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„From Hastings to Macaulay: how the East India Company strategically created a legal order to consolidate power over the indigenous people of India 1765-1862“

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Abstract

This thesis examines how legal orders can be structured to serve power consolidation by analysing the case of the East India Company. Under Governor-general Warren Hastings the Company created the Adalat System in which courts operated by the Company administered Islamic and Hindu Law to these respective populations. It is submitted here that the Adalat System, rather than deriving from benevolence and respect for these communities, helped the Company achieve stability.

The Adalat System then underwent a Universalist Shift. The Company backtracked from administering Islamic and Hindu law, often with a pretext of importing English-style legal reforms, from which they derived a moral justification for empire. The Indian Rebellion of 1857, which caused the dissolution of the Company, can be partially attributed to the encroachment on Indian social values and customs by legal means.

This thesis reconfigures the development of the legal order as an inherently imperial process occurring across many different stages in which the Company´s priority was to consolidate power. Thus, the Company imposed law foremost as a social and political tool rather than out of normative principles. Therefore, it is concluded the celebrated role of the British Empire of establishing the rule of law in India is not warranted. Furthermore, the implications of this legal order on modern India are considered, as well as on the international landscape in general, where in an era of globalisation, the clash between pluralism and universalism, becomes increasingly acute.

Zusammenfassung

In dieser Arbeit wird untersucht, wie Rechtsordnungen so strukturiert werden können, dass sie der Machtkonsolidierung dienen, indem der Fall der Britische Ostindien-Kompanie analysiert wird. Unter Generalgouverneur Warren Hastings schuf die Kompanie das Adalat System, in dem Gerichte, die von der Kompanie geführt werden, diesen jeweiligen Bevölkerungsgruppen das islamische und hinduistische Gesetze verhängen. Es wird argumentiert, dass das Adalat-System, anstatt aus Wohlwollen und Respekt für diese Bevölkerungsgruppen zu entstehen, dem Kompanie geholfen hat, Stabilität zu schaffen. Das Adalat-System erlebte dann einen Universalistischen Wandel. Die Kompanie zog sich von der Verhängung des islamischen und hinduistischen Rechts zurück, oft mit dem Vorwand, englische Rechtsreformen einzuführen, aus denen sie eine Moralbegründung für das Reich ableiteten. Die indische Rebellion von 1857, die zur Auflösung des Unternehmens führte, ist teilweise auf den Eingriff in die gesellschaftlichen Werte und Bräuche Indiens mit rechtlichen Mitteln zurückzuführen.

Diese Arbeit rekonfiguriert die Entwicklung der Rechtsordnung als einen inhärent imperialen Prozess, der in vielen verschiedenen Phasen abläuft, in denen die Konsolidierung der Macht Priorität hatte. Daher hat die Kompanie das Gesetz in erster Linie als gesellschaftliches und politisches Instrument und nicht als normatives eingeführt. Daher wird der Schluss gezogen, dass die vermeintliche Rolle des britischen Empire bei der Einführung der Rechtsstaatlichkeit in Indien nicht gerechtfertigt ist. Darüber hinaus werden die Auswirkungen dieser Rechtsordnung auf das moderne Indien sowie auf die internationale Sphäre im Allgemeinen betrachtet, in der, in Zeiten der Globalisierung, der Konflikt zwischen Pluralismus und Universalismus immer akuter wird.

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"Il n'y a point de plus cruelle tyrannie que celle que l'on exerce à l'ombre des lois et avec les couleurs de la justice."

"There is no tyranny more cruel than that which is exercised within the shade of the law and with the colours of justice."[1]

- Montesquieu

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"Merchants, unimpeachable of sin
Against the charities of domestic life,
Incorporated, seem at once to lose
Their nature; and, disclaiming all regard
For mercy and the common rights of man,
Build factories with blood, conducting trade
At the sword's point, and dyeing the white robe
Of innocent commercial justice red."[2]

- William Crowley

[1] Montesquieu, *Considérations sur les causes de la grandeur des Romains et de leur decadence*, 1734.

[2] William Cowper, *The Task: A Poem, in Six Books*, 1785.

1. Introduction

In 2003, Niall Ferguson published *Empire,* reigniting the debate on the influence of the British Empire on the development of India; however, one of the least contested claims he made was that they were responsible for establishing the rule of law in India.[3] In fact, praising the rule of law and the British legal order have become the hallmarks of recent empire nostalgia. This version of history is very much adopted within India itself as even the independence leader Dadabhai Naoroji would acknowledge the establishment of justice in India as one of the most beneficial legacies of British Rule.[4][5] What is most noteworthy is that such appraisals reflect the very rhetoric employed by that first incarnation of British rule, the East India Company, especially in its last days, to characterise itself as a governing body promoting, and being bound by, the rule of law. This outright simplification paints a picture of the British colonial administrators importing British laws and institutions into India in a benevolent manner; the reality was much different.

This thesis is concerned with the encounter between pluralistic populations, and the normative force of law, an encounter which is dominated by power dynamics. The legal sphere marked an area where the clash of cultures between the British and the indigenous populations could not be ignored but rather, by all accounts, had to be managed. In fact, the encounter was complicated by the fact the British were not just facing an other but rather *others* primarily in the sense there were different religious populations occupying the subcontinent, namely the Hindu and Muslim populations. I therefore examine how the East India Company chose what structure and which laws to apply to the pluralistic indigenous population of the Indian territory.

The timeframe I employ in this thesis spans between 1765, when the Company first received the so-called the Diwani Rights, which in turn granted them the ability to construct a legal order in Bengal, and 1862 with the enactment of the Indian Criminal Code; while the

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[3] Niall Ferguson, *Empire: How Britain made the modern world*, (London, 2003).

[4] Dadabhai Naoroji, "The Benefits of British Rule" in *Essays, Speeches, Addresses and Writings*, (Bombay, 1887): 131-136.

[5] Shashi Tharoor, "'But what about the railways ...?' The myth of Britain's gifts to India" in *The Guardian*, 8 March 2017, URL: https://www.theguardian.com/world/2017/mar/08/india-britain-empire-railways-myths-gifts (accessed 24/4/2019).

British Raj had already succeeded the East India Company as a governing body in 1858, the Code and other legal reforms had been conceived and prepared during Company Rule. Arguably the greatest proponents of what can be considered the guiding ideological poles of this narrative – pluralism and universalism – were Warren Hastings and Thomas Babington Macaulay respectively; in this way the descriptive title reflects the broad sweep of approaches which were adopted to consolidate power over the indigenous people at different stages of the imperial process.

Beginning with "Hastings Plan" in 1772, the Company developed the Adalat System in Bengal, in which they codified and applied Hindu and Muslim law to the respective religious populations with regards civil law, and a form of Muslim law to the entire indigenous population with regards criminal law. However, in the process of interpreting these laws the Company highly distorted them, often inadvertently, but also on occasion deliberately. However there soon emerged counterarguments deriving from sources such as utilitarianism, evangelicalism and Whig liberalism, which called for a more universalistic application of law. There thus followed a period in which legal reforms were carried out to the Adalat System, reforms which facilitated an encroachment of universalist English legal principles on the Hindu and Islamic law and religious customs. This would become an influential factor contributing to the outbreak of rebellion in 1857 and the subsequent dissolution of the Company.

In this thesis I argue that the development of the legal system should foremost be understood as a process inherent in the British ambition to consolidate power. I simultaneously put legal reforms at the centre imperial power consolidation and imperial power consolidation at the centre of the reasoning behind legal reforms. In this interpretation the orientalist pluralism of the earlier period should not be regarded as benign, but rather as a pragmatic precursor to the universalism which followed. It is contended therefore that the Company did not impose law in a moralistic sense but as rather as a carefully strategized social and political tool, always with the purpose of consolidating power and extracting profit. Instead of establishing the rule of law as defenders like Ferguson claim, the Company used the guise of the rule of law to establish themselves on the subcontinent.

Benton and Ross argue that "there is a dearth of sustained analysis of the changing and often locally specific understanding of law and legal complexity as presented and

debated by historical actors, including state agents.[6] Through this thesis then, I endeavour to trace the shifting debates and historical context which gave rise to this conception and implementation of law and therefore understand the Company´s role in a more systematic sense; rather than focusing on individual personalities and embracing an interpretation in which the legal order regarded as an ad-hoc development, I try to understand it as a significant piece of the imperial process.

Due to a paucity of sources on the subject matter I does not attempt a comprehensive review of the natives´ experience this legal order, as would fall in line with subaltern studies. Rather, I focus on the actions of the East India Company, as an imperial body imposing this legal order on the natives. The primary sources and indeed secondary literature is extensive in this regard. This thesis builds on the recent academic interest in empire and law while more specifically also adding to recent scholarship from different disciplines, demonstrating a growing recent interest in the East India Company.[7]

It has important contemporary relevance, firstly because the greatest legacy of this legal order in modern India is that personal law remains differentiated between religious groups; many argue this prevents national solidarity and call for a Uniform Civil Code within India. Secondly, the clash between the normative, universalist character of law and its diverse range of subjects, becomes increasingly clear in the age of globalisation. Thus, this thesis can also act as a springboard for understanding how legal regimes manage pluralities and how power factors into this.

Concepts and Definitions

In this thesis I frequently employ what are in some cases established terms, but also new terms, through which I attempt to capture the multifaceted nature of certain phenomena.

Metropole/Colony: The metropole and colony distinction has been frequently employed to emphasise the separateness of the central territory of an empire, and its conquered territory i.e. the colony. In the East India Company case, the metropole stands for the voices emanating from England, be they that of the public, parliament or the crown. The Company itself was largely administered directly from the colony i.e. British India. While

[6]Lauren Benton and Richard J. Ross, "Empires and Legal Pluralism" in Lauren Benton and Richard J. Ross (eds.), *Legal Pluralism and Empires* 1500-1850, (New York, 2013):5.

[7] For example, the work of scholars such as Robert Travers, Nicholas Dirks, John Keay, Joshua Ehrlich and William Dalrymple.

throughout Company Rule there was relatively little direct political interference from the metropole in the legal system, it was influential in many other respects.

Legal Order: this term has been used elsewhere in a different sense, but here I employ the term legal order instead of legal system to capture the important interaction between the legal structure and the substantive law applied through that structure. The legal order also encompasses procedural law, and procedural law indeed played an important role in this narrative. However, in this thesis I focus on substantive law because this is where the greatest controversies were concentrated. That is, procedural law was for the most part transported from the British system because unlike substantive law, it was considered less likely to offend the indigenous populations. Lastly by legal order I emphasise that this order is a political creation i.e. it has been imposed rather than arising *ex nihilo*. Indeed, what can be considered the artificialness of the legal order imposed by the Company was demonstrated by its overall incongruence with the indigenous way of life.

Imperial Process: by using the term imperial process I am not departing from any traditional reading of imperialism. I accept that imperial powers maintain specific imperial interests but argue that imperial entities implicitly understood that these interests could not always be realised at the early stages of conquest. I use this word process then, to capture the fact that the imperialism occurred over different stages and indeed the administrators of the East India Company themselves recognised the existence of these different stages. This then is reflected in the development of the legal order, in which the desired outcomes of this order themselves shifted over time as a new stage was reached. In this thesis I argue that these stages, and indeed the imperial process, is determined by power consolidation, which is inherently the ultimate goal for the imperial entity.

The Adalat System: while the pluralist system adopted under the "1772 Hastings Plan" is not named as such in Company records, I adopt the term "Adalat System" here. That is because it would be inaccurate to name it the "Hastings System" as others have done when said System was altered sometimes significantly under subsequent Governor-generals. Furthermore, it would be problematic to simply label it as the Pluralist System" because as will be demonstrated below, the System often facilitated crude understandings of pluralism. The law administered in the Adalat System has sometimes been labelled "indigenous law"; this neglects to consider that the Islamic and Hindu law employed by the Company failed to

account for customary law which formed a crucial part of the "indigenous law". Many scholars, recognising the distortions made from the original law, have used the terms Anglo-Hindu Law and Anglo-Muhammedan Law. However, these terms were also used by the Company to help justify their actions to those criticising the fact they implemented the law of the natives; they also are outdated in lexicological terms. For the sake of simplicity in this thesis I adapt the terms Islamic and Hindu law while recognising the law actually administered within this System cannot be said to be fully representative of these legal traditions.

The Universalist Shift: I employ the term Universalist Shift to describe the Company´s gradual alteration of the legal order towards universalistic principles, something which is typically held to have been inaugurated under the Governor-general Lord William Bentinck. I say shift because since the Adalat System was still intact throughout this period, one cannot speak of a Universalist System. It should also be emphasised as a I argue below that universalistic thinking was latent in the Company from its very conception but that this emerged more clearly in this period on account of their having consolidated power to a greater extent.

Basic Structure of the Thesis

My thesis covering, more than a hundred years of history, and describing a complex legal order and interaction of jurisdictions, constitutes a significant undertaking. Nevertheless, I argue that this framework is necessary for fully appreciating the transformation of the legal order within this time period, and therefore to fully appreciate the imperial process. I depart from the approach taken by most scholars who focus on only one part of this narrative.[8] I also depart from the approach of Susanne and Lloyd Rudolph who describe this period an oscillation between pluralism and universalism;[9] I argue, instead, that there was not so much an oscillation but rather the course taken flowed naturally from the Company´s situation and strategy. Indeed, the structure is designed to reflect this fact.

I begin by providing a background description of the East India Company in 1765. I emphasise the twin imperial and corporate identities of the Company. I outline how the debate regarding the sovereignty of the Company pervades this entire narrative. Lastly, I

[9] Rudolph and Rudolph. "Barristers and Brahmans in India": 24-49.

describe the indigenous populations whom the Company was now responsible for governing. Further relevant contextual information is presented in the Appendices wherein certain thematic areas are elaborated upon.

The next section is devoted to the Adalat System, describing its conception and its development in the face of challenges. I pay particular attention to the work of orientalists in extracting the Islamic and Hindu Law and the distortions of this law which were enabled by through process. In line with the central argument taken in this thesis I analyse the Adalat System as a strategy. Finally, I describe the performance of the Adalat System, that is the experience of the Adalat System, and how this influenced future Company moves.

In the following section I examine the Universalist Shift. I described the ideological influences which informed the Shift which was inaugurated under Governor-general Bentinck. I furthermore posit that the Shift made sense in light of the significant territorial expansion carried out by the Company at the time. I examine the Sati Regulation and some other legal reforms as cases representing encroachment on the pluralism of the Adalat System. I argue that the codification projects of Thomas Babington Macaulay and the Indian Law Commission mark the culmination of this trend. I include the Indian Rebellion of the 1857 under the section on the Universalist Shift because the Rebellion was to an extent precipitated by sentiments that the legally-bound respect for indigenous religions was waning. I add a section on the dawn of the British Raj, the successor state to the Company, because adaptations to the legal order envisioned and planned under Company administration were thereafter played out during this period.

My penultimate section briefly addresses the legacy of this legal order on contemporary India with special due given to the current debate regarding a Uniform Civil Code. I split my conclusion into three parts. First, I make my case that the development of the legal order during Company Rule must be considered as a fundamentally imperial process in which power consolidation trumped all other considerations. From this I conclude in the second part that celebrating the British Empire for establishing the rule of law in India is problematic. Thirdly, I extrapolate some implications of this case to a wider international framework and consider what this case has to teach about the encounter between law and pluralism, and how the role of power is configured therein.

The structure is as follows:

Disciplines and Methodology

This is a multidisciplinary thesis in the purest sense. The research question touches on aspects of political science and sociology; the subject matter is law; while the analysis is foremost historical. This is reflected in the methodology in which I look not only at texts from the discipline of history but also the disciplines of political science and law.

The main method I adopt in this thesis is a systematic literature review. This has been defined as 'a review of a clearly formulated question that uses systematic and explicit methods to identify, select, and critically appraise relevant research, and to collect and analyse data from the studies that are included in the review."[10] This method will be carried out in the following stages:

[10] *Undertaking Systematic Reviews of Research on Effectiveness. CRD's Guidance for those Carrying Out or Commissioning Reviews*. CRD Report Number 4 (2nd Edition). NHS Centre for Reviews and Dissemination, (University of York, March 2001).

Stage 1: The research question is formulated following an initial scoping of the literature.

Stage 2: This involves breaking the research question down into individual concepts to assist with the search process. Then databases and libraries are used to find relevant literature.

Stage 3: All of these sources will be analysed in line with the principles of source criticism to ensure the highest level of reliability possible.

Stage 4: The characteristics and key argument behind sources are collected and described in a table which orders them according to the main topics outlined above.

Stage 5: Standard hermeneutical principles are applied in order to interpret the sources in a consistent, academically robust manner.

Stage 6: These interpretations are then weaved into the thesis. The purpose is to create a diversely-sourced narrative while at the same time accounting for possible inconsistencies arising in the literature.

Literature Review

This thesis will work with both primary and secondary sources. Relevant factual information will be drawn from both types of sources to help create the narrative structure outlined above.

Primary Sources: in order to glean the motivations behind policy and the thoughts of the East India Company officials regarding the subject matter, I examine personal writings. Many of these have already been collected e.g. *The Correspondence of Lord William Cavendish Bentinck.* Other primary sources I rely on include legal documents themselves e.g. *A Code of Gentoo Laws* and primary sources relating to the preparation and drafting of these legal documents such as documents commissioned by the *Indian Law Commission*. Furthermore, I utilise online resources relating to the British Empire; *Haithi Trust* is the most extensive for the subject matter at hand. Nevertheless, as stated above I foremost adopt a systematic interpretation in this thesis, meaning that rather than constructing the narrative entirely from primary sources, I analyse these sources to determine if they substantiate the central arguments put forward in this thesis.

Secondary Sources:

In a general sense much has been written about the East India Company. However, many of the earlier monographs fall into the "Great Man" category of historical literature, focusing on the feats on individual Governors-general. Therefore, there is a currently a renewed interest in the Company, examining it from different theoretical approaches and disciplines. This is also the case for the Company´s legal system.

Susanne and Lloyd Rudolph were trailblazers in paying attention to the legal order behind Company Rule and their work has inspired further accounts. Thereafter scholars narrowed on different aspects of this order, such as Roy and Swamy on the economy and Bhattacharyya-Panda on indigenous law. Studies of legal pluralism became popular in the 1970s and 1980s and was soon thereafter applied to the colonial context. Lauren Benton is one of the leading figures in this regard who has written comparative work on legal pluralism across empires especially with an eye towards India. While the legal pluralism framework is not adopted here in full, its theoretical relevance for this case is described in a Briefing Report below.

Nevertheless, explicitly framing the legal order in terms of power consolidation has not been as widespread; Robert Travers emerges, through his 2008-published *Ideology and Empire in Eighteenth-Century,* as perhaps the greatest proponent of this approach although he does not bring the later, "universalist" 19th century period into his analysis of the Hastings era. Likewise, Stokes has written arguably the leading monograph on what is here termed the "Universalist Shift" period of the East India Company with his *The English Utilitarians and India*; however, he neglects to focus on the earlier late 18th century period.

In this sense I carry out an extensive literature review to bridge what I perceive to be an artificial separation of different periods of Company Rule. I rely on the works of a wide range of different historians, some who are very good on some aspects of this theme but less good and others, in order to tie the disparate strands of this narrative together. These and further secondary sources will be compared to each in a critical manner, utilising the quality assessment that forms Stage 3. I also try as much as possible to incorporate contrasting views into my thesis and to engage with them critically. I attempt to bring forth a diversity of secondary sources to substantiate the central arguments of my thesis.

2. Background: The East India Company in 1765

The structuring of the legal order in British India between 1765 and 1862 was carried out in a top-down manner and the driving force behind this order was the East India Company, an entity which to modern eyes appears to be a strange and often contradictory beast. The East India Company had been operative as a trading body since 1600 when its constitutive Royal Charter was issued by Queen Elizabeth I, and had been trading in the Bengal region of India since 1634. Nevertheless, the period which is known as "Company Rule" is considered as having begun with the victory of Sir Robert Clive´s forces over those of the Nawab or Bengal in the Battle of Plassey in 1757.

The novel administrative role of the Company was thereafter cemented with the Treaty of Alahabad of 1765 in which the Company was granted Diwani Rights by the Mughal Emperor Shah Alam II– that is, the right to collect revenue in the territories of Bengal, Bihar and Orissa, territories which would form the base of British India over the next century. This essentially meant that the Company had become in 1765 a governing body with administrative responsibilities towards the indigenous population, rather than merely towards its own servants. Revenue administration, as will be demonstrated, would become synonymous with legal administration meaning that the Company had to set out a deliberate legal policy and construct a legal order to avail of these profits. The executive body of the Company, the Court of Directors, helmed by Warren Hastings, Governor of Bengal, was charged with this task.

2.1 The East India Company as an imperial entity

The granting of Diwani Rights symbolised the Company´s orientation towards strengthening imperial jurisdiction in India. It also came at a time of widespread imperial expansion across the globe. This necessitated clarifying the way that English law would apply to colonies which was, as Benton puts it, "a chronically unsettled question."[11]

[11] Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the History of International Law, 1800-1850*, (Harvard, 2017): 183.

Company Rule is synonymous with imperialism and therefore it should be remembered the Company administered its legal order foremost as an imperial body. Ivison defines imperialism as "relations between states and peoples in which one state is able to effectively impose, constrain, dominate and exploit others in ways that affect their most important interests." These relations are shaped by numerous factors including the past practice of the imperial entity, and the cultural attitudes of the entity towards the indigenous population.

Ivison argues that from this it follows "the independence of any other legal orders is, therefore, by definition contingent and shifting, depending on the interests of the imperial power."[12] Therefore the legal order imposed by the East Company, regardless of any concessions made to the indigenous legal orders, was to be very that: *imposed*. The legal order would be characterised by the interests of the Company, interests that would not necessarily correspond to those of the indigenous population.

Imperial entities such as the Company in their genesis stage were characterised more by conquest and profiteering than by order, and they therefore had to define the place law served as a tool in their apparatus. This touched on significant philosophical, jurisprudential and political questions, even though the Company administrators may have been oblivious to this fact. The moral aspect of law, which imposes desired norms and aspires perhaps to even reshape the behaviour of the population, therefore must be understood in relation to the pragmatic, functional aspect of law which can facilitate co-existence and stability. However, such co-existence is not necessarily benevolent because, as in this case, it could help the British Empire consolidate power and, as Ivison suggests, dominate and exploit the indigenous peoples. Indeed, as will be demonstrated, the East India Company in practice strategically used law as both a tool of subversion and utilisation. The advent of empire thus made the function of law as a social and political tool within the British imperial system much clearer.

None of this is to suggest that imperialism operated as an empty vessel focusing on profiteering at the expense of moral principles. Entities such as the Company did have latent universalist dogmas and fundamental incompatibilities with the indigenous population whom

[12] Duncan Ivison, "Justice and Imperialism: On the Very Idea of a Universal Standard" in Dorsett, Shaunnagh, and Ian Hunter (eds.), *Law and politics in British colonial thought: Transpositions of empire,* (Basingstoke, 2010): 31.

they aspired to rule over.[13] Indeed this fact became inescapable as the imperial process developed and law increasingly became a tool of social transformation, giving them a moral justification for empire.

2.2 The East India Company as a corporate entity

The East India Company developed into a governing body rather gradually from its origins as a purely corporate entity and predictably it never lost its corporate interests. The use of charter corporations was in fact crucial to the expansion of the British empire overseas and the development of a wider imperial system. Indeed, the East India Company was modelled in some sense off its shorter-lived precursor, the Dutch East India Company, which established a stronghold in modern-day Indonesia in the name of the Dutch empire. Corporations acted as a covert means to initially expand into territories without openly offending sovereign claims.[14] After establishing themselves, these corporations gradually encroached on the sovereignty of the territory and as in the case of the East India Company and the Dutch East India Company, on occasion become fully-fledged governing bodies.

The Company´s original interest in India concerned trade, as India was rich in commodities such as silk, cotton and opium. The 1600 Royal Charter granted them a trade monopoly over vast swathes of land in South-east Asia; such privileges were not lightly granted at this time. Although initially they faced competition from other imperial powers such as the Dutch East India Company and the Portuguese Estado da Índia, the Company eventually gained a foothold by securing the patronage of India rulers, as exemplified by the meeting of Sir Thomas Roe and the Mughal Emperor Jahangir. With the advent of the Industrial Revolution in the 18th century, further advantage for the British corporation was obtained. With this and following the Battle of Plassey in 1757 their interests turned more to territory and the profits which could be extracted from territorial expansion combined with taxation. This period was characterised by relentless profiteering, the nadir of which was surely the Great Bengal Famine of 1770 in which an estimated ten million natives perished

The Company was a joint-stock company, meaning shareholders earned dividends proportionate to the number of shares they owned. The number of stockholders and value of stock in the Company had skyrocketed since the early 1720s (see Appendix G). These

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[13] Jennifer Pitts, "Empire and legal universalisms in the eighteenth century" in *The American Historical Review* 117.1 (2012): 98.

