amendment Act, *ibid.* c.368. See also above (ch. 3, note 3) that Macdonnell's minute of 20 September 1893 was published over his name to 'lend more authority to it' but actually written by Finucane.

cane, who wanted the state, in addition, actively to promote improvements in cropping patterns, agricultural methods and credit, and so on. There *was* a consensus about the need for legal protection for tenants.

This was a path originally set outside Bengal, specifically by the ideas of Henry Maine and the experience of the Punjab. And of course, though consensus was often reached, ideology might be a factor in isolating some officials from their fellows. The most notorious instance (to be discussed below) was a bitter public row in the 1880s between Bengal's Chief Secretary, Alexander MacKenzie, and the Bengal Chief Justice, Richard Garth. A little later Eden was contemptuous of his successor, Thompson. Elliott's relations with MacDonnell in 1893 were almost as hostile, while O'Kinealy was still reported at that time to be estranged from his colleagues on the High Court bench, on tenancy questions. On the other hand, even within Bengal, over a twenty-year period from the time of Ripon to that of Curzon, taking a pro-raiyat stance proved an aid to advancement in the service. Persistence in a more-or-less successful cause had its rewards. Of the members of the Rent Law Commission, Field and O'Kinealy were promoted to the High Court bench, Brojendra Kumar Seal became an additional Sessions judge, Harrison moved from the Board of Revenue to head the Calcutta Corporation, and Mackenzie was promoted from Bengal to the Government of India's secretariat. Ameer Ali, who contributed a pro-raiyat article to *Nineteenth Century* in 1883,⁷ was alleged to have been promptly appointed on the strength of it, to the Governor-General's Legislative Council and the Select Committee. Later, during the twentieth century, political fortunes would again be made (and the Hindu-Muslim split worsened) on Bengal tenancy issues.⁸

Bihar was the proving ground for radicals within Bengal. Eden himself may have formed his attitudes in part during his experience as a Political officer in north Bengal, from where he wrote in 1864 of the 'scarcely credible' Bhutia oppression of Bengali raiyats;⁹ but generally the officers who formulated the new tenancy policy had served in Bihar.

⁷ 'A note on the Rent Bill', P/T 1285, IOL.

⁸ See Bayley to Ripon, enclosing O'Kinealy to Bayley, 30 January [1883], supporting Ali's Council appointment as 'the chief & most influential member of the National Muhammadan Association' who would also 'represent fairly and well the views of the ryots.... I can guarantee that he will identify himself, as he has done, with the just claims of the cultivators'; Add.Mss. 43612. See also P. Chatterjee, *Bengal, 1920-47. The Land Question* (Calcutta 1984).

⁹ Government of India, Political Department, Political Branch Proceedings, October 1864, P/127/68, p.23, IOL. I owe this reference to Subhajyoti Ray.

Of those who served on the Rent Law Commission, Mackenzie began his service in Shahabad district in 1863, and also served briefly in Bihar a decade later on famine duty; apart from a stint of a few months as magistrate and collector in Murshidabad, Mackenzie was pre-eminently a secretariat man, beginning early as an under-secretary and occupying various positions in the Board of Revenue and other provincial offices before becoming a departmental secretary in 1877—his three or four years in Bihar constituted almost the whole of his experience of the mufassil. O’Kinealy, his almost exact contemporary, began his judicial career, after transfer from the revenue branch, in 1874 in Bhagalpur district, a time when discussions were going on among Bihari officers about the condition of the poor and the oppressions of the zamindari system. Other officials too, who were influential in the policy-making, had served in Bihar in posts relating to famine or agrarian conditions—men such as Antony MacDonnell and Michael Finucane. In the mid and late 1870s, the time of Richard Temple and Ashley Eden, the Lieutenant-Governors’ visits to Bihar also helped shift the emphasis towards questions of poverty and underproduction, and away from the problems of rent and rent-collection (as raised in the early 1870s under George Campbell). As we have noted, this produced the high-point of the government’s reforming zeal, in 1880, just after the report of the Rent Law Commission, when Alexander Mackenzie set out the new aims of the long-proposed legislation.

Encapsulating this period and this school of thought, Field’s *Digest* was a legal critique which justified the change in the law. Prepared under government orders, as the first part of the Rent Law Commission,¹⁰ it was a summing up of nineteenth-century studies of tenancy, and the authoritative voice of the reform as eventually enacted. It followed in the tradition of such works as Phillips’s Tagore law lectures of 1874/5,¹¹ but relied particularly on J.H. Harington’s *Analysis* (1805–21), intended for the College of Fort William and for the use of junior officials before they entered the service. Modeled on Blackstone’s Commentaries, then ‘an essential part of every gentleman’s library’, the *Analysis* proposed to elucidate the ‘elements and first principles upon which the rule of practice is founded’, while admitting that the Com-

¹⁰ Three preliminary meetings were held, and Field was deputed to prepare the *Digest*, which he completed by 19 August 1879; at the fourth meeting, the Commission began to consider a draft bill; *RLC Report*, vol.2, Minutes of Proceedings.

¹¹ Published as Arthur Phillips, *The Law relating to the Law of Tenures of Lower Bengal* (Calcutta 1876).

pany's laws, embodying as they did many rules of conduct for officials, could not be compared 'as a science' with those of England. Avowed policy-goals included the 'maintenance of the rights of proprietors and farmers of land, and of their under-tenants'. In 1866, as the work was out of print, and marking the new interest in tenurial questions, the government reprinted those parts 'bearing on the revenue administration of the native Governments, and the rights in the soil of the various classes of proprietors and occupants in the Bengal Presidency'.¹² Harington had later prepared draft regulations, also closely followed by Field. Taking an overt view on policy (unlike the *Analysis*), these adopted the then orthodoxy that the 'insecurity and oppression' of the Bengal peasantry should be attributed to a long list of official errors: the 'omission of clear and definite Rules' in 1793 and afterwards, the prejudicial effect of some rules and the lack of enforcement of others, the misapprehensions of landlords' rights, and their abuses, the abolition of local agency, and the inadequacies of the courts. Harington admitted the difficulty of reconciling landlord and *khudkashta* raiyats' rights, thought a distinction had to be made between ancient tenures and those newly created by zamindars, and proposed to empower officials to mediate, on demand, between landlords and tenants. Holt Mackenzie had favoured an even more pro-active official role.¹³

Building on these precursors, Field's was a Benthamite project undertaken from a historicist perspective: intended to present 'the existing law exactly as it stands', but also to show that a consolidated law of landlord and tenant was attainable. Field described that as easier than supposed, requiring just two main amendments, making occupancy right transferable and providing a practicable law of rent; accordingly the *Digest* included two particular essays, a 'Note on the transferability of ryots' holdings' and a 'Note on the enhancement of rents'. The intention thus crystallised was to create a property in the 'right' of occupancy, to be recognised by provisions for transferability, and protected by a 'practicable law' of rent enhancement. We have already noted that Field

¹² *Analysis of the Bengal Regulations* (Calcutta 1866) would have been the volume used. *An Elementary Analysis of the Laws and Regulations Enacted by the Governor General in Council at Fort William, in Bengal, for the Civil Government of the British Territories under that Presidency*, in six parts, had been completed by Harington in two stages, the first in 1805-9 and the remainder in 1815, and then as a revised edition (3 vols.) in 1821. See especially the 1821 Introduction and the 1866 Preface.

¹³ J.H. Harington, *Minute and Draft on Regulation of the Rights of Ryots in Bengal* (Calcutta 1827). See pp.1-2, 24 and draft regulation. An exception to its influence on Field was its warning against the pargana rate (p.39).

regarded such a development in tenorial property as desirable, inevitable and 'natural'. His argument has at least five different elements which we need to consider: the state's right to legislate, the tenants' proper position with regard to rents and to alienation (together in effect the nature and extent of their property in land), the origin of land rights, and finally the conditions justifying legislation in this instance.

In all these, the relative weight of custom and legislation had to be decided. In particular, because historical legitimacy was a principal weapon of debate, what had or had not been done in the permanent settlement became a focus of contention. Field outlined a process whereby standardised property rights were provided for tenants. It began with the permanent settlement, and the first Regulation (VIII of 1793) whereby the British interfered to define legal rents as distinguished from illegal demands (*abwabs*). Field claimed that the principle of interference in tenancy by law was then repeatedly established, in a succession of enactments. In 1812 rights of 'free' contract were permitted, and leases were protected against any transfer of the proprietary right (Regulations V and XVIII). In 1819, as we have noted, Regulation VIII protected the property-rights of *patnidars*. In 1820 certain tenures were permitted to be sold (Regulation I) while Act VI of 1853 established official jurisdiction over such sales. In 1859 the first major tenancy Act (Act X) opened the way for a flurry of legislation: Field discussed nine Bengal Acts which affected tenant rights between 1865 and 1876. The point was not that this legislation was supportive of tenants; it was that it established definitions of tenancy as comprising the specific rights and obligations set out in the written law, which officials and the courts interpreted. This change was entirely deliberate.

In one sense in particular the intervention of law was regarded as new. The Mughals did attempt to standardise and categorise rural rights, and their influence may be gauged from the dispersal and longevity of their terminology. On the other hand, the evidence also shows their incomplete penetration, localised law, and variable or ambiguous agrarian structures. On that basis, the British could allege that Mughal government had dealt with raiyats 'at will'—that is, not according to law—and that such orders as it passed, to regulate its officials, were of varying effect (less powerful in more distant provinces, for example). This was contrasted with what, for these purposes, was taken to be the complete and uniform sovereignty of the British system.

The justification for intervention was that it was the arbitrary nature of Mughal power which had impeded progress: under the British, the raiyat was to benefit from the opportunities and the temptations of pro-

perty, and to be provided with rental obligations that were both certain (or limited) and inescapable.¹⁴ For this reason it was quite consistent to try to make it easier for zamindars to collect rents, and at the same time to render raiyats more secure in the occupancy of their holdings. Such changes represented a kind of economic plan. The interventions of law were regarded as conforming to a great, evolutionary logic which sometimes, in India, needed a helping hand. Thus it was that Field and those who followed his prospectus looked both forward and back. The historical precedents which were sought were intended to legitimate policies which allegedly restored or replicated earlier practices, and at the same time to provide evidence of the pre-existing 'natural' tendencies which legislation was merely assisting.

What was the starting-point of the evolution; alternatively the diagnosis of the problem? One view was that tenants had always had property, as will be discussed more fully below. Another was that, whatever the original position, tenancies did not now constitute real property, because their rental obligations and their transferability and heritability were doubtful. These matters had been settled, in the British law, for zamindari estates in 1793, and for tenure-holders (*patnidars*) in 1819. Therefore similar incidents of property would 'naturally' spread to tenancies as well; this had been ruled out by Regulation VII (*haftam*) of 1799, but was provided to some extent in Regulation XI of 1822. We have noted Field's view that the 'tendency of development' was towards alienability.¹⁵ This was partly, he held, because it was in the zamindar's interest to sell holdings for arrears of rent, or to accept rent from whomever proffered it.¹⁶ For such reasons, the basis of agrarian relations as a whole was bound to shift to one regulated in market terms. The development was partly just the extension of an idea of alienability as an 'incident of property', inevitable once that idea had been introduced.

Accordingly, in seeking to ensure raiyats' property, Field elaborated upon a long list of arguments for and against legislation to provide for the transferability of tenancies.¹⁷ Their gist was fear of the exploitation

¹⁴ Field, *Digest*, p.181.

¹⁵ *Ibid.*, p.165.

¹⁶ *Ibid.*, p.10. Receipts often showed rent received 'through' a third party, often an unregistered purchaser, and conversely zamindari records might retain an original holder's name even after he had left or died.

