

# *Law, State and Agrarian Society in Colonial India*

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PERHAPS the most intransigent problem in the recent history of Indian society remains an adequate understanding of the processes of social change which took place under colonialism. As the continuing controversies within, as much as between, the traditions of modernization theory, Marxism, and the underdevelopment theory make plain, the Indian historical record is peculiarly difficult to grasp with conventional sociological concepts. In the study of Western European society, a focus on the evolution of legal ideas and institutions has proved a useful entry point to social history.<sup>1</sup> The law may be seen to represent a set of general principles through which political authority and the state (however constituted) attempt to legitimize the social institutions and norms of conduct which they find valuable. As such, its history reflects the struggle in society to assume, control or resist this authority. Its study should help to reveal the nature of the forces involved in the struggle and to suggest the implications for social development of the way in which, at any one time, their struggle was resolved. The condition of the law may be seen to crystallize the condition of society. This, of course, could be said of any governing institution. But where the law becomes uniquely valuable is in that, because of its social function, the struggle around it is necessarily expressed in terms of general statements of principle rather than particular statements of private and discrete interest. At the most

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<sup>1</sup> For example, R. Tawney, *The Agrarian Problem in the Sixteenth Century* (London, 1912). More recently, J. Goody (ed), *Family and Inheritance* (Cambridge, 1976); E. P. Thompson, *Whigs and Hunters* (London, 1975). The following essay does not necessarily pick up any of the themes raised in these works. The differing historical and historiographical contexts of Indian study make straight translation invalid. It merely also uses the law as a focus on society.

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fundamental level, these principles demarcate the rules on which the contending parties seek to build their versions of society and provide useful clues to their wider, often undisclosed, positions. Study over time of their relative successes, failures and compromises, and of the nature of their evolving relationships, may throw into sharper relief the more significant movements in the historical process. Of course, for the law to fulfill this wider analytical purpose, it is not possible to study it only in the courtroom. It is essential to trace the arguments and forces displayed there back to their various origins and consider their situation in the general social context. But the courtroom may not be that bad a place to try to re-assemble them and consider their implications for India's social history.

What follows represents an attempt to look at the conundrum of colonial India from the angle of the law, especially with regard to the nature of effective property right in land. One of the few points of common agreement among historians is the preponderant significance of agrarian relations in the structure of Indian society. The land remained overwhelmingly the single most important source of wealth and the base of production. While, however, there may be a consensus on the role of the land, views of its legal (and social) context under colonialism are much more divergent. On the one hand, some historians have tended to assume rapid and radical change, under the influence of 'Westernization' or 'capitalism', and to imbue the instruments of the law with great power, to break up village solidarities and to establish 'bourgeois' dominance over the peasant economy.<sup>2</sup> On the other, different historical perspectives have emphasized the continuity of 'traditional' and 'feudal' elements in the law and have questioned whether it was ever very effective in establishing its authority.<sup>3</sup> To add to the confusion, although a third view has shown the law to have consisted of an eclectic mixture of the new and the old, the effective and the ineffective, it does not seem to have found very adequate explanations of

<sup>2</sup> For example, B. S. Cohn, 'From Indian Status to British Contract', *Journal of Economic History* (XXI), 1961; R. Kumar, *Western India in the Nineteenth Century* (London, 1968), chs 3-4; H. Alavi, 'India and the Colonial Mode of Production', *Socialist Register* 1975 (London, 1975).

<sup>3</sup> For example, S. and L. Rudolph, *The Modernity of Tradition* (Chicago, 1967), ch. 3; B. S. Cohn, 'Structural Change in Indian Rural Society 1596-1885', in R. E. Frykenberg (ed.), *Land Control and Social Structure in Indian History* (Madison, 1969); B. S. Cohn, 'Anthropological Notes on Disputes and Law in India', *American Anthropologist* (LXVII), 1965; C. A. Breckenridge, 'From Protector to Litigant', *Indian Economic and Social History Review* (XIV), 1977; B. S. Cohn, 'Some Notes on Law and Change in North India', *Economic Development and Cultural Change* (VIII), 1959.

the resulting compound.<sup>4</sup> In these circumstances, it may be best to go back to basics and to consider the social implications of the colonial legal system as it first developed out of the conquest of Bengal in the late eighteenth century. Section II of this essay examines the logic of property right in the context of the early colonial state. This context, however, was historically relative and contingent. By the middle of the nineteenth century, Indian society was becoming subject to a very different set of pressures which necessitated new relations on the land and confronted the law with new problems. Section III traces the evolution of property right against this background. By the second decade of the twentieth century, a further sea-change was in progress, ultimately taking India to decolonization and independence. Section IV considers the meaning of the raj's final phase through the legal developments of this period. By looking constantly at the relationship between the law and its historical milieu, we may be able to understand better not only its effects on society but also, and more critically, the forces in society which moulded it.

By convention, the British raj emerged out of the political relations of Bengal in the middle of the eighteenth century. The East India Company, until then a mercantile/warrior institution operating (albeit with great independence) within the structure of the pre-colonial state, began to assume the formal responsibilities of government and to develop its own principles of state-craft. These principles, especially with regard to the rule of law and the nature of property right, usually are seen to have received their clearest expression in the Permanent Settlement of 1793, which also laid the foundations of the Anglo-Indian legal system.<sup>5</sup> First, a judiciary was set up independent of the executive institutions of the state and acting as a check on them. The law defined and protected the private rights of subjects against all-comers, including the encroachments of the executive itself. Among these private rights was that to property: the legal subject was guaranteed enjoyment of all his posses-

<sup>4</sup> For example, J. D. M. Derrett, *Religion, Law and Society in India* (London, 1968); E. Whitcombe, *Agrarian Conditions in Northern India* (California, 1972), ch 5. It is perhaps unfair to challenge Derrett's legal history to provide explanations of colonial policy. But, as we shall see, his suggestions that British conservatism with regard to family law flowed from a desire to avoid disruption and to save money may not be entirely adequate. Whitcombe's excellent analysis of the legal confusion of North India at the end of the nineteenth century is accompanied by no clear attempt to explain the phenomenon either in terms of colonial designs or in a context of pressures on the colonial authority. She appears to understand it as a product of administrative incompetence and the social disruption caused to Indian society by colonial land policy.

<sup>5</sup> P. Spear, *A History of India* (London, 1965), Vol. II, ch. 8; J. Furnivall, *Colonial Policy and Practice* (Cambridge, 1948).

sions free from external interference. Second, to facilitate economic relationships between propertied subjects, the public law developed a number of conventions. The sale of property for value was held always to be valid. A vendor could not subsequently claim it back. Contracts for debt and services were held to be binding and enforceable at law on the property of the party who failed to meet his obligations.<sup>6</sup> These conventions, as much as the notion of an independent judiciary itself, have been taken by many historians as indicative of the wider philosophical perspective represented in the settlement. They are regarded as part of a scheme for the transformation of Indian society under principles drawn from British Whig political and European Physiocratic economic theory.<sup>7</sup> The scheme centred on promoting the commercial and economic development of Bengal by emancipating the individual from the dead hand of the state (and the land from the weight of taxation) and encouraging him to accumulate private wealth and property through the market. It was stamped by a philosophy of 'possessive individualism'. To accomplish it, the revenue demand of the state on the land was limited, rights to ownership of the land were separated from rights to collect revenue on it and the role of the state in the economy was cut back to the simple preservation of law and order. The Permanent Settlement envisioned a society whose prosperity was underpinned by a free market in all commodities, including and especially land.

What, however, seems to be very much less noticed is that, parallel to this enunciation of the principles of the 'public' law, the Bengal authorities also attempted to define the bases of the 'private' or 'personal' law of their subjects. This definition rested upon jurisprudential principles sharply contrasting with those in the public domain and implied a quite contradictory vision of the future. Whereas the public law had the intention of enlarging and safeguarding the freedoms of the individual in the market place, and was to be made by statute and the courts in the light of equity and policy, the personal law was meant to limit the sphere of 'free' activity by prescribing the moral and community obligations to which the individual was subject, and was to be made by the 'discovery' of existing customary and religious norms.<sup>8</sup> Its purpose was to keep society in the structure of relations in which the colonial authority had found it and to construe the moral problems of the present against standards taken directly from the past.

As the personal side of the law has been investigated, so its subtle,

<sup>6</sup> Derrett, *Religion*, chs 9, 12.

<sup>7</sup> R. Guhar, *A Rule of Property For Bengal* (Paris, 1963).

<sup>8</sup> Derrett, *Religion*, ch 8.

conservative implications for the development of society have become clearer. These consisted not only of obstructions to change in the future but also of reversions to long dead or unfashionable conventions. Initially, the courts looked to the scriptures for guidance on domestic and social norms and rested heavily on the interpretations of pandits for the Hindu law. These interpretations reflected a Brahminical view of society, which saw its structure in terms of immutable religious principles. Under their influence, the personal law recognized and validated the caste system and the varna theory of social order.<sup>9</sup> It also applied a theological definition to the concept of the family and to the proper basis of relations within it.<sup>10</sup> With the support of British power, the Hindu law expanded its authority across large areas of society which had not known it before or which, for a very long period, had possessed their own more localized and non-scriptural customs.<sup>11</sup> On those sections of society closest to the regulating authority of the colonial power (mainly the upper echelons involved, in one way or another, with the higher institutions of state), the effects of the Hindu law seem to have been considerable. There is evidence that processes bringing about nuclear family formation were set into reverse;<sup>12</sup> that discretionary and voluntaristic elements in family relations were suppressed by enforced prescription;<sup>13</sup> that the position and independence of women declined.<sup>14</sup> The rise of the Hindu law was one of many developments of the period which made the nineteenth century the Brahmin century in Indian history (and perhaps helps to explain why the twentieth century was to be the anti-Brahmin century).

From its very beginnings, then, the Anglo-Indian legal system was distinctly Janus-faced and rested on two contradictory principles with

<sup>9</sup> A useful account is provided in S. and L. Rudolph, *Modernity*, ch. 3.

<sup>10</sup> Derrett, *Religion*, ch. 12.

<sup>11</sup> However, in the Punjab, which was annexed very late, *de facto* community custom provided the basis of personal law. Moreover, there always remained significant provincial disparities in the interpretation of the Hindu law. These, in part, reflected resistances thrown up by the differing customary conventions of the provinces. Within Hindu law, of course, there was room for caste custom but this was legitimated by scripture.

<sup>12</sup> T. Raychaudhuri, 'Norms of Family Life and Personal Morality among the Bengali Hindu Elite, 1600-1850', in R. van M. Baumer (ed.), *Aspects of Bengali History and Society* (Hawaii, 1975). Raychaudhuri does not formally relate this reversion to the legal context, nor indeed to any context at all. But its timing coincides with the establishment of the Anglo-Indian Hindu law and reflects its norms.

<sup>13</sup> K. I. Leonard, *Social History of an Indian Caste* (California, 1978), chs 7, 10.

<sup>14</sup> For example, see L. C. Stout, 'Hindu Law, Customary Law and Statutory Social Reform: The Hindu Widow Remarriage Act XV of 1856', paper read at International Symposium on Imposed Law, University of Warwick, April 1978.

different social implications. If the public side of the law sought to subordinate the rule of 'Indian status' to that of 'British contract'<sup>15</sup> and to free the individual in a world of amoral market relations, the personal side entrenched ascriptive (caste, religious and familial) status as the basis of individual right.<sup>16</sup> Strangely, this paradox seems not to have been grasped by the official mind of the early raj. There appears no awareness of a contradiction between the two parts of the law and no concern that rigid Hindu social tradition might stand in the way of free market economic enterprise. Such disinterest, however, certainly did not reflect the practical irrelevance of the Hindu law to the context of property relations in the market. In a large number of ways, its conventions interfered with the rights of the individual to possess, acquire, use and accumulate property, especially land. The legal definition of the family, for example, was taken from a religious principle which emphasized the almost infinite jointness of a kindred.<sup>17</sup> Members of a family were recognized to have rights to shares in, and maintenance from, its collective property, which naturally restricted the rights of other members to use that property. Under various schools of law, sons might constrain the activities of their father, and brothers of one another; prospective heirs and beneficiaries might invalidate alienations of their patrimony for other than religious purposes; an heir might insist upon partition of family properties against the wishes of other heirs or, conversely, the joint-family might prevent the division required by one of its members; vendors of, or foreclosed debtors who lost family property, might be sued for their share of its value by other members.<sup>18</sup> Private property rights were, in effect, deeply entangled in the relations of the Hindu joint-family and very much influenced by its norms. While with regard to 'movable' property, from the earliest period of Company rule an easy accommodation proved possible between the demands of the market for property exchange and transfer and those of the personal law for constraint on individual freedom, the same was

<sup>15</sup> B. S. Cohn, 'From Indian Status'.

<sup>16</sup> Cohn's generalizations about the Anglo-Indian law seem very suspect. Status determined the body of personal law to which the individual was subject. As these bodies differed, the law cannot be said to have treated individuals on an equal basis. Moreover, personal law rights clearly interfered in certain types of contractual relations. Cohn's dichotomous frame of reference appears to derive from an over-zealous use of the tradition/modernity paradigm. Here, as perhaps universally, its eclecticism obscures more than it reveals.

<sup>17</sup> Derrett, *Religion*, ch. 12.

<sup>18</sup> *Ibid.* The precise terms of these restraints varied by provincial and caste custom and by legal school (Dayabhaga or Mitakshara). Also, see W. H. Morley, *An Analytical Digest of All the Reported Cases Decided in the Supreme Courts of Judicature in India* (London, 1850), esp. pp. 38-44; 478-87.

certainly not true of immovable property such as land. The public law rules concerning the validity of sale for value and the enforceability of debt contracts tended to stick fast on the question of hereditary ancestral landed property. The rights of the purchaser of land (or its acquirer in honour of a debt) against those of the family of the vendor (or foreclosed mortgagee) remained exceptionally unclear and confused until the very end of the nineteenth century.<sup>19</sup> In these circumstances, it may not be surprising that there is little evidence of an active market in land other than that created by forced sales for revenue defalcation (over which the law, in any event, had no direct competence).<sup>20</sup>

But it was not only with regard to the Hindu family that the principles of the personal law affected market relations. Social prescriptions derived from the caste system could interfere with property right: where it could be shown that local customs had denied access to land or a trade to members of a particular community, they might find legal as well as practical obstacles placed in their path if they tried to precipitate change.<sup>21</sup> The law also validated (or at least had no competence to invalidate) the inegalitarian conventions of the tax system, which laid differential rates of assessment on the properties of different castes, with obvious implications for the value of property when transferred.<sup>22</sup> The extent to which different communities were subject to different bodies of law posed a further limit to market activities. Before the coming of legislation to regulate the affairs of companies, members of different communities who entered into property-owning business partnerships

<sup>19</sup> Whitcombe, *Agrarian Conditions*, ch. 5.

<sup>20</sup> Especially in Northern India, these forced sales of, essentially, revenue right were very considerable in the early nineteenth century. But it has long been questioned how far they necessarily involved the transfer of possession. Moreover, their incidence was declining in the second third of the century. See, B. S. Cohn, 'Structural Change'; E. T. Stokes, *The Peasant and the Raj* (Cambridge, 1978), chs 1, 5. Of course, the lack of formal evidence of a 'voluntary' land market does not mean that one did not exist outside the regulation of the law. But, as we shall see, general conditions make it unlikely: except in densely populated, highly irrigated regions, land as a commodity had little value.

<sup>21</sup> Especially in the towns, much litigation seems to have derived from inter-community disputes about rights to locate houses, conduct businesses, etc. In general, the law attempted to arbitrate these in the light of 'traditional' practice. But usually, this meant denying the innovatory group the right to compete with the established group. In a society in which caste and religious status were intimately bound up with economic activities, a preserved tradition was a strong barrier to market freedom. For an example from the earliest period of British rule, see P. A. Roche, 'Caste and the British Merchant Government in Madras, 1639-1749', *Indian Economic and Social History Review* (XII), 1975; for a later example, see R. L. Hardgrave, *The Nadars of Tamilnad* (California, 1969), ch. 3.

<sup>22</sup> The civil law was held to have no competence in the adjudication of taxation matters and subjects possessed no legal defence against inequitable state practices.

could find that a death or enforced dissolution trapped them in a hopeless confusion of overlapping jurisdictions. The preference of merchants and traders to operate through connections of kin and caste did not reflect only a cultural peculiarity.<sup>23</sup> The structure of the law made extra-communal relations dangerous in practice.

More significantly, however, as the framework of the Bengal legal system started to be imposed on other provinces, the personal law's concept of property as a trust rather than a right began to spread rapidly across what had been considered the domain of the public law and to affect, especially, landed relations. In one sense, which raises questions about the real purpose even of the Permanent Settlement, this possibility had been implicit in the original formulation of land law. It had been no intention of the Bengal Permanent Settlement to sweep away the 'traditional' and 'customary' rights which agricultural tenants possessed in the lands whose proprietary title had been given to zamindars.<sup>24</sup> Theoretically, the claims of underproprietors to a species of property right in the land were recognized. However, the settlement notably failed to define what these rights and claims were and left the courts the impossible task of discovering them. As the Permanent Settlement spread to parts of Upper and Southern India, more care was taken to define tenants' rights which qualified the titular landholder's absolute possession of his property.<sup>25</sup> In areas of non-zamindari settlement, other forms of community 'trust' were built into land law. In parts of Northern India, village bhaiacharas (brotherhoods) were recognized as possessing a kind of corporate property right which allowed them to pre-empt the land sales of any of their individual members.<sup>26</sup> In parts of South India, the same notions of corporate possession limited individual rights of alienation in certain types of co-sharing mirasi tenure.<sup>27</sup> Many grants of land (inams) reflected the social status and public roles of their

<sup>23</sup> The role of caste and kinship in mercantile activities is explored in C. A. Bayly, 'Indian Merchants in a Traditional Setting' in C. Dewey and A. Hopkins, *The Imperial Impact* (London, 1978). Bayly also notes the existence of powerful supra-kinship mahajan organizations among the business community. These, however, seem to have played only a regulating and arbitrational role. They were not property holding corporations.

<sup>24</sup> See Spear, *History*, ch. 8.

<sup>25</sup> T. Metcalf, *Land, Landlords and the British Raj* (California, 1979), ch. 3; for South India, see 'Proceedings of the Special Committee on the Permanent Settlement', Madras Revenue Records, special series 1800-04, India Office Library, London.

<sup>26</sup> E. T. Stokes, *The English Utilitarians and India* (London, 1965), ch. 2.

<sup>27</sup> Morley, *Analytical Digest*, p. 450.

The law also could insist on redistributing lands between shareholders. See D. Ludden, 'Mirasidars and Government in Nineteenth Century Tinnevely District', paper read at Conference on Intermediate Political Linkages in South Asia, University of California, March 1978.

holders.<sup>28</sup> They could not be freely transferred or alienated and did not represent marketable forms of landed property.