[14] Jane Burbank and Frederick Cooper, “Rules of Law. Politics of Empire” in Lauren Benton and Richard J. Ross (eds.), *Legal Pluralism and Empires 1500-1850*, (New York, 2013): 283.

investors expected fixed and regular returns in the form of revenue. However, the economy of Bengal was weak in 1765 and indeed worsened dramatically following the famine. Taxes were often paid or went mislaid during this period and many legal issues surrounding inheritance and the liquidation of debts were unclear.[15] The most substantial issue concerned the competing claims of zamindars, akin to landowners, with those of ryots, akin to the peasant class, to act as revenue collectors on behalf of the Company; Company administrators argued among themselves which of these classes was responsible for evading the full payment of full revenue sums.[16] Warren Hastings created a Board of Revenue to supervise taxation issues but on account of insufficient resources the Company continued to struggle to implement a centralised tax collection system in which they would have greater oversight over their tax collectors.

In any case this "corruption" would become one of the primary reasons for "imposing closer British control of all courts."[17] This was inspired by the experience of the English legal system which had been designed in such a way to make tax assessment more efficient.[18] Company administrators and employees were of course themselves often guilty of profit-seeking corrupt behaviour but the Company did not seek to rectify in any measure this until parliamentary oversight increased at the end of the century.[19]

In the decades which followed the Company transitioned from being pragmatically concern with profit, to become a more paternalistic body that was occupied with influencing Indian society. The Government of India Act in 1833 stripped the Company of its trade monopolies and it became a more centralised governing body, one which nevertheless continued to secure revenue for its investors.

2.3 The Sovereignty Question

Despite the granting of Diwani Rights many political questions were posed at the time, above all as to whether the Company could actually be in possession of law-making power. The East India Company was nominally administered by the Court of Directors, based in India House, located on Leadenhall Street in the City of London. However due to the distance between the metropole and colony administration of the Indian territories a clear line

[15] Nandini Bhattacharyya-Panda, *Appropriation and Invention of Tradition*, (Oxford, 2008): 72.
[16] Keith Feiling, *Warren Hastings*, (New York, 1954): 95-96
[17] Benton, *Law and Colonial Cultures*: 133.
[18] Cohn, *Colonialism and its Forms of Knowledge*: 59.
[19] Michael Edwardes, *Warren Hastings: King of the Nabobs*, (London, 1976): 54.

of authority was sometimes difficult to establish; the reality was that Governor-general Warren Hastings had a relatively autonomous mandate because he and his cohorts were physically based in India. The Company then was a constant source of confusion within the British power structure dynamic.

As Travers argues: "it was far from clear that the Company government, whether considered as Diwan of the Mughal gov or as delegates of a chartered company, had sufficient constitutional authority to remodel local judicatures." [20] There was no competing sovereign claim from any native Indian power which really challenged or perturbed the Company; or a the very least these claims were regarded as irrelevant.[21] The greater question concerned if the Company, a chartered company acting on behalf of the British Crown, could impose its own legal order.[22]

The Company´s relationship to the Crown, in whose authority the laws of England was vested, was initially unclear and the question of establishing a legal order magnified this. For Dorsett and Hunter the presumption existed that as the juridical construct of the Crown lay at the centre of the imperial system, then the judicial attributes of the Crown should be present in colonies.[23] Indeed the Crown and the law associated with it were present more directly in other British dependencies such as Ireland. There seemed to have been a push to emphasise something similar in India as certain new territorial acquisitions such as Bombay and Calcutta were explicitly given their corporate status in the name of the Crown rather than under charter.[24] Nevertheless in the process of the granting of Diwani Rights neither the Emperor nor the Company ever made it clear if natives owed allegiance to the Crown.[25] This left therefore the application of English law and rights to natives as an open question.

The sovereignty question is complicated by the fact that the Company existed at a time when states in the modern sense had only begun to emerge. Indeed, what we now consider as imperial states had until this point rarely claimed a full monopoly on legal

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[20] Robert Travers, *Ideology and Empire in Eighteenth-Century*, (Cambridge, 2007): 116.

[21] Nicholas B. Dirks, *The Scandal of Empire: India and the Creation of Imperial Britain*, (London, 2006): 168.

[22] Stern, "Bundles of Hyphens": 21.

[23] Ian Hunter and Shaunnagh Dorsett, "Introduction" in Shaunnagh Dorsett and Ian Hunter (eds.), *Law and politics in British colonial thought: Transpositions of empire*, (Basingstoke, 2010): 2.

[24] Stern, "Bundles of Hyphens": 39.

[25] Bernard Cohn, *Colonialism and its Forms of Knowledge*, (Princeton University Press, 1996): 58.

authority.[26] The construction of the modern state during this period responded to a number of political and legal developments and the role of colonies themselves were involved in this process. Amidst the unclarity it was often the Company´s very own political behaviour which led the way, breaking ground for what sovereignty within an empire exactly meant and how it would be understood in the future.

In the immediate aftermath of 1765, the Company enjoyed perhaps its highest degree of autonomy. For much of 17th century the Company was militarily weak and dependent on the compliance of Mughal rulers; finally, they received more security and independence. Furthermore, parliamentary oversight was next to none, due in no part to the fact it could take over a year to correspond with the metropole.[27] The later impeachment of Warren Hastings trial demonstrated that parliament often remained unaware of the exact nature of policies implemented in British India.

Therefore, in practice, the philosophical aspect of the sovereignty question was often side-lined. This is unsurprising considering centralising theories of sovereignty could not cope with the novel growth of overseas trade – again what actually emerged as a result depended more on contextual developments than on theoretical arguments.[28] Stern has worked on the law-making power of corporations in this era and he argues that the East India Company was for all intents with purposes endowed with sovereign, law-making power although this was limited in certain respects.[29] He argues that the Company at this time should be understood as an independent form of polity and political community.[30]

Furthermore, it was observable from their actions that the Company effectively viewed themselves as the sovereign body over these newly attained territories. [31] It does not follow that one can claim that the East India Company was somehow separate from the British Empire. For Stern within early modern states there existed a number of bodies (such as corporations like the East India Company) which either cooperated or conflicted with the

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[26] Lauren Benton, *Law and Colonial Cultures Legal Regimes in World History 1400-1900*, (Cambridge, 2001): 259.

[27] Dirks, *The Scandal of Empire*: 169.

[28] Richard J. Ross and Philip J. Stern, "Reconstructing Early Modern Notions of Legal Pluralism" in Lauren Benton and Richard J. Ross (eds.), *Legal Pluralism and Empires 1500-1850*, (New York, 2013): 130.

[29] *Ibid*: 21.

[30] Philip J. Stern, ""A politie of civill & military power": political thought and the late seventeenth-century foundations of the East India Company-State" in *Journal of British Studies* 47.2 (2008): 257.

[31] Ross and Stern, "Reconstructing Early Modern Notions of Legal Pluralism": 131.

sovereign.[32] However such bodies did not existed independent of a framework in which the sovereign was positioned at the centre.

In any sense this question came to the fore in the late 1770s when due to domestic political shifts, as well as the attention the Company was receiving, greater debates spread regarding the role of the Crown and parliament in British India.[33] Pitt´s India Act of 1784 clarified the sovereign question by establishing a dual principle of sovereignty: the Company could administer its territories for the profit of its stakeholders but it could only do so under regulations passed by Parliament and the Company would be periodically reviewed by Parliament.[34] By default, this meant the right of authority derived from the Diwani Rights was now considered to be grounded in an act of parliament.

A Board of Control was to be based in London which would review the affairs of the East India Company and provide a counterbalance to Company organ, the Board of Directors. This era was undeniably marked by greater oversight over the Company, which was perhaps the central issue within the impeachment trial of Warren Hastings, which lasted between 1788 and 1795. The trial did succeed in attracting public attention to the excess and possible abuses carried out by the Company but the eventual result, the acquittal of Hastings, represented, if not a complete endorsement of the Company´s mandate, then a truce of sorts between Parliament and the Company.

Thus by the mid-1790s and the consolidation of the Adalat System by the Lord Cornwallis, the colonial state was harnessed securely to the Crown and furthermore the metropole but at same time, in an apparent contradiction, it was allowed autonomous development.[35] While the Company had a certain free rein, imposing the rule of law would be one of the standards by which the administrator would be judged. Thus, closing the political distance between the Crown and the Company helped bring forth the later reforms to the justice system. Indeed, the Adalat System was implicitly accepted by Parliament but Parliament could and did became a forum for alternative visions of an Indian legal order to be heard.

It should be noted that formally speaking, it was not until the end of the Indian Rebellion in 1858 that the question of sovereignty was fully clarified by the inauguration of the British Raj.

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[32] Stern, "Bundles of Hyphens":24.
[33] Cohn, *Colonialism and its Forms of Knowledge*: 57.
[34] *Ibid*: 58.
[35] Dirks, *The Scandal of Empire*: 237.

2.4 The Indigenous Population

The legal order imposed by the Company would have to cater to the rich, diverse indigenous population of India, a population incomparable to that in England. Empire meant bringing a sense of unified rule across plural populations, many of which had different divergent legal traditions and cultures.[36] India, especially Bengal, was no exception, considering its plural demographics. Most natives were Hindu but on account of the preceding Mughal rule there was a substantial Islamic minority; many of these Muslims were also recent converts from Hinduism. The Christian population was negligible in 1765 but as missionaries became ever present, they eventually grew into a substantial minority of their own accord. On top of this there was a complex caste hierarchy within the Hindu population, not readily analogous to anything in British life. While at this time there was relatively little intercommunal violence between the religious groups, managing this balance was a prerequisite for the Company to flourish.

Most of the indigenous population lived in the Moffussil, a term used to denote territory outside of the three cities – Calcutta, Bombay and Madras. The Company had in its preceding history little experience with navigating the Moffussil and its inhabitants because they, and natives sympathetic to their Rule, were more established in the cities. Nevertheless rural India by all accounts needed to be controlled in order to reap the exorbitant sources of revenue investors were seeking. Bengal was for the Company at this time "the launching pad for further territorial expansion" and they needed a legal order which accommodated this strategy.[37]

Strategically speaking the recruitment of primarily Hindus, but also Muslims, for the military arm of the Company was crucial for safeguarding territorial control and expansion. [38] The military was structured so that each territory under Company control – Madras, Bombay and Bengal – had their own army in what were known as the Presidency Armies. While there were some European units and royal regiments, the bulk of the army was made up of sepoys, that is, Hindu and Muslim soldiers. While the sepoys could be promoted, they could not be promoted to commandment-level positions, which were restricted to British or European soldiers.

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[36] Stern, "Bundles of Hyphens":21.

[37] Travers*, Ideology and Empire in Eighteenth-Century*: 4.

[38] Seema Alavi, *The Sepoys and the Company: Tradition and Transition in Northern India 1770-1830,* (Delhi, 1995): 4.

However, relying on a military force made up of mostly natives with complex religious and caste identities had its risks. Therefore, Company administrators knew early on that any policy measures they made should at all costs avoid offending Indian religious beliefs, particularly those which affected the sepoys.[39] They employed mainly high-caste natives to function as sepoys, particularly those belonging to the Rajput and Brahmin castes, but ensured that battalions would not mix different caste members. Although they were trained along Western lines, sepoys maintained their religious integrity in carrying out their functions, initially at least. However, the emerging legal order would prove to be one of the most disruptive forces regarding religion in India. This meant that a direct thread connected law and its disruptive potential, to the military and the security they provided for the Company. Therefore, one can conclude that despite the granting of Diwani Rights, the Company still had a long way to go in terms of consolidating its power.

[39] Penelope Carson, *The East India Company and Religion 1698-1858*, (Suffolk, 2012): 2.

3. The Adalat System

In the face of all these unique considerations there was no blueprint or precedent to guide the Company on how to proceed with constructing the legal order.[40] However, the East India Company was operative and functioning as a quasi-administrative body for its own servants prior to 1765 and the legal order this gave rise to was characterised by Mayor´s Courts. Mayor´s Courts were first established by the East India Company in Madras, Bombay and Calcutta in 1726. A "mayor" presided over the court along with nine aldermen (at least seven of whom had to be natural-born British magistrates).

Their primary purpose was to administer justice towards the resolution of disputes involving company employees. The archival evidence on the Courts is limited but there is a consensus that English law was applied; a dispute remains as to whether English statutes were directly applied in these courts or if the courts had their own autonomous legislative process. The Courts could be and were utilised by natives when they had a dispute with a company official. Indeed, there is some scant evidence that periodically Hindu law was referred to in such disputes. [41] Nevertheless crucially the Courts could not be utilised for the purpose of resolving disputes *between* natives. This continued to be serviced by the informal system set up under the Mughal reign, in which the majority of natives utilised decentralised legal bodies such as panchayats and caste tribunals.[42]

In terms of disputes occurring exclusively between natives: officially the Diwan had had control over the civil justice while the Nawab controlled criminal justice. [43] That being said, natives were more likely to avail of more decentralised legal bodies, particularly local dispute settlement forums such as panchayats or caste tribunals.[44]

Thus the extension of the Mayor´s Courts, and its application of English law, remained an option for Hastings at the dawn of Company Rule. However how this would be accomplished was unclear and the option was soon taken off the table. Many advocated for a

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[40] Cohn, *Colonialism and its Forms of Knowledge*: 58.
[41] Bhattacharyya-Panda, *The Appropriation and Invention of Tradition*: 44.
[42] Pandey, *The Introduction of English Law into India*: 22.
[43] Feiling, *Warren Hastings*: 96.
[44] Pandey, *The Introduction of English Law into India*: 22.

full overhaul of the system in which English law would supplant the *modus operandi*. Alexander Dow, an army officer who had become an influential voice on Indian affairs, stated that "some laws of the conqueror must necessarily supersede some of the regulations of the conquered."[45] The dubious argument was occasionally was made since there was no viable laws or legal order in Bengal, English law should be transplanted to the region in full.[46] Furthermore these voices shared the desire for the Company to fundamentally distinguish themselves from what they portrayed as the "despotic and degenerate nature of Mughal and Nawabi rule".[47] They wanted the Company to instantly assert their power, through the medium of law.

3.1 The Hastings Plan

English law or a variation therefor had been replicated in other cases such as the Thirteen American Colonies, but Company servants argued the Indian situation and context were incomparable. Between 1772 and ´73 a parliamentary committee was set up to investigate the affairs of the East India Company and in the process deliberated on what legal order was appropriate for Bengal.[48] They found that there was no legitimate legal order in Bengal and that therefore British law and institutions should be introduced to fill this vacuum.

Nevertheless, Governor-general Warren Hastings worked hard to lobby both influential members of the Court of Directors of the Company and Parliament to prevent their recommendations from being realised. He succeeded and offered as an alternative the 1772 Judicial Plan, also known as the "Hastings Plan." This plan replaced the remnants of the Mayor´s Courts System with "the Adalat System", a legally pluralistic system which by all appearances was devoid of the influence of English law.

Hastings prioritised religious practices in deciding what substantive law should be applied[49]; no doubt perceiving the importance of religion in the region. Under this plan

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[45] Bhattacharyya-Panda, *Appropriation and Invention of Tradition*: 61-62

[46] Travers, *Ideology and Empire in Eighteenth-Century*: 19

[47] Piyush Kumar Tiwari, "The East India Company and Criminal Justice: The Role of Orientalists" in *International Journal of Humanities and Social Science Invention* ISSN (3) (4) April, 2014: 59.

[48] Cohn, *Colonialism and its Forms of Knowledge*: 65.

[49] Tirthankar Roy and Anand V. Swamy, *Law and the Economy in Colonial India*, (Chicago, 2016:) 17.

Company officials codified and applied Hindu and Islamic law to the respective religious populations in the civil district court (*Diwani Adalat*). Therefore, Hindus would be the subjects of Hindu law and Muslims the subjects of Islamic law. British company magistrates would officially preside over the civil courts, meaning that they discharged the majority of the decisions handed down.[50]

Civil law also addressed issues of personal law, including suits related to marriages, inheritance, caste and other religious matters. Personal law and civil law were heavily intertwined due to the dominance of family structures in Indian property traditions. The system then, was intended to give the impression that little ostensible difference was made to the law in personal matters such as marriage, inheritance and family issues, while pushing through more dramatic changes to revenue administration.[51]

The structure of civil administration makes clear the Company´s interest in securing revenue collection. Zamindars were elected as collectors of revenue and played a role within the Diwani Adalats by adjudicating over petty disputes.[52]Furthermore Hastings ensured that all disputes concerning the succession of zamindars would remain the ultimate decision of the Governor-general and the Supreme Council of Bengal, which would sit as an extraordinary revenue board.[53] Hastings himself claimed in private letter that he included criminal law in his 1772 plan because the prosecution of crime was also closely connected to revenue.[54]

The criminal law was not administered plurally as was the civil law. A form of Islamic law was applied to the entire population with regards criminal justice in the criminal district court (*Foujudar Adalat*). The administration of criminal justice would officially remain under the control of the Nawab, who was to be represented by Qadis and Muftis, both forms of Islamic Law officials, who would preside over the *Foujudar Adalat.* Nevertheless, the administration of criminal justice would soon come under the supervision of the Governor-general; he held a power of review to be applied, above all in capital cases.[55]

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[50] Benton, *Law and Colonial Cultures*: 134.

[51]Dirks, *The Scandal of Empire*: 231.

[52] P.J. Marshall*, The New Cambridge History of India II, Bengal: the British Bridgehead: Eastern India, 1740 – 1828*, (Cambridge, 1988): 128

[53] Travers, *Ideology and Empire in Eighteenth-Century*: 127.

[54] Warren Hastings to J. Dupre, Ft William, 6 January 1773, BL Add. MSS 29, 127, fo 64v as cited in Robert Travers, *Ideology and Empire in Eighteenth-Century* (Cambridge, 2007): 133.

[55] Feiling, *Warren Hastings*: 97.

British magistrates could furthermore adjudicate a case according "to justice, equity and good conscience" where Islamic or Hindu law was silent.[56] One would need resort to English law books for guidance in questions of this sort. [57] Crucially these courts followed British models in terms of procedure and adjudication.[58] Principles based on English common law, such as due process, a single referee and uniform procedures (many of which were alien to Indian legal traditions) were instigated.[59]

British judges lacking language skills and legal knowledge relied on interpreters of the law – maulavis for Islamic and pandits for Hindu – and their decisions often flowed from their instructions. [60] As Persian was understood by both educated Muslims and Hindus it was used as the language of the courts. Despite the pluralistic nature of the system it was still revolutionary in that it implemented one legal framework in which all natives would be accounted for; the immediate position of Company servants and British subjects within this framework was unclear.

3.2 Challenges and Consolidation

The Adalat System faced its first challenge in the form of the Supreme Court of Judicature at Fort William. This was founded through the Regulating Act passed by the British Parliament in 1773 and based in Calcutta, becoming officially British India´s highest court until the dissolution of the Company. It was created for the purpose mainly of putting a check on the actions of Company servants and thus applied English law. The Court was novel in that it was completely independent of the executive and its judges had been recruited directly from the English Bar; the first Chief Justice was Sir Elijah Impey.

The Regulating Act allowed natives to file suit in the court.[61] However doing so meant that they were willing to avail of the application of English law. This challenged the Company in a sense to justify why they were applying Hindu and Islamic law in their own

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[56] Benton, *Law and Colonial Cultures*: 139.

[57] Lloyd I. Rudolph and Susanne Hoeber Rudolph, *The Modernity of Tradition: Political Development in India*, (Chicago, 1967): 283.

[58] Michael R. Anderson, "Islamic law and the Colonial Encounter in British India" in David Arnold and Peter Robb (eds.), *Institutions and Ideologies: A SOAS South Asia Reader*, (Surrey, 1993): 167.

[59] Roy and Swamy, *Law and the Economy in Colonial India*, 18.

[60] Benton, *Law and Colonial Cultures*: 139.

[61] Benton, *Law and Colonial Cultures*: 136.

courts.[62] Nevertheless, it was soon debated whether the jurisdiction of the Supreme Court should be extended over all the British territories and if the Adalats should be subsumed into its overarching structure.[63]

This spawned further fears it would interfere with the Adalat System especially by providing judicial review by means of English law. Indeed, Warren Hastings lamented the intrusion posed by the Supreme Court and tried to counter this threat strategically.[64] He wanted to fuse the legal powers of the Company with those of the Supreme Court in order to preserve the Adalat System.[65] In his vision, the Company would then maintain oversight over the Supreme Court.

Sir Elijah Impey had a completely different view: in a bill drafted in 1776 known as Impey´s Plan he proposed to extend the jurisdiction of the Supreme Court over all of British territory and place the Company courts under its supervision. [66] Hastings and the Court of Directors fought back. During the so-called Kasijora crisis they succeeded in overruling the court´s jurisdiction. The dispute was finally settled when Parliament passed the Bengal Judicature Act in 1781 which restricted the Supreme Court´s jurisdiction almost exclusively to British subjects, something which constituted an endorsement of the Hastings project.

Impey, like Hastings, was impeached but eventually acquitted for his allegedly extradjudicial involvement in the Nandakumar affair; his influence thereafter waned. Nevertheless, Pandey argues the brief time in which Impey had influence over the Adalat System he improved them by introducing proper codes and rules of procedure.[67] Thereafter until its dissolution the Supreme Court mostly entertained suits based on official actions of the Company but its jurisdiction was firmly restricted from entertaining cases between natives.

The Supreme Court did not revolutionise the Adalat System. In fact by administering decisions involving Company employees and British subjects, it merely represents more a direct continuation of the Mayor Courts. Further Supreme Courts were established in Madras and Bombay but theirs too was a jurisdiction limited to cases involving Company servants.

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[62] Travers, *Ideology and Empire in Eighteenth-Century*: 181.

[63] B.N. Pandey, *The Introduction of English Law into India: The Career of Elijah Impey in Bengal 1774-1783* (Bombay, 1967): 122-123.

[64] Edwardes, *Warren Hastings: King of the Nabobs*: 73.

[65] *Ibid*: 86.

[66] Pandey, *The Introduction of English Law into India*: 122-23.

[67] *Ibid*: 234.

This was not against the interests of the Company as it satisfied critics who wanted the Company to be accountable for its actions in a legal sense.

Macaulay would later interpret the desire of the court to expend its jurisdiction over the entire territory as a calamity for the development of the Company because it was too early to attempt such a project.[68] In this interpretation Hastings succeeded at taming what would have been a hasty and potentially fatal effort to implement British law. He understood that the Company was at a natal stage of power consolidation.

The impeachment of Warren Hastings was a renowned event which was pivotal in the development of the Company. Since the trial lasted over seven years it provided parliament, and indeed the British public, the chance to review all aspects of Company Rule since 1765. Therefore, it could potentially have posed a significant challenge to the Adalat System by testing Hasting´s rationale in introducing the pluralist system. However, as Marshall points out, outstanding questions such as whether the British should seek to transform Indian society by introducing a Western legal system, were ignored during the trial.[69]

Prominent conservative Edmund Burke presented the Articles of Charges to the House of Commons in 1786 and thereafter led the prosecution of Hastings. Hastings was above all accused of corruption and of interfering with the process of justice during the Nandakumar affair. Nandakumar was a Brahman who was condemned in the Supreme Court and hanged (contrary to Hindu custom) on orders of Hastings and Impey. As Dirks argues, for many Hastings had betrayed his commitment to the rule of law and indigenous legal culture.[70]

Burke, on the first day of prosecution, famously accused Hastings of subverting the native legal order: "I impeach him in the name of the people of India, whose laws, rights and liberties he has subverted; whose properties he has destroyed; whose country he has laid waste and desolate." Despite these strong words, both Hastings and Burke shared similar approaches to the question of a legal order and believed that for the time being due should be given to Islamic and Hindu law.[71] As did Philip Francis, Hastings´ enemy who had campaigned for the impeachment. Francis and Burke like Hastings insisted on the similarities between the British legal regime and the native legal regimes and both were proponents of an

[68] Thomas Babington Macaulay, *Warren Hastings* Vol. 38., (Leipzig, 1904): 85.
[69] P.J. Marshall, *The Impeachment of Warren Hastings*, (Oxford, 1965): 190-1.
[70] Dirks, *The Scandal of Empire*: 212.
[71] *Ibid*: 290.

ancient constitution.[72] It is telling that the three giants of the day, despite their famous rivalries, did not have any fundamental difference opinion on this matter; in fact, supporting the adoption of a system catering to Indian traditions, had become very much the norm by the 1790s.