¹⁷ In the 1885 Act, section 26 made holdings heritable (which had been in doubt after *Ajodhya Pershad v. Inam Bandi Begum*, 1 WR 528) but, as will be

of raiyats by moneylenders, and arguments about the diminution of the zamindars' property. The first, Field conceded, might justify special protective measures, but generally could be left to the countervailing benefit of property. The second he either denied or considered desirable: the property of the raiyat would prevent the extraction of illegal dues or the transfer of 'ryoti land' into direct '*khas* possession' (or *zerat*).¹⁸ The creeping extension of *zerat*, he held, was contrary to the 'common law of the country'—a highly dubious claim, in that it was very unclear what that common law was, if indeed it existed at all in respect of such matters. In effect, Field was advocating an extension of the sway of state regulation and market forces in order to relate and fix rights in land at all levels. Progress had been hampered by the privileges and oppression of the zamindars, but change would follow once the raiyats were made 'independent and self-reliant', enabled to benefit from 'thrift and industry': thus would spread the 'magic of property', so that the great influence of peasant proprietors would be harnessed 'in stimulating industry, in training intelligence, in promoting forethought and self-control'. Here Field was quoting Émile de Laveleye on *Primitive Economy*, and referring also to J.S. Mill's *Political Economy*.¹⁹ He argued that some progress in 'independence and self-reliance' was already evident under the 1859 Act, for example in the 'wonderful amount of industry and thrift' encouraged by 'the creation of a particular class of tenures' in East Bengal.²⁰

The question of middlemen was not really addressed by supporters of the tenancy reform because it was inconvenient, intellectually and practically. The issue did provoke a number of inquiries into transfers of raiyati holdings, including one (made available to the Rent Law Commission) which analysed the purchasers at sales in execution of decrees for arrears of rent. The bulk of the land was acquired by zamindars or rent-receiving cultivators.²¹ Field noted, in this connection,

discussed below, left transferability to custom. See Finucane and Rampini, *Tenancy Act*.

¹⁸ Such transfer could be a device either to improve direct zamindari control or to worsen the status of tenants; section 116 of the 1885 Act excluded occupancy rights on such lands, except on a perpetual lease.

¹⁹ Field, *Digest*, pp.177-81. Émile de Laveleye was repeatedly quoted by Indian analysts, at least since Phillips' Tagore lectures. Here the reference is to *De la propriété et de ses formes primitives*, translated as *Primitive Economy* by G.R.L. Marriott (London 1878).

²⁰ Field, *Digest*.

²¹ See 'Statement of classes of purchasers of ryots' holdings and small under-tenures under execution sales' [1878-9], *RLC Report*, vol.2, Appendices.

that it was argued that transferability of holdings would possibly bring undue benefits to occupancy raiyats, and/or throw the lands of tenants, many of whom were already indebted, into the clutches of mahajans who would reduce the raiyats to 'serfdom'. Field conceded this, and, in a not very distinguished response, suggested that special measures might help combat such 'known disadvantages'. We will find that a similar argument against transferability was put by Richard Garth, the Chief Justice, and similarly not really answered by the reformers, Mackenzie and O'Kinealy.

Field was aware of the different effects of peasant proprietorship in different conditions—he referred to the example of the Deccan raiyats as a warning (in view of the agrarian disturbances of 1875). But, in a novel conclusion from a familiar metaphor, he regarded institutions as being like plants, that 'may flourish in one climate as well as another, if only due attention be paid to guard against the particular unfavourable influences which each climate presents'.²² In other words peasant proprietorship was universally beneficial, and no economic improvements could be anticipated without the possession of such property. However in Bengal and Bihar, a few adjustments would be needed to allow for peculiar local usages and other impediments to the expected development of landed property and enterprise—impediments supposed to include ecology, the malign influence on forethought and frugality of a climate which allowed several harvests in a year.

As another pre-requisite for the development of tenurial property, rents were supposed to be 'fair and equitable'.²³ Such provision was made for occupancy raiyats under the 1859 Act, but there were considerable ambiguities about what it meant. These were compounded when the Great Rent Case (*Thakurani Dasi v. Bisheshur Mukherjee*) permitted an increase with regard to the value of the produce (whether in general or on the land in question was unclear) and without allowance for any change in the costs to the raiyat. This uncertainty produced in some senses the motive power for the Tenancy Act of 1885. But it rested on a far older confusion which in itself may be said to have provided the core of the pro-raiyat case in the 1870s and 1880s. All tenants were entitled to leases, but these were on terms set at the landlord's discretion in the cases of those without occupancy rights. No rents were to be enhanced without notice, and yet the law did not establish very clearly an

²² Field, *Digest*, pp.178-9.

²³ In the 1885 Act this phrase was not defined. Finucane and Ali, *Commentary*, show that it derived from section 5 of Act X of 1859, so that there was case law upon it.

inalienable value in the holdings of any tenant, other than *patnidars*, such as would have clearly constituted legal property. In deciding what to do about this, the guiding principles were which 'rights' had existed in the past, and which would have most utility in the future. The result was that conditions of tenancy in the century before 1885 had to be examined.

Regulation VIII of 1793 had apparently envisaged four classes—proprietors, independent taluqdars, dependent taluqdars, and raiyats. The last included *khudkashta* or permanent privileged raiyats, whose leases were not to be changed or cancelled, unless they were paying below the 'pargana rate', or too little through fraud or collusion, or unless there were a general measurement to equalise and correct the assessment. Field thought the last implied a wholesale revision by the proprietor; and in support cited the role expected of patwaris and kanungos, in Regulation IV of 1808, to assist in measurements of land on behalf of landholders or raiyats. Another possibility is that what was meant was a revision under government supervision—as also provided for in 1808. Either way, the result would be a new 'pargana rate'. *Abwabs* were therefore unauthorised (that is, unmeasured) increases, whether imposed by zamindars or the state, which occurred between these formal revisions. They had greatly multiplied during the eighteenth century; Sir John Shore thought they increased the demand by 83 per cent between 1658 and 1789. The implication generally was that the 'real' pargana rate was not fixed, but could be changed, in practice, either by additional demands from landlords, or after measurement and 'correction'. In the latter case, Field presumed the rise would be in line with the value of output, for there is an implication in the Regulations of 1793 and in subsequent discussion of Todar Mal's system that rents were to be set after an assessment of the productivity of the lands in question. That would have been taxation according to the ability to pay, and Field's notion of it may have been anachronistic.²⁴ He concluded that there was no decision in 1793 to fix raiyats' rents alongside the revenue demand. But he also argued that the *khudkashta* raiyats were not in the position of tenants-at-will. They were entitled to receive a lease, in order to set out the exact amount of rent payable. It was not in order to legitimise their landholding: they did not need that as they were already 'upon the

²⁴ But see Field, *Digest*, pp.190-1, discussing section 51 of Regulation VIII of 1793, which limited any increase demandable, not from raiyats but from 'dependent taluqdars' (those not enjoying a direct revenue-paying relation with government), according to the conditions of tenure and to whether 'the lands are capable of affording it'.

land' at the time of the settlement.

Field assumed—it was rather a large assumption—that produce rents were taken in a fixed proportion, and thus would be reduced or enhanced in value according to the movement of prices. The Rent Law Commission proposed limiting the proportion of gross produce taken by the landlord, but disagreed about the limit.²⁵ Cash rents, for non-occupancy raiyats, were (Field thought) clearly a matter of agreement between the two contracting parties. It was the position of occupancy raiyats paying cash that was unclear. By a majority court decision in 1856, reached by analogy with the English law, it appeared that there was no limitation on any enhancement other than what was provided in legislation: the tendency of the courts was to drive out alternative jurisdictions.²⁶ But in practice it seems that, for whatever reason, occupancy raiyats paid less than other tenants in some areas, but more in others. What did legislation provide? Act X of 1859 allowed enhancement of individual rents up to the average, but no mechanism (other than a statistical one over time) of raising the average in each category. As we have noted, *Hills v. Ishore Ghose* ruled that the right of occupancy implied no privilege in respect of rents, which had to be paid at a 'fair and equitable rate', meaning (in the view of the Chief Justice, Peacock) a rate no lower than a non-occupancy tenant would pay, or in other words a 'market' rate.²⁷ It was unclear from this, taken in conjunction with the notion of 'fairness', whether or not the rent could be increased in real terms (that is, so as to take a higher proportion of the value of the output, in order to respond to the impact of population upon the demand and hence the price for land). If so, obviously the end-product, in a situation of land scarcity, would be the reduction of all tenants to the same level, and ultimately perhaps the removal of all distinctions between tenants and labourers.

However, few if any officials advocated the ruling in *Hills* as a possible or desirable solution.²⁸ Field, or even the judges, may well have had in mind a doctrine of rent which included a notion of 'prevailing profit'; the landlord could have extracted the whole of such a rent without reducing all cultivators to the same level. Field certainly applied his conception of political economy—and his reading of John Stuart

²⁵ *RLC Report*, vol.1, p.16.

²⁶ Sadr Dewani Decisions, 1856, p.617. The majority was four to one; the dissenting judge (Torrens) argued that it was false to equate English landlords and tenants with Bengali zamindars and raiyats. See Field, *Digest*, pp.228-34.

²⁷ W.R. Special Number 1862-4, pp.48, 131, 148.

²⁸ Field, *Digest*, p.241.

Mill—to distinguish between an increase in value and an increase in price, that is the exchange value expressed in money.²⁹ The same market price would give different net returns to different producers; prices could rise due to monetary or demand factors, and either generally or in commodity-specific ways. By this argument, the permanent revenue settlement should never have been fixed in money terms, and what was needed for rents was a means whereby ‘fairness’ could be calculated in relation to agricultural prices rather than as a fixed money rate. Many times the idea of fixing rates as a proportion of gross product had been advocated, for example by Sir Henry Ricketts in 1859, as deducible in principle from Indian ‘custom’. The assumption was effectively that rent could be maintained in the same proportion to the value of the output, and not be affected directly by changes in the demand for land. *Thakurani Dasi* provided that enhanced rents should be proportionate in that sense, that is in a constant ratio to the value of the produce; but it applied only to ‘customary’ rents, that is in the absence of contrary contractual arrangements.

The conclusion to all this was that there was, at the time of Field’s *Digest*, no satisfactory law of enhancement which could be consolidated. Therefore, though much of the effort in 1885 was to standardise what had always been heterogeneous in India, some of it was directed to sorting out the mess of contradictions imposed by the British legal system. The situation in Bengal was the more uncertain because, for all the apparent interference, government had not fixed rents—it had had no pecuniary interest in doing so, except on government estates, either generally or for individuals.³⁰ *Thakurani Dasi* also had not been used, and anyway relied on a test which was very difficult to apply. Experienced observers concluded that a prevailing or market rate too would be impossible to define, because actual rents were so extremely various. One explanation was that these rates always allowed the tenants some-

²⁹ See Field, *Digest*. Referring to Thomas De Quincey on ‘exchange value’ (*Minor Single Works and Essays. The Logic of Political Economy*, Edinburgh 1844), Field noted that, according to Mill, ‘price’ means value in money, and ‘value’ means command over purchasable commodities. This made it a mistake for the permanent settlement to have been fixed in money, and meant that ‘price’ should be used in regard to rents. Such gleanings from political economy probably indicate a practical man’s search for authorities, rather than the adoption of new concepts which changed judgements as to what was needed.

³⁰ Field, *Digest*, pp.244 ff. He noted that Bengal Act VI of 1876 gave power for settlement officers to fix rents, but that it was never used. Arbitration on rents was also possible under the Civil Procedure Code, but again little used; Field wondered if it should be made compulsory.

thing more than the wages of labour and the profits of capital (for example to cover risk and seasonal variation), and that rents (including this margin) were calculated according to the prices prevailing when the lease was agreed. One might say that rates would vary therefore either according to the date at which the agreement was made, or according to the level of the margin allowed.³¹ In practice, conditions in villages meant that actual rents and rates varied without reference to leases, and in consequence of a great number of extra-economic considerations. This conclusion is reinforced by the impression that they varied according to the ability of the raiyats to resist and of zamindars to insist—in other words according to political factors which must have been germane before 1793 as well as after—and with particular reference to the number of intermediaries between landlord and cultivator. Field decided that a new principle was needed, or at least an improved mechanism for applying principles that seemed dimly to exist: he envisaged the collection and publication of agricultural prices (as in the *London Gazette* as a result of Tithe Commutation Acts), and an enhancement of rents so as to maintain their value in terms of the price paid on average for the staple food crop.³²

The object was a certain but bracing regime for the raiyat; a strong element of paternalism in Field wanted to improve the raiyat, not give him ease: the end was future comfort through individual effort. Just as he held that the responsibility of peasant proprietary rights would encourage ‘thrift and industry’, so too Field argued that ‘one of the most important steps that can be taken in training is to fix the demand upon the ryot for rent, and to make him understand that this demand once fixed must be complied with faithfully and punctually’.³³ There is an undercurrent here of wishing to reform the ‘feckless’ raiyat, as well as of protecting the oppressed peasant.³⁴ Thus Field, and the reformers, balanced the apparently contradictory goals of assisting both rent-collection and peasant prosperity.