The contradiction between the individual freedoms supposedly supported by the public law and the social constraints strongly imposed by the personal law was, then, very deep and greatly coloured the nature of effective property right. As the law evolved in the first half of the nineteenth century, it tended to favour the principle of community trust at least as much as that of private property right.<sup>29</sup> In reflection of the contradiction, the courts recognised two different species of property in which owners had different kinds of right: 'individual' property which could be possessed and used freely and 'ancestral' property which was subject to encumbrance and the claims of the family. However, the balance of the law was inclined to favour the latter at the expense of the former. It was held that if an individual received any substantial help in his business activities from members of his joint-family, then all his business profits were joint-family property and fell on the ancestral side of the line. In South India at least, this was carried so far that if a lawyer, civil servant or other member of the 'learned' professions had received support from his family during his education, then his earnings throughout his career belonged to them rather than himself.<sup>30</sup> The conventions of land law also suggest the extent to which the 'community', not only the individual, was an object of the law's concern. In those mirasi tenures which allowed a collective veto on individual alienations, it was sometimes held that all shareholders had to give their consent before the sale was valid.<sup>31</sup> The more closely is the Anglo-Indian law's 'freedom' of property scrutinized, the more limited does it seem to become. The avowed intention of the Bengal authorities to subject India to 'a rule of

<sup>28</sup> In some provinces, the amount of land under inam tenure was enormous. In early nineteenth-century Madras, it varied across the districts at between about 12 and 40 per cent.

<sup>29</sup> It should be noted that, of course, the Anglo-Indian law notion of the 'community' was not necessarily the same as that of the régimes which it replaced nor that which its subjects easily recognized. In general, it excluded lineage and cross-caste neighbourhood ties and included an expanded sense of family and caste obligation. We are not arguing that the law genuinely preserved 'tradition' but only that it protected institutions of supra-private right. Some of the problems in interpreting legal change, and indeed change under the raj, may be due to careless assumptions drawn from modernization theory that all British change, by definition, functioned towards the private and individual principles. For a discussion of these problems in the context of Punjabi society, see T. G. Kessinger, *Vilyatpur 1848-1968* (California, 1974), chs 1, 6.

<sup>30</sup> Derrett, *Religion*, ch. 12; the law, of course, did permit privately earned property to be used at the individual's discretion and to be kept apart from ancestral property. But, in these circumstances, it is hard to see how much could be privately earned.

<sup>31</sup> Morley, *Analytical Digest*, p. 450.

property' which would promote economic development through the operations of an open market was not realized either in the legal system which they themselves provided or in its subsequent development in other provinces. The large gap between practice and theory naturally raises questions about whether this was ever the serious intention of early colonial rule at all. An examination of the institutions of the law confirms the suspicion.

In the first half of the nineteenth century, if the British were trying to bring society's property relations under the regulation of statute and the courts, it can only be said that they were not trying very hard or with much consistency. In spite of the initial popularity of the Company's courts,<sup>32</sup> their number in the mofussil of Bengal and Madras was reduced.<sup>33</sup> Stamp fees to bring a suit were pushed up to prohibitive levels: it cost Rs 1,000 in initial court charges to start an action on property worth only Rs 50,000.<sup>34</sup> The courts were denied the necessary machinery to enforce their own decrees with the result that the great majority of suits for the execution of decrees already obtained were 'infructuous'.<sup>35</sup> The Company state paid scant attention to the quality of the judiciary, which tended to consist of civil servants largely ignorant of the law but too incompetent to be given other duties, or passed retirement age and too impecunious to live on their pensions.<sup>36</sup> No reforms were made in trial procedures which had been set up originally in haste and optimism. The possibility of a near-limitless number of appeals prolonged litigation interminably, while the insistence on British conventions of evidence (especially documentary evidence) was unreal in the context of a largely illiterate society and put much potential business outside the reach of the law. Yet nothing was done to improve the situation and Indian property rights were left to be safeguarded by a legal system which could take up to fifty years to resolve a

<sup>32</sup> In most provinces, the first response of Indian society to 'Company law' was extremely positive. In fact, in Bengal it could only be described as prodigious. In 1813, 160,313 original suits were instituted, of which only 62,787 were contributed by Calcutta. See *Minutes of Evidence taken before the Select Committee on the Affairs of the East India Company*, Vol. IV, pp. 538-41. Parliamentary Papers (XII), 1832.

<sup>33</sup> Zillah courts had their competences reduced to suits worth less than Rs 5000 and their numbers cut back. *Ibid.*, Appendices 2,6.

<sup>34</sup> See J. B. Norton, *The Administration of Justice in South India* (Madras, 1853).

<sup>35</sup> *Ibid.* The problem of enforcing decrees is raised in Cohn, 'Structural Change', and P. J. Musgrave, 'Landlords and Lords of the Land', *Modern Asian Studies* (VI), 1972, and 'Rural Credit and Rural Society', in Dewey and Hopkins, *Impact*.

<sup>36</sup> Norton, *The Administration*. This incompetence showed itself repeatedly in the use by the lower judiciary of British precedents, which were not admissible under the terms of the Anglo-Indian law. The appeal courts probably overturned more judgements for this 'cardinal' error than for anything else.

contentious case or which could order the re-trial six times of a suit for property worth Rs 6.<sup>37</sup> Corruption was smugly admitted to be rife at all levels of the law but, and in sharp contrast to the revenue system, no systematic moves were ever contemplated against it. Prior to the granting of the Company's 1853 charter, the condition of the law became a *cause célèbre* and attracted a large pamphlet literature.<sup>38</sup> If only a small part of J. B. Norton's carefully documented attack on the Madras legal system was true, there would still be more than sufficient to sustain his challenge that South India existed outside the rule of law.<sup>39</sup>

In these circumstances, it may not be surprising that the courts were not always used for their 'proper' purposes in seeking the speedy resolution of disputes. Often, they were seen by litigants merely as a convenient place in which to bury 'bad' cases for years at a time, which might be lost if heard before unofficial panchayati tribunals.<sup>40</sup> This state of affairs, and the tendency which it reflected to refuse acceptance of initial court rulings and to prolong litigation by every means available, have been associated with a supposed innate litigiousness in the Indian character or with a supposed cultural haitus between the values of Indian litigants and those enshrined in the 'Western' legal system.<sup>41</sup> But

<sup>37</sup> As an example, the Sivaganga zamindari in Madras went into litigation in 1832 over a series of, admittedly complex, inheritance and debt suits, Judgement was finally delivered by the House of Lords in 1896. See Norton, *The Administration*, for a long list of débâcles.

<sup>38</sup> Besides Norton, see P. Khan, *Revelations of an Orderly* (Benares, 1848).

<sup>39</sup> See also, J. B. Norton, *Reply to a Madras Civilian's Defence of the Mofussil Courts in India* (London, 1853).

<sup>40</sup> The extent of 'informal' arbitral procedures in Indian society, to supplement the inadequacies of the Anglo-Indian law, remained enormous and provided the real institutional support to property right. This was true to a considerable degree even in urban metropolitan society. See Bayly, 'Traditional Merchants'; J. Dykes, *Salem: an Indian Collectorate* (London, 1853). In the countryside, it was even more true and various types of authority, ranging from dominant caste panchayats to paternalistic zamindar, lineage leader, local notable and village officer justice were available.

<sup>41</sup> Cohn, 'Some Notes' and 'Anthropological Notes'. The view that there was (is) a 'problem' in the way that Indians litigate and that it derives from the peculiarity of their culture in relation to that reflected in the law, which Cohn assumes without demonstrating, was shared by the British bureaucracy who had their own reasons for not wanting to be subjected to extensive checks from the judiciary. Cohn, and a number of other legal sociologists, appear to have 'objectified' colonial prejudices into the bases of social scientific problematics. For alternative views on the sources of Indian litigation, see R. L. Kidder, 'Courts and Conflict in an Indian City', *Journal of Commonwealth Political Studies* (XI), 1973; O. Mendelsohn, 'The Pathology of the Indian Legal System', *Modern Asian Studies* (forthcoming). There are two further difficulties with the Cohn 'dualistic' conception of the law, not merely for the Company period but generally. It assumes without demonstrating that the law is not extensively used for prevarication and harassment in the 'West' and that nineteenth-century British law, which provided the Western part of the Indian experience, was itself devoid of status-based, non-contractual notions of obligation. Neither assumption seems sound.

it must be asked what precisely were the Western values embedded in this extraordinary legal apparatus and whether Indian litigants were using it irrationally or rationally to its absurd specifications? If, after sixty years of experience in which they had come to know only too well the deficiencies of the courts, the Company government still attempted no remedy, it may be more reasonable to suppose that they were quite content with the apparent abuse of the law and intended it to be used in no other way than it was, and as its institutional structure suggested it should be. Outside Bengal, where the vagueness of the original Permanent Settlement and the lack of an alternative state apparatus fuelled a continuous expansion in litigation,<sup>42</sup> the system was used remarkably little, especially for disputes about land. As late as 1850 in the whole of Madras, for example, only 64,500 suits were instituted for property worth just Rs 73.5 lakhs; in N.W.P. at the same time, the figures were 69,500 suits for property worth Rs 67 lakhs. The number of suits involving land titles were 4742 and 7279 respectively.<sup>43</sup> Most of the suits concerned debts and bonds and, while some of these undoubtedly were connected with the security of land, most seem not to have been but representative of commercial transactions within mercantile 'metropolitan' society.<sup>44</sup> For provinces with populations of upwards of 25 million, based upon modes of petty commodity production which gave them perhaps 3–5 million claimants to land rights of various sorts, these statistics hardly bespeak a situation in which the law was very active in resolving disputes and securing rights to property. Nor, of course, do they bespeak a society to be noted for its overindulgence in litigation. In effect, they suggest that it would be extremely misleading to conceive the Company's purpose or effect as creating a 'free' market economy in land sustained by the rule of law. The courts scarcely engaged the issues of landed property and hence could not impose market forms upon it, even

<sup>42</sup> By 1829, the Bengal courts were trying to hear upwards of 190,000 cases a year worth Rs 6 crores in property values. *Minutes of Evidence . . . Select Committee* (1832), Apps 2,6. The expansion never slowed down, and reached proportions of some three-quarters of a million cases a year a century later. Bengal, however, was always exceptional in having, as a result of the Permanent Settlement, no real revenue administration to provide alternative channels between government and society. One suspects that the general view of Indian society as exceptionally litigious derives, in part, from a tendency to read the whole of India in the light of Bengal's peculiar problems. This certainly is the case in J. Furnivall, *Colonial Policy*.

<sup>43</sup> *Report from the Select Committee on Indian Territories*, Appendix, P.P. (x) 1852, pp. 608–95.

<sup>44</sup> This is suggested both by the fact that the heaviest centres of litigation by far were the courts of the major metropolitan centres rather than the small, semi-rural district towns and by the large participation within them of the 'higher level' financial community involved in the finance of government and trade.

had they seriously wished to (which, as we have seen, is doubtful). Landed relations were not re-constituted (at least on 'modern') lines by the Anglo-Indian law nor was the reproduction of the agrarian base a function of interactions in the market place regulated by the law.

These negative points, however, leave us with two very large questions still unanswered: what was the nature of the Company state and how were rights in land effectively defined? With regard to the first, the more carefully it is examined, the more does the Company state appear to be a continuity of the 'ancien régime'<sup>45</sup> and the less a revolutionary 'liberating' government. The key to the radical part of the Bengal programme had been the fixing of the land revenue in perpetuity and the withdrawal of government from management of the economy. Only on the completion of these policies could ownership rights in land meaningfully be separated from revenue rights and capital come to compete freely for commodities in the market. But, of course, over most of British India, the land revenue never was fixed in perpetuity, while even in the permanently settled areas its initial incidence was so high that generations passed before it ceased to be massively burdensome.<sup>46</sup> Moreover, the Company dismantled very few of the monopolies which it inherited from its predecessors and greatly strengthened some—as in opium. Early colonial India operated under a 'state mercantilist' form of economy in which the institutions of the 'ancien régime' were made more efficient, brutalized and bastardized but, significantly, not dissolved. The land revenue, for example, continued to absorb a very high proportion, perhaps 40–50 per cent, of production and thereby to

<sup>45</sup> This raises questions, which can hardly be tackled here, as to the character of pre-British state systems. The issue has been much clouded by the analytical conventions of structural-functional anthropology and the political interests of Nationalists which, together, once presented a picture of rural harmony and equilibrium. Much recent work, however, has begun to challenge these images, at least for the eighteenth century. By the 'ancien régime', the author means a state system strongly influenced by Islamic traditions of political centralization, extracting considerable quantities of surplus from the agrarian base and, in the eighteenth century if not earlier, undergoing a commercialization of its institutional forms. His reading derives from such sources as I. Habib, *The Agrarian System of Mughal India* (Bombay, 1962); F. Perlin, 'Of White Whale and Countrymen', *Journal of Peasant Studies* (V), 1978; D. Singh, 'The Role of the Mahajan in the Rural Economy of E. Rajasthan during the 18th Century', *Social Scientist*, 1974; P. Calkins, 'The Formation of a Regionally Oriented Ruling Group in Bengal, 1700–1740', *Journal of Asian Studies* (XXIX), 1970; K. Leonard, 'The Hyderabad Political System and its Participants', *Journal of Asian Studies* (XXX), 1971; H. Mukhia, 'Illegal Extortions in . . . Eighteenth Century Eastern Rajasthan', *Indian Economic and Social History Review* (XIV), 1977; Stokes, *Peasant*, ch. 3; J. F. Richards, *Mughal Administration in Golconda* (Oxford, 1975), chs 2, 8.

<sup>46</sup> See, for example, B. B. Chaudhuri, 'The Land Market in Eastern India 1793–1940', I and II, *Indian Economic and Social History Review* (XII), 1975.

remain the prime determinant of the value of land.<sup>47</sup> Land values hinged on protection and privilege from the weight of taxation: they were created in the various village offices, zamindaris, inams and specialized tenures which, on the basis of status or political function, conveyed rights to avoid or apportion the revenue.<sup>48</sup> Landed property was not emancipated from the political institutions of the state. Nor, in many ways, was commerce. Company monopolies sat across most of the more valuable areas of commerce and influenced all of the others. The principal profits of trade came from working and financing the salt, abkari and drug mahals. Until the 1830s, the Company also possessed an important stake in the textile trade and posted extra taxes on those textile merchants and producers who did not serve it.<sup>49</sup> Finance, too, was dominated by the state's fiscal institutions. 'Banking' often meant little more than financing the land revenue system or moneylending and moneychanging to facilitate state operations.<sup>50</sup>

In these circumstances, with an 'open' market hardly existent, it was inevitable that the state should take direct responsibility for the organization of production and the reproduction of the agrarian base. Political influence and force were used to establish favourable conditions for the production of various commodities such as indigo, opium, tea, coffee and sisal.<sup>51</sup> Military coercion was applied liberally to support the dominance of those playing intermediary roles in the revenue system and to help them collect revenue and maintain the peace. The Company's claim to have 'demilitarized' society was strictly a half-truth. While removing arms from the rest of society, it kept its own army closely involved in 'civil' affairs.<sup>52</sup> Groups of sepoys and auxiliaries attended the day-to-day operations of the bureaucracy. The qualities which they brought to economic relations are well caught in such documents as the Report of the Madras Torture Committee (1855) which found physical intimidation and violence to be routine elements in the revenue system.

<sup>47</sup> Obviously, the actual fertility of the soil and its irrigation context played a role in determining land's relative economic value. I mean here the relative value of the 'social' property right created in it.

<sup>48</sup> For an interesting discussion of the role of revenue shields in the pre-British period, see Stokes, *Peasant*, ch. 2.

<sup>49</sup> Through 'loom' and 'moturpha' taxes.

<sup>50</sup> For North India, see C. A. Bayly, *The Local Roots of Indian Politics* (Oxford, 1975), ch. 3.

<sup>51</sup> For the coercion involved in the indigo system, see R. Guhar, 'Neel Darpan: the Image of a Peasant Revolt in a Liberal Mirror,' *Journal of Peasant Studies* (II), 1975.

<sup>52</sup> For example, until the 1840s in most provinces, civil engineering and public works were departments of the military. The first two generations of Company raj represented a military occupation.

Very importantly, political force also was used to keep labour tied to the land and to coerce production for the market. The cash demand of the land revenue naturally obliged farmers to grow crops for exchange. In addition, the early settlements in many areas forced farmers to pay revenue on land whether they wished to cultivate it or not.<sup>53</sup> Equally, the Company recognized various types of serf and (before 1843) slave relations of labour and threw its weight behind their maintenance.<sup>54</sup> Its officials seem to have spent much of the early nineteenth century setting up serf-catching patrols and chasing runaways in order to bring them back to their masters.<sup>55</sup> The Company also tried to discourage the custom of hijrat and to prevent the physical movement of the peasantry to avoid revenue and rental exactions.<sup>56</sup> Forms of labour compulsion, validated by, and resting on, the support of the state, played a large role in the relations of production of the period.

Effective rights to landed property were forged in relation to this state apparatus. Obviously, as revenue demand was central to the value in land, the revenue department's distribution of privileged tenures and offices was of fundamental importance. The patronage of the revenue system tended over time (and Western theories of political economy notwithstanding) to be allocated to those in the agrarian structure capable of performing the services which it required, of extracting surplus and continuing production.<sup>57</sup> Ability to perform these services depended very much on the proclivities of the inherited social organization of production, which acted to mould effective rights. The precise nature of this organization varied enormously across the different Indian regions. But, in general terms, it could be characterized as consist-

<sup>53</sup> This was most obviously true of the early ryotwari settlements, see N. Mukherjee, *The Ryotwari System in Madras* (Calcutta, 1962), chs 3, 5, 10; but, by implication, it was also true of the heavy settlements initially laid on zamindars.

<sup>54</sup> In part by recognizing such relations as valid by tradition, in part by doing nothing to disturb the authority of those who commanded labour, in part by commanding labour itself on a caste differential basis and, occasionally, by re-enforcing the authority of 'masters'. For accounts of dependent agrarian relations, see D. Kumar, *Land and Caste in South India* (Cambridge, 1965); B. Hjelje, 'Slavery and Agricultural Bondage in the Nineteenth Century', *Scandinavian Economic History Review* (XV) 1967. J. Breman, *Patronage and Exploitation* (California, 1975), ch. 4.

<sup>55</sup> Especially in areas where labour shortage was acute. See D. Kumar, *Land*, ch. 5; also report of Collector of Bellary in 'General Report of the Board of Revenue', Madras Revenue Proceedings Nos 1345-46, 4 January 1821, I.O.L.; Breman, *Patronage*, p. 63.

<sup>56</sup> Collector of Bellary, *ibid.*; for the continuing possibilities of physical movement to avoid revenue exactions in Western India, see Stokes, *English Utilitarians*, ch. 2.