All three agreed about following native legal precedents but disagreed as to what some of these precedents were, most notably regarding the status of zamindars. Burke felt Hastings was distorting the legal basis of this status so as to give zamindars disproportionately favourable rights.[73] Burke also, and perhaps critically, accused Hastings of not respecting the rule of law by flaunting through his interference in the Nandakumar regime that which he had propagated during his regime: both the English sense of justice, and Hindu customs. Interestingly, N.B. Halhed, translator of the Code of Gentoo Laws, participated in the defence of Hastings. He referred to ancient Hindu legal texts to suggest that Hastings was right in assuming a semblance of despotic authority.[74]

In his criticisms therefore, using typically overwrought language, Burke accused the British of overhauling the native legal system.[75] However he did not in principle oppose the Adalat system or for that matter British imperial interests in India. In this sense Burke and Hastings represent the erstwhile consensus that existed regarding the Adalat System.

In 1795 Hastings was acquitted; the Houses of Commons and Lords did not find him guilty of Burke´s charges. In the subsequent decades his reputation was restored, and more appreciation was accorded for his formative role as Governor-general. For Travers the trial and the acquittal marked a break where while the Company was put under greater parliamentary oversight, colonial administrators were in the long-term given greater rein in their colonies so they could implement policy to the same extent has Hastings had done.[76] The impeachment of Warren Hastings, then, in something of a contradiction, turned out as not so much a challenge to the Adalat System, but a development influencing its consolidation. It acted as a confidence-booster to his successors.

From the outset the Hastings Plan was constantly reformulated until its consolidation under Lord Cornwallis´ rule. Lord Cornwallis, unlike Hastings who was acclimatised to India, arrived with little prior knowledge and connections and was thus more in a position to

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[72] Pitts, "Empire and legal universalisms in the eighteenth century": 107.
[73] Marshall, *The Impeachment of Warren Hastings*: 183.
[74] Nicholas B. Dirks, The Scandal of Empire: 199.
[75] Pitts, "Empire and legal universalisms in the eighteenth century": 112.
[76] Dirks, *The Scandal of Empire*: 135.

institutionalise the Adalat system in an objective manner. [77] Coinciding with the last days of the Hastings trial, Cornwallis set out to do just that. According to Travers the, 1793 Cornwallis Code cemented the Company State by centralising administrative law in a highly authoritarian structure.[78] This structure was based on creating more appellate courts (see Appendix G) and so-called munsiff courts, which were to hear claims before they reached the Diwani Adalat or Foujdari Adalat and thus reduced the volume of claims, which had in recent years proven cripplingly high.

The first concern was that too much autonomy had been given to natives within the district civil courts and this would interfere with revenue collection; therefore an appeal civil court (the Sardar Diwani Adalat) was created and presided over by Company officials.[79] In 1778 it was transferred to Calcutta, strengthening Company control.[80] They also worked to reform the administration of criminal justice to facilitate greater Company interference. Despite nominally being under the Nawab´s remit, Company magistrates began to administer criminal justice after 1781.[81] In 1790 the Nawab formally surrendered the administration of criminal justice as became reflected in the 1793 Cornwallis Code.[82] Cornwallis removed the presiding role of qadis and muftis in the district criminal court and made them merely assistants.[83] The appellate criminal court the Sadar Nizamat Adalat was also added to the structure and contributed to greater centralisation under the Company.

3.3 Orientalism

Beyond the structure of the Adalat System lay the complicated issue of substantive law and to what extent Islamic and Hindu law could actually be implemented within the courts. Those who undertook the task of uncovering and translating the laws have become known as “orientalists.” They were celebrated for their scholarly interest in native cultures. Hastings himself garnered the reputation as one of the foremost orientalists who sponsored such activities. On his orders the Madrasa 'Aliya was founded in 1781, exclusively to promote the study of Arabic and Persian languages, and along with that, the study of Islamic law.

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[77] Marshall*, The New Cambridge History of India II*: 101.
[78] Travers, *Ideology and Empire in Eighteenth-Century*: 243.
[79] Benton, *Law and Colonial Cultures*: 134.
[80] John Miller, *On the Administration of Justice in the British colonies in the East-Indies*, 1828: 8.
[81] Marshall*, The New Cambridge History of India II*: 94
[82] Miller, *On the Administration of Justice*: 9.
[83] Dirks, *The Scandal of Empire*: 222

The legalistic texts which orientalists used often needed to be translated across more than two languages, resulting in a process which could last decades. Hindu legalistic texts (shastras) were chosen to form the basis of the law at the expense of customary law which had been operative for most people of the peasant class through their utilisation of caste tribunals and panchayats. Some voices such as Chief Justice Elijah Impey had been dubious about relying on these texts and favoured using customary law.[84] However these texts prevailed as the basis for drawing out the substantive law of both religions.

In terms of the so-called Anglo-Hindu law, initially the most significant legalistic texts were the Gentoo Code, translated from the Vivādārṇavasetu by Nathaniel Halhed in 1776, and the Digest of Hindu Law on Contracts and Successions, translated partially from the Mitakshara by Henry T. Colebrooke in 1797. This required considerable effort as the texts had to be first translated from Sanskrit into Persian, and then from Persian into English. Within the Diwani Adalat that administered Hindu law, the British magistrates acting as judges still frequently relied on the expertise of pandits to interpret these codes, even when they had been translated. These magistrates quickly became distrustful of the pandits, suspecting them of ulterior motives.

Nevertheless the translation projects did help the Company address some of their most immediate concerns. One of the most crucial settlements to emerge from this translation project was that the joint family was the rightful owner of property and this helped the Company achieve a predictable property inheritance regime.[85] This again was conducive to their interests of resolving revenue disputes.

There are many similarities between the Company´s adoption of the Hindu Law with what has been called "Anglo-Muhammedan Law". Generally speaking, Anglo-Muhammedan Law was easier to codify due to the primacy of the written tradition within Islam. Adapted forms of the Shari´a (law deriving directly from the Qu´ran) had been administered in the Mughal empire prior to Company Rule.[86] The law which was chosen to be applied in the Adalat system was to a large extent a reproduction of these adapted forms of Shari´a law. However, the orientalists needed to supplement it with other laws in order to complete the comprehensive framework the Company envisioned.[87]

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[84] Travers, *Ideology and Empire in Eighteenth-Century*: 190.

[85] Roy and Swamy, *Law and the Economy in Colonial India*: 10.

[86] Marshall, *The New Cambridge History of India II*: 31.

[87] Kartik Kalyan Raman, "Utilitarianism and the Criminal Law in Colonial India: A Study of the Practical Limits of Utilitarian Jurisprudence" in *Modern Asian Studies* 28.4 (1994): 744.

Orientalists such as Sir William Jones undertook significant translation projects of classical Islamic texts; in 1791 the Al-Hidaya (an interpretive aid for Shari´a law) was translated while in 1792 the Al-Sirajiyya (on the law of inheritance) was translated. The judges of the Islamic Diwani Adalat and the Nizamat Adalat once again relied on experts- in this case the maulavis – to help them with the interpretation of the texts. As suspicion grew around the maulavis and their disproportionate influence, the strict application of the Islamic law waned.

3.4.Distortion of Islamic and Hindu Law

In the process of interpreting both the Hindu and Islamic law, significant distortions were made, some of which were not wholly innocent. These distortions are so widely accepted by scholars to the extent that many do not refer to Islamic and Hindu Law but rather Anglo-Muhammadan and Anglo-Hindu law respectively in order to reflect such distortions. Conversely these terms were often used by Company administrators themselves who wanted assuage critics arguing they were applying "barbaric" Hindu and Islamic law.

The Hindu law implemented was by default a distortion of Hindu religious principles. In the Dharmasastras (the collective name for Hindu shastras) there was no analogous term meaning "law" [88]; neither were the Dharmasastras consistent in the way a legal code requires. They were picked because for the orientalists, they resembled a constitution more than anything else did. Key elements of the pre-existing legal order had been customary law, and the oral transmission of normative judgements. Both were completely ignored during the extraction of Hindu legal principles. [89]

Scholars also argue the orientalists misunderstood the degree to which a consistent legal code could be extracted from these classical Islamic texts. [90] Anderson argues that the legal application of core Islamic texts such as the Qu´ran and Al-Hidaya required a "properly authoritative qadi" who would have the know-how to translate legal principles into practice according to the local context.[91] Furthermore Islam in South-East Asia at this time was much more heterogenous than it later became and the resulting Islamic law failed to acknowledge

[88] Bhattacharyya-Panda, *Appropriation and Invention of Tradition*: 20.
[89] Benton, *Law and Colonial Cultures*:139.
[90] Anderson, "Islamic law and the Colonial Encounter in British India": 173.
[91] *Ibid*: 173.

this fact. The Adalat System, for example, failed to account for the substantial differences between Shia and Sunni and how this ought to be reflected in the law. [92] The less formalised, fluid legal order preceding Company rule and thriving under Mughal rule was arguably less formalised by reason of this very heterogeneity. As Benton convincingly argues, the Company, by attempting to systematise in a legal sense this pluralism, only served to work against it: "the reification of legal practices and sources of law that had existed formerly only as fluid elements of a flexible legal process." [93]

One of the issues is that the orientalists rarely started their work without bias. They rather imposed their own English-influenced divisions of topics of law on the indigenous legalistic texts they used. This effectively meant that the logic of British law was fed into the law administered in the Adalat system.[94] For example, that in the al Sirajiyyah William Jones attempted to derive principles of inheritance akin to British fundamental principles.[95] Then, Colebrooke, who produced a Digest on Hindu Contract Law, used the already established Islamic contract law as a blueprint for his code.[96] Indeed this was typical of the pluralist system which viewed the law of both religions as analogous.

There were other distortions made which were of a more deliberate nature. This especially was the case for the issues of revenue and inheritance which had stifled the administration. Bhattacharyya-Panda, in her magisterial *The Appropriation and Invention of Tradition* verifies Edward Said´s criticism that the British orientalists deliberately altered the Hindu sources for their benefit. Additionally, her title refers to Hobsbawm and Ranger´s argument that traditions are often essentially invented but still treated as valid.[97] This argument is extremely relevant considering that a legacy of these distorted laws, is that Hindu and Islamic communities would in time could to construct their identities around them. This in turn would provide fodder for inter-ethnic tensions and clashes.

As an example of deliberate distortions Bhattacharyya-Panda argues the Gentoo Code was used to disfavour inheritance by female zamindars, in spite of the fact the Hindu sources suggest a different outcome.[98] This was on account of reports that female zamindars paid less

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[92] *Ibid*: 172.
[93] Benton*, Law and Colonial Cultures:* 128.
[94]Rudolph and Rudolph. "Barristers and Brahmans in India": 42.
[95] Sir William Jones, *Al Sirajiyyah: the Mohammedan Law of Inheritance*, (Calcutta, 1792).
[96] Cohn, *Colonialism and its Forms of Knowledge*: 74.
[97] Eric Hobsbawm and Terence Ranger, *The Invention of Tradition*, (Cambridge, 1992).
[98] Bhattacharyya-Panda, *Appropriation and Invention of Tradition*: 131.

revenue. The Company favoured, then, male zamindars through their Permanent Settlement policy, inaugurated in 1793, and this led to an elite-favouring property law regime. This law had a direct social effect as hostility towards women holding property became increasingly palpable within these communities.[99] The Permanent Settlement used legal grounding to attach perpetual rights to the zamindars, which could be taken from them if they failed to pay revenue, a condition which was intended to address potential corruption. It is not difficult to see how this arrangement satisfied the Company´s interests in achieving a predictable revenue regime; the voice of ryots on the other hand, was drowned out on account of the failure to incorporate customary law.

One of the most impactful distortions made by the orientalists related to caste. The term caste refers to the hereditary classes of Hindu society, distinguished by relative degrees of ritual purity or pollution and of social status. Prior to 1772 village tribunals akin to dispute resolution bodies dominated the administration of caste-based disputes. The Hastings Plan replaced the tribunal system with institutionalised courts in which legal cases which involved caste issues could be heard. In this sense the Company-administered courts first recognised the autonomy of castes as groups and added legitimacy to the hierarchy in a legal way.[100] Benton speaks to a fundamental difference existing between the view of justice within English law and the caste tribunals; caste tribunals usually did not seek to uphold a "just" decision but rather the most reconciliatory one. [101] Caste tribunals still operated in early years, but they were gradually made redundant.[102]

The Hindu legalistic texts used to derive the principles of Hindu law outlined the rules regarding of caste and the importance of maintaining the rule of the caste to secure collective order[103] Indeed it was impossible to implement Hindu law without implementing a caste-based hierarchy. However similarly with other aspects of Hindu tradition, and the Islamic tradition, orientalists have been accused of distorting the indigenous caste system by favouring the Brahminic caste status more.[104] The orientalists almost exclusively relied on Brahmins, a caste akin to priest status, for advice on interpreting these ancient Hindu texts.

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[99] *Ibid:* 248-9.

[100] Marc Galanter, *Competing Equalities: Law and the Backward Classes in India*, (California, 1984): 19.

[101] Benton, *Law and Colonial Cultures*: 137.

[102] *Ibid*: 132.

[103] Roy and Swamy, *Law and the Economy in Colonial India*: 17.

[104] Rudolph and Rudolph, *The Modernity of Tradition,* (Chicago, 1967): 254.

The Brahmins were biased in that they prioritised legal principles and outcomes which favoured themselves and other higher castes.[105] Thus the Anglo-Hindu law which emerged embodied the interests of the Brahmins. Galanter argues that the legal system both indirectly and directly worked to the favour of higher castes in the sense that legal precedence was established whereas in the tribunal system decisions had been less consistently adjudicated.[106] Precedence, then, locked in the elite status of the higher castes.

Many contemporary critics perceived this as such. J.H. Nelson who argued that there should be a greater emphasis on customary law, something which would be more amenable to lower castes.[107] This was also a point of contention for evangelicals like Charles Grant especially the favour accorded to higher castes.[108] Likewise utilitarians such as John Stuart Mill connected the high caste privileges to the promulgation of "barbarous usages" and favourably referred to efforts made by the Company to reduce this privilege.[109]

Exactly how deliberate all this was is debatable. Contemporary figures such as J.H. Nelson, otherwise sympathetic to the Company, attacked the courts´ use of Brahminic law at expense of other castes.[110] Customary law, which may have been less favourable to the Brahminic caste, was ignored because the British favoured transcribed and more uniform texts. [111]The Rudolphs argue however that the Company servants identified with the "high culture" of the Brahmins and that therefore Company Rule and Brahminisation worked hand in hand. [112]

Furthermore it should be noted that sepoys, who made up the bulk of the Company military, were often of a higher caste; assuaging them at the expense of lower castes was wholly in line with Company policy therefore. However, for the time being, by deliberately using this method of interpreting these legalistic texts, the Company institutionalised and crystallised what had been a more fluid caste system. And as with the tax regime question, this resolution played right into their hands.

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[105] Tiwari, "The East India Company and Criminal Justice": 59.
[106] Galanter, *Competing Equalities:* 20.
[107] Rudolph and Rudolph, *The Modernity of Tradition*: 276.
[108] Grant, *Observations on the State of Society*: 110.
[109] John Stuart Mill, *The Collected Works of John Stuart Mill, XXX*: 122.
[110] Rudolph and Rudolph, *The Modernity of Tradition*: 276.
[111] Lloyd I. Rudolph and Susanne Hoeber Rudolph, *The Modernity of Tradition: Political Development in India*, (Chicago, 1967): 269.
[112] *Ibid*: 254.

2.5 The Adalat System as Strategy

One must analytically consider the fundamental question that is the following: why did the Adalat System come about? It should be noted that such a result was by no means unique in the emerging imperial international system. For example, in the Ottomans Empire, non-Muslims were accorded their own laws within an overarching Islamic court system. [113] However within the context of British India the question persists. While transplanting English law would have been onerous in its own ways, the Adalat System necessitated ambitious translation projects and a reliance on locals to run the system. As Anderson argues such projects would by definition lead to great sacrifices in labour and capital.[114]It also seemed to go against the very identity of the Company. As Roy and Swamy pose the question: "Why should a state, let alone one that is British and mercantile in origin, decide that protecting religion or family ought to be its fundamental duty?" [115]

One argument put forward is that the decision was influenced by the unique outlook of figures such as Hastings, who were predisposed to respect India culture and heritage. The contemporary debate over orientalism was ignited by Edward Said´s renown *Orientalism*, published in 1978, in which he specifically singled out figures such as Warren Hastings and William Jones as representing a nefarious version of orientalism.[116] There is a clear strand of historians who view Hastings and his cohorts as orientalists in a more benevolent sense of the word.

For Raman, Hastings structured the Adalat System in order to preserve Indian society and institutions against the intrusion of English law.[117] Stokes argues that the Company recognised that on account of the granting of the Diwani Rights they were the "legatee of Mughal rule" and thus felt an obligation to respect the religions and laws of the people. This ignores the fact that Hastings continually tried to transgress the limits set by the Diwani Rights and consolidate British interests.

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[113] Lauren Barkey, "Aspects of Legal Pluralism in the Ottoman Empire" in Lauren Benton and Richard J. Ross (eds.), *Legal Pluralism and Empires 1500-1850*, (New York, 2013.)

[114] Anderson, "Islamic law and the Colonial Encounter in British India": 171.

[115] Roy and Swamy, *Law and the Economy in Colonial India*: 83.

[116] Edward Said, *Orientalism*, (London, 1978): 79.

[117]Raman, "Utilitarianism and the Criminal Law in Colonial India": 749.

Likweise, the Rudolphs characterise Hastings as a local ruler who wanted to act as locals did; suggesting that although he distorted the local law, his intentions were honest.[118] This interpretation suggests an image of the Company administrators being sympathetic to the natives as if they were almost noble savages *ala* Rousseau. For Neil McInnes orientalism was in strong contrast to Said´s interpretation something largely positive: ”it was an ideology, a movement, and a set of social institutions that defended Asian values and languages.[119] He notes that while Hastings was by no means a romantic, he was an orientalist in that he had the interests of locals at heart; he highlights with admiration Hastings´ invocation of Hindu and Islamic law in his defence during the impeachment process. [120]

This strand of interpretation is problematic on many counts. It first of all belies the degree of distortion of religious law which occurred at the hands of the orientalists. The orientalists not only failed to take into account customary law but deliberately obfuscated aspects of the textual law. It also belies the degree to which orientalists privately disparaged the religions, especially Islam. Many officials, including Hastings, privately intuited that Islam and Islamic law were barbaric.[121] These sentiments were to a lesser extent but nevertheless extended to Hinduism. William Jones also accused Hinduism of facilitating despotism. [122] Therefore, one cannot easily claim that the orientalists *respected* Hinduism or Islam.

Following this it needs to be assessed to what extent was the Adalat system strategically planned and if it really, despite the onerous costs and efforts, served the Company´s long-term goals. Company Rule was in retrospect an irrevocably disruptive event in the development of India but it may not have immediately appeared to all as such because Hastings and his cohorts tried to affect a sense of continuity with the Mughal regime.[123] Company servants had a superior local knowledge than the Directors located at the metropole i.e. London. Roy and Swamy argue that Company servants like Hastings, knowing the tenuous situation on the ground, soon formed the opinion that “politically

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[118] Susanne Hoeber Rudolph and Lloyd I. Rudolph, "Living with difference in India" in *The Political Quarterly* 71 (2000): 39.

[119] Neil McInnes, "" Orientalism", the Evolution of a Concept" *The National Interest* 54 (1998): 73-81.

[120] *Ibid*: 73-81.

[121] Edwardes, *Warren Hastings: King of the Nabobs*: 51.

[122] Bhattacharyya-Panda, *Appropriation and Invention of Tradition:* 146

[123] Travers, *Ideology and Empire in Eighteenth-Century*:14.

speaking institutional continuity was safer."[124] This would engender a sense of security at a time when the Company was just beginning to establish itself and launch its territorial expansion from Bengal; it would not have been wise to risk any systematic overhaul at this stage of the imperial process.

There was an intuition on the part of Company servants that India was a pluralistic society, in a way that was alien to British norms. Indeed, officials such as Colbrooke repeatedly cited sources which they believe indicated Mughal empire had been run by and through different groups. [125] They attempted then through the Adalat system to balance the interests of these groups. However as discussed above this led to a rather crude understanding of Indian pluralism.

For Edwardes, a prominent biographer of Hastings, Hastings´ attitude was foremost that "Indians would understand and accept British rule if they realised that their rulers respected and admired their religion, their laws and institutions."[126] Therefore the legal order became a way for the Company to express their so-called respect for the religions of the region. Again, this was regarded as a necessary step in assuaging the sepoys comprising the newly formed armies. Crucially however, respect for religion did not necessarily come of respect for the indigenous peoples themselves. Curtis argues that the British approached their colonies around the world as positioned at different stages of development[127]; it follows that those colonies existing at a what was perceived to be a more developed stage – for example, the Thirteen American Colonies - were likely to undergo more legal reform.

This was an open secret; in the foreword of *A Code of Gentoo Laws* it was recognised that India was at a different stage of development, and therefore religion should be interfered with only to a minimum. [128] Halhed, tellingly, also recognised that allowing freedom of religion was one of the ways in the Romans consolidated power across their empire.[129] Indeed even in contemporary, hagiographical studies of Hastings, such as the introduction of the *Memoirs of Warren Hastings,* it is recognised that translation of "Hindu Scriptures" was carried out with the purpose of inspiring confidence where there was distrust.[130]

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[124] Roy and Swamy, *Law and the Economy in Colonial India*: 83.
[125] Rudolph and Rudolph, "Living with difference in India": 40.
[126] Edwardes, *Warren Hastings: King of the Nabobs*: 198.
[127] Michael Curtis, *Orientalism and Islam*, (Cambridge, 2012): 135.
[128] N.B. Halhed, *A Code of Gentoo Laws*, 1776: ix.
[129] *Ibid*: ix.
[130] Hastings/ BL Add. MS 29, 125 in Warren Hastings, *Memoirs Relative to the State of India*, (London, 1787).

Along these lines one understands better why a certain primacy was accorded to Islamic law. This was counterintuitive on first glance as endorsing Islamic law would have been controversial in British circles. It permitted practices repugnant to them: for example, that a contract for murder could be drawn up that would be treated as binding contract in the eyes of the law.[131] For Raman, criminal jurisdiction within the Adalat System was intended "to convince Indian audiences that Indian rulers nevertheless reigned", something which explains why the the nominally supervisory role of the Nawabs was kept until 1790.[132] As Tiwari argues: "by saying that Muslims were „governed" by Islamic law, the British tried to conceal the fact that they had supplanted the Mughal sovereignty."[133]

This explains furthermore why Hastings did not try to revive a code of criminal law out of the Hindu texts despite there being more Hindus in thee territories and despite the Company´s abhorrence of Islamic criminal law.[134] As John Miller wrote in 1828, while some advocated against implementing Islamic criminal law, just as much thought it offered continuity as long as incorporated some English legalistic adaptations. [135] This would essentially become the strategy of the Company which removed many aspects of the Islamic criminal law via statue once the Company had consolidated its power to a greater extent. [136]

This invites likewise the question of allowing Hindu their own civil law. This disrupted continuity with the Mughal regime which had facilitated the more informal dispute settlement forums of caste tribunals and panchayats. Yet it is clear that propagating Anglo-Hindu law also had the purpose of legitimising Company rule. It endeared them to the Hindu population who saw their supremacy supplanted under the Mughals. Furthermore, Hastings and other were keen to suggest there was an "ancient constitution" within the Hindu faith and through the formation and maintenance of the Diwani Adalat, they were paying tribute to this.[137]

The Adalat system then, did create continuities between the legal order that had existed in the Mughal era – especially in recalling the Nawab/Diwan demarcation of civil and criminal justice. However, it formalised this much more than it had been and brought people

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[131] Atul Chandra Patra, *The Administration of Justice under the East-India Company in Bengal, Bihar and Orissa*, (Delhi, 1962): 170.