³¹ This was one of the elaborate attempts to find general rules. It was quoted by Field, *Digest*, pp.242-4.

³² Field, *Digest*, pp.250 ff. noted the lists of wheat, barley and oats prices recorded in seven-year tables as a basis for commuting tithes to cash.

³³ Field, *Digest*, p.181.

³⁴ John Beames, for example, who claimed sympathy with the raiyats, attributed their plight to wilfulness: ‘Every one *will* marry, and *will* have heaps of children, no one *will* migrate, a vast majority *will* grow nothing but paddy and the poorest *will* spend in advance the earning of ten years on a marriage feast or a religious ceremony’; quoted in ‘A note on the Rent Bill’, 20 April 188[5?], P/T 1285, IOL.

A related point will be worth foreshadowing at this stage. Field's thinking provided a model on which further refinements were considered. For example, E.C. Buck, when Secretary of the Revenue and Agriculture Department, produced an elaborate note refusing historical and economic legitimacy to any standard ratio of rent to gross produce. Holt Mackenzie, in Regulation VII of 1822, had argued, applying Ricardian principles, that the same fraction could be levied from all lands, regardless of quality, only at 'an early stage of society' and with a low population, when soils and outturn were uniform. Otherwise the rates, he held, must reflect the conditions of each village and field: Regulation VII required the ascertaining of 'the estimated produce per bigha, and the average value of the produce'. In Bengal proper, where money rents had long prevailed, Buck thought it equally impossible to find any merit in average rates of rent: the average would exist but could not decide any particular rent, either in a village or 'still less... individual fields'. He argued that Holt Mackenzie's principles were right, but the process he required 'too ambitious in detail and cumbrous in operation' to succeed. Bayley, the Member of the Government in charge of the Bill, agreed on the whole, adding that a gross produce rule was 'unscientific' because the outturn was less significant in assessing a fair rent than the costs of production. He suggested rules of rent enhancement which adduced the rise in agricultural prices, subject to a minimum return for the cultivator—his and his family's subsistence being 'the first charge on the produce'. The last requirement would mean that landlords must take a *smaller* proportion of the output as population rose. On the basis of such arguments, the various options for rent enhancement were debated and approved or rejected.³⁵ What should

³⁵ Notes to R&A file 46 (1883), by Buck, 24 October and 2 and 27 November, and Bayley, 24 October and 28 November 1883, Add.Mss.43584. The options were to permit enhancement (1) up to rate paid on comparable land nearby, (2) with reference to potential output, (3) for changes in productivity of the land, and (4) for change in the area of the holding. Of these the Government of India disapproved of (1) and (2), from past experience and on principle, and as impractical in Bengal without expensive inquiries equivalent to regular revenue settlement (at a time when it was thought elaborate inquiries into land rights must cease). Draft rules for establishing average rates on the basis of at least 'five exemplar fields' were drawn up by Elliott and Buck; factors to be considered in assessing comparability included soil, manure, irrigation, proximity to markets, the skill of the cultivators. But Bayley insisted that even Settlement Officers' rates were suspect and inappropriate for setting individual rents, and Buck, noting the statistical tendency for rents to rise under any system of averages, suggested that an initial rent roll should be proven for each village, and subsequent rises permitted only for increases in prices or area.

be noticed is the universal presumption of *individual* producers, and the use of measures drawn from a market rationale. The impulse, in terms of arguments about the 1885 Act, came essentially from classical economics and north Indian experience. Yet, at just this time, a special report on conditions in Awadh concluded from a sample of 28,477 tenancies that rents were generally first demanded *en bloc* and then allocated to component fields and holdings by the village accountant or proprietor.³⁶ Practice in Bihar and Bengal was not very different, in this respect. This apposition of individual enterprise with collective processes is important, and we shall return to it.

III

An extreme but also typical formulation of the pro-tenant view was that compiled in the *Zemindary Settlement*, presumably by the copyright holder, R.H. Hollingbery, First Assistant-Secretary in the Financial Department of Bengal from 1866 and 1879, and thereafter a government pensioner.³⁷ It allows us to focus on interpretations of the permanent settlement, and the concept of an original raiyats' property, which lay behind the specific proposals which Field and others were making. The fundamental point is that the zamindari settlement was intended to apply to tenants as well as to landlords. Bengal raiyats had enjoyed rights in land which Cornwallis had not intended to confiscate. It was noted that the Court of Directors had desired that tenants should continue to enjoy 'the same equity and certainty' as to rents, and the 'unmolested enjoyment of...long-established rights'. This was taken to imply a property for raiyats analogous to the property of zamindars. Real property rights were thus bifurcated, according to the *Zemindary Settlement*. In support of this it argued that, as the permanent settlement made no provision for the enhancement of rents, it had intended them to be fixed at the same

³⁶ Quoted in J. Woodburn, Secretary, G/NWP, to Secretary, R&A, 21 December 1883, Add.Mss.43584.

³⁷ Hollingbery was not a member of the covenanted (ICS) but of the provincial service. A member of a Calcutta family, he is first recorded as working in the Military Auditor General's office in 1844; he moved to the Financial Department in 1863. His other activities included being secretary and treasurer of the Parental Academic Institution, a Christian school founded in 1823 to provide instruction in English away from the 'bad influence of native servants'. The following paragraphs discuss this work and the large amounts of documentation it provides. The latter will be identified in the text, but, for reasons of space, separate references within the *Zemindary Settlement* or to the originals it quotes will not be included.

time as the revenue demand. The professed motive of the *Zemindary Settlement* was to explain and remedy the parlous state of the poor, identified rather casually with the body of the raiyats. The book was too deferential to attribute blame for present conditions upon more recent government policy, nor did it cite, as others have, the excessive revenue demand of the early years. But the *Zemindary Settlement* did criticise subsequent measures to assist the zamindars to meet the revenue demand, by the use of coercion in the collection of their rents. In this it took up a theme which had been a constant refrain in north Indian condemnations of the Bengal system: it was based on an image of a true and original Indian way.

These views may be compared not only with Field but with a later summary, itself much influenced by the arguments of the rent law debate, that of W.W. Hunter, in his 'Dissertation on Landed Property and Land Rights in Bengal'.³⁸ In an account which is still useful, Hunter seems at first sight to confirm the interpretation of Hollingbery. Hunter also stressed the varied nature of the forms of land-holding rights in Bengal, and the incomplete penetration of the Mughal system. What was remarkable in 1793, by this account, was the creation (in law) of a single form of proprietary right. Hunter believed that the rights of Bengal raiyats had not been derived from the zamindar, as a tenant's supposedly are from a landlord. The raiyats, he thought, had owned the cultivation (and were obliged to cultivate), just as the zamindar owned the rent (which he was obliged to collect). It followed that rents were fixed by custom in each area, according to a so-called 'pargana rate', and not by agreement between the parties concerned.

It could not be denied that the Act of 1784 (24 Geo.II, cap.25) had provided for an inquiry into land rights, a settlement with existing holders, and the preservation of other existing rights. It was equally undeniable that Cornwallis's final codification gave a proprietary right to the zamindars, subject to prompt payment of the land revenue, at rates fixed unconditionally in perpetuity: this made the rate inherent in the land and not its owner, and reduced all zamindari property to one type. Also certain was that this landlord-right was qualified only by the requirement to pay revenue and not by any subordinate rights. Landlords were *required* to issue leases (*patta*) to their tenants and to receive acknowledging counterparts (*kabuliyat*); it may or may not have been imagined that rents would remain unchanged, or be kept at standard rates; it was probably desired that some protection should be provided

³⁸ In W. W. Hunter, *Bengal MS. Records. A Selected List of 14,136 Letters in the Board of Revenue, Calcutta, 1782-1807...*, vol.1 (London 1894).

(Shore said as much). It was expected that it would be in the zamindars' interest to treat their tenants moderately (they would become to the landlords, in Thomas Law's words, 'a part of their necessary property').³⁹ But land ownership was not conditional upon the fulfilment of such expectations. On the contrary, Shore's desideratum was ignored, of determining and simplifying the rules of rent enhancement, and, as Field pointed out, Cornwallis believed tenures existed by *agreement* with the zamindars. Moreover, during the ensuing decades, to ensure their allegiance and the uninterrupted receipt of revenue payments, the zamindars' legal position was strengthened *vis à vis* that of most of the tenants. Cornwallis wrote in 1789 (and is quoted by the *Zemindary Settlement*) that a landlord with 'a permanent property in the soil' would find it 'worth his while to encourage his tenants, who hold his farm in lease, to improve that property'; he would forego small temporary gain for 'future permanent profits'. Though implying some safeguard for tenants, this must also mean that zamindars would gain income through increased rents. It does not show that rents were to be guided by some general principle, or controlled by government, and otherwise not expected to rise.

The *Zemindary Settlement* claimed that the zamindars' dues were limited to a set 'percentage of the rents of their lands'; but, if this *mali-kana* was fixed, it was as a proportion of the state's rent (or revenue) rather than of the raiyats' payment. Both varied in practice according to relative power before and to an extent after 1793. The *Zemindary Settlement* also cites Cornwallis's arguments about the disadvantages of fluctuating dues—disincentives resulting from the liability of a tenant to dispossession for refusing to pay a rent increase, or of a landlord to imprisonment or loss of property for non-payment of revenue. But the permanent settlement with the landlords made sense only if it produced an increase in prosperity (from which a still-trading and taxing Company would also benefit). This did not mean a licence for the landlord to exact more from the land without any increase in output: such was the objection of Shore to new cesses which 'subverted the fundamental rules of collection', exactions as were measured merely 'by the abilities of the ryots to pay'. For this reason, he thought, the zamindar's settlement with the raiyats should become 'a matter of record'. Corn-

³⁹ The quotation came from Thomas Law, Collector of Behar District (Gaya) in the 1780s, responsible for the terms of the settlement there and influential more generally; see his *Letters to the Board submitting by their Requisition a Revenue Plan for Perpetuity* (Calcutta 1789). See also Ranajit Guha, *A Rule of Property for Bengal* (2nd ed.; New Delhi 1982), pp.173-86.

wallis agreed: he distinguished two distinct demands, the state's revenue and the landlord's rent—the fixing of the first would help simplify the latter—but, in considering how rents would be determined, he supposed it would be equitably 'by both parties' and in accordance with the 'value of the produce'. The government's role, by this dispensation, was to record agreements, and not to prevent zamindars from raising rents, or reaching 'agreements'.