<sup>57</sup> An excellent account of the pragmatism of settlement practice is contained in J. Rosselli, 'Theory and Practice in North India', *Indian Economic and Social History Review* (VIII), 1971; also see R. E. Frykenberg, 'Village Strength in South India', Frykenberg, *Land Control*.

ing of corporate, kin-related patterns of land settlement shaped over a long period by attempts of the state to reduce their autonomy and by the penetration of the caste system, both of which created internal social and political differentiation.<sup>58</sup> The Company state, following its predecessors, tried to latch onto this differentiation, where it could find it, and turn it into the dominance which could be used to extract surplus. The early raj re-inforced the authority of local leaderships (headmen, vatan-dars, small zamindars, single family mirasidars, malghuzars, etc.) and subvented caste-based privileges (through inams and differential rates of assessments).<sup>59</sup> In some cases, it failed to find significant differentiation within the kin-body but was obliged to elevate it in its entirety to privilege over outsiders (bhaiachara, co-sharing mirasi tenure, etc.). The key feature of the process, however, was that although the state partially drew out these elements of potential dominance, it neither controlled nor created the context from which they came and in which they remained half-situated. In consequence, actual rights to possess and use the land remained part-conditioned by this context and dependent on the customs and norms of the local agrarian community. These customs and norms (institutionalized in the authority of panchayats, lineage leaders, caste and religious deference, etc.) played at least as large a role in determining the relationship of society to the land as did the granting of state privilege in the first place. In fact, the exact character of, and safeguards to, rights in the land continued, as before, to reflect the condition of a political struggle between the state and the agrarian community for control over production and surplus.<sup>60</sup> Access to the land and rights to its use were squeezed out and distributed in the course of this struggle. The British settlement of the land rested upon a

<sup>58</sup> See Perlin, 'White Whale'; Stokes, *Peasant*, chs 2, 3; B. Stein, 'Integration of the Agrarian System of South India', in Frykenberg, *Land Control*, for Vijayanagar and Muslim periods.

<sup>59</sup> In the turbulence of the early days of, especially, ryotwari settlement, claims sometimes were made that an egalitarian settlement had been made, and occasionally enthusiastic Collectors responded to the claim. However, the élitism of even this, the most direct, form of settlement can be seen in such statements as: 'It never was intended that the Ryotware [*sic*] settlement should go lower than the landholders and Meerassidars; it never could have been meant that their cultivating sub-tenants should be immediately included in the engagements with the Circar.' 'General Report . . . 1820', MRP Nos 1441-47, 4 January 1821, IOL.

<sup>60</sup> This never was, and never had been static, and it is no part of the case for continuity outlined here that groups currently possessing land did not suffer under the British. There is evidence, especially from North India, that a few 'resident' cultivating groups were dispossessed. Metcalf, *Land*, ch. 3; Stokes, *Peasant*, chs 3, 6, 7. But the process dispossessing them derived from the politico-revenue system in ways which were not new to British rule. Once again perhaps our judgement of colonial novelty has been made difficult by assumptions about a prior stasis.

series of political deals, flexible and changeable, which offered and withdrew revenue privileges to intermediaries situated between itself and agrarian society and trying to play roles which satisfied, in some measure, the demands of both.<sup>61</sup>

In spite, then, of its frequent avowals to the contrary, the Company state was not bent on creating a free market economy sustained by the rule of law. It did not, at least willingly or consciously, dismantle the ancien régime's revenue system and institutions of economic management. Indeed, it worked them more intensively than they had ever been worked before. Its effective revenue demand was much higher than that of previous régimes (prior to the 1820s by intent and, thereafter, by 'accident')<sup>62</sup> and bore more heavily on the value of land. It reduced several of the investment and re-distributive functions of the old state system (takkavi, maintenance and extension of irrigation works, etc.) and increased the use of force to secure surplus and the continuation of production. Against this background, its elaboration of a legal system which treated and protected landed property as if it existed at a remove from the state, as a private subject's right, was pure farce (and plainly regarded as such by the mind of local administration). But what brought the Company to abandon so completely the revolutionary elements in the Bengal settlement and to continue a state system of whose inutilities late eighteenth century Anglo-Indian statesmen had been only too aware?

The elements of continuity in 'the first century' of colonial rule frequently have been seen to derive either from fears which the British possessed that, by disturbing the bases of religious and traditional authority, they would unleash revolt against their rule or from administrative and political weaknesses which made them dependent on ill-controlled collaborators.<sup>63</sup> These constraints on action obviously existed and cannot be dismissed. However, they may have been less severe than is often supposed and, of themselves, do not explain very adequately the Company's activities. It is clear, for example, that colonial rule did

<sup>61</sup> If the penalty for failing to meet British demands was loss of revenue rights and offices, the penalty for failing to protect local subsistence and security needs was migration and occasionally revolt.

<sup>62</sup> Even the Company admitted that, prior to the 1820s, its revenue demands had been exorbitant and had created chaos. In most provinces, it thereafter set about lowering and regularizing payments. However, from the late 1820s to the 1850s, most parts of India underwent a serious depression in grain prices and the Company's cash demands may not, in the end, have been much lower in real terms although expanded cultivation helped them to be met.

<sup>63</sup> For example, Derrett, *Religion*, chs 8, 9; R. E. Frykenberg, *Guntur District 1788-1848* (Oxford, 1965), conclusion.

disturb the bases of religious and traditional authority. There was support, overt and covert, for Christian missionaries;<sup>64</sup> relationships between Hindus and Muslims were placed on a drastically different basis;<sup>65</sup> the Brahminization of the Hindu law represented a real revolution in domestic and social mores, which was pushed through in the face of considerable opposition.<sup>66</sup> Moreover, the struggle on the land produced many casualties among the 'traditional' élites.<sup>67</sup> If the Company could afford to take these risks, which served no coherent purpose of its own, why should it not have attempted to restructure society along lines in which it claimed to see positive value? Equally, the weakness evidenced in the Company's relationships with its indigenous collaborators can easily be over-estimated and misunderstood. Occasionally, the state did show an ability to change the groups from which it drew its intermediaries, and regularly to change individuals within the groups.<sup>68</sup> More significantly, whatever the limitations on control, these collaborators were producing for the Company higher levels of surplus extraction than any previous indigenous state had enjoyed. What both of these formulations may miss is consideration of the general forces restricting the freedom of the Company to reconstruct society and manipulate the various types of collaborator available to it. It was the pressure of these forces which dictated, more precisely, the degree of innovation which the early colonial state could make, and they can only be understood by taking a wider view of the content.

Two particular aspects of the context in which the Company had to operate seem especially important. First, there was the military imperative. Throughout the first third of the nineteenth century, and for longer in some provinces, the Company was still trying to establish its rule by force of arms and was engaged in continuous military activity. This placed an enormous drain on state resources and had to be met by maximizing tax yields.<sup>69</sup> Second, there was the problem of organizing the production and marketing of high value crops, from which both the government and its various commercial partners took profit, in econo-

<sup>64</sup> See, for example, T. Metcalf, *The Aftermath of Revolt* (Princeton, 1965), chs 1, 2.

<sup>65</sup> Especially in Bengal.

<sup>66</sup> As in South India, articulated by such civilians as J. H. Nelson. See Derrett, *Religion*, ch. 9.

<sup>67</sup> For example, among some of the Rajput warrior clans of North India. See R. G. Fox, *Kin, Clan, Raja and Rule* (California, 1971), chs 3, 5; Stokes, *Peasant*, ch. 3.

<sup>68</sup> In both Bengal and North India, for example, the social composition of revenue rights' holders showed some tendency to move from a basis in the 'warrior' to the 'mercantile' and 'bureaucratic' élites. Sales for default and occasional bureaucratic purges also moved individuals around.

<sup>69</sup> See Rosselli, 'Theory'.

mic conditions of land plenty and labour scarcity. Although the land: man ratio varied enormously across India, and some scrub regions of the interior had scarcely been populated at all, there are strong grounds for believing that the eighteenth and early nineteenth centuries were periods of demographic crisis even in the wealthier and traditionally more developed tracts. There is evidence that the wars which followed the weakening of Mughal power devastated several of the centres of prosperity in Northern and Central India, while the struggle between the Company and Mysore had serious effects on South India. Moreover, cyclones and famines at the close of the eighteenth century destroyed cultivation in the rich lands down the East Coast. Bengal may have lost a third of its population in the 1770s and, in coastal Andhrapradesh, the productive capacity of many estates was thought to have declined by four-fifths during the 1790s.<sup>70</sup> The initial settlement reports of the Company in most provinces make mention of extremely favourable rates of taxation being offered by zamindars and village leaders to attract paikasht or pykari wandering cultivators to their lands; and contain many suggestions that, compared to heights achieved more than a century before, the extent of cultivation was low.<sup>71</sup> Circumstances of land plenty and labour shortage, of course, limit the possibilities of subordinating labour and peasant production to the market.<sup>72</sup> Both have easy and continuing access to the means of subsistence and can retreat. Their engagement will depend heavily on the level of rewards, compared to the subsistence risks, available in the market. But, in the context of the Company state, this was not high. The weight of state taxation, the depressed condition of the market between the late 1820s and the 1850s and the constant climatic threat to subsistence all restricted the appeal of 'voluntary' production for market exchange, at least on anything approaching the scale required by the Company and its allied mercantile capitalist interests.

It is very difficult to see how the early Company raj could have coped with these twin imperatives in any other way than it did. Without a high revenue yield and close political management of the economy, it would have risked military defeat, bankruptcy and internal collapse. But while the land revenue was heavy and the institutions of management remained in place, there was clearly little scope for free market relations to develop. The relationship between this situation and the social continuities reflected in the raj's structure lies, of course, in the extent to

<sup>70</sup> See 'Special Commission on Permanent Settlement'.

<sup>71</sup> For example, see *ibid.*; also 'General Report . . . 1820', *passim*.

<sup>72</sup> See J. Goody, *Production and Reproduction* (Cambridge, 1976).

which the Indian régimes which the Company replaced had faced very similar problems and had already designed state institutions to cope with them. The British inherited the cash demand revenue system, which coerced market production, and the various political deals with local notabilities and peasant corporations (symbolized in inam grants, village offices, corporate tenures, etc.) which continued production and maintained the revenue flow. They took over a state system well-adapted to its environment. Although they appear to have contemplated innumerable alternatives, and tried a few, as soon as difficulties were encountered they inevitably came back to their inheritance. Ultimately, the Company's governing strategy may best be understood as adapting to its own ends the state structure which it had been bequeathed in order to raise its efficiency (which meant cheapening its costs by substituting force for patronage wherever possible). Its opportunities for qualitative innovation were strictly limited.

Against this background of a state-dominated economy and an agrarian society in which the possession of land was a function of the political system, the Anglo-Indian law begins to take on a different set of meanings. Its main purpose, so far from protecting the private rights of subjects, may be better seen as providing a range of secondary services for the Company, both as 'state' and as 'shield' for European business interests, which helped to translate political power into money. While the extraction of primary production and its insertion into the market was accomplished by the apparatus of the state, that apparatus itself had become thoroughly penetrated by capital. Following and extending tendencies which had arisen in the eighteenth century, state rights in monopolies, in the currency and in the revenue system had been put out to competitive tender (the difference between pre-colonial tax farming and the colonial fast turnover market in zamindari titles being perhaps more notional than real).<sup>73</sup> Mercantile capitalists bid against one another for what amounted to the right to work state institutions for their own profit. In consequence, a great deal of private capital was tied up in the business of government. It was clearly essential for the state that this capital be kept in motion and that commercial transactions affecting its finances be secured. The cost of market anarchy at the level of the state was declining tax yields and liquidity problems of its own.

<sup>73</sup> For comments on the growth of tax-farming and state commercialization in the eighteenth century, see H. Furber, *John Company at Work* (Harvard, 1948), chs 6–8; Calkins, 'The Formation'; Perlin, 'White Whale'. In some regions, commercial principles had penetrated the revenue system down to the village level and village offices and rights to share in dominant community assets were bought and sold. See also Ludden, 'Mirasidars'.

Motion and liquidity were both facilitated by the conventions of the public law, especially in relation to the parallel Hindu personal law. In fact, the rules regarding sales for value and the honourability of 'fair' debts and 'reasonable' contracts created a bailiff's paradise. At least with regard to movable property, these rules were held to be superior to the constraints of the Hindu law. A sale for value was valid even if the vendor had sold ancestral property to which he had no private title; debt commitments had to be met, if necessary also from ancestral property which the debtor had no right to mortgage in the first place. The Hindu law offered no shield to responsibilities undertaken by the individual in the market place.<sup>74</sup> But what this meant was that the assets of the entire joint-family were standing as security for the liabilities of each and everyone of its individual members. Liability was vastly extended and assets could always be found to service any debt. Thus the wheels of commerce were kept turning and, as the ultimate creditor in a vast range of transactions, the state was well secured. The Anglo-Indian law also helped European capital to penetrate the sphere of Indian finance. Prior to the law's establishment across India, European capital had been in a distinctly difficult position outside the courts of the presidency towns and dependent upon Indian justice for its security. Now it could relate to indigenous business on more than equal terms. Not only was there likely to be racial sympathy between the 'white' higher judiciary and British mercantile interests, but the personal law of Europeans gave them distinct advantages over Indian rivals. Whereas their Hindu debtors stood liable to the full extent of joint-family assets, they themselves could be liable for no more than their personal fortunes.<sup>75</sup>

The practice of the Anglo-Indian law cannot be divorced from the political structure of the colonial state. It never achieved the autonomy from 'the executive' which the late eighteenth century Bengal authorities proposed for it. The law functioned in the main to regulate the relations of urban commercial groups in the interests of the colonial power. Its concern with 'traditional' social forms, while no doubt reflecting a genuine desire to avoid social disturbance, also aided the collection of debt, which was of more than passing importance to an essentially extractive state. While these forms did very little to free the market entrepreneur in Hindu society, this hardly mattered for the open market was not operative in the agrarian base and was directing neither its

<sup>74</sup> Derrett, *Religion*, chs 9, 12.

<sup>75</sup> The relative freedom of European businessmen, compared to the restraints on Indian entrepreneurship, created a species of legal 'dualism' not essentially dissimilar to that to be found in Dutch Indonesia or, later, in colonial Africa.

production nor reproduction. These were left to the ebb and flow of political relations stemming from the conjuncture of state and local corporate institutions. In effect, the first phase of colonial rule subjected India less to the rule of property and law than to that of bureaucratic despotism and state monopoly.

From the middle decades of the nineteenth century, property law began to undergo a set of profound changes. The incidence of litigation rose sharply and cases concerning disputes about landed property (including its relations of tenancy, rent and debt) became very much more common.<sup>76</sup> To cope with the new pressures, the legal system was both expanded and streamlined by the imperial government. The number of courts was increased, the appeals procedure was foreshortened and the formal costs of litigation were reduced.<sup>77</sup> Agrarian society now was placed in much closer contact with the concepts and practices of the Anglo-Indian judiciary, and given far better access to its institutions and powers. The period from the Mutiny to the First World War was the great age of civil litigation in India and, if ever the rule of law was established, it was in these years.

Behind the new circumstances of the law, it is possible to see important changes in the socio-economic and political contents. First, the general increase in population was reaching levels at which it reversed the relationship between man and the land.<sup>78</sup> Land itself was becoming scarce and the object of more intense competition, which existing customary and state institutions had difficulty in containing. Labour was becoming more plentiful and being pushed into a 'natural' position of subordination. These conditions increased the use value of land and reduced the need for 'artificial' political instruments to secure its utilization. Second, the rural economy came out of its long depression and passed into a period of growth which lasted, broken only by the occasional and regional famine, until the 1920s. Grain prices rose steadily,

<sup>76</sup> For example, by the later nineteenth century, the number of suits instituted in Madras and U.P. was running at an annual average of over 200,000. See *Reports on the Administration of Civil Justice* by the various provincial governments, annual series. Bengal, by this time, had broken through the 600,000 a year barrier.

<sup>77</sup> Details of the changes are contained in the *Reports on . . . Civil Justice* 1862-65.

<sup>78</sup> The point of crisis, of course, was reached at different times in different places. Bengal may have reached its own limits as early as 1860; parts of Southern India continued to expand to the 1920s. As with all the generalizations in this essay, this one is a loose aggregate hiding many local variations. But the turn of the century has been noted as a watershed in the history of North, Central and parts of South India. See D. Kumar, *Land*; Stokes, *Peasant*, ch. 11; W. Neale, *Economic Change in Rural India* (Yale, 1962), ch. 8; R. Ray, 'The Crisis of Bengal Agriculture', *Indian Economic and Social History Review* (X), 1973.

while railways and steam shipping helped to open out the production of the interior to wider opportunities in the world market. And third, the state fell back from its roles of dominance over, and management of, economic activity. Its monopoly controls weakened and progressively lost their significance. Over a long period, Parliament had chipped away at them for, while no doubt serving well those interests which could gain contracts and licenses, they operated at the expense of those which could not. Further, the declining value of several of the old staples, such as opium, together with the expansion of commerce in areas outside state control, reduced the weight of the residual monopolies (in salt and abkari) in the overall economy. The transfer of governing authority from the Company to the Crown in 1858 symbolized the final part of the transition from mercantilist monopoly to free market competitive economy. More significant than the liberation of commerce, however, was the easing of the land revenue burden. Established in an era of stagnant and even declining prices, the land revenue systems of British India allowed for revision of the cash rates of assessment only every twenty-five to thirty years (if at all). The price rise caught out the raj and it never managed to devise a means of keeping land revenue rates even close to inflation. The gaps between resettlements were too long to permit any kind of forward planning and tridecennial revenue revisions provoked fierce displays of political resistance which often obliged compromises and reductions. Between 1880 and 1920, the proportion of total government receipts represented by the land revenue fell from 43 per cent to 23 per cent.<sup>79</sup> Estimates of the fall in real value are difficult to make. But, in South India at least, the weight of the land revenue in relation to the value of agricultural produce may have declined by as much as two-thirds between 1860 and 1920.<sup>80</sup> It was this which marked the real 'property' revolution in the Indian state. It combined with the growing profitability of agriculture and scarcity of land to give land a much greater exchange value, independent of the revenue assessment, and it weakened the political authority of the revenue bureaucracy over the distribution of effective property rights.

The new context established the basic conditions which made a

<sup>79</sup> These figures refer to gross income from taxation not gross government revenues. *Finance and Revenue Account of the Government of India for the year 1880-81* (Calcutta, 1882), pp. 4-5; *ibid.*, 1921-22, pp. 3-4.