[132] Raman, "Utilitarianism and the Criminal Law in Colonial India": 743

[133] Tiwari, "The East India Company and Criminal Justice": 60

[134] Miller, *On the Administration of Justice*: 27-29.

[135] *Ibid*: 26.

[136] Anderson, "Islamic law and the Colonial Encounter in British India":168.

[137] Travers*, Ideology and Empire in Eighteenth-Century*: 124.

away from utilising the panchayats and caste tribunals. Also, as Marshall points out, one should not forget that for many natives, the law which eventually was administered to them would have been alien to their everyday life experience. [138]

The Company propagated the Adalat System then to safeguard their rule but they also faced the task of justifying the system, especially from voices within the metropole and within Europe in general which viewed the India state, and therefore its laws, as despotic. [139] That being said, Hastings did point to the corruption of the Mughal courts as part of the reason there should be greater Company oversight of the courts.[140] For all intents and purposes the Adalat System was designed so that the final adjudicatory decisions were by British magistrates, and on occasion, the Governor-general himself.

After "establishing" the existence of law, they then argued, as William Jones did, that British law could not be imposed because that itself would be despotic.[141] In this sense despotism became a double-edged sword; while the Company would be in retrospect accused of something akin to despotism, at the time they argued to observers that they were eliminating it. Dirks argues that Hastings offered a misreading of Indian history to justify his own abuse of arbitrary power, which eventually culminated in his impeachment.[142] Furthermore while the orientalists may have been correct that despotism was a crude interpretation of the Indian situation, the countermodel they submitted and eventually propagated, that of a nascent British-style legal order, was equally crude.

The Company were at pains to portray their translation projects as untainted. They promoted the idea of an "ancient constitution" belonging to the Hindus which they would restore. Orientalists settled on the idea that the oldest legal texts were the most pure and authoritative for deriving accurate Hindu law.[143] For Travers, Halhed´s Translation of the Code of Gentoo Laws constitutes a propaganda project aimed at portraying Hastings as the "benevolent steward of ancient constitution:"[144] Halhed himself claimed that the code refuted the prevailing belief that Hindus had no written laws.[145]

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[138] Marshall*, The New Cambridge History of India II*: 129.
[139] Tiwari, "The East India Company and Criminal Justice": 59.
[140] Dirks, *The Scandal of Empire*: 220.
[141] Cohn, *Colonialism and its Forms of Knowledge*: 68.
[142] Dirks, *The Scandal of Empire*: 197
[143] Tiwari, "The East India Company and Criminal Justice": 59.
[144] Travers, *Ideology and Empire in Eighteenth-Century*: 124.
[145] Halhed, *A Code of Gentoo Laws*: x.

This was of course inconsistent with the structure of the Adalat System which otherwise prioritised the interests of the Mughals, who had arrived in India much later.[146] At the same time as promising to revive the ancient constitution of Hindus, Hastings was claiming to be reviving the administration structure of the 16th century Mughals.[147] This again provides an example of the Company trying to assuage all parties; a propaganda effort aimed simultaneously aimed at Hindus, Muslims and the metropole. For Travers, Hastings´ attempt to invoke the ancient constitution provided political legitimation for Company Rule in a language which British observers could understand.[148] Hastings could rely on such justifications in his impeachment trial.

That being said, Travers argues, as the Cornwallis Code became a constitution of sorts for Company Rule, the idea of paying homage to an ancient constitution became "increasingly redundant."[149] Thus the "ancient constitution" served to momentarily fill a void, but was soon done away with as Company Rule became established and was no longer fundamentally questioned by critics at the metropole.

Another reason that the Adalat system was created has already been alluded to. The Adalat system helped the Company prop up elites who were conducive towards Company interests. For Benton the Adalat System offered "an institutional fix for the fluid jurisdictional politics of colonial setting."[150] The Company could resolve certain internal disputes by promoting elite interests, something which would grant them a predictable, steady of revenue, as well as greater security. Thus, the zamindars and Brahminic classes were favoured under the Adalat System, something which also no doubt secured their further loyalty towards the Company. According special treatment to the zamindars provided a more reliable source of revenue while doing the same for the high-castes placated sepoys, in turn strengthening the Presidency Armies. Anderson also argue that this was just as much the case with Islamic law and Muslims in that elites such as qadis and muftis were favoured and made content.[151]

Revenue seems to have been a crucial deciding factor. Hastings himself admitted that the Adalat system was designed around revenue collection: "the due administration of justice

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[146] Travers, *Ideology and Empire in Eighteenth-Century*: 24.
[147] Cohn, *Colonialism and its Forms of Knowledge*: 60.
[148] Travers, *Ideology and Empire in Eighteenth-Century*: 15-16.
[149] *Ibid*: 26.
[150] Benton, *Law and Colonial Cultures*: 6.
[151] Anderson, "Islamic law and the Colonial Encounter in British India": 168.

had so intimate a connexion with the revenue, that in the system which was adopted, this formed a very considerable part."[152] This fact was furthermore recognised by contemporary historians such as John Miller.[153]A designed legal order was needed to protect client elites such as the zamindars who the Company estimated were more reliable guarantors of revenue than *ryots* would be.[154] For Sinha, the Hastings's Administration did not consider to any large great extent the welfare of the people when deciding the judicial policy, but was rather more occupied with revenue.[155] The Adalat System was created at stage of the imperial process where paternalistic attitudes played less a role than corporate interests.

2.6 The Adalat System in Practice

In the twenty years following the inauguration of Hastings Plan, the Adalat System in principle was not greatly criticised. Some, like Edmund Burke during the impeachment of Warren Hastings, criticised certain outcomes of the system but there were few voices at this time criticising the fact that British magistrates were administering Hindu and Islamic law. The Adalat System appears, initially at least, to have been considered a necessary measure, above all among Company servants. Likewise, while it is hard to gauge how exactly the System performed in subsequent decades but there is evidence of a relatively successful levl of acceptance among the natives. Nevertheless, following the Cornwallis Code and the system becoming more consolidated and more utilised, Company servants began to express dissatisfaction with the design.

The System soon became encumbered with problems. The Company were completely reliant on the hired indigenous experts – *pandits* for Hindu and *maulawi* for Islam - to give legal advice as to the settlement of cases. Distrust of their performance and accusations that they were manipulating the law for their own benefit grew as long as the system prevailed. Their answers were often inconsistent, but this reflected their lack of strict adherence to the word of the law, which was routine in the pre-Company legal order and reflected the natives´

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[152] Rev. G. R. Gleig, *Memoirs of the Life of the Right Honourable Warren Hastings, First Governor General of Bengal*, (London, 1841), vol 1, pp. 534-44 as cited in Nicholas B. Dirks, *The Scandal of Empire* (Harvard, 2008): 172.

[153] Miller, *On the Administration of Justice*: 5-6.

[154] Benton, *Law and Colonial Cultures*: 134.

[155] Chittaranjan Sinha, "III. Doctrinal Influences on the Judicial Policy of the East India Company's Administration in Bengal, 1772–1833" in *The Historical Journal* 12.2 (1969): 240.

more fluid understanding of law. Pandits especially did not place emphasis on precedent which also provoked suspicion of their motives.[156]

Despite this, and because the Company magistrates had little else to go on, the pandit´s advice was rarely contradicted.[157]Benton argues that "cultural intermediaries" such as pandits and maulavi showed themselves to be skilled at using their new found authority to create a special status for themselves, often at odds with the Company´s interests.[158] In contrast Tiwari argues that the importance of these intermediaries waned as British judges were able to rely increasingly on English translations of the legalistic texts. [159] Kishwar argues that English commentaries on these texts were often referenced more than translations of the text themselves.[160] In the appeals courts and in legislation, the judges and jurists often departed from a strict interpretation of the religious texts.[161]When judges learned that sometimes the content of the law was not to their liking, they ignored it: for examples Colebrooke´s translation on the Hindu Law of Contract was not known to be frequently consulted.[162]

The option also remained for them to adjudicate a case according "to justice, equity and good conscience" where Islamic or Hindu law was silent, and they increasingly availed of this. Lastly Anderson argues there is evidence in Punjab of British administrators focusing on customary sources of law out of frustration with the Adalat system.[163] This all led to anomalies in the application of law relating to property ownership and inheritance[164]; something which was not in the interests of the Company. [165] It furthermore confounded attempts to establish precedence by means of a consistent body of case law. Thus, despite the administrative machinery of the Cornwallis regime, confusion reigned. The Adalat System was not entirely fulfilling its strategic purposes.

There was also a decreasing willingness to implement Islamic law. While Company servants constantly denounced Islamic criminal law as barbaric, one of their main points of

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[156] Rudolph and Rudolph, *The Modernity of* Tradition: 283.
[157] Miller, *On the Administration of Justice*: 36.
[158] Benton, *Law and Colonial Cultures*: 10.
[159] Tiwari, "The East India Company and Criminal Justice": 61
[160] Madhu Kishwar, "Codified Hindu law: Myth and reality" in *Economic and Political Weekly* (1994): 2146.
[161] Roy and Swamy, *Law and the Economy in Colonial India*:88.
[162] *Ibid*: 125.
[163] Anderson, "Islamic law and the Colonial Encounter in British India": 176.
[164] Roy and Swamy, *Law and the Economy in Colonial India*:20.
[165] *Ibid*: 20.

criticisms was that it was too lenient in terms of penalties, especially towards the dacoits (or bandit) figures who abounded the countryside posing trouble to the Company.[166] The British judges proceeded to impose harsher sentences contrary to Islamic law.[167] Dacoits were thereafter punished with death and their local village would have to pay a high fine and the families could be sold as slaves.[168]

Marshall argues so many statutory and de facto amendments to the Islamic law had taken place "by 1817 that it had in fact produced what has been described as a new law mainly of European origin.[169]" This demonstrates Company servants´ willingness to interfere with the Adalat System when it did not serve their purposes. It also demonstrates that any historiographical narrative which justifies the Company´s interactions with the indigenous populations on account of the benefits of moral paternalism, ought to be questioned profoundly.

Evidence is limited and conflicted on how the locals received this at once both familiar and alien legal order. In the Hastings era the Adalats appear to have been underutilised; indeed, in some districts they were simply not established at all.[170] This seems to have been more to due to a lack of resources rather than a lack of will. The new Adalat System as restructured under Cornwallis, however, was popular with litigants and the panchayats and caste tribunals of the Mughal era declined. This led to a growing backlog of suits in the courts, something also attributed to delays caused by the inherent complexities of the pluralist system. They in fact became so popular that, in conjunction with fact that such a complex pluralist system often led to delays, there was a rapidly increasing backlog of cases: by 1824 there was an extraordinary I23,651 civil cases in arrears.[171]

The lack of unity across the Adalat System made it like many legal pluralist systems vulnerable to competition and conflict. The famous *Patna* case (1777-79) demonstrated how cumbersome such situations could be on the Company, where claims under the Hindu and Islamic personal law systems clashed with each other. It also challenges the idea that the Adalat System led to intercommunal peace. The case concerned one Nadira Beg, a widow

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[166] Hastings to Council at Ft William, 10 July 1773, BL Add. MSS 29,079, fo.15, as cited in Robert Travers, *Ideology and Empire in Eighteenth-Century*, (Cambridge, 2007): 135.

[167] Dirks, *The Scandal of Empire*: 221

[168] Edwardes, *Warren Hastings: King of the Nabob*: 51.

[169] Marshall*, The New Cambridge History of India II*: 131.

[170] Travers, *Ideology and Empire in Eighteenth-Century*: 132-33.

[171] Raman, "Utilitarianism and the Criminal Law in Colonial India": 762.

who was deprived of inheritance under Islamic Law but who would not have been under Hindu law necessarily. The case also turned on the conduct of qadis who reviewed the property in question. Although their conduct was considered to be out of line the court was obliged to take their oath, as Muslim witnesses, over that of a Hindu.[172] The Supreme Court, sensing an unjust decision, then tried to intervene by issuing arrest warrants for the qadis. The case proved for many that the Adalat system did not necessarily lead to just outcomes and created inefficiencies.

In general, it is unclear as to whether the Company had a principled approach to adjudicating civil suits involving both Hindus and Muslims. Miller believed mostly Hindu law was administered due to the British´s favour of it.[173] The system then did not provide reconciliation between the religious populations but acted as a wedge between them for in the civil law it was difficult to maintain a balance between two competing and often contradictory bodies of religious laws.

The fate of Christians under the system also became confusing. Christians who were British subjects had recourse in the Supreme Court at Fort William; however due to evangelicalism there was an increasing number of Indian Christians, many of whom had legal disputes with Hindus and Muslims on account of property and inheritance issues arising from conversion. Judges were often forced to apply Hindu and Islamic law to them because the design of the Adalat System had not accounted for them.[174] This also applied just as much to those known as "East Indians", who were considered more educated and cultured in the British sense.[175] British observers felt it was regressive to be on the hand promoting British and Christian values, while at the same time implementing a legal order which did not account for them.

Despite these criticisms subsequent Governor-generals broadly speaking followed the legacy of Hastings and Cornwallis and implemented the Adalat System. This was also largely the case in other Presidencies which had come under Company Rule during a period of extensive territorial expansion. Some local Governors did attempt to restore a degree of customary law. Thomas Munro, Governor of Madras, and Mountstuart Elphinstone, Governor of Bombay saw the Adalat System as facilitating increasing encroachments of

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[172] Benton*, Law and Colonial Cultures*: 145-6.
[173] Miller, *On the Administration of Justice*: 31.
[174] *Appendix to the Report on the Affairs of the East India Company*, 11 October 1831: 93.
[175] *Ibid*: 24.

European institutions and wanted to make improvements for the sake of efficiency.[176] However they failed to maintain legal orders independent of the Adalat System.

As the empire grew more conscious of itself as a holistic unit, in which the distance between metropole and colony narrowed, the Adalat system seemed increasingly at odds with British rule.[177]There were some voices such as Philip Francis who felt that the Company should restore full Mughal administration of the courts. [178] However he was in a minority; most within the Company did not want to retreat. Nevertheless, a shift was occurring in which Company servants were moving away from their prior praise of Hindu and Islamic law. Some spoke of a fundamental shift occurring from orientalism to anglicism.

In 1814 the Secretary to the Government of Bengal wrote a report identifying the content of the Hindu and Islamic law as the main obstacle to an effective legal order.[179] Furthermore people began to discuss the possibility that the system constituted an endorsement, and in fact an encouragement, of what they considered to be barbaric practices.[180] These deviations as well as the inherent practicalities meant effectively that the Adalat System was collapsing of its own accord. This coincided with the development of new understandings of the Company´s imperial mission on the Indian subcontinent.

[176] Curtis, *Orientalism and Islam*: 135.
[177] Benton and Ford, *Rage for Order*: 6.
[178] Benton*, Law and Colonial Cultures*: 144.
[179] Roy and Swamy, *Law and the Economy in Colonial India*:24.
[180] Dirks, *The Scandal of Empire*: 23

4. The Universalist Shift

The dissatisfaction with the performance of the Adalat System led to what can be termed a universalist shift in Company policy; that is a significant movement away from the pluralism that had been embraced by the Company since Hastings. This shift was marked by a desire to replace what were perceived to be Hindu and Islamic legal norms with those perceived to be western or British norms; something which necessarily would constitute a disruption to the legal order.

Benton argues that this shift was largely driven from within the Company; while the legal order within British India increasingly became debated in London, she argues there was no sustained metropolitan effort to change it.[181] She fails to account for significant developments having indirect effects: for example the burgeoning industrial revolution. Such developments gave rise to Britain´s greater consciousness as an almost invincible imperial power. The effects of the revolution reached India in the form of vast train and canal infrastructure projects. These cemented British control over the subcontinent.

There had also been influential political shifts. Aside from the ideological influence of evangelicalism and utilitarianism discussed below, liberalism was accelerating. The Whig Party was popular in parliament and it carried a reforming attitude at the metropole, epitomised by the Reform Act 1832. Thomas Babington Macaulay promoted the Whig interpretation of history in which Britain was on a teleological trajectory towards progress. For example, liberals spearheaded a volte-force in education along these lines. The English Education Act 1835 facilitated the teaching of a Western curriculum taught through English, rather than Sanskrit or Persian. Accompanying this interpretation was the idea that Britain was the carrier of the "rule of law" and a universal justice system and a discourse of the rule of law soon became a common staple when discussing Britain´s identity and future. [182]

A similar change of rhetoric had also been evident among Company administrators ever since the 1813 Charter. For example, Company Director Henry St. George Tucker claimed it was the duty of the company to give the people institutions which "operate towards

[181] Benton*, Law and Colonial Cultures*: 152.

[182] John McLaren, "The Use of the Rule of Law in British Colonial Societies in the Nineteenth Century" in Dorsett Shaunnagh, and Ian Hunter (eds.), *Law and politics in British colonial thought: Transpositions of empire.* (Basingstoke, 2010).

improving the moral, intellectual and social condition of the people of India"[183] Archibald Galloway, also a Director, was more damning in his critique of the Adalat System: "this, as a judicial system, can be approved by no intelligent being."[184] John Stuart Mill, the famous utilitarian philosopher who was the son of James and an employee of the Company, felt that the system "was utterly indefensible in principle."[185] There was also a renewed idea to extend the jurisdiction of the Supreme Court. In 1829 the Supreme Court judges, Sir Charles Grey and Sir Edward Ryan, proposed trialling the extension of an English form of property law to the Company Courts of Bengal; however this was not approved by the Board of Directors.[186] This rhetoric, which would have once been confined to a minority, had by the 1820s become ubiquitous.

4.1 Lord William Bentinck

Lord Bentinck´s accession to become Governor-general in 1828 was a watershed moment. Bentinck had been Governor of Madras between 1803 and 1807 and by ordering that sepoys be forbidden from wearing their national dress, he was partially responsible for the Vellore Mutiny and criticised heavily for this. Despite this he proved to be among the most proactive of Governor-generals, one of the first to turn rhetoric into action.

There was no consensus on what legal reforms should be attempted. The extent of reforms depended in large measure the response of Indians to British moves.[187] For Raman the greatest challenges facing Bentinck was the ever-present difficult of administering a centralised system of justice in the Indian context and tampering with what had become a well-established British fear of interfering with religion and the interests of elites.[188]Furthermore Bentinck knew completely overhauling the system would incur not only political costs but also stringent economic costs.[189] For this reason the shift occurred

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[183] Miller, *On the Administration of Justice*: 40.

[184] Archibald Galloway, *Observations on the Law and Constitution: And Present Government of India, on the Nature of Landed Tenures and Financial Resources, as Recognized by the Moohummudan Law and Moghul Government, and with an Inquiry Into the Administration of Justice, Revenue, and Police, at Present Existing in Bengal,* (London, 1832).

[185] John Stuart Mill, *The Collected Works of John Stuart Mill, XXX - Writings on India*, John M. Robson, Martin Moir, and Zawahir Moir (eds.) (Toronto, 1990). URL: https://oll.libertyfund.org/titles/264 (accessed 1/14/2019): 20.

[186] Stokes, *The English Utilitarians and India*: 61.

[187] Benton, *Law and Colonial Cultures*: 152.

[188] Raman, "Utilitarianism and the Criminal Law in Colonial India": 761.

[189] Benton, *Law and Colonial Cultures*: 149.

gradually and not all far-reaching envisioned reforms were realised. Indeed, some measures seemed to move backwards in this sense: for example, Bentinck in an attempt to solve the backlog granted greater competence to native judges to settle cases in the civil district courts because with superior language skills and knowledge of the law, they could settle cases more quickly. [190]

Nevertheless, Tiwari argues that the Company were invigorated by the reformist, paternalistic sentiment and received great satisfaction from portraying themselves as delivering the rule of law.[191] This also equipped them with a moral justification more readily understood within the metropole. This volte-force cannot be attributed merely to the personality of Bentinck. As with Hastings other contextual factors, corresponding to unique stages of the imperial process, were at play. These were the territorial expansion of the empire and the concomitant expansion of Company jurisdiction, and the ideological influences of the evangelicalism and utilitarianism.

4.2 Territorial Expansion

The Universalist Shift coincided with the period of the Company´s greatest territorial expansion, a period in which they reached the apex of their power consolidation strategy. The India over which the East India Company had control was vastly different from the India we know today. In 1765 the Company was appointed *Diwan* of Bengal, Bihar and Orissa, meaning it acted as revenue collector over these regions. Bengal was by far the largest of these regions so much so that Bengal can act as a stand-in for British India for much of this period. Marshall argues that expansion and the acquisition of territory was driven by the Company´s "dire need for more revenue from taxation:"[192] An implicit principle within the Company was to expand, in order improve their return for investors. Despite this the Company was military weak and relied on obtaining and maintaining the trust of the sepoys for its security and expansion.

The Company strategically waited until its Presidency Armies grew in volume and battalions were sufficiently trained and consolidated before attempting large-scale conquests. Their main foes in this regard were the Marathi Empire, who had acted as a counterpart to the Mughals on the Indian subcontinent in the preceding centuries. The Marathis achieved great

[190] Sinha, "III. Doctrinal Influences on the Judicial Policy": 244
[191]Tiwari, "The East India Company and Criminal Justice":61.
[192] Marshall*, The New Cambridge History of India II*: 116.

territorial control of the Indian subcontinent when their rule became centralised under a single de-facto leader, the Peshwa. The Presidency Armies started and engaged in successive wars with the Maratha Empire forces, whom they defeated on each occasion. The Third Anglo-Maratha War, lasting between 1817 and 1818, marked the decisive blow to the Maratha Empire whose territories were thereafter annexed to the Company´s control. It was around this time that the collective size of the Presidency Armies was 200,000, which made them one of the largest armies in the world.

The Company did not only on military force for the purposes of expansion. They also formed subsidiary alliances with rulers of other regions wherein the rulers acknowledged the hegemony of the Company but maintained a degree of internal rule: these became known as the Princely States and they offered military support to the Company. Later, especially in the era of Dalhousie, the Company expanded its territory by means of annexing other regions such as Punjab, often by relying on what is known as the Doctrine of Lapse. This in practice meant that the Company would annex states in which the suzerain had left no heir. The maps included in the Appendices give some indication of the rapid scale of territorial expansion occurring within this period.

These new territorial acquisitions always reignited the debate about what legal order should be implemented by the Company. This is reflected by John Miller´s assessment of the legal order published in 1828, in the foreword of which he cites the territorial expansion as the impetus for the greater universalist shift occurring under Lord Bentinck.[193] Indeed the accumulation of territories gave the Company more military backing and therefore more leverage with which to attempt legal reforms. Expansion, then, instilled the confidence in the Company to move further along the imperial process and to engage more with the indigenous populations and their way of life.

Overall one can say that territorial expansion acted as a destabilising effect on the Adalat System. The growth of trade facilitated by this expansion in the early 19th century increased interactions between different communities leading to more cooperation but also disputes.[194] The Adalat System necessarily complicated the efficient administration of

[193] Galloway, *Observations on the Law and Constitution*.
[194] Roy and Swamy, *Law and the Economy in Colonial India*: 20.

commercial law, which in turn, disrupted efficient trade.[195] Such disruptions posed an existential threat to the Company as a corporation.

As Cohn argues "the East India Company had to create a state through which it could administer the rapidly expanding territories acquired by conquest or accession." [196] The extension of the original Bengal-based legal order to these newly acquired territories did not always take place smoothly and at times the exact nature of jurisdiction in the various territories is unclear. The Governor-general always maintained a degree of supremacy over regional administrators, but clashes could and did still arise. For example Richard Wellesley ordered the introduction of the Adalat system into Madras in 1805 but Thomas Munro, Governor of Madras, favoured the prior system of customary law and village panchayats and criticised the Adalat System for its "artificial and foreign character."[197] Despite this he, and the similarly-minded Mountstuart Elphinstone, the Governor of Bombay, did not succeed in restoring a panchayat-based system. [198] Therefore by 1807 the Adalat system was replicated with little alteration to the presidencies of Bombay and Madras.[199] This pattern was repeated in newly acquired territories although often more recourse was given to local existing laws at odds with the Adalat system and its accumulating case law.