With all the late nineteenth-century arguments from the past, we face the fallacy of reading back terms and conditions, a problem that Shore recognised when he explained that rights could not be the same under different systems of government and law: he expected it would take much time before a consistent system could be produced to 'reduce the compound relation of a Zamindar to Government, and of a raiyat to a Zamindar'—each of them part proprietor and part vassal—'to simple principles of landlord and tenant'.⁴⁰ In the case of the permanent settlement the difficulties were increased by the lack of attention paid to the tenants at the time: one of the chief advantages perceived in the permanent settlement was that it would relieve the government of any need to intervene at this level of society. Lord Grenville claimed in speeches in 1813 that the late eighteenth-century Board of Control had thought no tax more 'detestable' than one on husbandmen; if so, they expressed this by agreeing to Cornwallis's plan to make the zamindari settlement permanent. Insofar as he thought about the matter, Cornwallis too was generally limited in his imagination by his European experience and concepts. The more one considers the authors of the permanent settlement to have been imposing a particular vision, the less credible it seems that they were intent to safeguard the interests of the raiyats. Certainly Cornwallis claimed to want to 'secure happiness to the body of the inhabitants', and to protect tenants against capricious eviction. Of course it would be 'a wanton act of oppression' to dispossess a cultivator 'with the sole purpose of giving land to another'. But Cornwallis thought land had to be cultivated 'under an expressed or implied agreement' as to payment, and (though this was a period in which the talk was more of re-capturing absconding raiyats than of dispossessing others) that rents were 'on most cases fully equal to what the cultivator can afford to pay'. Cornwallis knew that rents had been enhanced; but when he asked 'how could it be expected, whilst the Government were increasing their demands upon the zemindars, that they, in turn, would not oppress the

⁴⁰ Minutes of 18 June (also in the Fifth Report) and December 1789, quoted by B.H. Baden-Powell, *Land-Systems of British India*, vol.1 (Oxford 1892), p.520.

ryots', he meant to be understood as advocating the removal of one motive for *oppression*, not as proposing a permanent settlement of rents.⁴¹

This interpretation of the permanent settlement is not only obvious; it was also an orthodoxy of the period between the Fifth Report and the Mutiny. In trying to rehabilitate Cornwallis as a defender of the raiyats, the *Zemindary Settlement* was thus advancing a radical argument, and playing to a particular audience in changed circumstances. One major change was the new cogency of appeals to history and to property. The latter included the attempt to advance the cause of landlords and of permanent settlement; obviously this implied that claims for raiyats would be couched in parallel terms. The former appeal, reflected in H.H. Wilson's qualifications of James Mill's critique of India,⁴² and in questionings of classical political economy, married the legalism of Bengal administrative traditions with the priority long given elsewhere to 'appropriateness' to Indian conditions. In pursuing this new strategy, the *Zemindary Settlement* was at its most extreme, but also at one with certain explanations of India's evolution, when it insisted that the raiyats were the original proprietors of the soil. It was concerned to acquit Cornwallis of James Mill's charge that he had confiscated peasant rights through aristocratic prejudice. It considered the legal proprietorship awarded to the zamindars to have been a convenient fiction which did not remove existing raiyati property. This partly reconciled zamindari and peasant-proprietary models. It did not mean that the raiyats paid no rent to intermediaries; according to a dictum of James Mill, rent-paying was compatible with proprietary rights when rates could not be raised at the will of the collector or for improvements made by the rent-payer. In this we appreciate the importance of the supposed prevailing or pargana rate, which removed discretion from landlords, and also of the various safeguards provided to tenants in the 1885 Act.

But history could be made to tell many different stories. Rivers Thompson had made use of the *Zemindary Settlement* when reluctantly challenging the Government of India's letter of 21 March 1882 to the Secretary of State. Expressing his dissent from the granting of occupancy rights in respect of all raiyati land, and defending the twelve-year

⁴¹ Field, *Digest*, pp.194-5, noted that the fixing of rents was considered in the 1790s, but presumably abandoned as it did not appear in the Regulations.

⁴² James Mill, *The History of British India*, 10 vols. (1817; 5th ed. by H.H. Wilson, London 1858). For a valuable discussion see Javed Majeed, *Ungoverned Imaginings. James Mill's The History of British India and Orientalism* (Cambridge 1992), pp.129-30, 133-5 and passim.

rule, Thompson had argued that distinctions had always been recognised between Bengal's cultivators on the basis of residence. He quoted Shore's famous minute of 1789:

Those who cultivate the land in the village to which they belong (resident ryots), either from length of occupancy or other cause, have a stronger right than others, and may in some measure be considered as hereditary tenants, and they generally pay the higher rents. The other class (the *paikasht*) cultivate lands belonging to a village where they do not reside; they are considered tenants-at-will; and, having only a temporary accidental interest in the soil which they cultivate, will not submit to the payment of so large a rent as the preceding class; and when oppressed, easily abandon the land to which they have no attachment.⁴³

This formulation, clearly riven through with terminology and assumptions drawn from English law, could be taken to mean that there were two classes of raiyat (or types of tenant). But it could also be read as saying that there were two types of right (or modes of tenancy) so that all raiyats could have occupancy rights in land which they held in their hereditary village. The one was the version according to Thompson; the other the view of the *Zemindary Settlement*. The reformers generally took Shore to mean at least that all tenants who resided where they cultivated should have entrenched rights in the land—they earned the privilege either from time or some 'other cause' but in essence from residential status.

The second stage in this argument went much further because it insisted that the resident cultivator had a status and rights that were *superior to all others*. Lord Moira's Revenue Despatch of 21 September 1815, for example, already referred to 'indigenous proprietors or cultivating zamindars' (in opposition to the revenue-collecting *malguzars* who had 'no special privileges or exclusive rights') as having the 'only hereditary possession' of land and being the 'only persons fundamentally connected to the soil'. In Bengal terms, the *khudkastha* raiyat was the 'indigenous proprietor' and most of the zamindars merely *malguzars*. The Select Committee of 1812 had found the landholders in the Raja of Banaras's territories to be village zamindars who paid the revenue jointly with one or more partners or *pattidars*, descended from the same common stock: such taluqdars were merely members of a lineage who organised the collection from their kinsmen, but it was just such men (it was concluded) who had been made into exclusive landholders in Bengal proper. The original system, and therefore the better one, was the one still extant in Upper India. In 1819, inheriting this new

⁴³ A.R. T[hompson] note, 7 April 1882, Add.Mss.43584.

orthodoxy, the Court of Directors took it as a certainty that a wrong had been done to the Bengal raiyats because their payments had been treated as rents and not revenue. The *Zemindary Settlement* went further still and conflated these revenue-paying raiyats with the body of tenants and cultivators present in the permanently-settled areas almost a century later. They were identified too with the village communities to be found elsewhere.

The critical questions for the *Zemindary Settlement* and for one aspect of the legal reform were, then, first original property rights and second a consistent narrative. It was on this superstructure that Field built his proposed remedies for the condition of the raiyats of Bihar and Bengal. In the late 1870s the Bengal government decided that modest reforms had the best chance of success. As the reformers' ambitions became more comprehensive, they nonetheless preserved the façade of changing little. Finucane and Rampini acknowledged that the 1885 Act materially altered the law, but reflected the pretence of conservatism when they also accepted that it was 'restoring rights' and consolidating existing enactments (as stated in the preamble to the Act).⁴⁴ In the tenancy debates, the legal history itself was extensively homogenised and made to appear internally consistent, partly through cross-referencing and cross-fertilisation. The Bengal Government under Ashley Eden, the high point for pro-raiyati influence, was persuaded that official experience, from the days of George Campbell at least, represented a connected and consistent movement towards the opinions of the pro-raiyat school. Alexander Mackenzie, while Chief Secretary to the Government, wrote a long and not very memorable minute to illustrate the continuous gestation of the 1885 Act.⁴⁵

Such rationalisations were largely disingenuous or deluded. The central example was the dictum of the Rent Law Commission of 1880, as in the *Zemindary Settlement*, that the permanent settlement had intended to endorse the raiyats' 'property' in land as it had supposedly existed in the eighteenth century.⁴⁶ This amounted to the creation of categories by legislation, under the pretence of recognising what already existed. Later there was a rearguard action against this process, in a case on fixed-rates raiyats, when two judges (Trevelyan and Beverley) found

⁴⁴ Finucane and Rampini, *Tenancy Act*, on the preamble.

⁴⁵ A. M[ackenzie], 'Memorandum on the history of the rent question in Bengal since the passing of Act X of 1859', in *Report of the Government of Bengal on the Proposed Amendment of the Law of Landlord and Tenant in the Province with the revised Bill and Appendices*, vol.1 (Calcutta 1881).

⁴⁶ See evidence and report volumes of *RLC Report*.

that the 20-year rule did not turn an occupancy raiyat into a fixed-rate raiyat, and merely provided for his rent to be fixed. But the verdict was overturned by the Full Bench in 1898; and, according to Finucane and Rampini, Privy Council rulings, from 1873 to 1907, were 'strongly in favour of accepting custom...as giving rise to a presumption that tenancies are permanent'.⁴⁷

Such a teleological, instrumentalist history obviously raised as many questions as it settled. First could land-ownership be subdivided? Theory and the Indian past had to decide. According to Philip Francis, the revenue farming system of the 1770s had been wrong in ignoring proprietary rights. Warren Hastings, too, had conceived of 'rights of property...vested in the Zamindar'. While apparently acknowledging some rights of possession for raiyats, he had denied that these could be 'positive or exclusive' or contradictory of zamindari rights. Shore had made a similar theoretical point in a minute of 18 June 1789, that, if they were to 'admit the property of the soil to be solely vested in the zamindars' then they could not acknowledge any rights for the raiyats other than those granted by zamindars. Even to the *Zemindary Settlement*, determined upon a primary right for the raiyats, any division of rights had to be explained in terms of *dominium* and *servitas*, of lordship and service, whereby the former was a fundamental right in the soil, and the latter a portion 'broken off' and provided to the state. Whether *dominium* belonged ultimately to the crown or the lord, this implied a single form of ownership, though one which could be shared. Harington's *Analysis* and Phillips' Tagore lectures too were cited as showing that zamindars, descendants of 'ancient rajas, native leader[s] and robber chiefs', had traditionally 'owned' the land in India, while only the rents belonged to the sovereign; Phillips explained how, since British rule, the official aspect of zamindari had tended to decline while the proprietary was strengthened.⁴⁸

Other commentators sought to solve the problems of categorisation by separating out the different attributes.⁴⁹ Resolution I of 1820 implied that a greater variety of distinct rights had once existed, by recognising that the regulations of 1793 had had a generalising effect which tended to abrogate any unregulated rights. The Resolution identified a full, hereditary and transferable right over the 'whole of the land' for the *malguzar* or malik, but also the permanent, heritable and sometimes

⁴⁷ Ibid.; *Bansi Das v. Jugdip Narain Chowdury*, 1896, ILR, 254 Cal.152.

⁴⁸ See above notes 11 and 12.

⁴⁹ The following examples are taken from 'A note on the Rent Bill', 20 April (1884?), IOL P/T 1285.

saleable right of the settled or *maurasi* raiyat. This still standardised the categories of right, but implied a range that overlapped or co-existed—that is, cultivating or intermediate rights. Similarly, in 1819 the Board of Revenue’s evidence on Banaras wrote of the village zamindars explicitly as an intermediate class between the Raja and the cultivators. The pro-tenant case built upon such analyses to favour the raiyats. The consequences of this ambiguity will be discussed later.

Characteristically, in his *panjam* Regulation, Colebrooke had wanted to ‘reduce to writing a clear declaration and distinct record of the usages and rates according to which the ryots of each pergunnah or district will be entitled to demand the renewal of their pottahs’. In short, he wanted to marry a customary framework with ‘modern’ precision and contract, so as to maintain ‘a right of occupancy’, supporting the raiyat (in parallel with the zamindar) ‘in his ancient and undoubted privilege of retaining the ground occupied by him, so long as he pays the rent justly demandable’. The 1885 Tenancy Act continued this effort. Field too had considered the now-familiar case, put by the advocates of the raiyats’ rights and crucial to the question of rent, that the repeated references to custom and local usages in Regulations from 1793 onwards, implied a pre-existing, independent right of property analogous to that provided for the zamindars.⁵⁰ Field remarked that Regulation XLIV of 1793 had limited the rates (not the total rents in cash terms) for new leases, and also that, when there was concern at the ability of zamindars to meet the revenue demand, the law on tenancy was quickly altered to permit the abrogation of most leases at the sale of an estate. An occupancy right was not, he concluded, a necessary provision for all who qualified under the twelve-year rule—that would be to spread the net more widely than the ‘customary’ right of *khudkashta* status—but on the other hand after 1793 the landlord had not had the right to eject any tenant who paid his rent. In deciding on the currently legitimate rights in land, Field was combining the force of both custom and of law in order to create single, consistent categories.