<sup>80</sup> The average assessment per acre of cultivated land (regardless of type) rose only from Rs 1.7 to Rs 2.1. Grain prices rose by at least an average of 120 to 180 percent, depending on type; and much land was converted from the low-yielding dry grains to high-value cotton and groundnut. See *Reports on the Settlement of the Land Revenue in the Districts of the Madras Presidency*, Annual series.

competitive market economy possible. However, if the logic of that economy was to grip the agrarian base, it was essential that the law change both its role and its social biases. The growing distance of the state from the sources of production left it up to the 'free' interplay of class forces to sustain production for the market and to reproduce labour on the land. As in all competitive capitalist societies, it would be the job of the law to regulate this interplay and to provide the political instruments of class domination, which secured production and reproduction. The new role expected of the law, however, cruelly exposed the contradiction currently within it between the 'public' and 'personal' principles. Now that the institutions of state mercantilism were in decline, the constraints on property relations imposed by the Hindu joint-family and corporate- and status-based forms of landholding were no longer functional to colonial needs. Indeed, they stood in the way of Indian capital coming to develop the very active entrepreneurial duties now expected of it.<sup>81</sup> If the conditions implied by the new context were to transform agrarian society, the sphere of 'amoral' market relations assigned to Indian capital must needs be greatly expanded. Indian property relations would have to undergo very much the same kinds of change as British property relations during the transition to advanced market capitalism: concepts of community trust and moral obligation would have to weaken in favour of the freedom of the individual.<sup>82</sup> The price of these developments not taking place would be to leave society without the means of responding to its new situation. In fact, without the state to coerce market production any longer, it would be unclear what dynamic could lie behind the development of production.

To some degree, the law shouldered the enormous burden thrown upon it. It moved in various ways to beat back the frontier of the personal law and to disentangle private property rights from the institutions of the Hindu family and from the functions of ascriptive status and political office. In the zamindari areas, the rise of competition rents put pressure on the vague and uncertain domain of landlord/tenant relations. In part, the law responded by strongly favouring the proprietorial side and creating instruments to improve rent collection and landlord control. Landlords were helped to distrain defaulters' properties, eject at will at the end of leases and raise their rents.<sup>83</sup> Elsewhere, community

<sup>81</sup> That is to say, entrepreneurial in the commodity and export trades, where indigenous banking capital did most of the local spadework for both the state and British business. There was, of course, no expectation of an active industrial role.

<sup>82</sup> See Tawney, *Agrarian Problem*; also A. Harding, *A Social History of English Law* (London, 1966), chs 11, 12.

<sup>83</sup> This was the ostensible purpose of the various Rent Recovery Acts of the 1860s.

rights of veto on private land alienations became increasingly difficult to enforce at law; while even some intra-familial constraints, such as the theoretical check on fathers of sons, fell into desuetude.<sup>84</sup> In the market, a variety of measures made land more easily transferable. 'Traditional' usury laws were weakened; where still uncertain, the right to acquire ancestral land to meet the unrepaid debts of individual joint-family members was strengthened;<sup>85</sup> the growth of registration departments and documented property title improved land's legal security and freed it for exchange from prescriptive social encumbrance.<sup>86</sup> Much land locked up in status- and role-specific inam tenure became converted into freehold private property which could be used and alienated freely.<sup>87</sup> The revenue system progressively dropped caste differential rates of assessment, which had created artificial land values which were difficult to realize through sale. Finally, various property-holding public trusts, such as temples which had been directly supervised by the state, were turned into semi-private corporations responsible only to the courts. As the law assumed a role of far greater centrality in the property regulations of society, so it began to alter its character and to conceive the rights involved in property much more in terms of private ownership and use. Several pre-existing areas of moral and social constraint were reduced in scope. The transition to a competitive private capitalist social system was emergent.

Or so it might seem. Yet a closer look begins to raise questions about the slowness and timidity of the process and, indeed, to catch sight of a remarkable counter-movement against it. Progress in dismantling the Hindu law was greatly hindered by the 'assumption' of the law which took place in the 1860s<sup>88</sup> and by the determination with which the Government of India maintained the ban on religious and social interference. The first measure restricted what little flexibility the judiciary may have possessed to manoeuvre between different scriptural authorities and pandits' interpretations to innovate. The 'assumption' now fixed the norms and relations of Hindu ethics and left society to try and

<sup>84</sup> Derrett, *Religion*, ch. 12; on the individualization of 'community' mirasi rights in the period 1862-77, see Ludden, 'Mirasidars'; on Punjab, see Kessinger, *Vilyatpur*, chs 1, 6.

<sup>85</sup> Whitcombe, *Agrarian Conditions*, ch. 5.

<sup>86</sup> *Ibid.*

<sup>87</sup> In South India, for example, this was the principal purpose of the Inam Commission, which completed its work in 1869. See *A Collection of Papers relating to the Inam Settlement of the Madras Presidency* (Madras, 1906).

<sup>88</sup> From 1864, the Anglo-Indian law 'assumed' its knowledge of Hindu ethics to be adequate and dismissed its pandits. Interpretation thus became fixed. Derrett, *Religion*, ch. 9.

accommodate itself to the pressures of the epoch with mores frozen in the Vedic age (or what nineteenth-century jurists thought was the Vedic age). The ban on religious and social legislation prevented reform even when the need was obvious and the support strong. The rigidity of the law and the state's determination to preserve its version of 'tradition' are well seen in the 'Gains of Learning' agitation in South India. In spite of strong pressure from the educated élite to redraw the line between 'individual' and 'ancestral' property in order to allow at least professional earnings to be regarded as individual property, the law was unmoved until the 1930s. More than twenty legislative Bills were sent from Madras to Calcutta and New Delhi but they all came back.<sup>89</sup> There was, in the end, remarkably little movement to contract the vast sphere of right allowed to the joint-family nor was there much easing in the caste proscriptions of certain types of market activity. Indeed, with access to the courts becoming wider, the existing provisions began to have more serious consequences. Litigation to enforce rights to property in the inflated Hindu family seems to have become increasingly common; while the courts also made their presence felt by preserving the conventions of caste and religious deference against growing attempts to change them from below.<sup>90</sup>

But it was not only that the law stayed put. Through statute, it was advancing to develop new forms of constraint and prescription. The concept of occupancy tenure, validated on the grounds of tradition, came increasingly to qualify proprietary right. From 1859, a mountain of tenancy legislation began to grow in all the provinces with permanent settlements, steadily extending tenant right and bringing the freedoms of the landlord under closer control. It represented the first stirring of that logic which, in North India, was to bring about a redistribution of property right from large zamindars to small holders and was to reach completion only at zamindari abolition in 1951.<sup>91</sup> The laws of contract with regard to indebtedness came under similar pressures. As land, rather than revenue rights, became valuable and the object of acquisition by capital,<sup>92</sup> so the legal conventions regarding contract went into reverse. The judiciary were instructed to examine the terms of mortgages and debt bonds in the light of 'fairness' (an increasingly ubiqui-

<sup>89</sup> See my *The Emergence of Provincial Politics* (Cambridge, 1976), ch. 5.

<sup>90</sup> On the widening of precedents in family and caste law, see Derrett, *Religion*, ch. 12; also Hardgrave, *The Nadars*, ch. 3.

<sup>91</sup> See Stokes, *Peasant*, ch. 9; Neale, *Economic Change*, chs 6, 7.

<sup>92</sup> These had not been totally separate before but the incidence of cultivators' dispossession as a result of changes in revenue right seems to have been small and unusual. In the years c. 1840-80, however, it is noticeable that sales of intra-village lands

tous if utterly vague concept of the period) and, more importantly, were empowered to reduce or abrogate at will the contractual stipulations of those which failed the test.<sup>93</sup> In several provinces, legislation carried this revision even farther and introduced prescriptive social identities into the market to outlaw certain actors. In Bombay, 'urban' moneylenders had their abilities to take land to meet debts severely curtailed;<sup>94</sup> while in Bundelkhand and the Punjab, a list of castes was proscribed from all additional acquisitions of land.<sup>95</sup> Not only 'the peasant' but also the 'landlord' could enjoy the special protection of statute. Most provinces developed Encumbered Estates and Court of Wards Acts which functioned as 'shields' to safeguard the properties of certain 'ancient and prestigious' families from loss for debt or other market irresponsibilities.<sup>96</sup> Although the legislatures certainly preferred to act on the basis of 'discovered' traditions (however fictitious), they need not necessarily do so. When special primogeniture provisions were applied to inheritance systems, there was no pretence that they represented anything other than innovations. Significantly, however, they were not applied generally to facilitate accumulation or even to prevent the fragmentation of peasant smallholdings, and they did not give individuals greater control over their property. They were applied only to 'ancient and prestigious' families to prevent their estates from being partitioned.

The conventions of the law, then, did not move very far or fast to accommodate the social imperatives of market capitalism. They served at least as much to shore up 'antique' social institutions and rights as they did to pave the way towards a society based upon individualism and competition. They confused the definition of property right and maintained the personal/public law contradiction. It would be easy perhaps to associate the slowness of 'progress' with the enervate and conservative qualities of agrarian society itself or with the weaknesses of the objective market pressures for transformation. Certainly, there were forces of resistance to change in rural society and, until perhaps the turn of the twentieth century, it was unclear how seriously Indian agriculture required structural innovations to make it market-worthy. However, to

for revenue default took place on a larger scale and that zamindars also were 'selling' the lease rights of defaulting tenants. Sometimes these lands fell into the hands of non-members of the agrarian community (such as moneylenders) who had revenue rights earlier.

<sup>93</sup> See, for examples, *Report on . . . Civil Justice in Punjab*, 1868-69, and annually through the 1870s. This was also practice in Madras.

<sup>94</sup> As a result of the Deccan Agriculturists' Relief Act of 1879.

<sup>95</sup> See N. G. Barrier, *The Punjab Alienation of Land Bill of 1900* (Duke, 1966); also Stokes, *Peasant*, ch. 11.

<sup>96</sup> A. Yang, 'An Institutional Shelter', *Modern Asian Studies* (XIII), 1979.

emphasize these features alone would be to miss the fact that Indian society itself did contain a range of forces critical of the timidity of the law and demanding politico-legal changes more appropriate to market forms of capitalism. Large landholders frequently petitioned for improvements in their rights over property;<sup>97</sup> mercantile capitalists, such as the Nattukottai Chetties of South India, began to vote on the issue with their feet and to take their capital out of India in protest at legal insecurities and frustrations;<sup>98</sup> even the Congress took up the cause of the embattled creditor.<sup>99</sup> Moreover, the crisis in the agrarian economy at the end of the 1890s, when widespread famine coincided with the collapse of favourable exchange rates, indicated that, whatever else, agriculture remained seriously undercapitalized and had not attracted an adequate level of investment to its current needs. The case that the social and economic pressures for more radical change in agrarian relations were very weak is arguable at best. What is less contentious and much clearer, however, is that the raj itself was resisting these pressures and was concerned to try and hold up the existing agrarian structure.

The attitude of the colonial state towards a hypothetical capitalist transformation of agriculture was notoriously ambiguous. On the one hand, a great many of the imperatives towards competitive market relations emanated from its own activities. Although of declining weight, the land revenue demand continued to oblige production for the market and, until the twentieth century, to be the prime cause of exchanges in landed property rights (which now represented less tax collecting privileges than physical possession of, and access to, the land). The raj was also responsible for opening up the agrarian interior to deeper market penetration by building the railways and port facilities and sustaining the currency and credit systems of the colonial primary product exporting economy. In fact, its own finances depended critically on the success of this export (and the reciprocal import) trade and

<sup>97</sup> Such petitions were the main business of the various Landholders' Associations. It is clear that some large zamindars, contrary to their general image of feudal sloth, did try to run their estates on profit-maximizing lines and to invest in production and commerce. See Musgrave, 'Landlords', pp. 274-5; Stokes, *Peasant*, ch. 8; D. Kolf, 'A Study of Land Transfers in Mau Tahsil, Jhansi District', K. Chaudhuri and C. Dewey (eds), *Economy and Society* (Delhi, 1979).

<sup>98</sup> A leading Nattukottai Chetty gave the character of the legal system as the prime reason why his community preferred to work in South East Asia. *Madras Provincial Banking Enquiry Committee. Evidence*, IV, p. 243. Under rare favourable conditions 'banias' showed themselves capable of undertaking active development roles. See Stokes, *Peasant*, ch. 11, Kolf, 'A Study'.

<sup>99</sup> Especially in the wake of the Punjab Land Alienation Act.

it could not survive without the progress of market production. Yet, while needing and wanting economic growth in the primary sector, it set its face hard against most of the social changes which were corollaries of and facilitated that growth. The continuing conservative tendencies in the law can be traced mainly to the legislative activities, or inactivities, of the executive which refused to permit the courts to respond to the pressures on them for change.

Nor was it only by manufacturing laws that the state restricted the possibilities of the social development of market relations. It absolutely refused to build the 'modern' administrative structure necessary to underpinning such freedoms of the market as the courts were coming to provide.<sup>100</sup> The essential development of an efficient and centrally-disciplined police force, to protect 'legal' rights, safeguard the emancipation of the individual from community constraint and impose the rule of law, was neglected. The 'police' continued to be drawn from locally dominant (or warrior/criminal) castes and to be the agents of local agrarian élites. Equally, the bureaucracy notably failed to provide the courts with the facilities which would enable them to convey their jurisdictions to society. In spite of their new role and increased business, funds to sustain the courts and facilitate their use were kept painfully short. The expansion in the number of courts, especially in the rural areas, was slow; little executive machinery was afforded them so that, in most provinces, the proportion of their decrees which could be enforced was negligible; with the new weight of business, delays in obtaining legal arbitration remained enormous.<sup>101</sup> In effect, if the rule of law were meant to provide the social and political force driving the market economy, the raj was doing its best to see that it had little power.

The legal and political environment which the raj was creating for the operation of market forces and the penetration of capital remained contradictory. While not undermining the relations of the market or preventing capital entirely from engaging petty commodity production, it limited the social possibilities of development, failed to provide capital

<sup>100</sup> Many writers, including this one, have discussed the modernization of administration in the later nineteenth century. It was, however, a process initially confined to the nature of the state's own bureaucracy. Reflecting perhaps a continued antipathy to the rule of law, the executive did very little to centralize judicial authority or, critically, to re-build the police until much later.

<sup>101</sup> See *Reports on . . . Civil Justice* for the various provinces. In Madras, as an example, the average waiting time for a suit to be heard was 9-13 months, during which, if it were a debt-suit, interest could accumulate only at the rate of  $6\frac{1}{4}$  per cent per annum, which was derisory in terms of the market rate of interest. Then, of course, the appeals procedure could begin. At all times, about two thirds of petitions for the execution of decrees were classified as wholly or partially infructuous.

with instruments to subordinate production and gave social groups resistant to the demands of the market much scope for manoeuvre. The clearest sign of the problem was the difficulty which large accumulations of capital, whether made during the mercantilist era in revenue and monopoly speculation or imported from outside, encountered in gaining direct access to, and control over, agricultural production. Adequate access and control, of course, meant having the ability to dispossess resident cultivators. Yet the biases of the law, the potential for prevarication contained in its processes and the lack of executive machinery to enforce decrees if won, made dispossession, at least by outsiders to the agrarian community, a parlous exercise.<sup>102</sup> The cost of this impotence, from the perspective of capital, was to reduce the pressures of competition at work in the market and the possibility of investment in the means of production. If landlords could not charge competition rents, what forces drove peasants to increase production? If they could not re-possess their tenants' lands, why should they invest in improving them?<sup>103</sup> If urban and mercantile capitalists did not possess the ultimate sanction of being able to seize their defaulting debtors' lands, how could they impose the rhythms of the market on production? Indeed, without this sanction, what kind of security was offered them to invest at all? A large gap was opened up and perpetuated between existing large accumulations of capital and the productive base. This had several implications for the character of both.

First, and, obviously, it tended to limit capital to relations of rentierism, commodity speculation and short-term usury. Profits of a kind could be made in these with less difficulty than in confronting the agrarian community for control of the land.<sup>104</sup> Second, capital was

<sup>102</sup> The continuing 'diffusion' of effective authority in late nineteenth-century North Indian society is the subject of Musgrave, 'Landlords' and 'Rural Credit' and also, 'Social Power and Social Change in the United Provinces 1860-1920', Chaudhuri and Dewey (eds), *Economy and Society*.

<sup>103</sup> The general failure of zamindars and other rentier proprietors to maintain, let alone improve, irrigation works was the cause of endless complaint in this period. As an example, see *Land Revenue Madras*, 1904-05, 'Report on Chingleput'.

<sup>104</sup> For reasons of analytical convenience, it is going to be supposed that a sharp break can be made between members of the agrarian community, involved closely in the processes of production, and members of a metropolitan community who were distinguishable from the agrarian base and lived (whether capitalistically or feudalistically) on the profits of rent, revenue and commerce. The author is only too aware of the difficulties involved in applying this 'break' to reality where, certainly in densely populated and irrigated zones, 'metropolitan' groups such as mirasidars, petty Rajput landholders and Brahmin service families held village lands. None the less, he feels that the distinction serves some purpose in highlighting differences in the social and economic constraints on the uses of capital among groups located differently in the social structure.

deflected from productive investment in agriculture and pushed towards other uses. Landlord profits tended to drift off into further rent rights and urban property speculation or into the maintenance of the luxury display which supported the politics of rentierism.<sup>105</sup> Mercantile profits either stayed in moneylending and commodity speculation or, before the growth of industrialization, found outlets overseas or in revenue rights. Third, one consequence of failing to subordinate the agrarian base to capital was to leave it vulnerable to the vagaries of nature and insensitive to market changes. This increased the risks for those capitalists who speculated in its commodities, encouraging them into diffuse, risk-splitting operations which avoided concentration and consolidation in single activities.<sup>106</sup> But concentration and consolidation were essential to lowering costs and raising efficiency. And fourth, all this left a large measure of control over production with the small-holding farmers and petty village landowners who laboured, or directed labour, on the land.

It was not, of course, that these groups were entirely incapable of increasing market production or of developing the forces of production. They had been involved in a market context, albeit one imposed through the revenue system and the state, for generations. Their various patterns of internal differentiation were underpinned, now that revenue privileges were losing their value, by profits made from commodity production and exchange. Their internal relations showed an increasing stress on the status given by wealth rather than genealogical descent or political office. The commercial capitalism encouraged by the growth of the colonial export trades and of internal commodity markets made an obvious impression on, and elicited an obvious response from, 'village' society.<sup>107</sup> It was rather that, in this context, there were severe limits on their ability to secure and qualitatively improve production on the land. First, for many small producers, a large part of the profits of production tended to be secured by moneylenders and market operators. While, and increasingly, larger producers may have done better and, indeed,

<sup>105</sup> Metcalf, *Land*, chs 11, 12. Among petty landholding 'service' groups, investment in education was another use for agricultural profits.

<sup>106</sup> For the extreme 'risk-context' of North Indian banking and mercantile operations, see C. A. Bayly, 'Old style Merchants and Risk', paper read at conference on risk in South Asian social and economic history, University of Pennsylvania, 1977.