After the 1833 Charter Act the Governor-general had a more centralised role and efforts to codify the law across the territories were undertaken. Discrepancies between the legal orders within different provinces became one of the issues Macaulay and the Indian Law Commission were charged with solving via codification.[200] Thereafter, Lord Dalhousie, one of the last Governor-generals prior to the Indian Rebellion, notably strove for significant centralisation of the legal order.[201]

4.3 Influence of Evangelicalism and Utilitarianism

The transition to universalism would become more pronounced and would be coloured by the influence of two different ideologies: evangelicalism and utilitarianism.

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[195] Robert Cribb, "Legal Pluralism and Criminal Law in the Dutch Colonial Order" in *Indonesia* 90 (2010): 47-66.

[196] Cohn, *Colonialism and its Forms of Knowledge* 57.

[197]Stokes, *The English Utilitarians and India*: 141.

[198] Rudolph and Rudolph, *The Modernity of Tradition*: 264.

[199] Miller, *On the Administration of Justice*: 10.

[200] Stokes, *The English Utilitarians and India*: 222.

[201] Sir William Wilson Hunter, *The Marquess of Dalhousie and the Final Development of the Company´s Rule*, (Delhi, 1961): 128-9.

Despite the diffierences in these ideologies both complemented and to an extent informed the prevailing political liberalism. Utilitarians promoted this shift largely with reference to what they saw as the rationality of codification while the evangelicals were concerned with the moral development of the indigenous peoples along Western-Christian lines.

Charles Grant was the earliest evangelical voice who criticised the Adalat System in his 1792-published *Observations on the State of Society among the Asiatic Subjects of Great Britain Particularly with Respect to Morals; and on the Means of Improving It.* Grant found the Mohammedan and Hindu codes "severe and barbarous."[202] He decried the "encouragement" he believed legal sanction of practices such as *sati* gave to said practices.[203] Grant did not believe any reforms to the Adalat system could "eradicate the internal principles of depravity" but rather felt that a more fundamental overhaul was needed. [204] He argued that security could only be provided by promoting a common religion in the colony – Christianity.

Hastings did not support the conversion of the natives to the Christian faith and limited the influence of missionaries.[205] Lord Cornwallis claimed he would not support it but that he would not actively oppose it either.[206] Thereafter the presence of missionaries in India grew, as did the influence of evangelical voices on the debate concerning the Company´s future. This was particularly the case during the negotiations for the renewal of the Company´s charter. Petitions to the effect that the Company had to provide for religious and moral improvement of Indians, and recognise this in the 1813 Charter, were strongly supported in Britain.[207]

Opponents of evangelicalism pointed to the recent Vellore Mutiny, where regulations interfering with the religious dress code caused many sepoys to revolt, as evidence that religion should still be treated with the utmost sensitivity. Supporters of the evangelicals such as Lord Wilberforce argued that reforms in other policy areas such as land tenure had not resulted in protest and that promoting Christianity could follow along the same lines.[208] The

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[202] Charles Grant, *Observations on the State of Society among the Asiatic Subjects of Great Britain Particularly with Respect to Morals; and on the Means of Improving It*, 1792: 79.

[203] *Ibid*: 110.

[204] *Ibid*: 47.

[205] Penelope Carson, *The East India Company and Religion, 1698-1858*, (Suffolk, 2012): 22.

[206] *Ibid*: 30.

[207] *Ibid*: 3.

[208] *Ibid*: 70.

evangelicals succeeded in having their clause included in the 1813 Charter. Their influence on legal reforms would become significant again with the 1843 Slavery Abolition Act.

In the late 18th century philosophers such as Jeremey Bentham developed common ideas which have been labelled utilitarian and which became popular in many circles. Utilitarians focused on the consequences of actions when deciding what actions should be carried out, seeking to maximise a desired utility. Developing this ethical philosophy, they viewed education and law as political tools which could help achieve just and liberal transformations of society. Utilitarians accordingly believed strongly in the social-behavioural effect of the law.

Broadly speaking in terms of the law utilitarians were more focused on simplification than moralism, in contrast to the evangelicals. Bentham promoted "a rationally designed and simple code of laws which would supply a complete instrument of administration."[209] Bentham argued on behalf of a scientific theory of punishment in which punishments would be rationally weighted to correspond to the gravity of crimes committed.[210] However Bentham also opposed pluralism on principle because it was contrary to the equal rights that should be enjoyed by the *individual*; their philosophy did not encompass the group identities which were so uniquely important to India. The chaos in which the Adalat System had fallen was completely contrary to Bentham´s vision of a legal system.[211]

James Mill, another writer who has been labelled utilitarian and was influenced by Bentham, wrote *The History of British India* in 1817. He argued that what India needed was a code which, rather than simply being English, would spring from the universal science of jurisprudence. [212] Mill however called for a more tempered overhaul of the justice system than evangelicals were calling for; he still believed Indian religions and customs should be tolerated to an extent.[213] The influence of both James Mill and Bentham would become apparent when Thomas Babington Macaulay assumed chairmanship of the Indian Law Commission.

The growth of evangelical and utilitarian movements, and indeed liberal politics, in the metropole, put more pressure on the Company. These ideologies were all in some concerned with questions of governance. It no longer became possible for the Company to assuage

[209] Eric Stokes, *The English Utilitarians and India*, (Delhi, 1959): 149.
[210] Raman, "Utilitarianism and the Criminal Law in Colonial India": 754
[211] Stokes, *The English Utilitarians and India*: 146.
[212] Raman, "Utilitarianism and the Criminal Law in Colonial India": 754.
[213] Stokes, *The English Utilitarians and India*: 69.

concerns about their administration through financial justifications, or even the accountability of their own servants alone; they would begin to need a moral justification for remaining in India and carrying out their highly profitable enterprise there.

4.4 The Sati Regulation

All legal reforms initiated were weighed against the risk of inciting revolts by the natives. Lord Bentinck, no doubt due to his experience with the Vellore Mutiny, attempted to manage this strategically. Evidence to this effect is the much-vaunted Bengal Sati Regulation in 1829.

Sati or suttee was a practice in which a widow would undergo self-immolation on the funeral pyre of her deceased husband, often encouraged to do so by religious authorities. While it was especially prevalent within Hindu communities it was debated as to where, if at all, it had ever received religious sanction. Nevertheless, it had been tolerated under the Adalat System because there was no Islamic or Hindu legal text explicitly outlawing it; for many Company servants this was endemic of the absurdity of the System and ran counter to all standards of Western morality. While there were attempts from the Company to discourage it, Bentinck was told by his subordinates that between five and six hundred cases were still occurring annually in Bengal, Bihar, and Orissa.[214]

Bentinck was in principle in favour of outlawing the practice but was precautious in doing so, and he appealed to several parties for advice on the matter. For example, he reached out to certain Brahmins to try and get public confirmation that by outlawing sati they were not violating Hindu scriptures.[215] Indeed in this sense like Hastings he aimed to show that the Company was restoring a truer version of Hinduism.

However, for Bentick the most important factor was having the support of sepoys regarding the Regulation and there would not be a repeat of Vellore.[216] He reached out to local administrators for their assessments of the risk. One Magistrate Bird argued on behalf of abolishing sati assuring rather recklessly that "no one single instance of opposition has ever been attempted."[217] He argued that local authorities did not in general feel any apprehension

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[214] C.H. Philips, "Introduction" in C.H. Philips (ed.) *The Correspondence of Lord William Cavendish Bentinck*, (Oxford, 1977).

[215] Dirks, *The Scandal of Empire:* 304.

[216] Alavi, *The Sepoys*: 90.

[217] Letter 95 W, Bird to Captain Benson in C.H. Philips (ed.) *The Correspondence of Lord William Cavendish Bentinck*, (Oxford, 1977)

regarding possible revolts.[218] He furthermore felt the law would succeed in creating a social effect to discourage the practice.[219]

Bentinck´s decision to abolish sati through the 1829 Regulation was accompanied by a "Minute on Sati", written by him. He argued that the only moral justification for tolerating sati would be there if there was a threat to the "safety of the British empire in India." Bentinck excused his predecessors´ tolerance of the practice therefore and argued he would have done the same. However, by 1829, due to the superior state of security the Company found itself in, he argued he was convinced of the safety of total abolition.[220] The 1861 Criminal Code would eventually codify and capture the abolition of sati through the novel crime of voluntary culpable homicide by consent.[221]

The Sati Regulation was not accepted pacifically by all. A group of Hindus formed a defensive association in response and called for its repeal. Bentinck rejected their repeal in 1832 and remarked that "they could not require the assurance that the British government will continue to allow the most complete toleration in matters of religious belief." According to Carson thereafter any official protest movement had faded away.[222]

Benton downplays the significance of the Sati Regulation as an example of purely "symbolic initiatives."[223] This downplays however the transformation it helped initiated, a transformation to the Company justifying its presence in India on moral grounds, rather than merely the grounds of profit. It therefore played a vital role in the continued existence and flourishing of Company Rule. The Sati Regulation was widely celebrated in the metropole and constituted a significant propaganda victory for the Company; one that inspired them to carry out further reforms.

4.5 Other Reforms

In the meantime, the Adalat System was continuing to collapse. The backlog of cases was however in fact was beginning to decrease as the recourse to the Hindu and Islamic

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[218] *Ibid.*

[219] *Ibid.*

[220] William Bentinck, "Minute on Sati" in Arthur Berriedale Keith (ed.*) Speeches and Documents on Indian Policy 1750-1921*, (Toronto, 1922).

[221] Raman, "Utilitarianism and the Criminal Law in Colonial India": 778.

[222] Carson, *The East India Company and Religion*: 185.

[223] Benton, *Law and Colonial Cultures*: 149.

legalistic texts declined. British magistrates exercised greater autonomy to achieve more streamlined results.[224]

Lord Bentinck and his successors attempted to address some of the primary concerns with the System. He sought to resolve the confusion which the Adalat System created for people who were neither Hindu nor Muslim; for example, native-born Christians. He pushed for the Regulation of 1832 which specified that the law deriving from religious texts "shall be held to apply to such persons only as shall be bona fide professors of those religions at the time of application of the law to the case and were designed for the protection of the rights of such persons, not for the deprivation of the rights of others."[225] The already weakening Islamic administration of criminal justice also faced further reforms. The Thugee Act XXX of 1836 completely removed the encumbrances of Islamic law on the prosecution of dacoits.[226] Thereafter dacoits could be more strictly punished by the Company in its courts.

Stokes argues that the age of reform had come to its close by 1838.[227] However there were a number of reforms of note pushed beyond this date, mostly in the era of Lord Dalhousie as Governor-General. Dalhousie for example had the practice of infanticide declared as murder over all of British India. [228] He then moved on to the issue of slavery. In the early 19th century, abolitionism had become a popular movement in Europe. The evangelical movement in India poured most of their energy into campaigning against the practice of slavery.[229] There were reservations about interfering with slavery, because of its long-standing establishment in Hindu and Islamic customs. Indeed *pandits* and *maulavis* had represented that many practices such as beating slaves, were sanctioned under the legal texts.[230] After reviewing the situation in a similar way to sati had been, the Indian Law Commission and the Board of Directors decreed an Act in 1843, which entirely abolished the legal status of slavery. For Dirks this speaks to the hypocrisy of the Company´s universalising; they were using a practice which the British Empire up to recently (1833)

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[224] Roy and Swamy, *Law and the Economy in Colonial India*:25.
[225] *Ibid*: 22.
[226] Tiwari, "The East India Company and Criminal Justice": 62.
[227] Stokes, *The English Utilitarians and India*: 239.
[228] Carson, *The East India Company and Religion*: 223.
[229] Nancy Gardner Cassels, "John Stuart Mill, Religion and Law in the Examiner´s Office" in Martin I. Moir, Douglas M. Peers and Lynn Zastoupil (eds.), *J.S. Mill´s Encounter with India*, (Toronto, 1999): 183.
[230] *Reports of the Indian law commission upon slavery in India, January 15, 1841*; with appendices. URL: https://catalog.hathitrust.org/Record/008420865 (accessed 22/04/2019).

engaged in and thrived on, as fodder for their moral justification project.[231] It also speaks to the shifting of norms which complicates the British endorsement of universalism on moral grounds.

Following this were what were considered more severe interferences with religious customs, especially the role of the joint family in Hindu regulation of property. The 1850 Freedom of Religion Act, also known as the Caste Disabilities Act, protected converts from Hinduism from losing hereditary claims to property. [232] Evangelicals had called for such measures to ensure that conversion would not be discouraged. This was met with petitions as well as violent threats at large from the Hindu community. However, the Court of Directors sided with Lord Dalhousie and upheld the Act.[233] A further reform on similar lines - the 1856 Hindu Widows' Remarriage Act – again transgressed Hindu customs by protecting the right to inherit of Hindu widows who remarried. This and other reforms added to a growing feeling of precariousness within religious communities that their way of life would no longer be respected.

4.6 Macaulay and the Indian Law Commission

Amongst all these reforms, perhaps the greatest indication of the universalist shift was the Indian Law Commission (elsewhere referred to as the Legislative Council), set up under the Charter Act of 1833 over which Lord Thomas Babington Macaulay, the renown Whig historian, was made Chairman. The Charter Act streamlined the legislative process within the Company. The Governor-general was to be made the sole legislative authority in British India and the Law Commission would assist him by recommending legal reforms and drafting laws to this effect.[234]

James Mill, the influential utilitarian and by now chief administrative officer of the East India Company, and who was considered the primary author of the Act, characterized it by remarking that "the state of things at which it aims in prospect is when a general system of justice and policy and a code of laws common (as far as may be) to the whole people of India . . . shall be established throughout the country." [235] Bentinck also supported "framing laws

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[231] Dirks, *The Scandal of Empire*: 34
[232] John Stuart Mill, *The Collected Works of John Stuart Mill, XXX - Writings on India*: 125.
[233] Carson, *The East India Company and Religion*: 224-5.
[234] Stokes, *The English Utilitarians and India*: 171.
[235] *Legal Pluralism and Empires* 1500-1850, (New York, 2013):5.
[235] Rudolph and Rudolph. "Barristers and Brahmans in India": 43.

equally binding" on all groups within the population.[236] It had become official policy thereafter that codified law was the chosen solution to the problems of the Adalat System.[237] Their broad objective then was the comprehensive codification of both criminal law and civil law, to make them uniformly applicable across religions in India.

Codification did not necessitate completely changing the content of the law or transplanting English law; some, like James Mill, were not in favour of a radical overhaul of substantive law but proposed a consolidated digest of the existing pluralist law. This was of course, much desired; by 1835 the Islamic criminal law had been so altered by statue that magistrates were perplexed as to what laws to apply.[238] It was Macaulay who led the Commission in this project. He, however, as a utilitarian more in the Benthamite sense, explicitly wanted to create a comprehensive body of rational codes.[239] He believed a wholly rational code would be able to be transferred across cultures, be it England or India, and that it could accommodate all subjects, be they British or Indian.[240] Nevertheless Macaulay did not zealously support interfering with the religions. He defined his approach during a speech on 10 July 1833: "Our principle is uniformity where you can have it; diversity where you must have it; but in all cases certainty."[241] This in effect meant that differences of law for different religions, castes or nationality needed to have a clear and strong reason to be permitted.[242] This had the effect of forcing the Company to consider each and every one of the Islamic and Hindu practices they endorsed through law.

Despite the wide-reaching ambition, pragmatism prevailed to a certain extent. The British magistrate, Sir Charles Grey, argued that the long-term goal of the Law Commission should be to impose uniform law but that this could not be done too hastily.[243]The Law Commission did modify its ambition throughout its lifetime. It moved from advocating a code of civil law wholly based on English law to advocating a uniform civil code that

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[236] Letter 87 Bentinck' s minute on the half-balta orders in C.H. Philips (ed.) *The Correspondence of Lord William Cavendish Bentinck*, (Oxford, 1977).

[237] Stokes, *The English Utilitarians and India*: 189.

[238] Stokes, *The English Utilitarians and India*: 22.

[239] *Ibid*: 210.

[240] Barry Wright, "Macaulay´s Indian Penal Code: Historical Context and Originating Principles" in Chan, Wing-Cheon, Barry Wright and Stanley Yeo (eds.), *Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform*, (Surrey, 2009): 47.

[241] Stokes, *The English Utilitarians and India*: 219.

[242] *Ibid*: 222.

[243] *Appendix to the Report on the Affairs of the East India Company*, 11 October 1831: 56.

exempted personal law. They officially continued to pursue codes for civil and criminal law, each of which would have a separate code for substantive law and procedure. [244] John Stuart Mill was extremely optimistic about the codes and felt they would make the legal order much more efficient: "these codes, when enacted, will constitute the most thorough reform probably ever yet made in the judicial administration of a country."[245]

Very little effort was expended on the development of a civil code as Macaulay and the Commission focused on the codes of criminal and civil procedure, and especially on the criminal code which was finalised in 1837. Nevertheless, the enactment of the criminal code was delayed by a number of factors: a loss of reforming momentum; government inertia in general; and resistance by European residents to the idea of them having same legal status as the natives. [246] John Stuart Mill was a great defender of the code and defended it from attacks coming from Calcutta which feared that English would be treated on same par as natives.[247] The criminal code received a renewed impetus in the administration of Lord Dalhousie. By means of an 1853 Act the Law Commission was enlarged by the addition of the Chief Justice of the Supreme Court, as well as representatives from the various Presidencies, meaning that the project garnered greater collective sponsorship. [248]

In this project Macaulay had extraordinary freedom then, to design the code. He attempted to apply a measured rationalism, calculating what code would cause the least amount of suffering. The code is to all appearances made up of *sui generis* provisions. Indeed, Macaulay basically invented a new language with which to describe law as many of the provisions referenced hypothetical examples rather than real-life experiences. John Elliot Drinkwater Bethune an influential Anglo-India barrister, criticised the language as too strange and unbefitting for a code and thus formulated his own alternative code, which in turn did not gain traction.[249]

Macaulay, true to his word, did make some concessions to religion. For example, the crime of adultery could only be brought forward by men as was customary in Hinduism and Islam. Raman argues that the omission of bigamy is evidence that Macaulay was paying

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[244] John Stuart Mill, *The Collected Works of John Stuart Mill, XXX*: 114,
[245] *Ibid*: 115.
[246] Wright, "Macaulay´s Indian Penal Code": 38.
[247] Cassels, "John Stuart Mill, Religion and Law in the Examiner´s Office": 191.
[248] John Stuart Mill, *The Collected Works of John Stuart Mill*, XXX: 113.
[249] Wright, "Macaulay´s Indian Penal Code": 37.

respect to religious traditions in India.[250] However Wright points out Macaulay left out of the criminal code practices which he believed did not pose clear harms, such as bigamy, deliberately in line with utilitarian thinking.[251] The debate rages as to how "English" Macaulay´s criminal code was. Codification itself was not a prominent feature of the English legal system which relied far more on developing a body of case law.[252] Indeed one of the greatest inconsistencies in the legal policy of the British empire is that no such similar project of codification was attempted in England at this time. The codification projects speak to the fact that the Company viewed India more readily as *tabula rasa*, whose laws could be dispensed of with less reservation. This is ironic considering the homage the orientalists had paid to ancient Indian laws.

Macaulay argued that he rejected the influence of English criminal law in formulating the criminal code. Stokes argues however that the influence of English law is unmistakeable in these universal, rational formulations. [253] Indeed, it is far-fetched to believe that Macaulay, a man educated in England and raised with British values, could actually create an *ex nihilo* legal code. Notably the idea of criminal justice as universal and impersonal had been made clear in the provisions. Any semblance of Islamic, or Hindu, penalties had been removed. When the code was imposed in 1861 Macaulay's foreword betrayed that its purpose went beyond simplifying the law. While he noted that there were discrepancies between the interpretation of the Islamic criminal law across the Presidencies, what was equally pressing was the absurdity of the Company in imposing what he viewed as retrograde laws.

However, as with Bentinck, Macaulay did not attack his predecessors for the Adalat System – in fact he published an essay titled "Warren Hastings" in which he praised the subject – but now the time had come to implement a new criminal law.[254] As with the Sati Regulation and other reforms, it bore the mark of, and served towards, the moral justification for empire. Furthermore, as Benton and Ford argue, codification was the logical next move in the imperial process to help expand the ideological influence of the empire through law. [255] Despite representations of Macaulay and the Company to the contrary, codification

[250] Raman, "Utilitarianism and the Criminal Law in Colonial India": 781

[251] Wright, "Macaulay´s Indian Penal Code": 47.

[252] *Ibid*: 28.

[253] Stokes, *The English Utilitarians and India*: 226.

[254] Vernon R. Smith, "A Copy of the Penal Code Prepared by the Indian Law Commissioners and Published by Command of the Governor-general of India in Council", *India Board*, 30 July, 1838.

[255] Benton and Ford, *Rage for Order*: 186.

intensified the "Englishness" of the legal order in India and was the largest nail, drilled into the coffin of the Adalat System.

4.7 The Indian Rebellion of 1857

The Indian Rebellion of 1857 spelled the end of the East India Company. The rebellion was sparked by a mutiny of sepoys, who felt aggrieved about being forced to come into oral contact with the ammunition for the Enfield P-53 rifle, ammunition which was laced with animal fat deriving from pork and beef, thus offending the religious principles of the Hindus and Muslims comprising the forces. The mutiny quickly spilled over into a general revolt, one in which civilians also participated in, which was fuelled by other grievances. The revolts were suppressed in 1858, costing many European lives but much more Indian lives. The British Crown then established itself as the governing body of the Indian subcontinent through the Government of India Act 1858; this governing body became known as the British Raj. The Raj also inherited the Company´s administrative resources as well as the Presidency Armies. Although virtually powerless the Company eked out an existence until 1874, when it was officially dissolved.

Some historians attribute the Indian Rebellion of 1857 in part then to the excessive encroachment of the universalist shift on the legal order and the concomitant disregard for indigenous customs and way of life. The tensions emanating from interference had been made obvious through events such as the Vellore Mutiny. Raman argues that the effect of the universalist shift was limited. He points out that many everyday aspects of the law – such as the use of Persian in courts and the maintenance of maulavis and pandits – remained as before.[256] It is submitted here that Raman drastically underestimates the symbolism these reforms carried. Although not readily perceptible to many, law reforms shaped the everyday lives of natives and had symbolic value for their understanding of what freedom they enjoyed. Therefore, systematic legal change could easily lead to resistance on the part of the natives.[257]

This was corroborated in practice. Following the Sati Regulation, the native response to missionary action throughout India became more aggressive. Converts were killed in Bengal and missionaries were frequently threatened with death.[258]Thus legal reforms to some

[256] Raman, "Utilitarianism and the Criminal Law in Colonial India": 740.
[257] Benton and Ford, *Rage for Order*: 184.
[258] Carson, *The East India Company and Religion*: 192.

extent became associated with Christian proselytists and encroachment on Hinduism and Islam. This increased in the age of Dalhousie whose seemingly innocuous legislative reforms (The 1850 Freedom of Religion Act and the 1856 Hindu Widows' Remarriage Act) trespassed gravely on core family values within Hinduism. [259] The role of caste also was significant. There had been legal reforms directly affecting them; for example, the rights of members of high castes to decline appearing at trials and other legal proceedings were removed.[260] In addition infanticide which was outlawed by Dalhousie had almost exclusively been carried out by high caste members.

A large contingent of the Hindu sepoys were high caste members who felt sorely about these legal reforms. Many of them duly participated in the Rebellion against the Company. As Alavi elucidates: these castes elites increasingly felt like the special status they had enjoyed since the Adalat System was under threat.[261] This was especially true for the Brahminic class. One of the primary purposes of codification was to diminish the exclusive ability of elites such as pandits and maulavis to interpret the law. [262]Thus, many elite groups became disgruntled. Not only their religion, but also their elite status, seemed to be threatened.

The Rudolphs attribute the Rebellion mainly to Dalhousie and his lack of respect for the established pluralism.[263] This must be considered excessive considering other possible factors – notably the heavier taxes imposed on land – but that the waning respect for religion and the role law played in this process, is undeniable. It is also debatable as to whether Dalhousie ignored the role of family and elites in indigenous social life or was rather carried away by the universalist shift. Indeed, blame cannot solely be placed on Dalhousie; the Sati Regulation had also created backlash. In this interpretation the Indian Rebellion had been brewing for some time, throughout the universalist shift period.

4.8 The Dawn of the Raj

In November 1858 Queen Victoria issued a proclamation to all Indian promising to "hold ourselves bound to the natives of our Indian territories by the same obligation of duty

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[259] *Ibid*: 226.

[260] Raman, "Utilitarianism and the Criminal Law in Colonial India": 783.