But he was not doing so, despite his claims, because the law was clear. Nor could the history lesson be simply applied to the occupancy tenant. Some genuinely set up alternative legal schema based upon the incidents of indigenous categories. H. Bell, the Legal Remembrancer, for example, argued that ‘There is no magic in the number twelve; and it is submitted that a “khood-khast” ryot, who settles and builds his house upon the land, possesses from the commencement of his tenancy a right

⁵⁰ For example in Regulations VIII of 1793, s.57, ch.1; XLIV of 1793; VII of 1799, s.15, ch.7; XI of 1822, s.33, and so on.

of occupancy in it'.⁵¹ But most of the debate kept within the terms of English jurisprudence. The effect on the Rent Law Commission was that arguments led on to continual refinements of more advanced positions, after last-ditch defending. Mackenzie and O'Kinealy, as we would expect, had started with an extreme interpretation of the *khudkashta* raiyat—as anyone admitted to a village with the intention of settling. Field argued that, whatever the original situation, a period of residence was now needed for the right to accrue. Mackenzie accepted this, and wrote in 1880 that it was 'acknowledged that the effect [of Act X of 1859] ...has been to inflict serious injury on resident ryots', but that, contrary to Bell's view, 'time' was now essential to status, and it was impossible to go back simply to 'residence'.⁵² What period would suffice? Dampier and Field favoured retaining the twelve-year rule of 1859.⁵³ Having given up their first point, however, Mackenzie and O'Kinealy then voted, with the support of Seal, to reduce the qualifying period to three years on their original argument that occupancy right was intended for all resident raiyats. Dampier, Field, Harrison and Roy opposed this. As a compromise, special provisions were then proposed for raiyats holding for between three and twelve years, and thus a legacy of the strong position on occupancy found its way into the Report (supported by Dampier, Harrison, O'Kinealy, Mackenzie and Seal against Field, Mookerjea and Roy). On the other hand, in deciding whether occupancy rights could be sold without the landlord's consent, Dampier, Harrison, O'Kinealy, Field, Mookerjea and Seal thought not, but Mackenzie, Roy and Harrison were in favour.

The questions behind these manoeuvres were: who is this propertied raiyat? By what rights might one identify him? These questions came up repeatedly, and overlapped with the issue of how to best to protect raiyati interests in future. One proxy for the debate concerned the distinction between tenure-holders and raiyats, on which the case law had been inconsistent. Particularly difficult was the legality of sub-letting by raiyats: did this make them tenure-holders, or was it evidence of their property rights? One answer was to consider the purpose for which interests were granted; one judgment proposed as the 'only test' whether the rights were granted on empty land (hence raiyati, an interest created for cultivation) or on land where raiyats were already in possession

⁵¹ He quoted his edition of *The Law of Landlord and Tenant*, p.16; see 'Draft Bill for Behar', *RLC Report*, appendices.

⁵² See note 8 above.

⁵³ Mackenzie note, 20 January 1880, *RLC Report*, vol. 1.

(hence tenure-holding, an interest created for rent-collecting).⁵⁴ The same questions could be put with regard to all sorts of transferability: one judgment claimed that any raiyat with a transferable holding was a tenure-holder.⁵⁵ The Full Bench ruling in *Ajodhya Pershad* was that occupancy right was not transferable except by custom. But later cases quite often found that the custom existed. The Bengal government in its 1883 report on the Tenancy Bill argued that free transferability existed in almost all Bengal and Bihar districts (citing 32,633 transfers recorded in 1881-2). To the riposte that this was always subject to the landlord's consent, the reply came in the government's report on the Bill in 1884, to the effect that sales occurred 'throughout these provinces' without such consent. Any such right was preserved in section 178 of the 1885 Act.⁵⁶

The Bihar Rent Committee had debated transferability, coming down against it for occupancy holdings, after weighing the dangers of throwing raiyats into the hands of mahajans against the assertion that a right of transfer already existed widely.⁵⁷ The Rent Law Commission too wanted to treat tenure-holders as intermediate landlords, and therefore to distinguish them from raiyats. But they considered different criteria—rent-receiving, heritability, transferability, quantity of rent—and decided that none was reliable.⁵⁸ The Commission thus sought to meet the situation by 'an authoritative enunciation of what is accepted in customary law', namely that occupancy holdings were freely saleable (though their division, for example at inheritance, required the landlord's consent). To keep away the mahajan, they proposed secondly that occupancy holdings should not be mortgageable. Dampier, Harrison, Field and Mookerjea also wanted to restrict the raiyats' use of the land to agricultural purposes; unsuccessfully opposing them had been Mackenzie who, with the support of O'Kinealy and Seal, had wanted to place no restrictions.⁵⁹ The Commission also proposed (paragraph 22) that all tenures of 15 years or more should be deemed permanent, and that all such tenures should be registered; but this plan was dropped, after opposition led by the Maharaja of Darbhanga and the British

⁵⁴ *Durga Prosanno Ghose v. Das Dutt*, 9 CLR 449.

⁵⁵ *Krishtendra Roy v. Aena Bewa*, ILR, 8 Cal.675, 10 CLR 399 (discussed in Finucane and Rampini, *Tenancy Act*).

⁵⁶ See Finucane and Rampini, *Tenancy Act*.

⁵⁷ BRC Report, pp.270-1.

⁵⁸ *RLC Report*, vol. 1, pp.12-13.

⁵⁹ See *RLC Report*, vol.1, p.16, and vol.2, Minutes of Proceedings, 17 February 1879.

Indian Association, and given the difficulty of deciding on transferability. The further significance of this issue will be considered shortly.

IV

Among the vignettes that may serve to delineate the great rent law debate, the campaigns of opposition must play their part.⁶⁰ The landlord interest was the best orchestrated. We have noted some of its arguments already, and will consider just three advocates in detail. The first, Ashutosh Mookerjea, who represented the major voice of the Indian zamindars, contended in refutation of the *Zemindary Settlement* that the permanent settlement had deliberately made proprietors of the landlords. He cited Cornwallis's minute of 3 February 1790 in which he suggested that, whatever the theory of zamindari rights, in practice they had been nugatory not least because of the state's unlimited claim to revenue: the permanent settlement decided to 'stamp a value on them hitherto unknown'. The impulse came, as Mookerjea recalled, quoting Philip Francis in 1776, from the desire to preserve an intermediate level of profit: for the 'scheme of every regular Government requires that the mass of the people should labour, and that the few should be supported by the many, who receive their retribution in the peace, protection and security which accompany just authority and regular subordination'.⁶¹ The decision in favour of landlords, Mookerjea suggested, constituted a contract between government and the zamindars. A similar contract would govern zamindars' relations with raiyats. The contracts had to be interpreted from texts, to discover the law-as-it-is, and not with reference to other information or deductions about the intentions of the law-makers. The theory here was obviously derived, in a general way, from eighteenth-century English constitutional ideas; Mookerjea was internalising Western thought in defence of colonially-defined privileges. A

⁶⁰ There are dozens of such pamphlets preserved in the India Office Library, London, several of them being reprints from newspapers, others reports of the proceedings of public meetings, for example of the East India Association or of the London Committee formed to oppose the Bengal Tenancy Bill, and yet others studies commissioned by interested parties such as the Central Committee of Landholders. References to pamphlets in this chapter are drawn from this collection. Leading pamphleteers included Ashutosh Mookerjea, Henry Bell, Roper Lethbridge and W.S. Seton-Kerr. To counter this campaign, extremely full government papers were also published, in reports or as supplements to the *Calcutta Gazette*.

⁶¹ Ashutosh Mookerjea, 'The annals of British land-revenue administration in Bengal from 1688 to 1793' (Calcutta, 1883). Mookerjea was then an vakil of the Calcutta High Court; later he was Vice-Chancellor of Calcutta University.

novel feature, however, was the assertion that the permanent settlement transferred to the zamindars the state's 'duty...to protect all classes of people'. This new contract the state itself was bound to respect, treating it as 'unalterable like the physical bounds and divisions of the country' (an interesting comparison in view of the colonial fixing of such boundaries, for property as for states).⁶²

Thus far the argument depended upon rights given by the state. But in addition the zamindari supporters wanted to prevent the state from giving rights to anyone else. One suggestion was that to do so it must also take away rights given to zamindars, thus breaking the contract. But, as we have seen, the zamindars also had to counter a much stronger, primordial view of rights which was advanced by the pro-*raiayat* faction—their idea of the primacy of the cultivators' right in the soil, from first Lockean principles and from their reading of Indian traditions and history. Mookerjea tried to turn such arguments against themselves. For example, he appealed to a passage in Harington's *Analysis* which appeared to support the cultivators' rights. Harington argued that the variety of rent rates in Bengal resulted from a discretion allowed to the zamindars to add to the rates approved by the state; *abwabs* were an innovation subsequently sanctioned by custom. The government could and did intervene to prevent oppression, and some *raiayats* had the privilege of fixed rates. On the other hand no *raiayat* should be given a right to which he was not already entitled. Presumably the principles evoked were that custom and the state were somehow co-equal, for change might be legitimised as practice but was also subject to state regulation; and that rights were otherwise fixed and inviolate. By contrast Mookerjea's argument depended not only on a primordial right of the state but also on rights of the zamindars acquired by an act of the state. He faced a slight awkwardness in regard to the salience of custom.

He introduced a second element which rather contradicted the legalism of the first. Presenting himself as a practical man facing highhanded theorists,⁶³ Mookerjea now played up the special needs of India. He

⁶² Ashutosh Mookerjea, 'The proposed new rent law for Bengal and Behar' (*Calcutta Review*, October 1880; reprinted Calcutta 1880).

⁶³ *Ibid.*, p.53: 'Theory was very powerfully represented in the [Rent Law] Commission, and swayed with a high hand all its deliberations; but practical acquaintance with the realities of peasant life in Bengal, and, above all, practical common-sense views of what was just in the actual circumstances, were much too inadequately represented.'

appealed to Émile de Laveleye's Cobden Club essays,⁶⁴ and asked whether legal changes could 'extinguish the influence of instincts or tendencies whether inherent in the race or the historical product of centuries'. This doubt perhaps had been implied in Harington's position also. But Mookerjea's gloss on this was to regard the raiyat as 'no better than his landlord' in his instincts, and never known 'to postpone the requirements of his family to the requirements of political economy': hence the prominence in Bengal of the problems of overpopulation, subletting and subdivision. Now, in what was at root a racial doctrine, endorsed by Mookerjea, custom became supreme, if only because ignoring it would not overcome the impediments it presented to economic rationality, as the reformers hoped. Taking Field's argument about transferability, Mookerjea asserted that that too should only come about where it was 'suited to the locality'. To provide for it by rule in other places 'cannot but prove mischievous'. This view originated partly in Jones's critique which, Mookerjea thought, showed Ricardo's theory of rent, and its supposed mobility of capital, to be applicable only in England. Mookerjea professed to be well aware of the distinctions of Jones, as adapted by J.S. Mill in *Principles of Political Economy*, and by Whewell, between different kinds of rent—labour, *metayer*, raiyati and cottier. Jones's theory had the merit, in Indian conditions, of showing that rent might increase according to political factors beyond what economic calculations supposed possible—an awkward argument for the zamindari camp.⁶⁵ On the other hand Jones's 'raiayati' rent also implied, of course, a different view of the state as sole landed proprietor: the rent was the monarch's share of the produce collected by his agents for a percentage, the amount depending on his (and their) power or forbearance, and not upon economic factors such as soil quality or returns on capital. The state's role, one may suppose, was to secure the cultivator on its own land, in return for the share of the produce. What the permanent settlement had done—and here was the beauty of the two theories together—was to transfer this state ownership to the zamindars in perpetuity. The cultivator was entitled, under the state or the zamin-

⁶⁴ Ibid. De Laveleye published Cobden Club essays, 'On the causes of war' (1872) and 'The provincial and communal institutions of Belgium and Holland' (1875), but Mookerjea's page reference (242-4) is to an unidentified compilation.

⁶⁵ On Richard Jones' importance to tenancy debates in India, see Eric Stokes, *The Peasant and the Raj. Studies in Agrarian Society and Peasant Rebellion in Colonial India* (Cambridge 1978), pp.90-119, referring to Jones, *Essay on the Distribution of Wealth* (1831). The reference to William Whewell, presumably his 'Elements of morality', has not been traced.

dar, only to such a share as would enable him to cultivate, live in reasonable comfort, and participate in the progress of the country. Thus Mookerjea interpreted Philip Francis's version of the social hierarchy.