<sup>107</sup> For examples, see my 'Country Politics: Madras 1880-1930', *Modern Asian Studies* (VII), 1973; D. Hardiman, 'The Crisis of the Lesser Patidars', D. A. Low (ed.), *The Congress and the Raj* (London, 1977); N. Charlesworth, 'Rich Peasants and Poor Peasants in Late Nineteenth-Century Maharashtra', Dewey and Hopkins, *Impact*; J. Banaji, 'Capitalist Domination and the Small Peasantry', *Economic and Political Weekly* (August), 1977.

acquired some of these profits from small neighbours, the surplus was seldom of a kind to finance heavy fixed investments (other than wells). The scale of production and landholding at this level of rural society was not such as to generate sufficient private resources. Such resources would have to be borrowed and, in the absence of cheap state finance, this created a second problem. The risks of large-scale borrowing were penal. Most of the markets served by Indian production were highly volatile and difficult to predict. Moreover, the growing scarcity of land (the means of subsistence) was starting to make it very precious. To mortgage its future possession against an investment loan was to gamble for very high stakes. Indian farmers showed an almost universal aversion to long-term borrowing on the security of the land.<sup>108</sup>

And third, continuing community conventions, in part enforced by the conservatism of the law but in part filling the social vacuum created by the absence of the institutions of a modern state, constrained the forms of entrepreneurial activity. Although, indeed, there was competition between farming families for the land, it was competition not directly regulated by, or constituted in, the market. In tightly corporate peasantries, such as the Jats of East Punjab and West U.P., the possibilities of capitalist exploitation were restricted by the reliance of all individual farming families on community panchayats and consensus. The farmer who attempted to maximize his profits at the expense of his neighbours by, for example, changing the customary terms of crop-sharing rents or importing extra-local labour to work his fields, was liable to incur heavy censure and sabotage.<sup>109</sup> In more hierarchic communities, caste fellows and lineage relations might exercise a special call on the patronage and protection of the wealthy. In general, local landowners were expected to grow and store subsistence crops for a wide variety of clients.<sup>110</sup> The restraints were not completely rigid: they left room for a degree of market production and many were slowly being

<sup>108</sup> On risk-aversion in the context of Punjabi farming, see Kessinger, *Vilyatpur*, chs 4, 6. Needless to say, as a function both of the size of profits and the degree of risk, propensity to invest (as in wells) varied considerably with the particularities of agrarian conditions. In, for example, the cotton-belt of South India, a combination of particularly wealthy and large landholders together with a profitability in cotton hardly to be equalled by local grain production promoted an expansion of well investment on a considerable scale. In the 'wheat frontier' of the C.P., a similar scale of borrowings and investments was in evidence. Both of these cases, however, seem exceptional.

<sup>109</sup> T. G. Kessinger, 'The Peasant Farm in North India 1848-1968', *Explorations in Economic History* (XII), 1975.

<sup>110</sup> For example, see my *Provincial Politics*, pp. 74-8. On the general influence of the need for grain storage against famine, see M. McAlpin, 'The Effects of Markets on Rural Income Distribution in Nineteenth-Century India', *Explorations in Economic History* (XII), 1975.

eroded over time. But they held back and made difficult a 'perfect' response to the market opportunities theoretically available to landowners and producers of agricultural commodities.<sup>111</sup>

The political and legal context in which the raj invited capital to work, was not very conducive to the development of the forces of production. It contained a series of restrictions on the social competition which, at least in Marxian theories of economic change, drive forward the revolution in the means of production. In India, the social groups already established on the land were being protected from the competitive threats of others both above and below them in the class structure. The tenancy and indebtedness laws, and the continuing chaos of the courts, kept landlord and mercantile capital at a remove from the productive base. Custom and conservative legal conventions guaranteed that members of 'dominant' caste communities of landholders would not be pressed by the land hunger of those from inferior statuses. Although competition within these communities, fuelled as much by demographic pressures as by anything else, was growing, it was unable to produce qualitatively significant results. As the state steadily withdrew the coercive pressures which, in the past, had whipped agrarian society into servicing the market and left the development of production to the 'free' interplay of class forces, so it was helping to create a class structure premised on perpetual economic stagnation.<sup>112</sup>

How and why did the late nineteenth-century raj get itself into this extraordinary position? Recurrent in the literature of Indian history are arguments that the maintenance of this 'quasi-traditional' agrarian base was of maximum utility to, at least, the British metropolitan economy and, possibly, to the Indian capital locked up in the systems of rentierism, moneylending and commodity speculation.<sup>113</sup> For the British, it produced a steady stream of cash crop exports at the price of very little effort. The stream not only carried forward government finances but

<sup>111</sup> Once more, of course, the degree to which these 'restraints' operated was a function of the local agrarian structure and its precise market context. These structures and contexts were given to wide variation and in some areas they permitted considerable agricultural expansion. But it remained quantitative expansion within the existing mode of labour-intensive, small-scale, family-organized production.

<sup>112</sup> We are beginning to become aware of how far the state apparatus of the ancien régime and early Company rule had not merely extracted surplus but also invested in the means of production through *takkavi*, irrigation and political protection. For examples, see Stokes, *Peasant*, ch. 3.

<sup>113</sup> For a classic statement, see R. and R. Ray, 'The Dynamics of Continuity in Rural Bengal', *Indian Economic and Social History Review* (X), 1973; also, by implication for the colonial period, H. Alavi, 'India and the Colonial Mode of Production', *Socialist Register* 1975.

also, via international currency manipulations, helped metropolitan balance of payments problems. Within the Indian economy, it offered easy profits to ex-patriate business interests, who could use monopoly powers in the market to strip producers of most of the potential rewards, and to British industry, which need anticipate no rival industrialization in so 'backward' a context. For Indian capital, the situation also offered ample opportunity to profit from the peasantry. The law and the state validated rental relations and provided machinery to aid collections. The small scale of Indian farming, its distance from the market and need for short-term credit to pay revenue and finance seasonal operations, put creditors and men with power in the market in a very strong position and enabled them to manipulate the mechanisms of exchange to their own advantage. In effect, on this reading of the evidence, the colonial class structure appears perfectly functional to, and the paradigm creation of, both metropolitan and Indian capital. At costs kept low by lack of need to invest in the means of production and at risks kept low by their transference to the peasant producer, capital could enjoy an unproblematic profitability.

On a different reading, however, difficulties begin to appear. First, while indeed the exploitation of India was profitable to those metropolitan interests involved in it, the nature of this exploitation reduced their numbers and cut off many other metropolitan interests from sharing in it. Cotton manufacturers and import/export trading houses might do well but capital goods producers and finance capitalists found much less in the Indian economy to attract them.<sup>114</sup> Its structure was not functional to their operations and it remains to be seen why they should not have pressed the limited Indian 'establishment' for better access to India and have pushed for a greater development of the forces of production, on which their own profits depended. Second, the stagnation of the agrarian base left it vulnerable to the climate, and this risk was one which metropolitan and domestic capital both shared with the peasantry. Periodically, when famine struck, rents proved uncollectable, advances made to cultivators for their crops were lost, the import/export market collapsed and the state went into the red. True, the risk to capital was only bankruptcy whereas to the peasantry it was death. But, for all parties engaged, a seriously undercapitalized agriculture provided a context of constant danger.

But third, and perhaps most important of all, the logic of the market economy was developmental and that of this agrarian structure static. Both the international market and imperial systems, of which India was

<sup>114</sup> See R. Ray, *Industrialization in India* (New Delhi, 1979), ch. 1.

a part, were changing over time and making new demands on their components. The nature of Indian agricultural production limited the possibilities of its response. Until the turn of the twentieth century, this problem went largely unnoticed. A considerable quantitative expansion in agricultural output, as new lands were opened up by the plough and the well to petty commodity production, and artificially favourable export prices, caused by imbalances in the gold:silver ratio, gave the appearance of an agrarian boom. Thereafter, however, these conditions disappeared, and the real intractability of the agrarian base became clear. Several leading market regions (the wheat frontier in C.P., the Gujerat cotton belt) were badly hit by the famines of the 1890s and subsequently found it very difficult to get back their markets.<sup>115</sup> Changing methods of production in other parts of the world, mechanized agriculture in North America and fresh zones of peasant farming in South East Asia and Africa, threatened their competitiveness. Equally, changes in the nature of the metropolitan economies began to undermine the existing 'colonial' relationship with India and not to replace it. The modern chemical industry displaced the need for several tropical crops (such as indigo); the traditional imperial export industries (such as cotton) reached saturation point in their Asian markets; new patterns of multi-lateral trade between the developed economies stimulated capital goods production and turned metropolitan interests away from impoverished satellites.<sup>116</sup> The 'disengagement' between the colonial and metropolitan economies, which became obvious in the inter-war period, was already starting. The proportion of world trade in which India was involved declined steadily from the turn of the century.<sup>117</sup> And this decline, of course, marked a reciprocal shrinkage in the possibilities of metropolitan exploitation and profit. Nor was it only British capitalists who began to feel the strait-jacket of Indian poverty. The Boer War revealed to the British Parliament the extent to which the rising costs of modern warfare made its Indian military barracks useless. This imperial 'police action' simply could not be financed off Indian revenues, as had so many before.<sup>118</sup> Indian economic stagnation now

<sup>115</sup> For examples, see Stokes, *Peasant*, ch. 11; Hardiman, 'The Crisis'.

<sup>116</sup> The rate of increase in British cotton textile exports to India slowed noticeably from the 1890s. S. B. Saul has seen 1890 as the critical turning-point in the old British-dominated, colony-orientated pattern of world trade. S. B. Saul, *Studies in British Overseas Trade 1870-1914* (Liverpool, 1960), ch. 5.

<sup>117</sup> From about 4 per cent in 1900 to 2.5 per cent by 1939. The fall was steady and not merely a reflection of the depression of the early 1930s. See B. R. Tomlinson, *The Political Economy of the Raj* (London, 1979), ch. 2.

<sup>118</sup> See Committee of Imperial Defence, Minutes, 11 June 1903 and 5 August 1903, Cabinet Papers (CAB 2/1), Public Record Office, London.

began to hit the British tax-payer in the pocket, where it hurt most. By these years too, Indian rentier and mercantile capital was starting to be pinched. Landlords were failing to keep their rents in line with inflation and, in several provinces, were finding that the combination of occupancy tenure rights and complicated legal rituals was making it difficult for them to collect rents at all. In Bengal, the levels of effective rent collection appear to have collapsed;<sup>119</sup> while in West U.P., many petty zamindars were under the severest of pressures.<sup>120</sup> The signs of stress in the mercantile communities were unmistakable. The protections afforded to the agrarian community drove many professional bania groups out of agricultural finance and turned their roles over to wealthier members of the community itself.<sup>121</sup> A flood of mercantile capital made for better opportunities overseas, in East and South Africa and South East Asia.<sup>122</sup> A wave of bankruptcies, especially in the wake of the financial crisis of 1908, shook the financial structure of India.<sup>123</sup> Even European business houses started to increase the diversification of their operations in order to be less reliant on the commodity trades.<sup>124</sup>

By the early twentieth century, all was by no means well with the Indian agrarian economy. Metropolitan government and capital as much as Indian government and capital were encountering increasing difficulties in working it to their present needs, while the future looked dark. Yet, so far from responding to these imperatives by pursuing policies of structural change, the raj was inclined to do exactly the opposite. Every crisis was met by efforts further to defend the agrarian community and to shore up its antique mode of production. Both tenancy and indebtedness legislation reached the height of their popularity in the decade before the First World War; while conservationist co-operative credit and canal colony programmes speeded up.

The policy documents of the period, however, make it plain that the raj saw the agrarian problem much more in political than in immediately economic terms. Its policies of social conservation and peasant protection

<sup>119</sup> See R. and R. Ray, 'Zamindars and Jotedars: A Study of Rural Politics in Bengal', *Modern Asian Studies* (IX), 1975.

<sup>120</sup> F. C. R. Robinson, *Separatism Among Indian Muslims* (Cambridge, 1974), ch. 2.

<sup>121</sup> As has been argued for Western India by R. Kumar, *Western India*, ch. 6; Charlesworth, 'Rich Peasants'.

<sup>122</sup> The Nattukottai Chetties provide the clearest example. By the late 1920s, their overseas assets were thought to be Rs 60 crores. But Western Indian financiers were active in the opening up of East Africa and in the Natal sugar production economy.

<sup>123</sup> For the currency problems of 1907-08, see Tomlinson, *Political Economy*, ch. 1.

<sup>124</sup> Binnys of Madras, for example, went into cotton textile production; Parrys of Madras increased their hold on the alcohol distillation industry; in Calcutta, firms such as Andrew Yule speeded up their diversification into industries such as coal.

flowed from the fear that if competitive capitalist relations were allowed freedom to take over the countryside, the resulting conflict would destroy the raj's own institutions of government and political security.<sup>125</sup> On such an understanding, it clearly made sense to block the development of these relations and to hang on to its inheritance for as long as possible. The price of this strategy, which meant that the value of the inheritance would be dwindling, was lower than that of encouraging the capitalist process and risking the loss of everything. But there are two curiosities or paradoxes about this otherwise readily comprehensible position. The first is the extent to which British fears always ran far ahead of Indian realities. The raj was already paranoid about the consequences of the imminent capitalist transformation before any signs that it might be taking place appeared. It jumped at the shadows of small-scale and hardly novel riots between landlords and tenants or between moneylenders and their peasant debtors, as if they represented the silhouettes of a massive social drama being played out before it.<sup>126</sup> Moreover, it frequently misunderstood the nature of the political struggles actually taking place. Many of its conservationist policies pre-dated the problems they were meant to solve and thus killed in advance the development of the conditions to which they were supposed to be a response. Second, this strategy of protection represented a very strange way for any capitalist state, or at least state attached to capitalist metropolitan base, to behave. Leaving aside the ideologically-biased models of modernization theory, with their supposition of a smooth and 'osmotic' transition, all capitalist processes of development have involved (and continue to involve as part of their nature) political struggle, resistance and repression. The 'problem' faced by the raj was not unique to it but one of universal historical experience. However, it has been by no means universal for the political instruments of capitalist states to be used not to crush resistance but to protect and preserve the social bases from which it is arising. What would have been the consequence to Meiji Japan had its much larger and fiercer peasant and samurai rebellions led to an accommodation with, and freezing of, the Tokugawa social structure? Both the paranoia and the counter-intuitive behaviour of the raj need closer investigation for they may tell us something important about the peculiarities of the colonial context.

The consequences which the British Indian civil service, at various

<sup>125</sup> See, for example, Metcalf, *Aftermath*, chs 4–6; Barrier, *The Alienation*; Whitcombe, *Agrarian Conditions*, chs 4, 6.

<sup>126</sup> For example, see N. Charlesworth, 'The Myth of the Deccan Riots of 1875', *Modern Asian Studies* (VI), 1972; Stokes, *Peasant*, ch. 11; Musgrave, 'Social Power'.

times, claimed to fear most from a competitive capitalist conquest of agriculture were a decline in the land revenue, a link up between the wrath of dispossessed peasants and the emergent nationalist movement and a general collapse of political order leading to mass revolt.<sup>127</sup> Neither of the first two fears seems well-founded. It is unclear why mercantile capitalist landowners should have been any less able than peasants to meet the declining incidence of the land revenue, and evidence from a few areas where their penetration was considerable and had been attended by commercial development suggests precisely the reverse.<sup>128</sup> Where mercantile capital may indeed have interfered with revenue operations was where it was squeezing the peasantry dry through usury relations. But these relations were, arguably, as much a result of its inability to penetrate the productive process completely as of the degree of its existing penetration. It is also unclear, given the social character of the early nationalist movement, what kind of connection it could have made with a marginal peasantry being driven off the land. At most, this might have extended to propaganda (as in the Poona Sarvajanic Sabha). But, outside the Western-educated intelligentsia, most of nationalism's popular following seems to have come from urban commercial and mercantile groups who frequently were expressing frustrations at the limitations posed to their exploitation of the countryside by the raj (as over the Punjab Land Alienation Act). The third fear is the only one which seems to have substance. But the evidence that the threat was real is not strong. It was the shadow of the Mutiny rather than a cold examination of the facts, which turned the petty Deccan Riots into the justification for a far-reaching policy of peasant protection, and every act of bazaar violence into the augury of mass revolt. The tendency of the raj to over-dramatize the problem may be indicative of two significant features of Indian colonialism. First, a large part of the Indian Civil Service itself was, for whatever reason, opposed to a capitalist transformation of agrarian society and was fumbling for excuses to support its case. And second, the recurrent nightmare of the Mutiny suggests how extremely weak the raj felt its political and military position to be.

Both of these themes appear again in the logic which took the raj to opposing radical social change and in the contradictions which increasingly were exposed in its situation. Had the raj pursued a more aggres-

<sup>127</sup> Whitcombe, *Agrarian Conditions*, chs 4, 6; Metcalf, *Aftermath*, chs 4-6; R. Kumar, *Western India*, ch. 5.

<sup>128</sup> There seems to have been no revenue problem, for example, in the Namada valley during the wheat boom. See Stokes, *Peasant*, ch. 11.

sive set of capitalist policies, it would have needed a strong coercive arm. But where could this have come from? The obvious answer would seem the British Indian army, which absorbed over 40 per cent of the state's budget and stood as the awesome pillar of British might in South Asia. But, for these purposes, the army was wrongly constructed, geared to a different end and utterly useless. It was a wing of imperial policy worldwide and its principal roles were to defend the Indian frontier, maintain the Pax Britannica from Africa to China and protect international trade routes. It was no longer a domestic police force and, having an independent command structure, could not readily be engaged for internal purposes short of dire emergencies. The raj could not count on the army to face long-term civil dissidence and rebellion and, had it done so, one cost would have been the insecurity of the rest of the imperial system. Moreover, the army was particularly not a force which could have been deployed with safety against the North Indian countryside. It had become increasingly reliant on recruits from 'the martial races' of North India, whose own origins lay in the dominant peasant and petty landlord communities of the region.<sup>129</sup> Indeed, not only could it not be so deployed but its social character placed a set of counter-imperatives on the development of policy. Much of the Punjab Government's strategy of social conservation, derived from the need to maintain army loyalty by protecting and subventing the existing rural community.

Without the army, there was the police itself. However, as we have already seen, the later nineteenth-century police force was still deeply entangled in the networks of local level rural powers and, as such, could hardly be used to attack those powers and the social bases on which they rested. At the very least, a new type of centrally-directed police system would have had to be created. From the turn of the twentieth century, especially under Curzon's authoritarian promptings, such a system began to emerge. But it was held back by the eternal problem of cost, by the political resistance which it tended to provoke and by the difficulty of breaking down local loyalties.<sup>130</sup> By the time that police organization even began to approach its ideal, the political equation had altered and the police could not be used for an onslaught on the dominant village landowners of the countryside.

The question of the police provides a clue to a second dimension of the

<sup>129</sup> C. Dewey, 'The Rise of the Martial Castes: Changes in the Composition of the Indian Army, 1878-1914', paper read at conference on Social Stratification in India, University of Leicester, April 1977.