[261] Alavi, *The Sepoys*: 294-5.

[262] F. Rosen, "Eric Stokes, British Utilitarianism, and India" in Martin I. Moir, Douglas M. Peers and Lynn Zastoupil (eds.), J.*S. Mill´s Encounter with India*, (Toronto, 1999): 22.

[263] Rudolph and Rudolph, "Living with difference in India": 41.

which bind us to all our other subjects" and to furthermore respect the rights of the Indians. For Carson the proclamation amounted nothing more than a repetition of the rhetoric the Company had always employed.[264] The Rudolphs argue that Queen Victoria´s proclamation marked a retreat from universalism and a greater movement towards and acceptance of difference and upholding minority interests.[265]

However, what followed is more nuanced than either of these interpretations suggest. Codes of Civil Procedure and Criminal Procedure and Criminal Law had been prepared by the Law Commission since the 1830s. [266] Between 1859 and 1861 the civil procedure code, criminal code and code of criminal procedure were all implemented, constituting a substantial shift within the legal order.[267] As Wright argues the Indian Rebellion renewed interest at the metropole regarding the administration of the colony. Many felt that the British Raj needed a stronger legal grounding for governing India. Therefore, for Wright, enacting the code was the Crown´s way of demonstrating to sceptics that imperial authority under the Raj would be more effective and legitimate.[268] Likewise Stokes believes the Rebellion reaffirmed the code as a legislative priority. [269]

Under the codes of civil and criminal procedure there was also greater consolidation of British authority. Qadis and pandits were dispensed with giving British magistrates more independence in their decision-making.[270] Furthermore the Diwani Adalats were absorbed into a structured, unified system headed by the Calcutta High Court, the Raj-era successor of the Supreme Court.

Simultaneously the Raj rolled back the civil code which had been supported by the Indian Law Commission. In 1861 they decided on a permanent policy basis to abandon the codification of the substantive civil law.[271] Civil law, dealing intimately with the role of the family in Indian life, had always shown itself to be more sensitive than criminal law. It was around this time that the concept of isolating personal law from the general civil law came about. It was felt that personal law which touched on the most sensitive issues within civil law such as marriage and succession, could be only disturbed at considerable risk, a view

[264]Carson, *The East India Company and Religion*: 238.
[265] Rudolph and Rudolph, "Living with difference in India": 43.
[266] John Stuart Mill, The Collected Works of John Stuart Mill, XXX: 114.
[267] Stokes, *The English Utilitarians and India*: 258.
[268] Wright, "Macaulay´s Indian Penal Code: Historical Context and Originating Principles": 21.
[269] Stokes, *The English Utilitarians and India*: 258.
[270] Rudolph and Rudolph, "Living with difference in India": 51
[271] Stokes, *The English Utilitarians and India*: 225.

strengthened by the Rebellion of 1857.[272] Thus between 1865 and 1872 a number of reforming civil law acts were passed which were largely influenced British law but they did not encroach in any way on the personal law.

Thus, scholars who argue that the British Raj and Queen Victoria´s proclamation marked a *volte force* of sorts to the universalist shift are simply wrong. By achieving a step forward with the criminal code and codes of criminal and civil procedure, and enduring a step backwards with the civil code, the British Raj should itself to be as politically calculating as the Company was, in tampering with the legal order.

[272] Rudolph and Rudolph, *The Modernity of Tradition*: 286.

5. Legacy of the Company´s Legal Order on India

The legacy of the legal order implemented by the East India Company on contemporary India is immeasurable. While it is beyond the scope of this thesis to elucidate on the further transformation of this order during the British Raj, it is worth noting that the legal order as it existed at 1862 is not so different from the system which operates today.

Macaulay´s criminal code continues to be applicable law in India. Many of the decisions made in courts under the Adalat System accrued into case law which continues to have legal standing and are commonly cited.[273] The respective legal systems of Pakistan and Bangladesh are also influenced by the legal order constructed by the East India Company. During the Raj the idea that the British empire had successfully established the rule of law (along the lines of Whig historiography) in India started to gain leeway.[274] This is something which has been revived by recent historians such as Niall Ferguson and arguably continues to inform much of contemporary British and often-Indian attitudes towards the empire.

One can only speculate as to the extent of the social effects of pluralism. As has already been discussed the Adalat System served to unyieldingly demarcate what had been fluid conceptions of identity. Law became one of the most important signifiers of identity; as Hobsbawm and Ranger would famously argue even invented traditions such as the distorted Islamic and Hindu Law could accumulate significant and entrenched value in terms of the development of identity. Anderson argues that the creation of legal identities consolidated the religious identities across India. These identities then became entwined with nationalism during the Indian independence movement.[275] The same nationalist movements also led to splinter independence movements in Pakistan and Bangladesh, both of which have predominately Muslim populations. The Rudolphs also argue that the legal order had the effect of creating a stricter adherence of the Indian Muslims to shari´a law.[276] In any case there is more intercommunal tension between Muslims and Hindus now than there arguably ever was on the Indian subcontinent prior to Company Rule and this tension often surrounds legal issues.

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[273] Cohn, *Colonialism and its Forms of Knowledge*: 75.
[274] Rudolph and Rudolph, *The Modernity of Tradition*: 253.
[275] Anderson, “Islamic law and the Colonial Encounter in British India”: 180.
[276] Rudolph and Rudolph, "Living with difference in India": 54.

The clearest indication of the legacy of the Company legal order, and indeed the clearest indication of the aforementioned tension, is the differentiated personal legal regime in India today. As was later envisioned by the Indian Law Commission, and as had become a *de facto* settlement in the aftermath of the India Rebellion, personal law remained differentiated between Hindus and Muslims. Thus, pluralism remains in the Indian legal order concerning matters of family and marriage. Additionally, a form of Christian personal law has developed in its own right.[277] Therefore a uniform civil code of substantive law as was originally desired by Macaulay and the Indian Law Commission never came into being (with the exception of the state of Goa which due to the legacy of Portuguese colonisation does not have a differentiated personal law regime). This is in some sense a direct legacy of the British strategizing in the aftermath of the Rebellion.

The lack of a uniform civil code was debated rigorously during the establishment of the Republic of India in 1950. Jawaharlal Nehru, the independence movement leader who would become the first Prime Minister of the Republic pressed for a uniform civil code to be implemented. Nevertheless, he held back on doing so realising that the many within respective religious communities had tied their identities to the upholding of the differentiated personal law and that in the early days of the Republic tensions should be eased. Articles 25 and 26 of the Indian Constitution therefore were included to provide for differentiated religious based personal law. For many the differentiated personal law conflicts with the Indian State´s constitutional claim to be secular.[278] In addition Article 44 of the Constitution states that "the state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."[279] As a non-justiciable Directive Principle of State Policy, the state is not obliged to implement a uniform civil code and has not yet done so. The Indian Parliament successfully modified the Hindu personal law to some extent; in 1956 polygamy was outlawed and divorce was permitted. The state has found it more difficult to modify Islamic personal law.[280] This may be attributed to the fact that Muslims in India are still a minority and fear encroachment on their rights.

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[277] Nandini Chatterjee, "Religious change, social conflict and legal competition: the emergence of Christian personal law in colonial India" in *Modern Asian Studies* 44.6 (2010): 1147-1195.

[278] Chatterjee, "Religious change, social conflict and legal competition": 1147.

[279] Rudolph and Rudolph, "Living with difference in India": 38.

[280] Seval Yildirim, "Expanding secularism's scope: an Indian case study" in *The American Journal of Comparative Law* (2004): 913.

The 1985 *Shah Bano* case highlighted for many the failings of the differentiated personal law regime. It mirrored the Patna case, occurring almost two centuries prior, because it involved an entrenched encounter between the religious laws. In this case a Muslim woman tried to force her husband to pay her alimony, something forbidden under Islamic law (but acceptable under Hindu law). The Supreme Court held in her favour on account of equality between sexes before the law but due to the threat of sectarian violence the government interfered and overruled the verdict.[281]

In the 20th century and 21st century the question of gender in Indian society has become a prism through which to view the uniform civil code debate. Many women's´ rights groups argue that giving credence to religious law discriminates against the individual rights of women.[282] Mani argues that the debate even splits those identifying as progressives. Some argue that a uniform civil code is needed to protect the law from the influence of religious fundamentalists; others argue that the differentiated personal law protects important minority rights.[283] For proponents the differentiated personal law acknowledges the inherent pluralism of India through a system which may have been inherited but it is since the independence of India no longer imposed. In any case the uniform civil code does not seem on the cards in the near future. In 2018 the current Law Commission of India published a consultation paper in which it found that a Uniform Civil Code "neither necessary nor desirable at this stage".[284]

For Randeria the uniform civil code is one of a number of projects by the state seeking to establish the national identity as the dominant identity in India at the expense of other identities. This may become problematic as Hinduism increasingly influences what is considered the national identity.[285] This touches on a question many critics raise: what would a uniform civil code look like? Thus, the Indian state and people face the same question once faced by Macaulay. Do they attempt to create a rational code along the lines of the criminal

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[281] *Mohd. Ahmed Khan v. Shah Bano Begum And Ors* AIR 1985 SC 945

[282] See for example: Leila Seth, "A uniform civil code: Towards gender justice" in *India International Centre Quarterly* 31.4 (2005): 40-54; Siobhan Mullally, "Feminism and multicultural dilemmas in India: Revisiting the Shah Bano case" in *Oxford Journal of Legal Studies* 24, no. 4 (2004): 671-692.

[283] Lata Mani, "Contentious traditions: the debate on sati in colonial India" in *Cultural Critique* 7 (1987): 155.

[284] Krishnadas Rajagopal, "Uniform civil code neither necessary nor desirable at this stage, says Law Commission", in *The Hindu*, August 31, 2018, URL: https://www.thehindu.com/news/national/uniform-civil-code-neither-desirable-nor-necessary-at-this-stage-says-law-commission/article24833363.ece (accessed 20/04/2019).

[285] Shalini Randeria, "Entangled histories: Civil society, caste solidarities and legal pluralism in post-colonial India" in *Civil society: Berlin perspectives* 2 (2006): 215.

code, or do they seek to enact a code which achieves a balance between the Hindu personal law and the Islamic personal Law? The historical experience of Company Rule shows that neither can be achieved easily without the influence of latent bias. While not driven by power consolidation and profiteering, there are unmistakeable overlaps between the challenges the independent Indian state face and those faced by the Company, when it comes to altering the legal order.

6. Conclusion

I have presented what is a complex narrative but a narrative which accounts for the disparate strands comprising the development of the legal order under Company Rule. It began with describing the Company as an imperial entity and what followed has demonstrated that the Company imposed an imperial legal order, a medley of exploitation and extraction, aimed at securing profit and consolidating power. Travers has pointed out that with the East India Company historians tend to neglect ideological motives and emphasise the ad-hoc genesis and development of the entity.[286] I put forward here that despite the fact the Company was a strange and contradictory beast, it was unmistakeably an imperial one.

6.1 Company Rule and an Imperial Legal Order

In Section 2 I outlined what were the Company´s interests at the dawn of the Adalat System. As a corporation which relied on locally-sourced revenue the Company wanted settlements which would secure a steady flow of profit for its investors. The Company was also preparing base for territorial expansion from the original territories, to thus achieve further profits, and for this reason wanted to placate the religious interests of natives, many of whom were joining the Company army as sepoys. I lastly found that despite some unresolved theoretical debates about the nature of the Company´s sovereignty, it still managed in practice to impose a legal system in much the same way as a state would; I furthermore found that for most of the duration of this period metropole oversight of the Company´s action was sufficient enough that the Company must be considered an arm of the British Empire and not an autonomous body.

I then proceeded in Section 3 to describe how the Adalat System came about and what form it took. Asides from some expressed scepticism prior to the 1772 Hastings Plan, there was until the period of Cornwallis surprisingly few voices of opposition to the Adalat System, and its novel solution to administer Islamic and Hindu Law. The Adalat System was not surreptitiously implemented; not only was it embraced by most Company servants who knew the situation in the colony, at the metropole it received implicit approval from Parliament and even from Hastings´ fiercest critics such as Edmund Burke. I described how support for the system helped it to endure a challenge of jurisdiction in the form of the

[286] Travers, *Ideology and Empire in Eighteenth-Century*: 14.

Supreme Court of Judicature, and that under Lord Cornwallis the structure of the Adalat System was strengthened.

The substantive law of the System was Hindu and Islamic law, which orientalists on behalf of the Company derived from religious legalistic texts at considerable effort. I then showed how the Hindu and Islamic law was distorted. Some of this resulted from a latent bias towards English-law, in the sense the orientalists neglected customary law for textual laws, and then imposed their own English understanding of law on these texts. These distortions also had the social effect of homogenising heterogenous religious groups around distorted traditions.

Some commentators such as Ramen argue that the integrity of the indigenous law prevailed, but they downplay the extent to which the Company distorted it for their advantage. These distortions were made deliberately with the purpose of propping up elites, such as zamindars and high castes, who the Company judged would provide them with loyalty in the form of revenue and security.

In addition, I examined other elements of reasoning behind the Adalat System. I moved away from a personality-based understanding of this decision. Hastings and co. were not orientalists in a benevolent sense, if such a thing ever existed; their private condemnation of the Islamic and Hindu law evinces this. Stokes is likely right in his assessment that Hastings and others were pragmatic enough not to let their decisions be led by racial superiority. [287] However, one should stop short of claiming they *respected* the religions and rights of natives; the Adalat System is the result of cold-blooded strategizing.

It was employed to create an illusion of continuity with the Mughal-era legal order, demonstrate tolerance of the natives, and it allowed the Company to shirk from accusations of despotism and assume a guise of self-containment. The Company furthermore judged their colonies differently, regarding them as having arrived at different stages of development. In a contradiction of sorts, India was not considered developed enough to undergo substantial legal reforms in line with Western morals. Crucially, however, the Company would later trespass on this principle when it suited them.

Lastly profit, of course, pervades the equation. The Court of Directors felt it would be cheaper to try and replicate the System than to overhaul it completely. [288] The System facilitated further profit and territorial expansion by creating stability where there had been

[287] Stokes, *The English Utilitarians and India*: ix
[288] Edwardes, *Warren Hastings: King of the Nabobs*: 199.

disputes, by propping up elites. The Company did not overnight transform into a tolerant body, the Adalat System was a continuation of their profit-maximising behaviour.

The System, for the most part then, performed. It allowed the Company to consolidate power at the early vulnerable stage of its rule as a governing body. Nevertheless, it gradually ran past its sell-by date for the Company. The Company soon detested any semblance of autonomy on the part of the natives in the Adalat System and therefore the pandits and maulavis were treated with suspicion. The system was widely utilised by natives and this created a backlog which was becoming unprofitable for the Company; also becoming unprofitable and indefensible was the inconsistency with which the law was applied. This was often a matter of conflicting interpretations, but it also had to do with the growing reluctance of British magistrates to administer Hindu and Islamic law. The Company, disrupting the vision of the original Hastings Plan, continuously increased their interference at different levels of the Adalat System.

In Section 4 I outlined how the Universalist Shift came about. Once more I did not pay excessive due to the personalities behind this shift such as Bentinck and Macaulay. I found that of greater influence was the rapid territorial expansion of the Company across the Indian subcontinent during this time. This highlighted the impracticalities of administering a decentralised legal order like the Adalat System, as well as granting the Company the requisite stability to tamper with the established religious-legal dynamic.

Another important factor was the reduction of the gap between metropole and colony, which allowed for new movements to make their impact such as evangelicalism, utilitarianism and Whig liberalism, all of which shaped the Universalist Shift in their own way. These gave oxygen to the latent universalist flame which had been carried by the Company throughout administering the Adalat System, on account of the incompatibilities of British Empire with the indigenous way of life. As Kostal argues by early 19th century law was increasingly seen by the political class as a tool for social transformation.[289]

The Company also at this time moved away from being associated with profit-making to become a paternalistic body, which provided a moral justification for their presence in India. The Sati Regulation exemplifies this development and proved a propaganda coup for the Company. The moral justification boosted support for their mandate in India in the face of this ideological shift. Nevertheless, they did not get carried away; Bentinck´s attempts to

[289] R.W. Kostal, *A Jurisprudence of Power: Victorian Empire and the Rule of Law*, (Oxford, 2005): 20.

gauge the response of locals to the proposed measure illustrate that the same cold-blooded strategizing was at play.

Following the Charter Act of 1833 with the establishment of the Indian Law Commission the Adalat System came under threat from codification projects. The shift from the rhetoric of Hastings-era Company servants to that of those staffing the Indian Law Commission could not be more different as the Company now configured themselves as bearing the responsibility for the moral development of the indigenous population. They now proposed to develop universal codes of laws, again which would be biased towards English-style legalistic norms. Indeed, codification ended the pretence that Indian laws were valued by the Company.

Lord Dalhousie inspired by the Sati Regulation spearheaded a wave of legal reforms which often trespassed on significant local customs. These reforms had strong symbolic value for the Company but also for the natives. I found that there is sufficient evidence to suggest that growing discontent in the face of legal reforms, especially those which undermined elite privileges, was one of the reasons for the outbreak of Rebellion in 1857. Therefore, the Indian Rebellion evinces the powerful political and social effects a legal order can amass.

The Rebellion resulted in the end of Company Rule, but it did not end the Universalist Shift although it did give cause for reconsidering it. The successor state, the British Raj, decided to implement further reforms, including the three codes prepared under Company Rule. The fact that the Rebellion did not cause a retreat from further British encroachment rather confirms that a strong, almost teleological imperial process was at play. The Raj simultaneously decided to thereafter separate personal law from civil law. The Raj realised that the religious issues attached to personal law were the most sensitive and, in this sense, it was a final act of cold-blooded strategizing, similar to those preceding during Company Rule, where the legal order was constructed not out of normative principles, but rather for the purposes of power consolidation.

The legacy of this legal order on contemporary India is difficult to fully comprehend. In Section 5 I outlined what appear to be some of the salient legacies. Many of the laws governing India today derive from this period. Law, something to which the indigenous people had an entirely relationship prior to Company Rule, had during the period covered become an important signifier for identity, especially religious and caste identities, and this has since, arguably never left the Indian social landscape. The most palpable legacy however remains the debate for a Uniform Civil Code. It is a debate which has burdened India since

the separation of civil and personal law, and it is difficult to envision a path out of it which does not threaten the pluralistic balance between religious populations.

I admit this thesis is limited in some regards in its scope and suggest here some additional studies which could be undertaken to complement it. The proposed correlation between the universalist shift and the Indian Rebellion needs a more comprehensive study to confirm it. The role of procedural law in the legal order has not featured largely and it could be given greater attention. With greater access to local sources it may be possible to carry out, in line with subaltern studies, a more thorough investigation into the experience of Indians regarding the legal order, especially to establish if there is any correlation between the legal order and the incidence of intercommunal violence. Lastly the study would benefit from a greater comparative aspect, not only with other British colonies but also the experience of Goa as a Portuguese colony in which a pluralist system was not attempted to the same extent as by the Company.

Despite such shortcomings I feel I have established it is worth interpreting the Company´s legal order as the result of strategizing and as the result of an imperial process. The Company administrators followed a strategy in which the legal order would be constructed with reference to the situation on the ground, and so as to instil loyalty in the indigenous population and create stability. In the words of Benton: "wherever a group imposed law on newly acquired territories and subordinate peoples, strategic decisions were made about the extent and nature of legal control."[290] The strategic decisions of the Company were mostly based on consolidating power – that is for the purposes of further territorial expansion and revenue extraction – and for the purposes of justifying their rule. Indeed, even without succumbing to counterfactual thinking it is difficult to imagine the Company securing and extending power over India if Hastings had not embarked on the Adalat System. The Company for the most part proved extremely effective at balancing getting what they wanted out of the legal order with the threat of insurrection. One could say this strategy only met ostensible failure in Lord Dalhousie´s era, whose legal reforms helped give to the Rebellion.

This strategy was foremost then, intended to fulfil the imperial process, wherein the Company acted as a vessel for the British Empire. Despite the collusion of certain elites, and interpreters such as pandits and maulvais, the legal order was a top-down imperial project imposed on the indigenous people. The Company understood itself working according to

[290] Benton, *Law and Colonial Cultures*: 2.

different stages of this project, just as different "stages" of development were accorded to different colonies by the British Empire. As the stage shifted and the context changed so did the legal order. However, this process should be understood not as a random process but as a realisation of inherent imperial goals, mostly which centered around power consolidation. Power too, then, was a perennially shifting ideal. Power initially meant financial control to the to the Company; it soon would develop to mean financial control and ideological control.

It began with a prioritisation of revenue extraction and territorial expansion. Revenue extraction was the lifeline of the Company in all respects. Territorial expansion was a way of securing further profits and security. It was not only a facet of the imperial process, but it provides an analogy for development of the legal order: one of conquer and consolidate, of divide and rule. However, the Company was not purely and pragmatically concerned with profit. Dirks is correct in saying that imperialism was from the start predicated on the assumption of European universality.[291] The Company did realise their cultural incompatibility with the Indians and were uncomfortable with administering Hindu and Islamic Law. Power increasingly became about using law as a tool of social transformation. This mirrors the increasing degree to which the Company, originally a hybrid sovereign-corporation body, self-conceptualised itself as a state bearing responsibility for the moral development of the indigenous people.

Despite the role of colourful figures such as Hastings and Macaulay I would argue this is not a story of personalities, it is rather the story of a process. This was recognised as such by the Company administrators who rarely criticised their predecessors but understood their actions, in relation to the legal order, were justified on the basis of the specific stage of the imperial process in which they operated. This understanding demonstrates that a strict distinction between pluralism and universalism is not useful for understanding this process. Hastings and Macaulay were two sides of the same coin; one was not a universalist and was not a pluralist, rather both were foremost *imperialists*. It is more important therefore, to trace how the Company developed from one to the other.

6.2 Empire Nostalgia and the Rule of Law

This leads me to consider the celebrated role of the British Empire in establishing the rule of law in India something which is used to excuse other, more blatant abuses. While this recent growth of empire nostalgia is difficult to engage with at all, I feel that this thesis has

[291] Dirks, *The Scandal of Empire*: 296.

demonstrated that at the very least one should doubt the praise given to the British Empire for establishing the rule of law in India.

The argument or implication that the rule of law is an unrelated by-product of the British empire is patently false. Indeed, I have demonstrated that the legal order implemented by the Company was a crucial tool for installing the British Empire and facilitated the further abuses it carried out. The legal institutions and laws which survived were not separate from the profit extraction and the violence of the Company but rather an integral part of this imperial framework. The "rule of law" endorsed by the Company provided no real accountability for these acts of exploitation and must therefore be considered lacking.

The greatest problem with this argument is that it insinuates a moral argument; that is, that the rule of law was established on deliberate moral grounds. I have shown that nothing could be further from the truth. Through the vessel of the Company, the British empire essentially relied on merchants to create their legal order, for whom universal principles of law did not matter. First, they administered laws which they themselves held to be barbaric. When they even adapted the administration of these laws, they often imposed even harsher laws in their place e.g. Islamic penal law. Furthermore, the Company´s intentions in bringing in more universalistic law were neither benign nor benevolent. They were highly selective in choosing what laws they wished to transform, using them for propaganda purposes and still being guided by the principle of power consolidation. Writers like Ferguson who attribute to the Company the moral virtues of the rule of law fail to recognise what his idols, the servants of the East India Company, clearly did: that law in this context was a social and political tool before it was a moral tool.

Lastly the rule of law is fundamentally a western conceptualisation of the legal order. The legal order which existed prior to Company Rule, was fundamentally different as it featured a different understanding of justice, one which prized the community over the individual. It was also less centralised. In Europe the supremacy of state law was itself only coming into being[292]; India was caught up in this tide on account of Company Rule. Law then does not recognise the fluidity sometimes present in society but often entrenches the development and transformation of society.

Judges, under the Western concept of law, have been regarded as not so much as creating law but rather burying it because of their disregard of other sets of norms such as

[292] Benton, *Law and Colonial Cultures*: 127.

customary law. [293] Indigenous law has been buried under years of Company Rule and is now lost in time. Whether or not this has led to more moral and just outcomes is up for debate, but this debate should be treated with humility with respect to the cultural differences regarding the role of law in society. It should not become a battleground for Western historians to try and score points.

This thesis clearly dispels the simplified narrative adopted to celebrate the establishment of the rule of law in India. Empire nostalgia must go deeper if it is to deserve any modicum of our respect and attention.