It is difficult to assess the importance of ideas when two opposite tendencies are thus marshalled in support of the one point of view. These modes of argument seem to be the means but not the cause of the positions taken. On the other hand the arguments were won or lost often on the basis of some previous 'authority', by virtue of what he had *said*—usually a reflection of the intellectual currents of *his* day—without any real sense or concern about demonstrating that it was true, empirically. The cleverness of Mookerjea's argument was that it used almost the same premises as his opponents—the terms which most people accepted—in order to reach an opposite and equally extreme conclusion. One may compare it with that which the Rent Law Commissioners espoused when they suggested that the legislature had the power and duty to 're-distribute property in land...in the interests of the entire community'. If this duty of care existed, then, according to Mookerjea, it now belonged to the zamindars. If it were taken on fully by the state it became, in Mookerjea's term, 'socialistic'.

In a further pamphlet in 1884 Mookerjea was tempted by an even more bold argument, of appearing to concede that the raiyats had rights in 1793, but arguing that if so these had been lost by legislation passed then, and subsequently, in favour of the zamindars. This was a somewhat exposed position for one who railed against the government's imminent 'confiscation' of zamindari rights. By this time Mookerjea and the landowners were contending with the pro-raiyat case as set out in draft legislation, and therefore had to attack the acceptance of arguments about raiyats' property. Mookerjea rested his case on Lord Hastings' resolution of 1 August 1822 to the effect that the Bengal revenue code was founded on the recognition of private property in land. But he also had to reply to S. C. Bayley, who, supporting the pro-raiyat case, quoted the Court of Directors' letters of 19 September 1792 and 7 October 1815. Mookerjea countered that even the latter—which referred unequivocally to the resident raiyats' 'established permanent hereditary right in the soil'—had implied a residuary right for the landlord in remarking also that these tenurial and proprietary rights had to be reconciled. Another account suggested that the privileges derived from those provided when land was originally settled (implying a pre-existing zamindari right as a kind of first cause), and that they were thus properly restricted to those who could trace their inheritance to the first settlers. More generally, so the argument went, the zamindars were like the petty

rajas of ancient India. The implication was that most peasant rights were an import from other parts of India—this writer cited Holt Mackenzie's Act and the record of rights in the NWP—and that the peasant proprietary interest had never existed or had been lost in Bengal; no less an authority than Harington stated that the region had 'no such little republics or village communities'.⁶⁶

C.P. Ilbert, in his speech to the legislature on the tenancy Bill, had pinpointed the difficulty once it was conceded that there were two rights; it was that a contract between two parties (government and zamindars) could hardly affect the rights of a third party, the raiyats. Yet Halhed, in his 'Memoir of the Land Tenure and Principles of Taxation in Bengal', declared firmly that Cornwallis had abrogated the 'allodial rights' of the cultivators; on 12 July 1820 Colebrooke referred to the merging of all village rights into the zamindars' property. If the government were sovereign, and the zamindars held the superior, residuary rights, why not accept that the raiyats had simply had their rights 'confiscated' in 1793? The question would then be again one of the position of the state: was it truly subject to law, that is bound by its previous decisions? Could a lawful government go back on its promise to the landlords? The question was repeatedly asked. It was significant that the pro-reform party seldom suggested that it should, only that the promise was not what it was purported to be. For them the zamindar was an owner subject to restrictions.

Mookerjea's new line was perhaps only slightly less perilous than one which allowed for a sovereign legislature, though it neatly accomplished the trick of suggesting that reality was as the Regulations described it to be. The rights, Mookerjea proposed, departing at this point from Ilbert, were not after all created *de novo* in 1793. The zamindars were not revenue collectors who became owners. Unlike the revenue farmers, they were already owners whose ownership gained effect and value by the limiting of the government's revenue demand. In the turns of this casuistry, Mookerjea had lost sight of, or rather suppressed, as it is still hidden here, his 1880 version in which the state was the original proprietor making a gift of proprietorship to the zamindars; and perhaps this confusion was a fair reflection of the avowed intention in 1793 *either* to preserve *or* to create landlords. Mookerjea concluded in short that zamindars had *and* were given absolute and unlimited rights in the soil, both in the permanent settlement and by ancient custom. Other rights—of a particular class to hold at fixed rents, of another class to

⁶⁶ K. C. Acharya, 'Strike but hear'. Acharya was a Mymensingh zamindar.

occupancy—also existed, in so far as they were recorded in the Regulations. This was consistent with a principle that (he conceded) still applied, the right to legislate for the general good. But Mookerjea also alleged that legislation should not be passed in order to benefit one class at the expense of another. Ilbert had not really tackled this argument. His speech took the limited view that zamindars gained only such rights as the government of the day had been able to share, that the Regulations reserved a right of future legislation, and that other rights, including those not mentioned at the time, also existed and could now be supported by new laws. It was a peculiar kind of reasoning, subordinating state to private or social rights, and less satisfactory, in its historical legalisms, than other more pragmatic, public-policy justifications for the Bill. In common with much of the rest of the legislative debate, it operated in effect on Mookerjea's ground, and gave so many hostages to fortune—or to such a subtle advocate as Mookerjea—that it became a focus of the pro-zamindari attack during 1884. It may perhaps have contributed to the weakening of the tenancy Bill in its final stages.⁶⁷

Our second opponent of the Bill, representative of a large group, was Roper Lethbridge, former Press Commissioner of India. His attack was straightforward. He quoted opinions that the Tenancy Bill was an 'ungodly measure of wholesale robbery' (*Hindoo Patriot*), an 'abuse of plenary power' (the *Englishman*), depriving zamindars of proprietary rights (Behar Landholders), revolutionary indeed to the 'horror and dismay' of the Chief Justice of Bengal, and an attack on the rights, social position, and the 'very means of living' of the landlords (Maharaja Sir Jatindranath Tagore). But Lethbridge concentrated not on these issues of justice and principle, but on the consequences of the measure. If a 'hitherto absolutely unknown' transferability of raiyati holdings were allowed, then, he claimed, control of the estates would pass from zamindars to occupancy-raiyat middlemen of whom the actual cultivators would become serfs; it would make these raiyats unthrifty and give 'a most unwholesome stimulus to over-population, already the great difficulty' being faced in Bengal. The chief thrust of this was, first, that raiyats were not already miserable, not even in Bihar (those who claimed so were sadly mistaken, including Florence Nightingale in the

⁶⁷ Ashutosh Mookerjea, 'An examination of the principles and policy of the Bengal Tenancy Bill, written at the request of the Central Committee of Landholders' (Calcutta, 1884).

Contemporary Review)⁶⁸ and, secondly, that they would be made miserable by the errors of this reform.⁶⁹

Lethbridge and his fellows brought to the fore two other elements as well—personal attacks and comparisons with Ireland. The latter were important especially in London where opposition was led by former India hands in alliance with Irish landlord interests: the Indian Constitutional Association (with Lethbridge to the fore) and the Liberty and Property Defence League chaired by Lord Wemyss and March. Some supporters were moved by fear of a general attack on property—Sir Herbert Maxwell, MP, spoke in such terms to a meeting in 1885—⁷⁰ and by the support of Bright and others for the Rent Bill.⁷¹ Though their alliance was not formalised until the middle of 1884, their pressure, and the involvement of a number of MPs, as well as Indian civil servants and Calcutta merchants, probably played a part (alongside the objections of the Secretary of State's Council) in ensuring that further consideration was asked for in Hartington's despatch of 17 August 1883, and that Kimberley rejected, on 15 December, the occupancy right attaching to the land and not the tenant. This group in particular also made personal attacks on Ripon, described by Lord Fortescue as 'the present rash and reckless Viceroy, a benevolent man, but a man of some socialistic theories'—a delicate insult combining hints of personal acquaintance and Ripon's temporary tenure, with allegations of his weakness and poor judgment, and a surely intentional echo of Hamlet's lament for the 'wretched, rash', *interfering* Polonius. It was also suggested repeatedly in these circles, as by Garth and others, that support for the tenancy Bill could be traced to 'certain officials' and to the strong views of Ashley Eden backed by the Viceroy. C.T. Buckland, a Bengal civil servant and

⁶⁸ Lethbridge quoted Raja Shiva Prasad, who claimed in the Governor-General's Council in March 1883, that he had nowhere found a 'stronger set of ryots, happier or better off' than in Bettiah.

⁶⁹ Roper Lethbridge, 'The mischief threatened by the Bengal Tenancy Bill', paper read to the East India Association, 31 October 1883 (London, 1883).

⁷⁰ "'The Bengal Tenancy Bill". Report of proceedings of a meeting held at Willis's Rooms, King Street, St. James's, on Wednesday, February 25th, 1885' (London, 1885).

⁷¹ J. Dacosta, 'The Bengal Tenancy Bill' (London 1884). Eden had predicted an organised opposition in Britain, on hearing that money was being sent from India; he considered British opinion 'pretty sound', with the important proviso, he told Ripon, that 'you do not go too far'; to Ripon, 1 June 1883, Add.Mss. 43592. Kimberley too reported to Ripon a growing feeling, not only among Tories, that he was 'introducing too many internal changes'; to Ripon, 16 February 1883, Add.Mss.43523.

formerly senior member of the Bengal Board of Revenue, complained that the requests to divisional Commissioners for advice had instructed them to take a vote among their subordinates; he was sure that every official would have responded predictably, quite able to 'see which way the wind blows if he wishes to please the Lieutenant-Governor'.⁷² A.P. MacDonnell, then Revenue Secretary, was a particular *bête noire*.⁷³ When Ashley Eden fell ill in November 1883, MacDonnell stood in for him on the Select Committee and 'urged, in threatening words' (according to Buckland) that the Tenancy Bill should be passed at once.⁷⁴

The London Committee to oppose the Bill, its activities well publicised in the *Morning Post*, produced a barrage of pamphlets, claiming that the Government of Bengal had an animus against the zamindars (presented by Charles Campbell, brother of Sir George, as out-squiring the English squire) and that it ignored the principles of political economy (meaning the market laws of supply and demand). The group even suggested that tea-planters would be unable to settle their labourers on land, and that English shareholders would suffer. Eden claimed to Mackenzie that he had prevented publication of a 'tremendous onslaught on Ripon's revolutionary policy' made by 'fearfully ignorant' people who believed Ripon intended every raiyat to have the right to hold in perpetuity on a fixed rent and not to be liable for eviction even for non-payment. The bitterness of the exchanges which we will see shortly, between Garth and Mackenzie, were repeated in the pamphlet war. They were fierce because they occurred within a close community (one wonders if the animosities ever spilt over on, say, the committee of the Bethune School committee in Calcutta on which both served);⁷⁵ but also because of issues of principle to which people were intellectually committed.

⁷² Mackenzie to Primrose, 26 January 1883, Add.Mss.43615.

⁷³ London Committee formed to oppose the Bengal Tenancy Bill, pamphlets 1-6: 'The Bengal Tenancy Bill' (*Morning Post*, 1 February 1885), 'Indian opinion on the London Committee' (K.D. Paul, member of the Imperial Legislative Council), 'The Indian tea industry endangered by the Bengal Tenancy Bill' (*Morning Post*, 28 February), 'Mr. Seton-Karr's lecture on the Bengal Tenancy Bill' (C.T. Buckland), 'Mr. Seton-Karr's letter [to *The Times*] on the Bengal Tenancy Bill' (Buckland), and 'The Government of India on the Report of the Select Committee on the Tenancy Bill' (Buckland).

⁷⁴ C.T. Buckland, 'The Bengal Tenancy Bill as amended in the Select Committee of the Legislative Council of India' (London, 16 June 1884). Buckland was part of the London group opposing the tenancy Bill.

⁷⁵ Thacker's Directory for 1880.