<sup>130</sup> For the police in South India, see D. Arnold, 'The Armed Police and Colonial Rule in South India', *Modern Asian Studies* (XI), 1977; also my *Provincial Politics*, ch 2.

problem. This concerned the enormous strength of the potential forces of resistance. In any initial confrontation with competitive capitalism, it was not so much the poor and the dispossessed who were going to be engaged and threatening revolt—or, if they were, the raj neither saw nor cared about them. Its advance palliative legislation did nothing for the landless and precious little for the two-acre ryot. Indeed, few of its processes and protections could be used if money and a degree of independence were not available. The archetypal occupancy tenant of the U.P. or peasant proprietor of the Punjab, whose interests were to be safeguarded, was conceived more as a substantial farmer than a marginal peasant. Rather, the serious resistance was imagined to come from the erstwhile dominant local-level elements in the mercantilist/revenue based political structure through which the ancien régime and its Company variant had operated. It was village community brotherhoods, mirasidars, inamdars, vatandars, pedda ryots and petty zamindars whose disaffection the British feared and which they tried to avoid. As early as the 1850s, when attempts in South India to resume inams had stirred the opposition of their substantial holders, the state had beaten a rapid retreat;<sup>131</sup> in the 1880s in Tanjore, when its revenue resettlement operations had touched mirasidar quick it had backed off and cut the revised rates of assessment.<sup>132</sup> The reasons for this sensitivity were cogent: these groups' influence over the entire agrarian base was strong and it was still being used to support many of the functions of government, such as revenue collection and the maintenance of the peace. Through influence over access to land, through the provision of employment and credit opportunities, through traditional ideologies of deference and through often extensive connections of caste and kinship, these land controlling groups could call out the countryside into sustained opposition or keep it stable for the raj. They made formidable enemies and, ultimately, could only be suppressed if the colonial authorities could come to build a different, an alternative, political structure which would distribute and validate the power of other classes in society. But where could the elements of a new class structure be found and would they work easily inside a colonial framework?

The answer, presumably, would have had to come from the social forces favourable to the expansion of capitalist relations. But, in the late nineteenth-century context, they were still weak, needed enormous support and opened out a further set of contradictions for the raj. Urban-based mercantile capitalists and large absentee landed pro-

<sup>131</sup> See *Papers on Inam*.

<sup>132</sup> See my *Provincial Politics*, ch. 1.

pietors, who had the resources and might have come to possess the incentives to play a new dominant role, seem to have exercised only the most contingent forms of authority over the village resident agrarian community. Their 'influence' has been seen to hinge on an ability to work through members of the local agrarian élite or to exploit cleavages within the community.<sup>133</sup> They tended to have little permanent standing or independent power in the rural areas and to be vulnerable to any closing up of the local community against them. If they became increasingly assertive and sought to take over direct control of the agricultural base, this closure could be guaranteed. They did not represent very promising material out of which to forge a new political system, certainly under the terms in which imperial collaborationist politics had to work. It would require a great effort on the raj's part, a massive elaboration of police and bureaucratic power, to push these interests down onto the foundations of production. But who would pay?

And there was a further problem. Would these groups be as prepared as the 'traditional' agrarian authorities they replaced to work within the framework of colonial rule? Ultimately, this question takes us to the general relationship between capitalism and nationalism, and indeed between capitalism and any particular political system, and lies beyond the scope of our inquiries. But there are good reasons for believing that, even if the development of Indian capitalism were compatible with some species of colonial rule, it was not the species then extant and its rise would have posed a threat to the current colonial establishment. First, given the constraints imposed by metropolitan dominance and the economic structure, it is very difficult to see how an expansion of Indian capitalist activity<sup>134</sup> could have avoided coming into conflict with existing metropolitan and ex-patriate business interests. The stasis of the economy meant that the rise of one group could only be at the expense of others: as Indian capital expanded its control over agricultural produce, it would necessarily run up against the dominant role currently played in the export, and some internal, trades by British capital. Moreover, challenges would be posed to the hegemony of British imported manufactures. Of course, this did not mean that an expanding Indian capitalism might not establish new links with different parts of the metropolitan economy (as to some degree happened later). But it did suggest that the present 'old India hands' would be squeezed, and their squeals were

<sup>133</sup> Especially by Musgrave, 'landlords' and 'Rural Credit'; also Charlesworth, 'Myth'.

<sup>134</sup> By this I mean an expansion beyond the confines of the 'middle-man' commodity trades, where it was confined, to the bases of production.

treated with some importance by the raj. Second, an expanding Indian capitalism would necessarily have demanded a greater share of state power and political authority. Again, there is no reason why this should not have been accommodated within a continuing colonial context, but it would not have been the same colonial context. In particular, the ICS would have had to have shared power with Indians and granted Indian politicians and bureaucrats a measure of equality. This, of course, they regarded as anathema and struggled against down to the dying days of the raj.<sup>135</sup> In the late nineteenth century, the mere suggestion offended against widely-held theories about racial superiority and the British civilizing mission. And third, the social values of the ICS were plainly out of kilter with those of the groups from which emergent Indian capitalists came (or were anticipated to come). It was the 'martial' races, the 'yeoman' peasantry and the magnificent feudality whom the late Victorian mind respected. The ethics of the moneylender and Brahmin were held in a distinctly lower regard and the notion that the interests of the latter should be developed at the expense of the former was outrageous.<sup>136</sup> By a curious process of elision, whose logic is not easy to follow, fears for the feudality and peasantry were then converted into fears for the raj itself and it was argued that an Indian society dominated by the bania and the priest would have no room for the Briton.

Whatever the wider possibilities of the situation, the prospects of an active Indian capitalism, gnawing at the bases of the agrarian order, displeased the civil servants and businessmen who composed the British Indian establishment. They made their own interests and prejudices synonymous with the fate of any raj at all. In view of their influence over Indian policy, it may not be surprising that they managed to drive many of the elements of a proto-Indian capitalism, especially on the land, into opposition to themselves and thus to bring their prophesy of a connection between capitalism and nationalism to self-fulfilment. Blocked and frustrated by the protective legislation, Indian business groups showed a strong tendency to respond to the appeal of nationalism. In the Punjab, the Land Alienation Act made the urban mercantile community natural allies of the Congress; in Bengal, the twin pressures on the bhadralogh of white racist businessmen in Calcutta and a favoured

<sup>135</sup> H. A. Ewing, 'The Indian Civil Service 1919-42. Some Aspects of British Control in India', unpublished Ph.D. dissertation, University of Cambridge, 1980.

<sup>136</sup> These sentiments seem to have been particularly strong in North India, where the feudal 'Oudh' policy was influential in the U.P. Secretariat and the more peasant orientated 'Punjab' school held sway farther West. For discussions of the civilian mentality, see Musgrave, 'Social Power'; C. Dewey, 'Images of the Village Community', *Modern Asian Studies* (VI), 1972; Metcalf, *Aftermath*, chs 4, 5.

Muslim tenantry outside pushed their politics along an anti-imperialist course.<sup>137</sup> By the early twentieth century, when the case for structural change in the agrarian economy was becoming strong, it was less fantasy than fact that the social forces capable of advancing this change were those most vehemently opposed to the continuation of British rule.

The raj, then, was, or felt itself to be, in an acute dilemma. Having established a context for the capitalist development of agrarian society, it could see no way of allowing the corollary social transformation to come about and survive. It therefore proceeded to obstruct the unfolding of the logic which it had set in motion in the first place. But all its problems stemmed from the perception that it needed to survive indefinitely in the shape which it had acquired by the late nineteenth century. This accorded with the interests of the narrow band of businessmen and bureaucrats currently holding the Indian jewel. But why should it have accorded with the interests of the much broader splay of interests in the metropolitan economy and government? Economic stagnation kept them out of potential markets, limited the opportunities for exploitation and, ultimately, impoverished the empire.<sup>138</sup> The answer to this riddle may be that, within the terms of profitability set by the international market system, there was no way that metropolitan capital could have promoted a more significant development of the Indian economy, and the price of trying would have been the loss of the existing limited benefits. What India needed above all else and before appreciable movements in her economic structure would begin was a very large dose of infra-structural investment capital.<sup>139</sup> The deficiencies of the railway system, of irrigation facilities and of support services to production and commerce posed immense limitations to development. Yet where could the colonial state have found the resources for such a massive undertaking? It could hardly have got them by sequestering existing Indian assets. Such a policy would certainly have promoted political revolt besides dampening the existing precarious levels of demand. If it went to the money market, what profits and security could it have offered to pull capital out of its current uses? India had no great and valuable mineral wealth. She enjoyed few comparative advantages in production costs

<sup>137</sup> See Barrier, *The Alienation*; J. Broomfield, *Elite Politics in a Plural Society* (California, 1969); G. Johnson, *Provincial Politics and Indian Nationalism* (Cambridge, 1973).

<sup>138</sup> The question of the real benefits to advanced capitalist economies of impoverished colonial satellites was raised by G. Lichteim, *Imperialism* (London, 1961).

<sup>139</sup> This, at least, seems agreed by all the juxtaposed theorists of the colonial Indian economy. See A. K. Bagchi, *Private Investment in India 1900-1939* (Cambridge, 1972); and a review of this by M. D. Morris, 'Private Industrial Investment in the Indian Sub-continent 1900-39' *Modern Asian Studies* (VIII), 1974.

and her own markets were too small to warrant the re-location of existing international industries.<sup>140</sup> Most particularly, the many problems of her agrarian base made attempts to develop her agricultural production for international consumption questionable. The potential resistance of the dense Asian peasantry, the depth of ecological weaknesses and the need for many non-economic investments (for example, in transport to articulate the internal food-market) made the costs of development very high. It could hardly be that it was worth capital's while coping with these problems when the opening out of Canada, Australia, South Africa and South East Asia offered comparable commodities at much cheaper rates and less risk. In effect, there was nothing in India to attract the capital necessary to a fundamental transformation of the economy.

British colonialism's possibilities of exploitation were limited by two powerful sets of constraints. On the one side lay the structure of class relations built up in the previous epoch of state mercantilism, which was difficult to change and threatened serious revolt if disturbed; on the other lay the international market economy, whose competitive norms gave it only a peripheral interest in Indian production. In these circumstances, the narrow British establishment in India offered the metropolis the most that it could hope to gain. To reverse the time-honoured formulation, it was less British colonialism which was determining the structure of the Indian economy than that structure, in its class and international context, which was determining the forms which colonial, and metropolitan, exploitation could take. What the late nineteenth-century establishment offered was a free army, the import/export trades and guaranteed payment on the sterling debt. Even if these proved to be dwindling assets, it was clearly better to hold onto them for as long as possible than to back a futile gamble on a class transformation which could not be brought to completion but might just create disturbances in its wake powerful enough to break the raj and the bases of political order in India. 'Holding on', however, meant allowing the present establishment its head and the metropolitan government seems to have taken its prejudiced and self-interested understanding of Indian politics as gospel and given it freedom to suppress its enemies before they stirred.

The raj found itself in a situation in which it would have liked to stop history somewhere around 1880. At that point, it possessed a near perfect equilibrium between the development of the forces of production necessary to its economic needs and the solidity of the social and political

<sup>140</sup> R. Ray recently has argued that the colonial economy was not underutilizing supply factors to its existing demand capacity. Ray, *Industrialization*, ch. 3.

structures necessary to its security. The strong quantitative expansion in agricultural production and the temporary profitability of the new cash crop markets were enlivening the old mode of production without, as yet, threatening to dissolve it. There appeared to be room for accommodation between metropolitan (and indigenous rentier and mercantile) capital and the existing agrarian structure in the buoyancy of the economy. All could live together, in some kind of harmony, without contending for the bases of one another's social existence. The hope of this harmony, and balance, was fully expressed in the law. The apparent confusions and contradictions in its theories and procedures served to make it an instrument of compromise. In practice, it did not deal in absolute rights and wrongs, in property rights and exclusions. The tenancy and indebtedness legislation of the period sought to give the landlord his 'fair' rent without threatening the tenant's continued possession of his land and the creditor his 'fair' returns without pauperizing the debtor. The complex and long-winded procedures of the law, and the dependence of its executive machinery on local power structures, promoted out of court compromises and settlements.<sup>141</sup> The law pursued a *modus vivendi* between all the parties contending for the production of the land, helping capital to extract some level of profit from the agrarian community but obstructing it from a deeper social penetration. The civil law, in effect, was being used by the colonial state to maintain the class balance most suitable to its present purposes.

But, of course, history does not stand still and, certainly by the early twentieth century if not before in some areas, the bases of this balance were ceasing to exist. On the land, the rate of demographic increase was catching up with the possibilities of the quantitative expansion in cultivation and the favourable market conditions were on the turn. The inherited mode of production could no longer take as easily the pressures being imposed upon it from above; and the force of competition was starting to make landlord and mercantile capital increase the pressures. The conditions underpinning the raj's optimistic compromise were fast collapsing and its legal institutions, designed to foster harmony, were being used in the course of a class struggle no longer capable of being contained in these terms. The emergence of this struggle was reflected both in the huge increase in litigation and in the more rapid pace of legislative enactment in the years before the First World War. As the courts failed to hold the compromises required of them, the raj was attempting desperately to re-create through legislation the social condi-

<sup>141</sup> For discussions of the 'long' political process of which the law was but a part, see Whitcombe, *Agrarian Conditions*, ch. 5.

tions which economic change was destroying. Needless to say, the attempt did not work but rather exacerbated the sources of conflict. Capital and the agrarian community were in direct confrontation. By holding them together, without allowing either adequately to subordinate the other, the raj was sitting still while their antagonism intensified and perpetuated a framework which prevented its resolution. In the wake of the First World War it was to face the costs of its policies in the explosion of agrarian agitation, which attended the non-cooperation movement.<sup>142</sup> By the second decade of the twentieth century, the British Indian state was at a cross-roads. It could no longer maintain its precious balance from a *laissez faire* economic position and through mere manipulation of the civil law. It was obliged to re-think its strategy of imperial rule and look for some different answers.

In the period between the wars, three significant developments overtook the creation and definition of property rights in land. First, although the formal judicial apparatus continued to increase its sway over land disputes, it was changing its social character. Part of this change came simply from the Indianization of the judiciary but part, and politically the most important part, came from the devolution of the courts' authority to locally elected or appointed committees. In the late nineteenth century, some use had been made of local notables to sit on arbitration committees and many of the state's village officials had possessed petty judicial powers.<sup>143</sup> However, after the First World War, the movement to devolve the administration of the law became much more pronounced. In Madras by the late 1920s, panchayats elected by village landowners dealt with nine-tenths of all the officially recorded cases, and certainly the vast majority of petty disputes about land.<sup>144</sup> As we have seen, throughout the colonial era, unofficial and informal arbitral procedures had always existed in rural society, supplementing and often being more effective than the jurisdictions of the British courts. What was happening now was that these procedures were being drawn up into the structure of the state and given a full legitimation.

Second, there was growing state regulation of the uses to which

<sup>142</sup> See D. N. Dhanagare, *Agrarian Movements and Gandhian Politics* (Agra, 1975); M. H. Siddiqi, 'The Peasant Movement in Pratabgrah 1920' *Indian Economic and Social History Review* (IX), 1972; W. F. Crawley, 'Kisan Sabhas and Agrarian Revolt in the United Provinces', *Modern Asian Studies* (V), 1971.

<sup>143</sup> For examples, see my *Provincial Politics*, ch. 4; in Bombay, under the terms of the Deccan Agriculturists' Relief Act (1879), village officials had been empowered to arbitrate in debt suits; in Punjab, the courts had long encouraged the use of appointed arbitrators, see *Civil Law* (Punjab), for example 1868-69.

<sup>144</sup> C. J. Baker, 'Madras Headmen', in Chaudhuri and Dewey, *Economy*.

property could be put and of relations in the market. Some of these interventions also had their origins in the previous period. Under the fiction of a special branch of 'revenue law', the bureaucracy had kept in touch with the administration of landlord/tenant relations and influenced the setting and collection of rents. Revenue law, however, had existed alongside the civil law and been dependent upon it for many of its sanctions. Defaulting tenants might be penalized at revenue law but they could lose their occupancy tenures, which would represent a species of property transfer, only by due process of the courts. But the domain of revenue law had shown a strong tendency to expand, especially towards the end of the nineteenth century and in the early twentieth century.<sup>145</sup> By the interwar period, it was dominant over litigation in the zamindari regions and effectively being used by the state to convert rental relations into a department of government administration. Rental rights and obligations were fixed down to increasingly small details and taken further out of the market context.<sup>146</sup> Equally, a number of provincial anomalies and gaps between theory and practice, which had kept the state at a remove from agrarian relations, were resolved to bring the administrative apparatus closer to society. In 1921 and 1930 respectively, Oudh and Malabar received tenancy legislation which gave them more effective occupancy right; the 'planter' problem in Bihar was largely overcome;<sup>147</sup> the ryotwari system in Western India finally broke through the residual corporate social forms blocking its penetration of the agrarian base.<sup>148</sup> Further, bureaucratic regulation of the overseas labour market tightened. This process had begun in North India in the 1890s and was extended southwards, to the large migrant labour flows to Ceylon and Burma, in the wake of the First World War.<sup>149</sup> In administrative theory, of course, British Indian government, even at the height of the popularity of laissez-faire ideology, implicitly had possessed strong powers of intervention in the market place. Now it was using them much more vigorously and purposefully than before.

Moreover, several crises of the period pushed it into invading areas which it always had claimed lay beyond its competence. In the food shortages at the end of the First World War, several provincial govern-

<sup>145</sup> See Whitcombe, *Agrarian Conditions*, ch. 5 for U.P.; revenue courts for the Permanently Settled estates reached Madras in 1908.

<sup>146</sup> See D. Rothermund, *Government, Landlord and Peasant in India* (Wiesbaden, 1978).

<sup>147</sup> S. Henningham, 'The Social Setting of the Champaran Satyagraha', *Indian Economic and Social History Review* (XIII), 1976.

<sup>148</sup> D. Hardiman, 'Peasant Agitation in Kheda District, Gujarat 1917-34', unpublished Ph.D. dissertation, University of Sussex, 1977.

<sup>149</sup> H. Tinker, *A New System of Slavery* (London, 1974), pp. 279-80; also my *Provincial Politics*, ch. 7.

ments found themselves having to step into the market in order to prevent not only economic dislocation but the threat of serious political violence. True, this intervention concerned itself only with the manipulation of transport and the purchase of foreign grain. It did not yet reach domestic retail.<sup>150</sup> But the pattern was set and the ideological objection to 'interference' in the market removed. During the next major food crisis of the Second World War, the state moved in on retail and took up a position whence it has seldom been able to escape. The inter-war problems of the Bombay textile industry provoked the state into a leap into the raw cotton market and into the direction of supplies.<sup>151</sup> The crisis of the depression proved another spur to intervention. The chaos of unrecoverable rents and debts left in its wake suspended the operation of the market over large parts of the rural economy. The raj, albeit too late to avoid the rise of major political protest, set up a series of Conciliation Boards to arbitrate disputes and passed debt cancellation legislation, both of which overrode the legal conventions of property right.<sup>152</sup> Finally, and very tellingly, the state found itself becoming involved in the relations of rural labour. It had always been desperate to avoid this involvement and to keep out of intra-village labour systems. Inadvertently, its property laws had implied both regulation and change: the claims of dependent labourers to shares in their patrons' product had never been recognized as a form of property right.<sup>153</sup> But, in practice, this implication had not been picked up by society to any great degree. The economic problems of the period, however, brought labour and landed property into greater confrontation over division of the social product and the law (backed by a more effective police) found itself supporting the landed interest in protecting property against the claims of labour.<sup>154</sup>

And third, the value in the possession of landed property began to revert directly to a function of the state system. This function, however, was very different from that under the old mercantilist state. First, the political benefits accrued not merely to those who held specific tax-shielded state offices but in general to the increasingly small proportion of agrarian society who held significant amounts of land at all. Making

<sup>150</sup> D. Arnold, 'Looting, Grain Riots and Government Policy in South India 1918', *Past and Present* (84), 1979.