6.3 Thoughts on Law, Pluralism and Power

I wish to extrapolate some thoughts from this thesis for application in a broader context. While I do not wish to formulate concrete policy proposals, I feel it is significant to parse out what implications are given by such an interpretation of the development of the East India Company´s legal order. Interpretations of historical processes do on occasion have both indirect and direct significant contemporary impact; Dirks points out that Niall Ferguson has advised US policymakers based on his interpretation of the East India Company. [294] Since crude interpretations can lead to crude policymaking there is all the more reason to offer and apply alternative interpretations.

In the modern, fluid, globalised world, the idea of constructing legal orders remains pertinent. While it is not correct to fully analogise this with an imperial setting, there are several overlaps with modern Western rule of law promotion efforts, most clearly with the debate over the twin poles of universalism and pluralism. The colonial encounter gave birth to this debate and in the globalised world it appears to be a debate from which it is increasingly impossible to retreat. Unlike with regards cultural clashes in other spheres, it is inescapable that law will be administered, and a legal order implemented, and the way in which it is implemented will necessarily lean more closely to one pole over the other. Pluralist societies are a descriptive fact; law, by definition, is imposed and thus necessitates finding a normative solution to managing this pluralism.

While Western states are not likely to run pluralist legal orders, many non-Western states have such diverse ethnic and religious populations that a pluralist legal order is more

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[293] Paul D. Halliday, "Laws´ Histories: Pluralisms, Pluralities, Diversity" in Lauren Benton and Richard J. Ross (eds.), *Legal Pluralism and Empires 1500-1850*, (New York, 2013): 265.

[294] Dirks, *The Scandal of Empire*: 355.

likely to be implemented. In the latter countries religious principles often continue to guide the law-making process. Modern India is an example of the latter in which legal tribute is paid to separate religious identities. However, since the differentiated personal law is an imperial creation, we must not consider it the destiny of India and the never-ending debate over the Uniform Civil Code evinces an uneasiness with the plural order. As a naturally more benevolent entity than the Company, for the Indian state this becomes an even more difficult question as the risk of civil unrest lingers.

I have shown in this thesis that changing the legal order towards more desired norms, out of moral grounds or otherwise, remains a balancing act, one which can create greater equality on the individual level but also one that can lead to discontent on the community level. As with the Company´s experience within this balancing act different power dynamics configure – such as latent bias – and even more complex is that power can taking shifting forms. And although it no longer directly affects this balancing act, the spectre of imperialism haunts it.

This makes especially transnational legal reform efforts difficult for the globalised world legal reforms are carried out not only within states but also *between* states. In the post-WWII international system there have been projects carried out aspiring to bring legal reforms to developing, often post-conflict countries, which possess plural populations. This came about as scholars increasingly made the argument that strong legal institutions and the rule of law were crucial prerequisites for economic development. The Law and Development Movement within the United States was emblematic in this regard. Under their remit and that of others Western "legal planners" who entrusted with helping to design the legal orders of developing African nations, the norm was, according to Halliday, to favour a pluralist model.[295]

The same was the case in Afghanistan where the Italian state led the judicial reform project during the reconstruction era following the US invasion in 2001.[296] Such projects and others have rarely proven to be successes because as the case of the East India Company demonstrates, it is difficult for Western entities to fully understand an alien plural society let alone create a legal order to manage it. On the other hand, legal reforms directed by other states and which bend towards universalism are easily accused of moral paternalism.

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[295] Paul D. Halliday, "Laws´ Histories: Pluralisms, Pluralities, Diversity" in Lauren Benton and Richard J. Ross (eds.), *Legal Pluralism and Empires 1500-1850*, (New York, 2013): 262.

[296] Esther Meininghaus, "Legal pluralism in Afghanistan", No. 72. *ZEF Working Paper Series*, 2007.

What then can one say of the moral aspects of this debate?; especially considering that under pluralist regimes many practices which offend us have been given legal sanction. Indeed, pluralist legal orders can be an impediment to the advancement of an international human rights regime. [297] And even if one accepts the Western-based concept of the rule of law has ignominious origins, is it not morally better than the any alternative?

These are valid questions. However, I have not attempted through this thesis to morally judge whether universalism or pluralism is better. In fact, my larger purpose has been to demonstrate some of the contradictions of people who confidently advocate for one or the other. Nevertheless, I feel I have shown that that both universalist and pluralist systems need not be necessarily be progressive; and furthermore, that setting up the question of a legal order as moral choice between pluralism and universalism, when other influential considerations abound, is naïve. If anything, I would advocate that, strangely like the Company, we abandon the idea that legal orders have normative roots – when it is clear they are a medley of different social and political forces, in which power dominates. I would also hope that we recognise that the development of a legal orders with its twin poles of universalism and pluralism is part of a fluid, temporal process which societies must, and should, mostly undergo of their own accord without external interference.

[297] Helen Quane, "Legal Pluralism and International Human Rights Law: Inherently Incompatible, Mutually Reinforcing or Something in Between?" in *Oxford Journal of Legal Studies* 33.4 (2013): 675-702.

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8. Appendices

a) Chronologies

Evolution of East India Company	
1600 Royal Charter	Royal Charter issued by Queen Elizabeth I. The charter gave them a monopoly on trade with any country situated between the Cape of Good Hope and the Straits of Magellan. Sir Thomas Smythe was appointed Governor of the company which became known as the East India Company.
1612	Sir Thomas Roe sent to India to meet Mughal Emperor Nuruddin Salim Jahangir and arrange a commercial treaty on behalf of the Company
1634	The Mughal Emperor invites the East India Company to trade in the Bengal region of India.
1670	The power of the East India Company was increased when Charles II granted the Company the right to acquire territory, to mint money, to command fortresses, to make laws and use force to protect assets.[298]
1690	The East India Company established a trading post in the Calcutta region of India.
1757 Battle of Plassey	Often cited as the beginning of "Company Rule" in India. Sir Robert Clive leads the Company to victory over the Nawab of Benghal.
1765 Treaty of Alahabad	The East India Company gained permission from the Moghul Emperor to collect revenue in Bengal (the so-called *Diwani* rights).
1769-73	The Great Bengal Famine of 1770. On account of Company negligence and tax exploitation over ten million perish.
1773 Regulating Act	This act was passed to reform the management of the East India Company's activities in India. It also affirmed the fact that Parliament had ultimate control over the Company. A governing council was established in Calcutta, led by Warren Hastings.

[298] Heather Y. Wheeler, "East India Company 1600 – 1873" *Totallytimelines* 2017, URL: https://www.totallytimelines.com/east-india-company-1600-1873 (accessed November 29th, 2018).

	Establishment of the Supreme Council of Bengal and the Supreme Court of Judicature at Fort William.
1784 East India Company Act	Also known as Pitt´s India Act, this act set up a Board of Control in London to oversee the administration, finance and diplomatic functions of the East India Company. It also covered the military expansion of the company.
1793 Permanent Settlement	Company voluntarily renounced any increase in taxation from land. The advantages accorded to zamindars since the Hastings era were legally recognised.
1806 Vellore Mutiny	An interference with Hindu customs – the dress code of sepoys- provokes a mutiny in Madras.
1813 East India Company Act	This act asserted British control over Indian territories controlled by the Company. It also removed the Company's trade monopoly with India, though it retained a monopoly on trade in tea and trade with China. Extended the Company's charter for a further twenty years.
1833 The Government of India Act	Also known as The Saint Helena Act 1833 and the Charter Act of 1833. This act removed the Company's remaining trade monopolies and extended its charter for a further twenty years thus making it primarily an administrative body. However, these administrative powers became more centralised: the Governors of Bombay and Madras were deprived of their legislative powers and the Governor-General led and exercised legislative powers over 'Government of India' and his council as the 'India Council'.
1853 Government of India Act	This act stated that the Company would continue to serve the administrative role over British India until Parliament decided otherwise.
1857 Indian Rebellion	A major uprising begins with a mutiny by sepoys, and soon spreads over India where civilians also began to protesting Company Rule. British forces only managed to suppress the Rebellion in 1858.
1858 Government of India Act 1858	Crown Rule is proclaimed in India by Queen Victoria. The East India Company is nationalised by the British government heralding the British Raj era.
1874 East India Stock Dividend Redemption Act	This act formally dissolved the East India Company and ceded all governmental duties over India to the Crown.

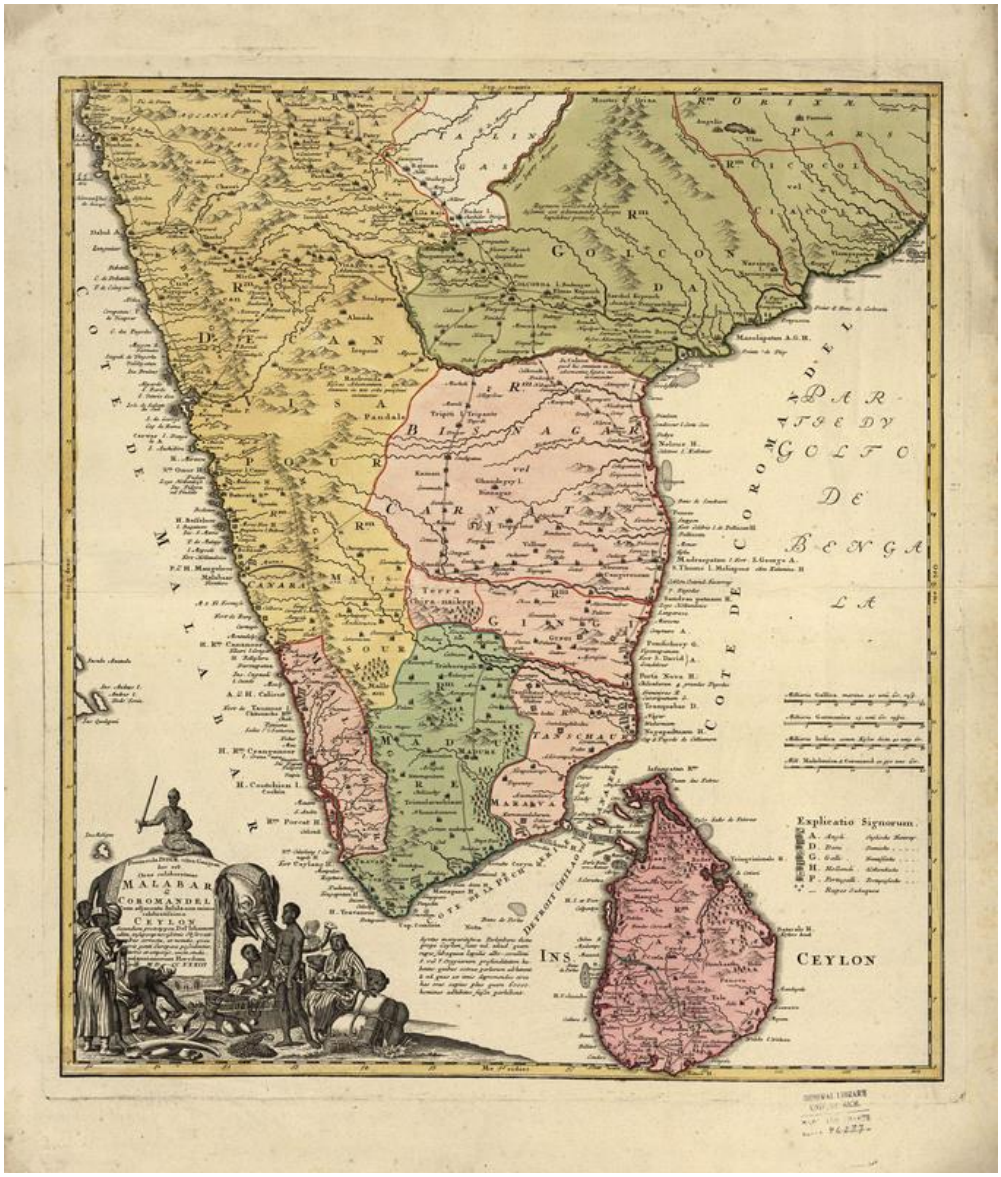
Significant Law-related Events of the East India Company	
1683 *East India Company v Sandys*	A British legal case in which the trade monopoly was contested on grounds of having them having illicit relations with "infidels." However the judge found that the prerogative monopoly enjoyed the Company was legitimate.
1726	Mayor´s Courts established by the East India Company in Madras, Bombay and Calcutta. They for the large part adjudicate cases involving British subjects and Company employees.
1772 Judicial Plan	Also known as the "Hastings Plan", this plan formulated that Islamic law would apply in criminal district courts and that Hindu and Islamic law would apply in civil district courts i.e. "the Adalat System"
1781 Bengal Judicature Act	Resolved the conflict with Supreme Court of Judicature at Fort William by removing their jurisdiction over Bengal.
1790	The Nawab formally surrendered the administration of criminal justice to the Company.
1793 Cornwallis Code	The structure and the judiciary of the Adalat System was reorganized; there were district judges with magisterial powers responsible to provincial courts in civil cases and to courts of circuit in criminal cases.
1801	Establishment of Supreme Court in Madras
1823	Establishment of Supreme Court in Bombay
1829 Bengal Sati Regulation	This made the practice of sati - the immolation of a Hindu widow on the funeral pyre of her deceased husband—illegal in all jurisdictions of British India and subject to prosecution.
1832	The fatwa was no longer considered a source of law
1833 The Government of India Act	The first Indian Law Commission was established
1843 Slavery Abolition Act	Outlawed all economical transactions associated with slavery.
1850 Caste Disabilities Removal Act	Affirmed that excommunication from caste could not lawfully lead to deprivation of property.
1856 Hindu Widows' Remarriage Act	Provided legal safeguards against loss of certain forms of inheritance for remarrying a Hindu widow, though, under the Act, the widow forsook any inheritance due her from her deceased husband.

1861 Code of Civil Procedure	Standardised procedural issues relating to the administration of civil justice. Due to shortcomings it was already replaced by the Code of Civil Procedure Code, 1877.
1861 The Indian High Court's Act	Allowed establishment of High Courts which created considerable judicial uniformity across British India.
1861 Code of Criminal Procedure	Standardised procedural issues relating to the administration of criminal justice. It was only replaced in 1972.
1862 Indian Penal Code	Also known as the Macaulay Code, it standardised the administration of criminal justice. It is still applicable today.
1864	Abolition of offices of maulavis and pandits .
1872 Evidence Act	Resolved the confusion over the law of evidence resulting from the Adalat System.
1872 Punjab Laws Act	Recognition of Indian customary law as a potential source of law.

Governors General of the Presidency of Fort William (Bengal), 1773–1833	
Warren Hastings	*1773-1785*
John Macpherson (acting)	*1785-1786*
Charles Cornwallis the Marquess Cornwallis	*1786-1793*
John Shore	*1793-1798*
Alured Clarke (acting)	*1798-1798*
Richard Wellesley, Earl of Mornington	*1798-1805*
Charles Cornwallis the Marquess Cornwallis	*1805-1805*
Sir George Barlow, Bt (acting)	*1805-1807*
The Lord Minto	*1807-1813*
Francis Rawdon-Hastings, The Earl of Moira	*1813-1823*
John Adam (acting)	*1823-1823*
The Lord Amherst	*1823-1828*
William Butterworth Bayley (acting)	*1828-1828*
Lord William Bentinck	*1828-1835*
Charles Metcalfe, Bt (acting)	*1835-1836*
The Lord Auckland	*1836-1842*
The Lord Ellenborough	*1842-1844*
William Wilberforce Bird	*1844-1844*
Governors-General of India, 1833–1858	
Henry Hardinge	*1844-1848*
The Earl of Dalhousie	*1848-1856*
The Viscount Canning	*1856-1858*

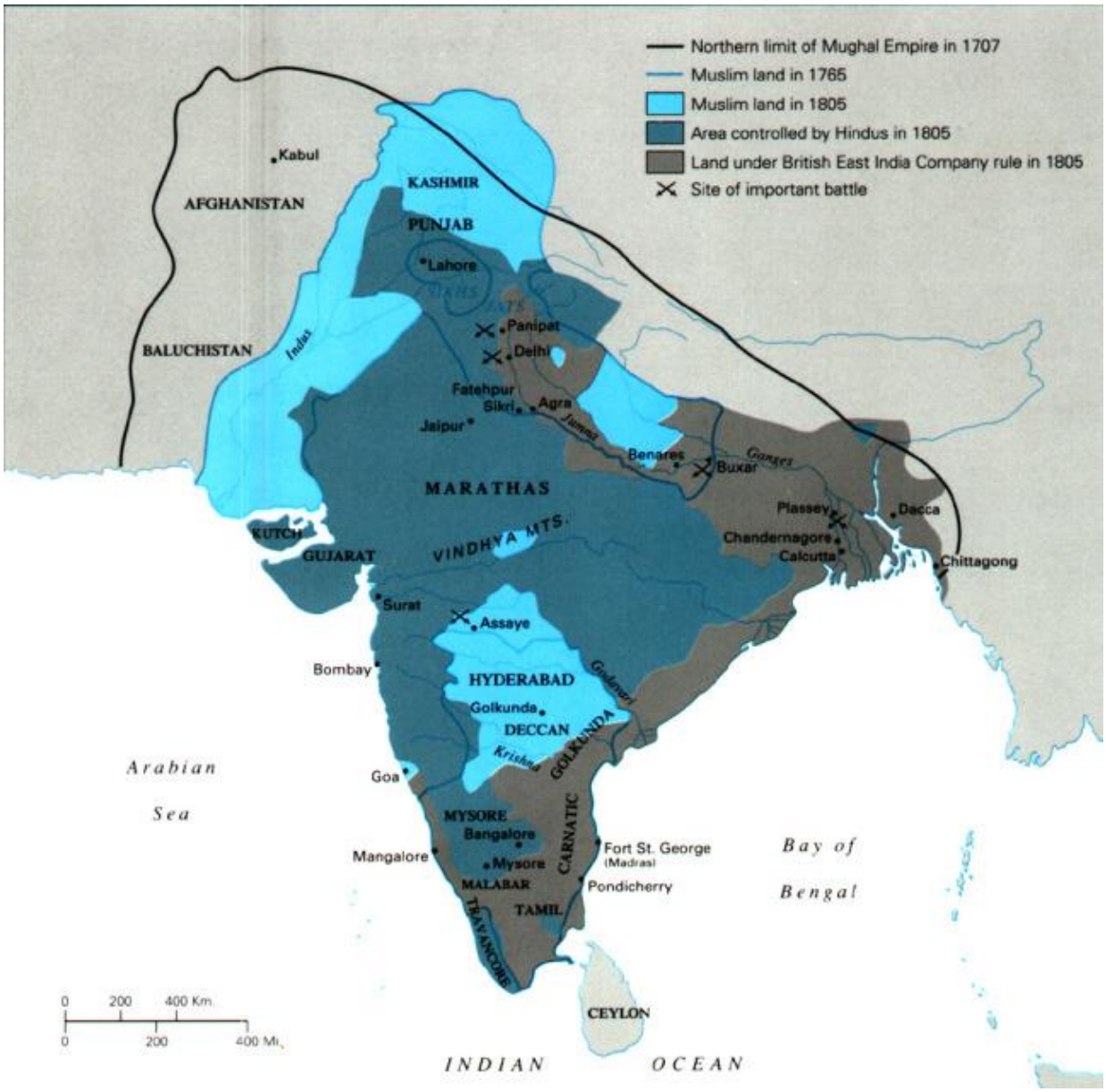
b). Maps

A map of Bengal, Bahar, Oude & Allahabad : with part of Agra and Delhi, exhibiting the course of the Ganges from Hurdwar to the sea, 1786[299]



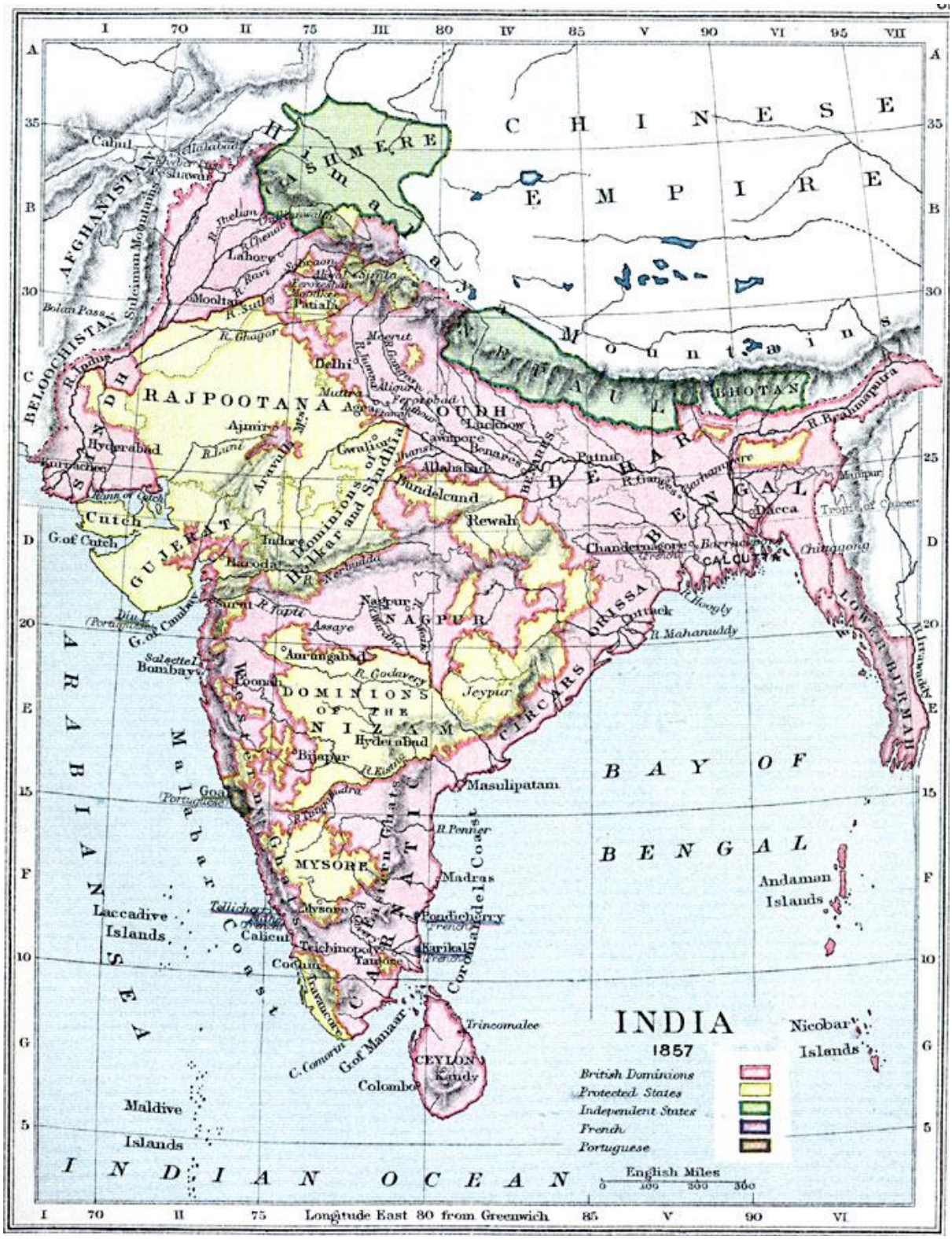
[299] University of Michigan, "James Rennell: The Father of the Indian Survey", URL: https://www.lib.umich.edu/online-exhibits/exhibits/show/india-maps/rennell (accessed 22/4/2019).