Lethbridge had argued that tenancy reform, originally undertaken to help and compensate zamindars after the Cess Acts which he thought breached the permanent settlement, and to redress the balance after the 1859 Act, had been taken over by a school of reformers deluded by ‘absurd descriptions’ of the raiyats’ poverty, and ‘dazzled by the splendid achievements of slap-dash land-reform in Ireland’.⁷⁶ This brings us, secondly, to Lord Wemyss who reported that in Ireland the ‘fair’ rents rule had set the landlord’s rent below the market rate, allowing the tenant to sell land on the market. The result was to divorce the labourer on the land from the ownership of tenancies, which he could not afford. Largely on the basis of this supposedly conclusive comparison—by those who after all mostly argued that landlords and tenants were everywhere alike—Buckland similarly feared the creation of middlemen in India.⁷⁷ Lethbridge, in 1885, declared that to create them was the main purpose of the Bill; and J. Dacosta, a former Calcutta merchant, derided the attempt to present the Bill as supportive of actual cultivators by those who had no sympathy for the middlemen who, he claimed, would be the real beneficiaries.⁷⁸

In its pure form the doctrine of this group was as laid down by a final representative critic, Fleetwood Pellow, the Commissioner of Dhaka Division. It went like this: eighteenth-century Bengal had been one-third waste land, savaged by dacoits, its government (the Company) in financial difficulty. The zamindars had had hereditary and residuary title—hence the institution of *nijjote* and *khamar* (or *zerat*)—and raiyats were entitled to a fixed proportion of the produce, ensured by pargana-rate tables revised periodically with reference to custom, land use and prevailing prices. The zamindars had been sorely tested by eighteenth-century revenue demands, and were losing out to ‘men of capital’ on smaller properties, men who made improvements but were ‘hard in their dealings’. The permanent settlement stopped this process, and improved prosperity, the only problem being sub-infeudation. Act X of 1859 created a new right of occupancy for some (a broader category than the *khudkashta* raiyats). Pellow observed, in addition, that in Eastern Bengal these ‘old’ raiyats had become proverbially wealthy, and frequently were giving up actual cultivation. They were becoming middlemen who benefited at the expense of both the zamindar and the cultivator. These under-raiyats and field labourers (*kurfa*) were the true poor identified by

⁷⁶ Lethbridge, ‘Mischief’.

⁷⁷ Buckland, “‘The Bengal Tenancy Bill’”. Report of a meeting held at St. James’ Hall, on Wednesday, June 25th, 1880’ (London, 1884).

⁷⁸ Dacosta, ‘Tenancy Bill’.

the Famine Commission.

The historical aspects of this are not all convincing, but there is some interest in the observations, in view of the more egalitarian picture of the region, and the sudden appearance of a Muslim rich and middle peasantry, as described in recent literature.⁷⁹ In the great rent debate, the attention on the past directed attention away from such present observations and predictions. But Pellow's was not an impressive piece, and (despite Buckland's certainty of official self-interest) he mixed in a great number of points which, whatever their validity, could have been calculated not to persuade his superiors, convinced as they then were by the proprietary peasant above all—points about the proposed definition of *khamar* discouraging zamindari improvements, or the value of zamindar's loyalty, or the disadvantages of perpetuating the occupancy right. Pellow also remarked, more pertinently, that the Bill was 'framed on the basis of refusing protection to those who are of necessity cultivators, and affording it to those who are only accidentally and occasionally such...'.⁸⁰ There were very many other occasions on which similar points were made, since, on the Rent Law Commission, H.L. Harrison had regarded the prohibition of sub-letting as the keystone of the necessary legislation. Surely it was an ideological fixation upon the 'magic of property'—on both sides of the argument, and by all the cleverest and most vociferous advocates—which prevented decisive weight being given to this serious and realistic point about how Indian agrarian society worked. In practice sharp differences of opinion remained on this issue throughout the debate. Interestingly, in the exchange of views in London in 1884, when W.S. Seton-Karr lectured on the subject to the Society of Arts, Sir George Campbell advocated the welfare of labourers, while the lecturer (who was critical of aspects of the Bill) wanted to benefit raiyats but not under-raiyats.⁸¹ It was all too easy for Pellow's point to be dismissed as just another facile objection from the mediocrity, or just another piece of special pleading by the zamindars. Successful, articulate and influential men were certain about the raiyats' property as a device for future prosperity, and perhaps also of their loyalty and manly virtues (as already was the perception of the

⁷⁹ See Sugata Bose, *Agrarian Bengal. Economy, Social Structure and Politics, 1919-1947* (Cambridge 1986); Partha Chatterjee, *Bengal 1920-1947. The Land Question* (Calcutta 1984); and, for an argument tracing this stratification to the later nineteenth century, Nariaki Nakazato, *Agrarian System in Eastern Bengal c.1870-1910* (Calcutta 1994).

⁸⁰ Fleetwood H. Pellow, 'The rent question in Bengal' (London, 1883).

⁸¹ [Buckland], 'Mr. Seton-Karr's Lecture'.

Punjab).

V

The outline to be discerned in the *Zemindary Settlement*, with its echoes in Hunter and Baden-Powell, was worthy of attention because it exemplified many of the arguments employed by the tenancy reformers before 1885. The main lines taken by the opponents could be discerned in the writings of Mookerjea and Lethbridge in particular. But the most dramatic contest between these views was the public row between two of the highest officers in Bengal—the Chief Secretary, Alexander Mackenzie, and the Chief Justice, Richard Garth—over the 1885 Act. Also involved as a judge with experience on the revenue side was J. O’Kinealy.⁸² Where the other debates vied in their interpretations of the permanent settlement and their prediction of future agrarian relations, this dispute was also crucially about the proper role of the state and of law.⁸³ One of the instructive features was the extent that the protagonists considered the tenancy issue a matter of public concern, in Britain as well as India; it was important, to their minds, both in politics and theoretically, at a time when the obscure details of Indian agrarian history were thought to raise significant intellectual issues.

For several years, during all the discussions, Bengal’s Chief Justice had held aloof. He was on leave abroad, or he was ill, or (as he said, when he broke his silence in 1882) he was unwilling to oppose the strong pro-raiyat views of Eden until they had taken definite shape. But, finally, after the Rent Law Commission’s report had been turned into a draft bill, and that draft had been amended by the local government and

⁸² The memoranda discussed below may be found with R&A Rev A 16-46 (July 1883). See also Add.Mss.43584. An earlier version of this account was published as part of ‘Ideas in agrarian history’; see the Acknowledgments.

⁸³ There may have been personal as well as policy issues. Garth also clashed with Ripon over a proposed reduction in High Court judges’ salaries, and over the appointment of Mitter, J., to act as Chief Justice while he was on leave. Earlier he had similarly objected to the appointment of an Indian barrister such as W.C. Bonnerjee (whose ability, power in court and legal knowledge he admitted were ‘second to none’) or Manmohan Ghose, as Standing Counsel for the Bengal government, as ‘however good he might be’ an Indian appointee would ‘generally be distasteful to the Bar’, and awkward in some political prosecutions, and because of the expectation of promotion from Standing Counsel to Advocate General; Garth to Ripon, 20 September 1880 and 10 July 1882, Add.Mss.43610. Ripon later objected that Mitter was to be passed over for the substantive appointment as Chief Justice; to Kimberley, 8 February 1886, Add. Mss.43526.

further changed by the Government of India, and yet another version had been prepared to meet the objections of the Secretary of State, Sir Richard Garth did put pen to paper. His previous silence did not prevent him from complaining that the High Court had not been properly consulted. But he saved his venom for those whom he called the extremists of the Rent Law Commission, two of the younger members who were responsible, as he saw it, for ‘revolutionary provisions’ which, ‘unjustly and unnecessarily’, would dispossess the landlords of rights they had enjoyed for nearly a century, and relegate them to a position ‘far inferior to that which they occupied before the Permanent Settlement’—that is, before the foundation in 1793 of the Bengal system of revenue, land law and administration.⁸⁴ Garth objected above all to the extension of the occupancy right and to limits on rent enhancement. The young men in question were Mackenzie and O’Kinealy, both of whom at that time had had some twenty years’ service in India. The interference they proposed was justified by them, Garth complained, on a ground ‘(if it is worth to be called by that name)’ which was as ‘transparent a pretext as ever was presented’. Their extreme views, he wrote, were supported by no one, and by nothing save their own ‘constructions’ of previous legislation, and indeed were contradicted by all the eminent men who had expounded the law since the permanent settlement—men who were, it was true, ‘unfortunate enough to have differed in opinion with Mr Mackenzie’. Loftily, the Chief Justice trusted that ‘even Mr O’Kinealy’ would learn ‘some little respect for authority and precedent’ when he became ‘a permanent member of the High Court’; Garth hoped he would before long.⁸⁵ Garth then published his memorandum in the newspapers; it was seized upon eagerly by the well-organised opponents of the Tenancy Act, and was also translated into Bengali and Hindi and circulated widely in the province.⁸⁶ There

⁸⁴ This was a conventional viewpoint for the judges; it was endorsed on the Rent Law Commission by P.M. Mookerjea in a note dissenting to measures which would ‘assail the very foundation of private property’. *RLC Report*, vol. 1, p.96.

⁸⁵ O’Kinealy was officiating on the High Court bench; in December 1882 Garth had recommended him for the full appointment, as having ‘by far the highest claim’; to Primrose, 8 December 1882, Add.Mss. 63610.

⁸⁶ The publication of the material infringed the sensitivity shown towards the security of internal notes; see S.C. Bayley to Ripon, 1 August [1882], Add. Mss.43612, tracing copies of Rivers Thompson’s confidential memorandum. Kimberley considered whether to take official notice of Garth’s note; his instinct was to ignore it, as ‘the public has a notion that the independent position of a judge warrants him in speaking his mind, however foolish that mind may be’; to

followed various correspondence, including letters to *The Times* in London. Some of the readers must have been glad of Garth's assurance that, as he was 'happy to say', O'Kinealy and Mackenzie were two gentlemen who were 'both very good friends' of his.

At one level this was just another round in the long rivalry between Court and executive in Bengal. That, in turn, was a special variant of the rivalry between regulated and arbitrary methods of government. As Henry Cotton wrote to Ripon in September 1893:

The point is this: our present form of administration organised 100 years ago is still adequate and well suited to the requirements of the masses of the population with whom the *hakim ka hookum* is still an article of belief. To the Oriental mind the concentration of authority in one responsible head is the only conceivable system of Government. But the spread of English education during the past two generations has created among the educated classes a demand for a revised method of administration based upon the English model. It is impossible not to admit the justice and reasonableness of this demand but the difficulty is to accede to it in a manner which shall not in any way impair efficiency.⁸⁷

Oddly, Garth, who was quite hostile to any such advance, nonetheless represented another strand of pressure for it, as in judicial review, or insistence upon proper form and precedent, designed to moderate executive discretion. He clearly envisaged general codes within which the state should operate, codes of consistency and good purpose in face of competing rights. These were doctrines to limit state power, while presenting the courts as the defenders of higher and (by Cotton's conventional stereotype) non-Oriental principles.

Garth complained that measures passed by one Lieutenant-Governor and confirmed by another, should not be lightly set aside; otherwise the public would have no security that in another ten years another Lieutenant-Governor might not arise who would take another view and cause another general revolution. According to Garth, legislation, if it interfered with rights, was justifiable only in a real emergency; and rights, though they might derive from legislation, rested ultimately upon the common law. Thus, any occupancy right for the tenants must have depended, before 1793, upon prescription; that is, it was a common law presumption of legal title on the basis of possession from time immem-

Ripon, 24 January 1883 and also 24 October 1884, Add.Mss.43523. Garth later remarked that he had intended his minute to be an official communication and not a private letter, as the government were regarding it; if private, he agreed, it would have been improper to have had it published as an official document; to Primrose, 19 December 1882, Add.Mss.43610.

⁸⁷ Cotton to Ripon, 10 September 1893, Add.Mss.43618.

orial, a provision recognised in Roman law and given legislative form in England (with a thirty-year limit) in 1832. Boldly, Garth accommodated this precedent to Indian experience by supposing that 'prescription' was really the same as what Indians meant by 'custom': these 'poor people', the raiyats, he explained sadly, knew no difference between the two, and in fact probably had no word in their language to signify 'prescription'. In short, in opposition to theories of an Asiatic way, he supposed that the underlying principles of law were universal. Fundamentally he was convinced that property was a natural state of man, that it was regulated by contract, and that, though either might evolve, neither should be overturned by governments. Nor should the courts be required to intervene in transforming or denying them: Garth was concerned that the rent law would create a 'frightful amount of ill-feeling and litigation'. On the other hand he recognised also that practice differed, and that enactments could alter things: he imagined that the period of prescription required for tenant rights had varied from place to place before 1793, and that afterwards the zamindars 'took advantage of the liberty of contract which they acquired' in order to 'break in upon existing customs' by requiring written agreements from their tenants, setting out rents and the duration of tenancies.⁸⁸ But he argued both that such changes had produced new rights which could not now be overturned, and that the consequences of extending similar rights to tenants would be to create in the occupancy right a valuable property, a prize for land speculators: the more valuable it was, the less likely the cultivating classes would be to acquire it; indeed the condition of the actual cultivator would probably decline.