<sup>151</sup> A. D. D. Gordon, *Businessmen and Politics* (New Delhi, 1978), ch. 3.

<sup>152</sup> C. J. Baker, *The Politics of South India* (Cambridge, 1976), ch. 3; B. R. Tomlinson, *The Indian National Congress and the Raj* (London, 1976), ch. 3.

<sup>153</sup> The precise legal understanding of dependent labour relations is difficult to assess. At times, it seems to have stressed the rule of the market but at times the rule of some species of custom. For an interesting case, see Kessinger, *Vilyatpur*.

<sup>154</sup> See, for examples, Arnold, 'Armed Police'.

explicit what inflationary trends and the rigidity of the land revenue system had made implicit since the middle of the nineteenth century, the raj consciously shifted the burden of taxation off landownership.<sup>155</sup> State finances became increasingly reliant on customs and excise duties and taxes on non-agricultural incomes, which fell most heavily on the urban and poorer rural sections of the population.<sup>156</sup> Land ownership itself was coming to include a privileged tax status. More than this, the raj also was redirecting income and capital towards landholders. To some degree, of course, it had been obliged to do this even in the late nineteenth century, especially where deep economic and demographic pressures were threatening the social balances which it sought. The imperatives towards social conservation, as well as economic gain, were represented in its programme for the punjab canal colonies, which was not costed on a strictly profit-making basis as were most irrigation projects and which was undertaken mainly to relieve population problems, threatening the bases of the 'traditional' agrarian order, in the East Punjab. The colonies were settled on social models which tried to replicate and perpetuate as far as possible (though with less than perfect success) the structure of landed society in the regions from which the immigrants came.<sup>157</sup> Equally, the initial and largely unsuccessful co-operative credit movement had provided a small amount of government funding in an effort to make agrarian society more self-reliant and less dependent on socially-threatening urban sources of finance. Between the wars, however, state activities to aid and subvent landowners became much stronger. In several provinces, the co-operative credit movement took off and, by the middle 1930s, was coming to provide at least the larger landowners, who could take advantage of it, with a privileged credit status and means of taking over local-level credit systems from 'outside' financiers.<sup>158</sup> As state proscriptions on the activities of 'professional' moneylenders and commodity dealers hardened, protected opportunities for landowners to increase their role in agrarian commerce also appeared.<sup>159</sup> The coming of tariff protection increased the profitability of some kinds of production at the expense of the consumer.<sup>160</sup> Moreover, through new sources of funding, greater

<sup>155</sup> See *Report of the Indian Taxation Enquiry Committee 1924-25* (Government of India, 1925), Vol. 1.

<sup>156</sup> *Ibid.* For example, about 15-20 per cent of state revenues came from the abkari excise which fell mainly on the cheap liquor drunk by the lower classes.

<sup>157</sup> See M. Darling, *The Punjab Peasant in Prosperity and Debt* (Oxford, 1925), ch. 7.

<sup>158</sup> B. L. Robert, 'Agricultural Co-operatives in Madras 1893-1937', *Indian Economic and Social History Review* (XVI), 1979.

<sup>159</sup> For examples, see my 'Country Politics'; also Tomlinson, *Political Economy*, ch. 2.

<sup>160</sup> Especially sugar.

resources were beginning to be pumped into agricultural development. Government experiments with export cash crops produced several notable successes: most particularly, the 'Cambodia' cotton strains which underlay the cotton boom in the extreme South.<sup>161</sup> Development agencies began, however falteringly, to consider the problems of agricultural profitability and, via the expanded competence of district and local boards, rural infra-structural services (particularly roads capable of carrying motor transport) were much improved.<sup>162</sup> The agrarian community, or at least the land-possessing members of it, were becoming net beneficiaries of the state.

Second, the devolution of the administration continued much beyond the judiciary and opened up a political process which gave certain members of the agrarian community 'legitimate' control over many of the ancillaries of agriculture. Administration of forest rights, irrigation and local markets was being transferred to committees whose members could enhance or diminish the value of land by their decisions. Doubtless, of course, informal political processes had been involved in these matters even when their control lay with the nationally a-political bureaucracy. But these changes formalized such processes and gave them the imprimatur of the state. As ecological and demographic problems increasingly beset agriculture, access to these ancillary facilities played a growing role in determining the profitability of production. It was an access now firmly in the hands of the dominant elements in the local agrarian community.<sup>163</sup>

These developments in the nature of property right and value in land make it plain that the colonial state was still concerned to protect the social bases of petty commodity production. But it was doing so in different ways which carried subtly different implications for the character of agrarian relations. It was no longer simply manipulating the terms of the civil law to provide some general shields from the potentially disruptive effects of mercantile and rentier capitalism. Much more, it was isolating the wealthier members of the landholding community and trying to establish positive relations with them, which could act as pillars of a new political system. Its strategy had several important consequences. It became more possible for the larger landowners to emancipate themselves from some of the constraints of community and custom. The new police protection afforded by greater bureaucratic penetration

<sup>161</sup> Baker, *Politics*, ch. 3.

<sup>162</sup> In Madras by the mid-1930s, for example, local boards and municipalities were handling 44 per cent of all government expenditure. Baker, *Politics*, ch. 2.

<sup>163</sup> See my *Provincial Politics*, ch. 4.

facilitated the movement in wage forms from patronage and dependency to casual labour. This movement had been progressing slowly from the later nineteenth century but now speeded up in the depressed agricultural conditions of the period.<sup>164</sup> It promoted a much clearer differentiation in the agrarian community between those with sufficient land to be full-time farmers and those without, dependent on labouring for a large part of their subsistence. The latter were pushed into a situation whence their relative share of the social product declined even faster than before.<sup>165</sup> Naturally, such a movement provoked fierce resistance from labour, manifested in a wave of riots and violence.<sup>166</sup> But better police coercion sustained the rights of property owners.<sup>167</sup> The new control gained by the upper echelons of rural society over the apparatus of the law also proved of positive advantage to them. It was less a case now of using the law as a defensive weapon to block out the encroachments of absentee zamindars and banias than of using it as a weapon of aggression to cement dominance within the local community. In the generation before independence, as afterwards, there was little contrast or contradiction between the notion of property right found in official panchayati tribunals and that in the higher courts of the law. The two were symmetrical and continuous, reflecting the symbiosis being achieved between the ideology of 'governance' and that of the village landowning class interest.<sup>168</sup> These legal and institutional changes, of course, were part of a much wider set of social and political changes overtaking India in these years. The devolution of the law and of agrarian administration was an aspect of the general devolution of political authority from the colonial bureaucracy to domestic politicians, from Briton to Indian, as the raj moved steadily, if for a long time unwittingly, to its demise. As the British hesitatingly withdrew, a new structure capable of articulating the political relations of a 'national' society was being forged. Political devolution both made possible and paid for the expansion of the bureaucracy and the interventionism of the

<sup>164</sup> It seems generally agreed by many writers that this period was critical in the weakening of 'traditional' labour relations, although explanations differ. See, for example, Breman, *Patronage*, ch. 5. Less often considered, however, are the political conditions which would permit what for many dependent labourers amounted to a considerable deterioration in, at least, their security and, frequently, their standard of living.

<sup>165</sup> See M. Mukherji, 'National Income', V. B. Singh (ed.), *The Economic History of India* (Bombay, 1965).

<sup>166</sup> See Baker, *Politics*, ch. 3; G. Pandey, *The Congress in Uttar Pradesh 1926-34* (New Delhi, 1978), ch. 6.

<sup>167</sup> Arnold, 'Armed Police'.

<sup>168</sup> For a discussion of the continuity between 'local' panchayati and higher judicial tribunals, see M. Galanter, 'The Aborted Restoration of Indigenous Law in India', *Comparative Studies in Society and History* (XIV), 1972.

state. The 'mixed' constitutions and partially representative provincial governments of the inter-war years pushed and pulled the colonial state to break with many of its nineteenth-century taboos. The ban on religious and social legislation, for example, went by the wayside when 'representatives' of Indian society expressed a contempt for Anglo-Indian 'tradition'. In the 1930s, the Madras intelligentsia at last won its Gains of Learning Act and several of the caste impediments to social and economic activities were removed. Equally, Indian political pressure in the context of an increasingly powerful nationalist movement, capable of offering practical solutions to the problems which the British blamed on providence, drove the state away from its laissez faire postures and into the market. Particularly important in the strengthening of the role of the state was the acceptance of its authority by the local agrarian community, some of whose members now were influential in its legislatures. The ability of the police and the administration to penetrate 'the village' to a far greater degree than before reflected the extent to which they were now being invited in by dominant local groups who had much less to fear from political processes over which they had gained some control. The political context of devolution and state building also was reflected in the new patterns of resource distribution through the tax system and of state aid to, and subvention of, parts of the economy. The grasp of the colonial metropolis on the Indian economy was loosening and the powers of the state were coming to be used to sustain a different parallelogram of class forces.

Within this parallelogram, as before, one side was represented by landed society. The other side, however, was of a very different character. The raj's balancing act in the inter-war years was much less concerned to hold together a quasi-traditional agricultural system of production with a mercantile/rentier capitalism than with a domestic industrial capitalism. The other principal beneficiary of state subvention, protection and intervention was a sector of 'advanced' industry painfully beginning to arise within the Indian economy itself. Through tariffs, state contracts, infra-structural services, interventions in both the commodity and labour markets and the political repression of labour, the raj expressed a commitment to industrial development.<sup>169</sup> Of course, given the constraint of scarce resources, the colonial state could only subvent land and industry at the expense of other interests. Its

<sup>169</sup> Tomlinson, *Political Economy*, ch. 2; C. Markovits, 'Indian Business and Nationalist Politics 1931-39', unpublished Ph.D. dissertation, Cambridge University, 1978; Gordon, *Businessmen, passim*; R. Chandavarkar, 'Between Work and Politics', fellowship dissertation, Trinity College, Cambridge, 1979, chs 1, 2.

attempts at economic management plainly discriminated against three elements. First, the consumer, who had to meet the bills from higher taxes and pay higher prices for protected production. Second, commerce, especially at the local level, which was being taken over by state agencies and squeezed by state regulation of the market. Many of the larger and more significant 'indigenous' mercantile capitalist groups of the previous generation were finally driven back from agrarian commerce at this time and into industrialization or higher level finance.<sup>170</sup> The commodity trades were engrossed by the state and wealthier members of the agrarian community. And third, labour which was subjected to increasing repression in both agriculture and industry. State support for the rights of landowners against labour was matched by reciprocal support for the rights of industrial capitalists. Wage bills were cheapened by state-sponsored 'rationalization' programmes and policies to limit and moderate trades unionism.<sup>171</sup>

The emergence of Indian industrialization was the product of many causes. Doubtless, the growing political pressures of the nationalist movement played their part, making it more difficult for the British to maintain the political structure and 'open door' trade policy which had favoured the limited interests of the metropolis. But shifts in the international and domestic Indian markets already were destroying the bases of the old colonial relationship. Indian primary product exports stagnated and declined as a result both of the crisis in world trade and of their particular uncompetitiveness. The British metropolitan economy itself was turning rapidly towards new patterns of production designed to serve its own, and other developed countries', markets. A fundamental disengagement between the two economies was taking place, which left the old colonial policies bereft of a rationale. Moreover, strong forces were developing to create profitability in industrial investment in India. The decline of commerce and the commodity trades (as much overseas as domestically) released Indian capital and made the relatively lower rates of return possible in import-substitute industrialization attractive. The rise of Japan threatened Britain's ability to use the Indian open door and helped to bring tariff protection to underpin the profitability of industrial manufacture.<sup>172</sup> In these conditions, the colonial state could not ignore the needs of Indian industry and began to develop policies more favourable to it. Indeed, state finances were increasingly depen-

<sup>170</sup> Tomlinson, *Political Economy*, ch. 2; T. Timberg, 'Three Types of Marwari Firm', *Indian Economic and Social History Review* (IX), 1973; Baker, *Politics*, ch. 3.

<sup>171</sup> Chandavarkar, 'Between Work', chs 1, 2.

<sup>172</sup> Tomlinson, *Political Economy*, ch. 2.

dent upon its progress and, if the residual legacy of the raj (the army and the sterling debt) was to be maintained, industry must prosper to replace the income lost from the colonial trades and the protection of the countryside. The one remaining reservation was that industry's expansion ought to be directed away from a challenge to rival British manufacture wherever possible. The squeeze on labour costs in part stemmed from an attempt to improve Indian industry's profits without increasing its needs to compete more strongly for residual British markets.<sup>173</sup>

In the context of this shift in the structure of the colonial economy, however, the continued and re-inforced protection of agriculture becomes problematic. The old colonial structure, to which a quasi-traditional agriculture had been partially functional, was fast disappearing, while the industrial elements in the new configuration possessed very different rural needs. Indeed, the dysfunctions caused to industrial development by the condition of agriculture were very considerable. Between the wars, Indian primary commodity production not only lost foreign markets but significantly failed to respond to the new domestic imperatives upon it. In spite of the expanding demand for food crops, production of grain, on most readings of the evidence, remained static and India became ever more reliant on imports of foreign food.<sup>174</sup> Equally, with the exception of some specially protected commodities such as sugar, the increase in industrial crops was small.<sup>175</sup> Indian industry had to look to foreign imports for many raw materials which, theoretically, could have been supplied by its own economy.<sup>176</sup> Further, the social structure of the countryside restricted the level of market demand and limited industry's scope for expansion. The state's attempts to raise agricultural productivity through new in-puts and technological help were proving too little and too late to make much of an impact. But its social conservation strategy, of lowering tax demands, creating opportunities for landowners to increase their profits from commerce and reduced wage bills and offering community (or state) ancillary assets to the private political command of the wealthier farmers, was

<sup>173</sup> Chandavarkar, 'Between Work', chs 1, 2.

<sup>174</sup> Although the bases of its statistics have been challenged, G. Blyn, *Agricultural Trends in India 1891-1947* (Philadelphia, 1966), remains the most comprehensive survey of grain production in the inter-war period.

<sup>175</sup> Sugar acreage expanded by about 20 per cent in the 1930s. The other area of significant growth was groundnut which was coming to be used as a cheap source of vegetable oil. See D. Narain, *Impact of Price Movements on Areas Under Selected Crops in India, 1900-1939* (Cambridge, 1965). The failure of agriculture to respond to industrialization in the inter-war period naturally raises questions about how far agricultural stagnation previously had been the product of lack of industrialization.

<sup>176</sup> Especially raw cotton which was coming in large quantities from East Africa.

succeeding in easing the competitive pressures on agriculturists and enabling them to survive without change. The economic corollary of the state's agrarian policy was stagnation and the growth of industry was not part of any far-reaching process of economic transformation.<sup>177</sup> This situation hardly suited metropolitan interests. With the decline of the colonial trades, India's future value to Britain lay in the ability of the growth sectors in her economy to link up with new elements in the metropolis. The provision of finance capital and capital goods to Indian industrialization offered the promise of continuing profit from the empire. The restraints imposed by the protection of agriculture obstructed the realization of this promise. Indeed, the economics of empire in India became increasingly questionable. New markets failed to develop; the acute crisis in primary commodity production caused by the depression saw the metropolis having to bail out the cotton market and cover the sterling debt; and the 'modernization' of the Indian army was having to be paid for, in part, by the British tax-payer. If the 'old' colonial economy could not be held, there was precious little for Britain to exploit in the stunted national economy which was beginning to replace it.<sup>178</sup>

An 'agrarians' versus 'industrialists' problem, of course, is not at all unusual in the history of 'developing' societies. In most European countries, apart from Britain, industry found itself having to live with, and accord a measure of expensive favour to, agricultural producers. The difficulty in this case, however, was that the protected bases of the agrarian order were peculiarly incompatible with industry's progress. Except in a few parts of Northern India (Oudh, Bihar), the 'agrarian' interest did not reflect that of the large landholder and feudal aristocrat. Generally, the economic trends and legislation of the previous two generations had done their work and eased the feudality back to a distant rentier and pensioner role. And even in Oudh and Bihar, the events of the 1930s suggested that the real power of their talukdars and zamindars was below that assumed by British officialdom.<sup>179</sup> Over most of India, the agrarian interest represented that of wealthier, village-based landowners and members of the dominant castes. The significance of this was that, as in the previous 'colonial' economic structure, these agrarians had little ability to develop agriculture along lines suitable to

<sup>177</sup> There was no significant shift in the sectoral balance of the workforce across the period. See J. Krishnamurty, 'The Distribution of the Indian Working Force 1901-51', Chaudhuri and Dewey, *Economy*.

<sup>178</sup> See Tomlinson, *Political Economy*.

<sup>179</sup> For examples, Pandey, *The Congress*, chs 2, 6; G. McDonald, 'Unity on Trial.' D. A. Low, *Congress*.

the 'external' world of capital. In German industrialization, for example, the agrarian interest of the Junker aristocracy at least had been able to improve production by sponsoring large-scale farming and to drive labour off the land and cheapen its supply to industry.<sup>180</sup> It had provided some services to compensate for its protection. But here there was no scope for large-scale farming or cheapening production and labour. The organization of production tended to remain based around the use of family labour and to contain a high measure of local subsistence provision which kept production out of the market.<sup>181</sup> Although, indeed, the demographic increase guaranteed that labour was supplied from agriculture to industry, it is unclear that the latter gained much from the relationship. The commonly-made argument that Indian factory labour's continued access and relationship to the land reduced its costs to employers, by providing a hidden subsistence component, does not accord well with a great deal of the evidence. Full-time factory wages in, for example, the Bombay textile industry were relatively high due, on some accounts, to continued rural linkages which had to be bought out in order to stabilize the labour force.<sup>182</sup> Equally, the level of wage remittances back into the countryside seems so high that it is difficult to believe wages made no substantial contribution to the subsistence of the worker's family as well as himself.<sup>183</sup> In effect, it would be possible to argue the reverse of the 'cheap industrial wage' thesis. Remittances from industry cheapened the cost of agricultural labour by providing part of its subsistence. The returns to hired casual labour in agriculture appear so low that alone they could not have met the

<sup>180</sup> K. S. Pinson, *Modern Germany* (Toronto, 1954), chs 1, 6.

<sup>181</sup> The family farm model of production made famous by Chayanov and held in, for example, Kessinger, *Vilyatpur*, chs 3-5, to underlie Punjabi farming may imply too much decision-making independence to be widely applicable to other regions. Nonetheless, it seems true that, within different contexts of decision-making, the family remained the principal unit of labour organization and, in the absence of a fully articulated food-market, tried to provide a large part of its own subsistence needs. This appears to have held true generally until at least the early 1960s. See B. Dasgupta (*et al.*), *Village Society and Labour Use* (Delhi, 1977).