A map of the Indian subcontinent and the land under East India Company Rule in 1805[300]



[300] *Ibid.*

A map of the Indian subcontinent and the land under East India Company Rule in 1857[301]



[301] *Maps Etc.* URL: https://etc.usf.edu/maps/galleries/asia/india/index.php?pageNum_Recordset1=1&totalRows_Recordset1=52 (accessed 22/4/2019).

c) Dramatis Personae

- Warren Hastings
- 1732-1818
- The first Governor of the Presidency of Fort William (Bengal).
- Hastings provided the basis for the pluralistic Adalat System in Bengal with the 1772 Judicial Plan which is also known colloquially as the Hastings Plan.
- He self-identified as an orientalist who was interested in and respectful of indigenous culture. Nevertheless, his alleged despotic leadership, as well as his interactions with Nandakumar, helped lead to his impeachment, over which the House of Commons sat for over seven years, leading to one of the most famous trials in history.
- Following his acquittal in 1795 Hastings mainly dropped out of public life, but he eventually re-established himself as an authority on India, and even became a Privy Counsellor in 1814.
- Sir Phillip Francis
- 1740-1818
- Antagonist of Warren Hastings who wanted Hastings´ job but also disagreed with him on crucial policy matters, including land-revenue collection.
- Member of Governing Council of Calcutta.
- Fought Hastings in a non-fatal duel in Calcutta after he revealed details of affairs Francis had been having.
- His accusations led to the impeachment of Hastings.
- Muhammed Reza Khan
- 1717-1791
- Naib Diwan of Bengal from 1765 to 1770 (exercised Diwani rights on behalf of the Company).
- Acted as a precautionary influence on the drafting and implementation of the 1772 Judicial Plan.
- Originally the administration of criminal justice was in his name.
- Edmund Burke
- 1729-1797
- Irish statesman and philosopher.
- Took an active interest in British policy in colonies. He led the prosecution against Warren Hastings during the impeachment trial wherein he denounced his encroachment on the rights of the indigenous people.
- He has subsequently come to be regarded as the father of modern conservatism
- M Nandakumar
- 1705? -1775
- Tried for forgery by Elijah Impey, India's first Chief Justice and, with Hastings´ blessing, was found guilty, and hanged. Was a Brahmin by status which made his execution shocking for the natives.
- Hastings was accused of judicial murder by Burke during the impeachment.
- Sir Elijah Impey
- 1732-1809
- The first Chief Justice of the newly established Supreme Court of Judicature Bengal

- He attempted to introduce the principles and rule of English law into India and came into repeated conflict with the East India Company. He was recalled in 1783.
- There was an attempt by Burke, Francis, Elliot and other Whigs to have him impeached but this was thwarted in the Commons in 1788

• Sir William Jones – "Oriental Jones"
- 1746-1794
- British Orientalist and jurist who did much to encourage interest in Oriental studies in the West.
- He learned Sanskrit, to equip himself for the preparation of a vast digest of Hindu and Muslim law.
- His translation of the Digest of Hindu Law was published in 1794 and of the Muhammedan Law of Inheritance in 1792.

• Charles Grant
- 1746-1823
- Evangelical who championed social reform and Christian Mission in India
- He proposed a substantial overhaul of Indian law in the tract "Observations on the State of Society among the Asiatic Subjects of Great Britain."
- In 1794 he was elected a Director within the Company securing greater influence.

• Sir Thomas Munro
- 1761-1827
- Scottish soldier and Governor of Madras
- Munro believed the Adalat System was failing and proposed a decentralised system based on customary law.

• Lord William Bentinck
- 1774-1839
- British Governor-general of Bengal (1828–33) and of India (1833–35)
- A champion of legal reforms in India, he inaugurated the "universalist shift"
- He suppressed such practices offensive to the British mindset such as
- Bentinck was Governor of Madras during the Vellore Mutiny and was recalled from his position by the Company following it.

• James Andrew Broun Ramsay, Marquess and 10th Earl of Dalhousie
- 1812-1860
- British Governor-general of India from 1847 to 1856.
- He advanced territorial expansion of the Company through annexing presidencies
- He followed the legacy of Bentinck by introducing significant legal reforms
- Dalhousie's progressive policies are believed to have contributed to the Indian Rebellion in 1857.

• Thomas Babington Macaulay
- 1800-1859
- British Historian and renown Whig politician
- Served on Supreme Court of India 1834 and 1838
- Led the First Indian Law Commission
- Influenced reform of the Indian schooling system with his Minute on Indian Education and promoted use of English as the language of education
- Designed the Indian Penal Code in 1860 and contributed to other codes

- He admired Hastings, praising him as "among the most remarkable men in our history."[302]

- Jeremy Bentham
- 1748-1832
- Was an English philosopher, economist, and theoretical jurist, the earliest and chief expounder of utilitarianism.
- Wrote "Essay On The Influence Of Time And Place In Matters Of Legislation' which touched on legal reform in India.
- He supported *ex nihilo*, rational codification and became a strong influence on Macaulay.

- James Mill
- 1773-1836
- Scottish historian and philosopher.
- One of the first to apply utilitarian logic to India.
- Father of renown utilitarian philosopher John Stuart Mill
- Wrote *The History of British India* in 1817 in which he called for greater legal universalism, albeit with some adaptations to the local circumstances.

- John Stuart Mill
- 1806-1873
- English philosopher, economist, and exponent of Utilitarianism.
- An employee for the British East India Company from 1823 to 1858
- Supported the codification projects of the Indian Law Commission.

[302] Thomas Babington Macaulay, *Warren Hastings* Vol. 38., (Leipzig, 1904).

d). Glossary

The Adalat System: sometimes used to describe India´s legal system created by the Judicial Plan 1772.

Al-Hidaya: the compilation of Hanafi opinion, translated into English in 1791 by Charles Hamilton.

Board of Control: the monitoring body based in London, set up under Pitt´s Act to provide a check on the Company´s activities.

Bombay: former name of Mumbai.

Caste: each of the hereditary classes of Hindu society, distinguished by relative degrees of ritual purity or pollution and of social status.[303]

Court of Directors: the executive body of the Company. Similar to Board of Director in a modern corporation.

Dacoits: also known as Thugees or Bandits who carried out robberies and murders in on roads situated in the countryside. The Company considered they were treated too leniently under Islamic criminal law.

Dharmasastras: literature on prescriptive, normative and moralistic codes of individual and social conduct for the Hindus.[304]

Diwani Adalat: as established by Hastings Plan 1772, the district court in which civil matters were tried. There were specific Diwani Adalats for Hindus and for Muslims.

Diwani Rights: were the rights granted to the British East India Company in 1765 to collect revenues and decide the civil cases.

Foujdari Adalat: as established by Hastings Plan 1772, the district court in which criminal matters were tried.

Indian Law Commission: a body formed by the Charter Act of 1833 to recommend legal reforms to the Indian system.

Maulavi (or mawlawi): the experts on Islamic law employed by the British to interpret Islamic law

Madras: former name of Chennai.

Maratha Empire: a largely- Hindu empire which ruled over much of the Indian subcontinent until 1818 when they were defeated by the Company.

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[303] *English Oxford Dictionaries*, URL: https://en.oxforddictionaries.com/definition/caste (accessed 22/04/2019).

[304] Bhattacharyya-Panda, *Appropriation and Invention of Tradition*: 252.

Mayor´s Courts: established in 1726, the Mayor's Courts in Madras, Calcutta and Bombay were the East India Company's highest courts until the 1772 Judicial Plan.

Moffusil: Originally, the regions of India outside the three East India Company capitals of Bombay, Calcutta and Madras; hence, parts of a country outside an urban centre; the regions, rural areas.[305]

Munsiff Courts: subsidiary courtlike body of the Adalats in which claims could be heard and assessed before reaching the district level.

Nawab (or Nabob): the title given to the 18th century Mughal governors of Bengal. They were semi-autonomous from the Emperor and notably bore responsibility for the administration of criminal justice.

Panchayat: a Mughal-era court-like entity which administered civil justice and was chaired by village headmen. Those which dealt with matters of caste are often called "caste tribunals" in the literature.

Pandit: the experts on Hindu law employed by the British to interpret Hindu law.

Personal Law: section of civil law that deals with matters pertaining to a person and his or her family. Such matters include marriage and succession.

Peshwa: the de-facto leaders under the Maratha empire during its zenith. Under Company Rule they became more nominally leader figures.

Presidency Armies: the armies of the East India Company, made up of Europeans and primarily sepoys.

Qadi: magistrates or judges acting in courts of Islamic law. Muftis were a variation of qadis.

Raiyot (or ryot): was the equivalent of a peasant or tenant, who often worked for the zamindar.

Presidencies: later termed provinces, these were the administrative divisions of British governance in the subcontinent.

Sadar Diwani Adalat: the Chief Civil Court, positioned over the Diwani Adalat. The Governor and Council presided over it.

Sadar Nizamat Adalat: the Chief Criminal Court, positioned over the Nizamut Adalat. Composed of the Daroga, Chief Qazi, Chief Mufti and three Maulavies. It was soon in practice centralised under the control of the Supreme Council of Bengal.

Sati (or suttee): a now obsolete funeral custom where a widow immolates herself on her husband's pyre or takes her own life in another fashion shortly after her husband's death

Sepoy: an Indian infantryman, many of whom were recruited by the East India Company to act as its military.

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[305] Wiktionary. URL: https://en.wiktionary.org/wiki/mofussil, (accessed 22/04/2019)

Shastra: a Hindu word meaning something like a treatise and is thus often used to describe the legal texts from which the orientalists derived Anglo-Hindu law.

Supreme Council of Bengal: the highest executive authority from 1774 to 1833. After the Charter Act it became the Council of India.

Supreme Court of Judicature at Fort William: British India's highest court from 1774 until 1862The Bengal Judicature Act of 1781 which restricted the Supreme Court's jurisdiction to either those who lived in Calcutta, or to any British Subject in Bengal, Bihar and Odisha, thereby removing the Court's jurisdiction over any person residing in Bengal, Bihar and Odisha.

Uniform Civil Code: the term used to describe a proposed code of civil law in modern India which would negate differentiated personal law.

Zamindar: a land-owning aristocrat under the Mughal empire. The zamindar/raiyot debate proved a persistent issue within legal policy. The Company favoured the zamindars through their Permanent Settlement policy and this led to an elite-favouring property law regime.

Zillah: sometimes used to describe the Adalats i.e. district courts.

e). Briefing reports

Legal Pluralism

Legal pluralism is a legal-sociological theory which has been embraced by many scholars to describe, among other things, the pluralist legal system in colonial India. Despite this it remains a highly contested concept and is often employed to describe different phenomena. John Griffiths distinguished between weak legal pluralism and strong (or deep) legal pluralism. Strong legal pluralism means the coexistence of legal norms with different, often varying, sources of authority. Weak legal pluralism applies where there are two or more bodies of legal norms that have the same source of authority.[306] This situation often comes about in response to pluralistic societies, for example the British India population made up of Muslims, Hindus and Christians. In such a situation Griffiths argues "the sovereign commands different bodies of law for different groups of the population varying by ethnicity, religion, nationality or geography, and (sic) the parallel legal regimes are all dependent on the state legal system."

[306] John Griffiths, "What is Legal Pluralism?" in *Journal of Legal Pluralism* 24 (1986):5-8

The law is pluralistic in this case because whether or not a specific set of laws applies or not depends on which population sub-group(s) the dispute affects.[307] Tamanaha argues that those who embrace deep legal pluralism mislabel norms (which may be only customs) as law, and thus deny that law must necessarily derive from a, centralist norm-making body like the state.[308] In this sense the pluralist system which was created by the Hastings Plan can be described as an example of weak pluralism because the Company did, at the end of the day, impose this system. Benton argues that even if the absence of a visible overlapping authority or formal regulatory structure legal power can still be conveyed to all members.[309] Therefore while the Adalat System at times seemed haphazard, Company authority still supported and pervaded it. If one wished to argue the system was an example of strong legal pluralism, one would have to demonstrate that the Company´s legal authority was no more prior than the others; this thesis rejects this stance as a theoretical misunderstanding of what law is and the nature of its power.

Barzilai argues that despite what one might otherwise presume, "legal pluralism is not necessarily an inclusive phenomenon. Nation-states may construct ideologies and a public policy of legal pluralism for the purpose of promoting political control over non-ruling communities."[310] The interpretation of the actions of the East India Company outlined in this thesis, which views power consolidation as the main aim, strongly corroborates Barzilai´s argument. Legal pluralism is present and remains an area of academic interest in the modern world, not only in India with reference to differentiated personal law, but other multi-ethic states such as Afghanistan. It also at times informs rule of law promotion projects carried out by largely western states in developing countries where donors believe western law should not be brought into overhaul existing legal traditions.

[307] Brian Z. Tamanaha, "The folly of the'social scientific'concept of legal pluralism" in *Journal of law and society* 20.2 (1993): 211

[308] *Ibid*: 192-217.

[309] Benton, Law and Colonial Cultures: 5.

[310] Gad Barzilai, "Beyond relativism: where is political power in legal pluralism?" in *Theoretical Inquiries in Law* 9.2 (2008): 409.

f). Documents

1. Excerpt from the oration delivered by Edmund Burke on the first day of the Impeachment of Warren Hastings.

"…..We commit safely the interests of India and humanity into your hands. Therefore, it is with confidence that, ordered by the Commons,

I impeach Warren Hastings, Esquire, of high crimes and misdemeanors.

I impeach him in the name of the Commons of Great Britain in Parliament assembled, whose parliamentary trust he has betrayed.

I impeach him in the name of all the Commons of Great Britain, whose national character he has dishonored.

I impeach him in the name of the people of India, whose laws, rights and liberties he has subverted; whose properties he has destroyed; whose country he has laid waste and desolate.

I impeach him in the name and by virtue of those eternal laws of justice which he has violated.

I impeach him in the name of human nature itself, which he has cruelly outraged, injured and oppressed, in both sexes, in every age, rank, situation, and condition of life.Warren Hastings….:"[311]

2. Bentinck, William. "Minute on Sati." Speeches and Documents on Indian Policy (1829).

To consent to the consignment, year after year, of hundreds of innocent victims to a cruel and untimely end, when the power exists of preventing it, is a predicament which no conscience can contemplate without horror. But on the other hand, if heretofore received opinions are to be considered of any value, to put to hazard, by a contrary course, the very safety of the British empire in India, and to extinguish at once all hopes of those great improvements affecting the condition, not of hundreds and thousands, but of millions, which can only be expected from the continuance of our supremacy, is an alternative which, even in the light of humanity itself, may be considered as a still greater evil. It is upon this first and highest consideration alone, the good of man-kind, that the tolerance of this inhuman and

[311] "Speech in the Impeachment of Warren Hastings, Esq", *Bartleby.com*, URL: https://www.bartleby.com/209/868.html (accessed 22/04/2019).

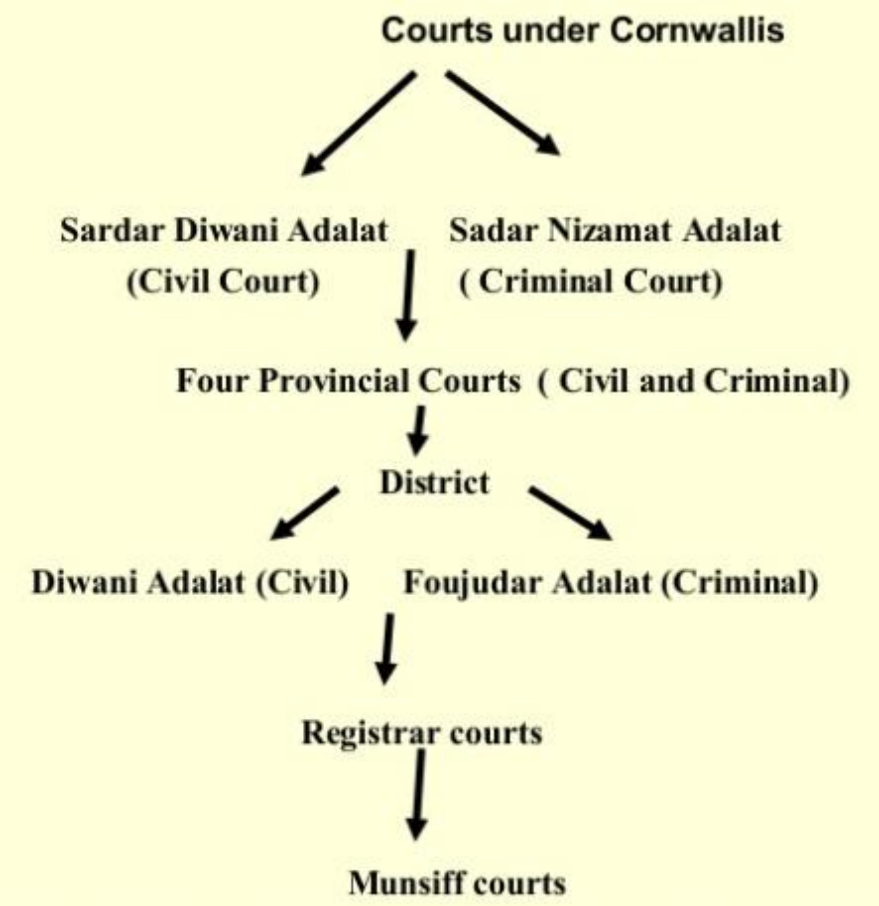
impious rite can, in my opinion, be justified on the part of the government of a civilized nation.

On the other side, the sanction of countless ages, the example of all the Mussul-man conquerors, the unanimous concurrence in the same policy of our own most able rulers, together with the universal veneration of the people, seem authoritatively to forbid, both to feeling and to reason, any interference on the exercise of their natural prerogative. In venturing to be the first to deviate from this practice, it becomes me to shew, that nothing has been yielded to feeling, but that reason, and reason alone, has governed the decision. So far indeed from presuming to condemn the conduct of my predecessors, I am ready to say, that in the same circumstances, I should have acted as they have done. So far from being chargeable with political rashness, as this departure from an established policy might infer, I hope to be able so completely to prove the safety of the measure, as even to render unnecessary any calculation of the degree of risk, which for the attainment of so great a benefit, might wisely and justly be incurred. So far also from being the sole champion of a great and dangerous innovation, I shall be able to prove that the vast preponderance of present authority has long been in favour of abolition. Past experience indeed ought to prevent me, above all men, from coming lightly to so positive a conclusion. When governor of Madras, I saw, in the mutiny of Vellore, the dreadful consequences of a supposed violation of religious customs upon the minds of the native population and soldier[312]

[312] Lord William Bentinck, "Minute on Sati" in Barbara Harlow and Mia Carter (eds.) *Archives of Empire: Volume I. From The East India Company to the Suez Canal,* (Durham, 2003) : 351.

g). Charts and Figures

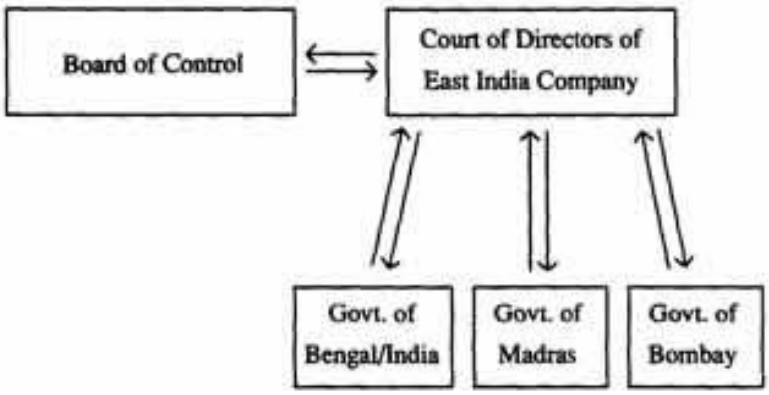
The most basic structure of the legally plural system finalised by Lord Cornwallis. [313]



[313] Domodaram Sanjeevayya National Law University. *Slideshare*. URL: https://de.slideshare.net/vissu.madasu?utm_campaign=profiletracking&utm_medium=sssite&utm_source=ssslideview (accessed 22/04/2019).

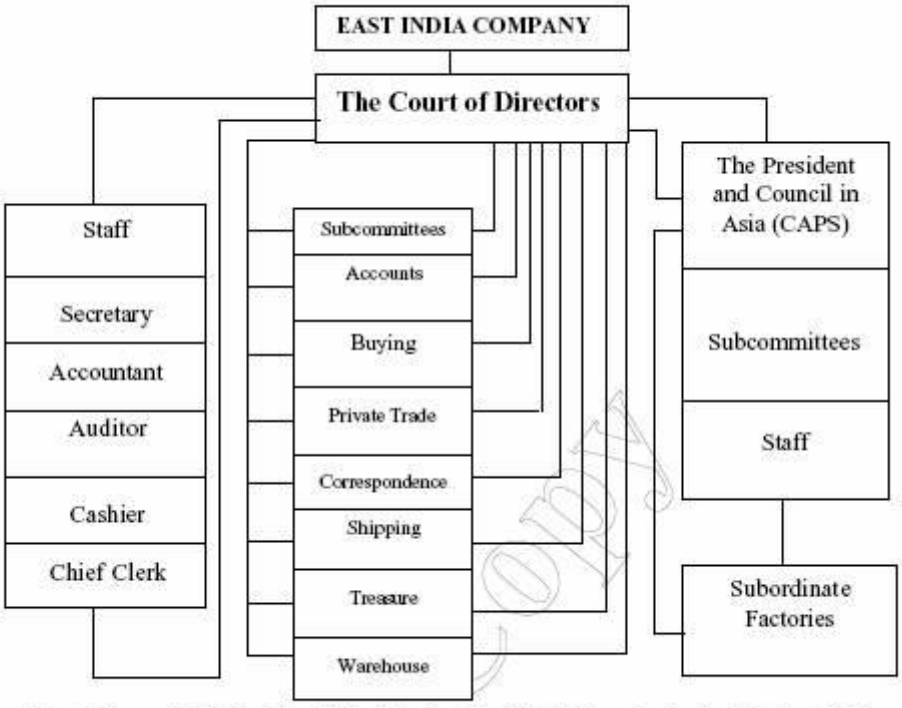
The hierarchical structure of the Company

TABLE 1



The administrative breakdown of the Company

Figure I
Organization Structure



Adapted from: K.N.Chaudhuri, *The Trading World of Asia and the English East India Company-1660-1760,* Cambridge University Press, Cambridge, 1978.

Value of Stock in the East India Company 1693-1874

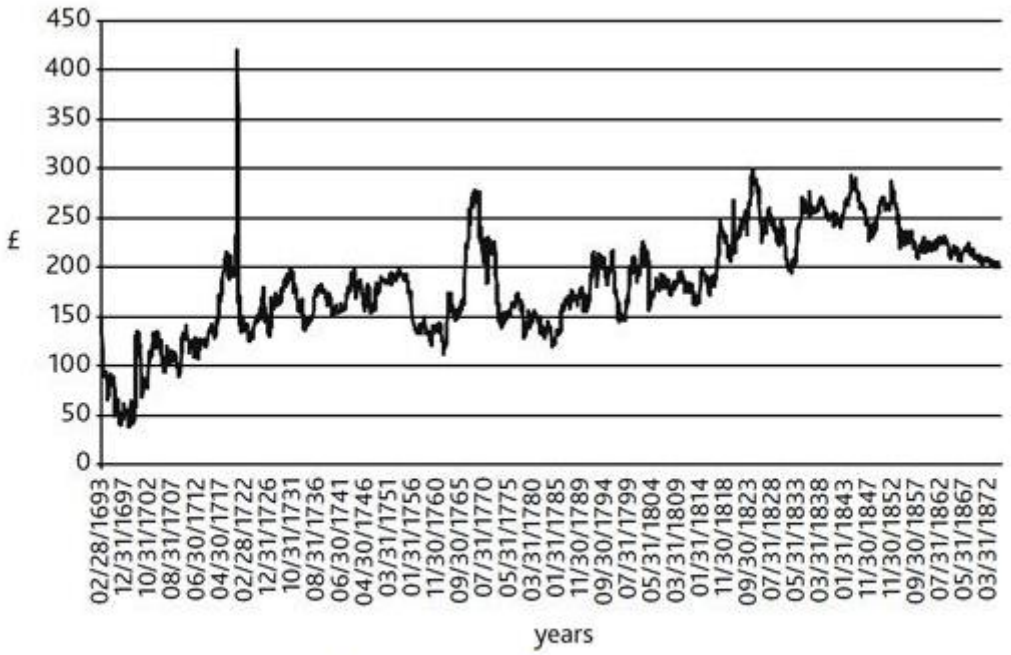


Figure 2.1 The Company's share price 1693–1874

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[314] Nick Robins, *The Corporation That Changed The World,* (London, 2006).

Pledge of Honesty

"On my honour as a student of the Diplomatic Academy of Vienna, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it."

Signature: _____

Vita:

I was born in 1993 in Galway, Ireland. I studied Law with History (BCL) at University College Dublin, during which he completed a year-long international exchange at the University of Minnesota. I have pursued my interests in these and other disciplines at the Diplomatic Academy of Vienna. In my second year of the MAIS programme I served as a teaching and research assistant. Additionally, I have experience working in various law offices, NGOs, IOs and embassies.

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