This last was a shrewd thrust at the advocates of tenant-rights, but generally Garth was a man of narrow imagination: the law had a concrete reality for him to an extent with which the revenue officers had little patience. It was far from the case that agrarian relations were being regulated by law-courts to the degree that Garth believed, though the laws of property had undoubtedly made an impact on the situation of zamindars; on the matter of contract for example it was known that very few formal leases were issued between landlords and tenants.⁸⁹ It was

⁸⁸ See Garth's 'Proposed new rent law', minute no.1, 8 January 1880, *RLC Report*, Appendices, arguing that zamindars had 'almost as much freedom' as English landlords, and that Act X of 1859 was 'an invasion of the landlord's rights'. He himself admitted: 'I may have been induced to look at the matter rather too much from an English point of view'.

⁸⁹ Garth had argued that the registration of all leases would put a stop to a vast amount of litigation; as raiyats were mostly illiterate, he proposed official

not until somewhat later that the courts did intervene to an increasing extent—the ten-year averages of rent suits almost doubled between 1890 and 1903—and the increase was in large part attributable to the Bengal Tenancy Act (as Garth had predicted), and to the greater access provided by Small Cause Courts (with jurisdiction in cases worth up to Rs.500 for subordinate judges) and by an expansion in the number of munsiff's courts (competent in civil cases worth up to Rs.1,000).

The replies to Garth concentrated upon the legal arguments. It was pointed out that proprietary rights in Bengal were very concentrated and very lightly taxed, and that rental incomes had increased vastly since the permanent settlement; but the reformers were convinced that there was no need to justify change on such arguments of public policy. What was now proposed—the words come from H.S. Cunningham, another High Court judge—was not a subversion but a re-establishment of the law, exercising a right reserved in 1793 for the state to intervene to prevent the 'raiyats being improperly disturbed in their possessions'. According to this view (as we have seen) the great mass of resident raiyats had commonly possessed occupancy rights throughout India. It will be plain from our earlier discussion that there was an interesting confusion or conflation here. Mackenzie and his fellows believed the usual cultivator was a resident; they thought that 'resident cultivator' was a fair translation of *khudkashta* raiyat, and that the privileges of such raiyats were well-established. Therefore, the usual cultivator had (or should have) the same rights, which only the previous errors of government and the courts had obscured. It now seems clear that not all residents, not even all resident cultivators, were *khudkashta* raiyats; and indeed that not all *khudkashta* raiyats were true cultivators or even necessarily resident. Rather there were categories of privileged proprietary tenants; there were village residents who inherited tenancies and other obligations or benefits, but without such privileged status; there were resident cultivators who had little or no land directly from a zamindar, or who were otherwise not regarded as full members of the community; there were *khudkashta* raiyats in one village who occupied fields in another, as *pahikashta* (non-privileged) tenants; and so on: the picture, as will already be plain enough, is of a very great complexity. There was no pair of categories neatly covering all the possibilities, and available for Western legislators.

O'Kinealy wrote along similar lines to his colleague, Cunningham, and with rather less circumspection than might have been expected from

registry offices where records would be explained to both parties; 'Note by Sir Richard Garth on Mr Field's Digest', *RLC Report*, Appendices.

one yet to receive his permanent appointment to the High Court. He had been a reluctant recruit to the Rent Law Commission, he explained, and returned to the subject only to meet Garth's 'rather personal attack'—one written, moreover, calmly in England (in fact during the sea-passage) and not in India or in the heat of discussion; one then published in the Indian newspapers. Reluctant or not, O'Kinealy was unable to refrain from citing what he regarded as factual and legal errors in Garth's submission. There was rather a long list of these, for some of which O'Kinealy drew on his twelve years of experience as a revenue officer. This gave him a different view of the intellectual capacities of the average raiyat—as for their not understanding 'prescription', for example, he could only say that since becoming Government Legal Remembrancer, supervising the drafting of government pleadings, he had seen hundreds of documents making just that plea. But, as a former revenue officer, the main difference was in his approach to the legal record. Garth interpreted the current state of the law mainly from the perspective of universal legal principles. O'Kinealy scanned the many authorities from Cornwallis onwards to reveal general support for the idea that, in India, 'no tenant could be ejected except for non-payment of rent, nor could his rent be enhanced beyond the customary rate'. Thus armed he suggested that it was the Chief Justice and not he who should learn to respect authorities, and that 'It is not by mere general statements in regard to us or our motives that our arguments can be set aside'.

As will be already apparent, however, this was to take a rather sanguine view of the history of enactments, legal statements and judgments by the British in Eastern India over the preceding hundred years. Indeed had O'Kinealy been correct, the need for a new tenancy law would not have seemed as obvious as he otherwise claimed it to be. What O'Kinealy was doing was interpreting a diverse series of statements of principle which purported to describe what the existing situation in India was in regard to tenant rights. In other words, just as Garth's ultimate authorities were the analytical principles of the law, those of O'Kinealy were the customs of India: each of them supposed that their authorities had a unique validity. In detail, however, O'Kinealy derived his understanding of custom from the statements of British administrators, whom he therefore had to assume had an accurate knowledge of Indian realities. He declared that the permanent settlement and subsequent regulations did not give the zamindars freedom of contract; therefore he assumed they had previously been bound by custom. He argued that rents were not, as Garth thought, customarily a share of produce, but expressed as a money rate; he believed therefore in the

reality of a district or pargana rate, moderated by the state, and which zamindars were bound to apply. He found that *khudkashta* raiyats were not regarded as 'settled' in the meaning of English law, and that regulations in 1793 specified periods of prescription; he concluded that such rules reflected actual rights generally held in eighteenth-century Bengal.

Mackenzie's reply was similar. 'The situation is no doubt serious', he commented, 'when the Chief Justice of the Province thinks it his duty to use language like this of any Government measure, and when he not only makes these charges in general terms, but, in the face of the public, he impeaches two officers of Government by name as the authors and instigators of all the mischief'. Mackenzie denied the last point vehemently, giving details of the votes on the Rent Law Commission: the views he and O'Kinealy put forward were not original to them and mostly were not opposed on material grounds, and indeed were supported by the Indian judicial member (now the first Bengali district judge), a man 'deeply read in Indian law and well acquainted with Indian custom'.⁹⁰ If there had been a radical among them, on tenant rights, it had been H.L. Harrison, the Secretary to the Board of Revenue, cited by Garth as if he supported his views; Harrison had wanted to 'protect the actual cultivator whoever he might be'. This Board-of-Revenue view (for it received some support from the Commission's chairman, H.L. Dampier, a member of the Board) represented the pure voice of pragmatism, interpreted in the way then current: that is, the revenue officer's appreciation that the real problem was to find some way of protecting the agricultural producer from those whose rights in land (or for that matter over capital) enabled them to batten on his output. It was this thinking—the conclusions drawn from the evidence of starvation and agrarian riots—which Mackenzie described as the 'stern logic of facts' which had forced reform upon a reluctant government. He represented this as helping the landlords: the Act would be their 'salvation', for the alternative to a settling of the rent question would 'lead them into narrower straits than they have ever dreamt of'.

In this defence, Mackenzie was marshalling authorities, including himself: being in his forties, he had (he wrote) rather liked being called 'young', but he pointedly contrasted his decades in India with the brief

⁹⁰ Seal did indeed largely vote with Mackenzie and O'Kinealy. On the other hand, though Field largely drafted the Commission's report, Mackenzie, at his most eloquent, had led the attack on the Commission's dissenting minority, Mookerjea and Roy, who, he claimed, reflected 'Every prejudice arising out of Western notions of property'. *RLC Report*, vol.1, pp.96 ff.

experience of the London-trained barrister who had been parading his seniority. From the authorities, as already remarked, he could find an initial premise that the 'old law and custom of Bengal made no practical distinction between resident and non-resident ryots, and that all ryots without distinction of class (not being mere casuals or nomads) were entitled to hold their lands without disturbance, so long as they paid rents not less than the established rates'. Moreover the British laws had not turned these raiyats into 'mere contract tenants'. This was the basis of the local government's reply to some objections from the Secretary of State; but it was a remarkable claim, considerably beyond anything contained explicitly in the much-vaunted authorities. Mackenzie subverted customary divisions of ancestry, caste or kind in favour of a generalised right apparently derived from (or at least expressed in) the action of paying a standard rent. Elsewhere he referred to the 'unfriendly peasants', supported only by 'much dry study of old records, old laws and old books', on the basis of which he, the peasants' champion, had 'been led to hold that there is, both in law and fact, a living tenant-right in Bengal—a right, that is to say, belonging to the cultivator, limiting and restricting the proprietary rights of the zemindar, and which, though seriously damaged by ill-advised legislation, has not yet been altogether destroyed'.⁹¹

But the true origin of the idea was theoretical; we can recognise in it, as in the *Zemindary Settlement*, the living presence of the notion of the Indian village community. India was divided, as Baden Powell put it, into groups of holdings called villages, in which a collective ownership derived from the bond of union among the original tribe or settlers. This was the primary form of landholding in India. By contrast, the zamindar was an intermediary who owed his position to his having swallowed up some of these communal rights in land.⁹² Mackenzie did not conclude from this that it was possible to return to the pristine condition of the village in Bengal, but he did conclude that the government's goal was to secure an occupancy right for settled cultivators, so as to exclude 'land jobbers and mahajans' and to create 'a well-to-do peasant class, able to resist the vicissitudes of seasons and to pay a fair rent'. He was concerned at any further decay in the primary rights of the village landholders at the hands of outside speculators or moneylenders—his view of the village community was that it was a sealed unit, distinct from the world surrounding it—but he did not take Garth's point that their depre-

⁹¹ *RLC Report*, vol.1, p.110.

⁹² See B.H. Baden-Powell, *The Indian Village Community* (London 1896), ch. 1.

dations would be increased as a consequence of vesting valuable property in the tenants. On the contrary, he believed that property would enable the raiyat to defend himself. In short, his priority was not to protect the vulnerable cultivators but (while saving the landlords!) to help support a 'class'—his word—of proprietary peasants. He agreed, as all did, 'about keeping moneylenders out' but added, significantly, 'if we can'. In his book on *The Indian Economy*, Primit Chaudhuri refers to the idea of a 'kulak state', seeking economic growth rather than redistribution.⁹³ Clearly, if it existed, it was not an invention of independent India.

At the time of the tenancy debate, concern was expressed for the 'actual cultivator', his subjection and vulnerability to famine. Obviously, in the aftermath of the Deccan riots and the 1879 Agriculturists Relief Act, this could translate into worries about transfers of land to moneylenders and other non-cultivators. Some who advised on the legislation, as we have seen, opposed transferability because they feared for social cohesion and political stability. Mortgages and land transfers to and from different categories of people were regularly monitored after 1885, as part of the reports on the working of the Act. But defects in the categorisation meant that agricultural moneylenders, sub-letting and terms for the employment of labour were largely unremarked and unregulated—and intentionally so. For all the emphasis on original rights, the predominant theme of the debate was change not continuity, and transferability was seen as a means of economic progress. By sleight of hand the 'actual cultivators' were identified with agricultural entrepreneurs. In that calculation, consolidations of holdings, a capacity to invest and security of individual ownership became the crucial goals. The next chapter will go back and consider in more detail how this important decision emerged out of the competing social and economic prospectuses on offer, and how (in short) custom gave way to law.

⁹³ Primit Chaudhuri, *The Indian Economy. Poverty and Development* (London 1978), ch. 9.