<sup>182</sup> D. Mazumdar, 'Labour Supply in Early Industrialization', *Economic History Review* (XXVI), 1973; on rural/urban wage differentials see L. Chakravarty, 'Emergence of an Industrial Labour Force in a Dual Economy', *Indian Economic and Social History Review* (XV), 1978.

<sup>183</sup> Recently, the point has been strongly disputed by G. Omvedt, 'Migration in Colonial India', *Journal of Peasant Studies* (VII), 1980. But the statistics she herself provides are not so easily dismissed. The sum of Rs 10.7 crores reportedly remitted to six North Bihari districts between 1915 and 1920 is very striking. In Gorakhpur by the 1890s, remittances through the post office alone came to more than the total land revenue demand of the district. I am grateful to Dr Peter Musgrave for this information.

reproduction costs of the workforce.<sup>184</sup> Moreover, the drag of rural connections pushed industry into developing a number of 'expensive' devices to retain and control its labour. There was no real basis for compatibility between industry and this protected agrarian base. It is striking that, for example, in both the Japanese and Russian experiences, where the nature of the social organization of agricultural production was somewhat similar, industrialization proceeded in concert with a squeeze on the peasantry, which took a high proportion of surplus from it to pay for infra-structural costs and attempted radically to alter its class character by engineering the emergence of larger capitalist farmers geared to the market.<sup>185</sup> In Indian industrialization the policies of the state were accented quite differently.

The antagonism between the agrarian and industrial orders was exceptionally deep and bitter in the Indian context. It showed itself in increasingly frequent breakdowns in market relations and in political confrontations. The agrarian interest naturally sought to push up primary product prices and, in the violently fluctuating economic conditions of the period, was provided with many opportunities to hoard and to threaten to starve out the towns. Urban grain riots, common enough occurrences in times of dearth, became a regular feature of the inter-war years even in non-famine conditions.<sup>186</sup> Supplies of important industrial crops, such as cotton and jute, also were subject to sudden local fluctuations and unforeseen leaps in price.<sup>187</sup> The agrarian problem was further manifested in the aid which the countryside provided in sustaining strike action in industry. Retreat to the village, and reliance on village resources to hold out against recalcitrant employers, were important weapons in the struggle of factory labour.<sup>188</sup> On the industrial side, the interest naturally lay in raising the price of necessary manufactured goods. The cloth market seems to have suffered from the same difficulties as the grain market and sudden shortages and leaps in the price of cloth were the occasion of much rural rioting.<sup>189</sup> Industrialists' attempts to beat down the price of factory labour also affected the countryside,

<sup>184</sup> For the declining share of the social product represented by agricultural wages, see Mukherji, 'National Income'. The chief problem may have been one of underemployment, for casual agricultural labour frequently was employed only seasonally.

<sup>185</sup> For examples, see R. P. Dore, Land Reform and Japan's Economic Development', *Developing Economies* (III), 1965; H. Willets, 'The Agrarian Problem', G. Katkov (ed.), *Russia Enters The Twentieth Century* (London, 1973).

<sup>186</sup> Especially in the 1930s, see Baker, *Politics*, ch. 3.

<sup>187</sup> For the problems of cotton, see Gordon, *Businessmen*, ch. 3.

<sup>188</sup> Chandavarkar, 'Between Work', chs 1, 2.

<sup>189</sup> See *Report(s) on the Administration of the Police in the Madras Presidency* (Annual Series), especially 1929-39.

reducing the flow of remittances to it. In effect, the articulation of the industrial and agrarian economies was beset with increasing problems and inclined to collapse into chaos and violence. It was in response to this that the state found itself having to intervene constantly in the market place and to set up its own bureaucratic apparatus to provide the regulation which conditions were preventing the market from supplying. The raj, of course, saw the problem entirely in terms of 'the middle man', the agent of commerce who stood between the producer and consumer and supposedly exploited both.<sup>190</sup> Its market interventions were aimed primarily against him and sought to establish a context of 'fair' competition in which, at least, industry and agriculture could live. But middle-men are constrained by the structures of supply and demand in which they work and over which they have limited control. The extent to which the raj was having to subvert both the farmer and the industrialist tells a different story. Stripped of their mutual powers to dominate each other politically, neither industry nor agriculture could hold their own in the market, be it state regulated or not. Both needed resources drawn, through tariffs, tax losses and state repression, from other sectors of the economy. The colonial state's ideology of the evil middle-man was merely an excuse designed to avoid confronting the much deeper structural problems of the economy, which were developing under its rule but which, for various reasons, it was unwilling to admit. To hold the two together and contain their natural antagonisms, the raj was having vastly to expand the competence of its own bureaucracy and to facilitate the increasing exploitation of society by privileged classes of landowners and industrialists. This exploitation was producing as little in the way of the development of the forces of production and the qualitative transformation of the Indian economy as it was in the way of benefits to a new metropolitan relationship. It functioned, in effect, to hold the economy still.

What lay behind the last balancing act of the colonial juggler and what purpose was served by sustaining so contradictory a structure? If the problematic element in the situation is seen to be the protection of agriculture, the immediate context of politics in this, the final, phase of the raj supplies some ready answers. In most provinces, policies favourable to the petty landowning interest were part of the colonial state's battle with nationalism; and in others, although its perception of the political struggle may have been different, it inadvertently created opportunities which this interest could take. In Bengal, Punjab and most

<sup>190</sup> The classic statement of the anti-middleman thesis is the *Report of the Royal Commission on Agriculture in India* (HMSO, 1928).

of Madras, the raj was inclined to identify nationalism with urban groups among the intelligentsia or commercial classes and to gear its programme of political devolution to exclude or weaken them.<sup>191</sup> This strategy had the effect of bringing dominant local-level agrarian groups into the legitimate structure of government from an early period and giving them a considerable measure of local power. It could hardly be that their loyalty and continued collaboration would survive the formulation of policies in the higher institutions of the state, which attacked their material interests by squeezing them in favour of industry. In provinces such as the U.P., matters were complicated by a nostalgia for the feudality. Although the plan of using a supposedly loyal countryside against a supposedly seditious town appears to have been the same, its execution broke down on the British belief that the larger landlords, whose relations with their tenants had been moved progressively to a basis of administrative rentalism and whose conflicts with their tenants had been filling the courts for nearly fifty years, were somehow the natural leaders of the rural community. This belief, and its realization in the constitution of dyarchy between 1920 and 1937, gave the structure of legitimate government to the zamindars and the upper level of village society to the Congress. Logic, however, prevailed in the 1937 election when, much to the surprise of the British, a Congress provincial government closely related to the upper tenant interest was returned to power and, here too, the state came to rest on entrenched petty landholding interest.<sup>192</sup>

In addition to the simple struggle with nationalism, the shock of the depression also created political imperatives to protect agriculture. The worst effects were felt by those most closely involved in market production and commerce. This tended to include at least the wealthier village landowners who invested in supra-subsistence cultivation, who indulged in commodity speculation and moneylending and who often had labour to pay from the sale of valueless crops. The slowness of state intervention to suspend tax (and zamindari rental) collections and, absurdly, even revenue resettlement operations, provoked a series of direct confrontations with the raj and suggested the serious possibility of a general political alliance between the 'coqs du village' and the Con-

<sup>191</sup> For Bengal, see J. Gallagher, 'Congress in Decline', *Modern Asian Studies* (VII), 1973; for the agrarian roots of the Punjab Unionist Party, see I. A. Talbot, 'The 1946 Punjab Elections', *Modern Asian Studies* (XIV), 1980; for Madras, see Baker, *Politics*, chs 2, 4.

<sup>192</sup> However, beneath the epiphenomenon of the dyarchic landlord governments, the process consolidating the position of the upper level of village tenants' landholders seems to have continued in U.P. as elsewhere. See Stokes, *Peasant*, ch. 9.

gress. Once again, and now in the pressing circumstances of a political emergency, the raj had reason to court the favour of petty landowning society. Its extraordinary willingness to do so indicates how far, by this time, its concern in India was just to hang on for as long as it could, even at the expense of stultifying economic development and the growth of a new 'neo-colonial' relationship with a progressive Indian industrial capitalism. As history closed in upon it, the raj's notion of survival became based on increasingly short-term expedients.

Yet the context of nationalist struggle does not provide all, or even very many, of the answers. One of the most remarkable aspects of the matter is the extent to which not only the British but also all the other important elements in the political system favoured the village landowning interest. The Congress came to consist of a mixture of precisely the same class interests as those pursued by the British in the cause of loyalism. The agrarian/industrialists alliance was fully reflected in its own membership and social policies. Moreover, although our information is not good, there seems little sign that industrialists themselves were deeply unhappy with the alliance and pushing either the Congress or the British to take a more aggressive line towards the archaic mode of petty commodity production, designed to force it into structural change. Indeed, the signs everywhere suggest a consensus on the need to serve the landowning interest, manifested in Gandhian nostalgia for the village community (which, whatever its mystical and romantic connotations, could now but mean the preservation of existing patterns of agrarian dominance) or in the anti-middleman ideology shared as much by the Congress as the raj<sup>193</sup> (which overlooked the structural question) or even in the workings of the devolved administration (which showed no indication of a difference in the notion of rights enforced by local rural and national bureaucratic authorities). The symmetry of dominant class opinion on the desired structure of Indian society, with its continued inefficient and theoretically obstructive agrarian base, is extremely striking.

Behind it, it is possible to see three patterns of development which drew the agrarians and industrialists into a symbiosis and which, for all their residual differences and antagonisms, made them inter-dependent. First, under their demographic and ecological/technological difficulties, dominant village groups had become very reliant on the existence of a context of industrialization to which they could relate. Earnings made in

<sup>193</sup> Most of the Congress provincial governments of 1937-39, for example, discussed further improvements in indebtedness and tenancy legislation although their brief period in office seldom allowed them to achieve much.

commerce, in work outside agriculture and in market production played an increasingly large role in the 'family' economies of farming groups.<sup>194</sup> Indeed, the economic structure of 'traditional' rural society was dependent upon a host of connections to, and subventions from, advanced capitalist development going on somewhere else. Had a revolt of 'the agrarians' actually succeeded in seriously damaging India's industrial bases, the price would have been the collapse of the agrarian structure itself. Here, then, there was room for compromise which the state could use to impose conditions on agriculture, which permitted the existence of some complementary industrialization. On the other side, the structure of the countryside, for all its obstructions, performed one service for industrial capital which was becoming increasingly critical: it provided political stability. Beneath the solid level of privileged village landownership, the conditions of the inter-war period were stirring up a maelstrom. Demographic pressures on the now fixed landed base had greatly increased the landless or virtually landless proportion of the population who were dependent on agricultural or migrant labour for their subsistence, who had been pushed out of local subsistence calculation and onto the precarious grain market for their food and who had borne most of the risks to life in the limited development of market production. In the 1920s and, especially, the 1930s, their situation was becoming impossible. Many sources of work in neighbouring agrarian economies collapsed, transport services (a major employer of casual labour) suffered from the commercial stagnation and market fluctuations threatened the continuity of their food supplies. The final straw perhaps was the great depression which, while temporarily providing them with relative wage bonuses, in the longer term set landowners to cutting their labour costs and to converting more rapidly from permanent and patronage-based to casual and short-term forms of labour exploitation. The rural poor were becoming a major problem and their frustrations began to boil over into a series of agrarian riots and violent confrontations with their 'traditional' authorities.<sup>195</sup> At least one of the reasons why the colonial state began to devolve power to dominant village leadership groups and to support their authority with greater coercive force was to keep the lid on the potentially turbulent rural pot.

<sup>194</sup> In the upper echelons of the agrarian community, this showed itself less in 'labour' than in investment in urban and urban-related undertakings. For examples, see Baker, *Politics*, ch. 3; Tomlinson, *Political Economy*, ch. 2. Also, there was drift towards education and the professions, see my 'Country Politics'. In less hierarchic communities, however, even some of the more substantial farming families were now sending scions to labour elsewhere. See Kessinger, 'Family Farm'.

<sup>195</sup> Baker, *Politics*, ch. 3; Pandey, *Congress*, ch. 6.

The need for this support became particularly acute in the depression, when economic changes damaged the material bases of the networks of clientage which articulated the agrarian order and threatened the structure of social dominance within it. There was a danger that not only would the agrarian élite not be able to hold down the countryside but that some of its members might even join and sponsor an attack on the institutions of the raj which, through failure to respond quickly to the conditions of depression, was putting added pressure on the élite. The absorption of dominant village landowners into the structure of legitimate political (state) authority in the middle- to late-1930s greatly improved the means of maintaining social control in the countryside and added supports from the higher levels of the political system to shore up the institutions of local dominance which economic conditions were undermining. From the vantage point of the raj and of industrial capital, a preservation of petty landowning society guaranteed peace in the countryside and the possibility of continuing some kind of business. It might limit development in the longer term but it was cheaper in the short term than any conceivable alternative (such as welfarism or military repression) and promised to be a great deal more effective. On the understanding that its removal might produce conditions even less conducive to capitalist activity, industry could be brought to pay its price.

Beneath, then, the fundamental antagonisms between industry and this agrarian structure, there were lines of communication and possibilities for collaboration. It was these which the colonial state picked up in its devices of regulation and subvention. And once, of course, they were in place, a third reason for, and basis of, compromise emerged. Both industry and agriculture were joined together in enjoying a growing influence over the apparatus of the state. They were mutually dependent upon its powers and redistributions (of demand and wealth) for their prosperity and survival. The risks involved in taking their differences to the point at which they might threaten to break up the state and undermine its integrity were very great. They needs must compromise to preserve their alliance, for the price of its falling apart could be their mutual loss of authority and ability to use state power in the service of their own interests.<sup>196</sup>

The peculiar context giving property right and value to land in the interwar years, which was reflected in the legal developments of the

<sup>196</sup> For an analysis of the post-independence political economy, which stresses this 'contradiction' see P. Patnaik, 'Imperialism and the Growth of Indian Capitalism', R. Owen and R. B. Sutcliffe (eds), *Studies in the Theory of Imperialism* (London, 1972).

period, was the product of the agrarian/industrial alliance being brokered in the colonial state. The possession of land (or at least of significant quantities of it) was a function of the possession of political privilege. This privilege manifested itself in the way that existing village landowning groups were coming to control the policies of the state with regard to land and the administrative machinery distributing access to, and adjudicating rights over it. While, doubtless, dominant village groups always had possessed a considerable informal influence over the land, these developments legitimated their position and promoted clearer differentiation within ascriptive caste and kinship communities between the more substantial landholders, with access to the institutions of the emergent 'national' political system, and those without. As the British carefully bequeathed this agrarian political structure to India at independence, it was clear that no social revolution could follow the winning of 'freedom'. The class qualities of the new national political structure suggested major problems being stored up for the future. The possibilities of economic development in both agriculture and industry were bleak. After industry had taken over the manufacturing quota of the old metropolis, in what directions could it expand without putting pressure on its agrarian ally? Without some fundamental change in the nature of agricultural technology capable of being used within its social constraints, how could agrarian society significantly increase its output? The political structure seemed to contain in-built principles of immobility. Yet neither industrial capital nor the agrarian community could stand still: the one existed under competitive market pressures for constant accumulation; the other under demographic pressures to support ever higher numbers. Within the continuing structure of the state and the class alliance frozen into its operations, it appears possible to conceive 'progress' coming from only two sources. Industrial capital and the dominant agrarian élite might either improve their profits by increasing their mutual protection and acquiring an ever larger relative proportion of the static social product for themselves; or (and) they might combine to use their control of the state to increase the repression of labour and constantly cheapen its costs in production. Both are indicative of the dark legacy which nearly two hundred years of British rule left behind it, embedded in the form of the state and the contradictory structure of class domination in society.

To summarize, in each of these three phases of colonial rule in India, characterized by different constellations of social forces, the role of the law and the nature of the property right which it sought to uphold varied considerably. In the first phase of 'the mercantilist state', the

influence of the Anglo-Indian law over the relations of production on the land was limited to a secondary function in maintaining the liquidity of capital within the apparatus of the state. Effective rights to land emerged, as under the *ancien régime*, at the point of conjuncture between the extractive institutions of government and the corporate organizations of agrarian society and reflected the status of the struggle between the two for control over surplus. With regard to the land, the courts merely validated the frequently non-market forms of property right required by the state in this struggle. Most of the courts' business seems to have concerned the relations of 'metropolitan' society and its 'movable' properties. Here the Anglo-Indian law strongly favoured neo-traditional types of property relationship and concepts of community trust. These presented an illusion of continuity which served the Company's political security. But they also facilitated the extractive operations of the state and European mercantile capitalists by extending liabilities and holding together property trusts to service debts. The key feature of the period, however, was that the state showed no real interest in making market competition, under the rule of law, the dynamic behind agrarian society, regulating its production and reproduction. Its own structure of political relations oversaw the development and continuity of production.

In the second phase of 'the high colonial' state, this situation had changed. Conditions of market competition now touched the agrarian base and the law was assuming definitions of property right more suitable to a 'free' capitalist context. Yet it clearly did not go so far as to establish a basis of equal and individualistic competition. The state was maintaining and manufacturing social prescriptions which limited the consequences of competition and was trying to keep control over the land in the hands of existing agrarian corporations. To conserve society in this way, while at the same time sustaining some market dynamic, the raj undertook a delicate balancing act. Its laws sought to guarantee a level of returns to mercantile and rentier capital but, at the same time, to restrict the pressures which they could exert on agriculture. The law of property now was meant to serve as an instrument of compromise and took on suitably confused and contradictory forms.

In the third phase of 'the incipient nation state' the basis of the compromise broke down. The definition and regulation of property right passed back directly to the state and the political systems and became increasingly subject to the operations of the criminal, rather than civil, law. Behind this lay attempts to build the wealthier members of the village landholder class into a dominant position, shared with

large-scale industrial capital, in the state apparatus as it was progressively nationalized. The principal purpose of this position was to provide political stability over a countryside whose growing relative impoverishment was starting to threaten the possibilities of continuing capitalist business activity at all. Through each of these phases, we have used the law as a focus on the complex social and political forces at work in colonial India, on the problems posed by these (and by the international context) to the governing metropolis and on the consequences of the law's various resolutions for the continuing development of agrarian society.

What does this view of India's colonial history through the law have to tell us about the problems of historical and sociological conceptualization which dominate debates about the recent past? First, it may help to periodize the history of the raj rather more clearly. Our knowledge of the structural characteristics of the colonial régime at different times is not highly developed. On the one hand, there has been a tendency to treat 'British' rule as all of one piece, from the eighteenth to the twentieth centuries, and to pay insufficient attention to the very significant reorientations in the relationship between state and society which took place over those two hundred years.<sup>197</sup> On the other, there has been a tendency to suppose a single break, from the time of the Mutiny, between an active and innovatory 'early' period and a conservative later phase.<sup>198</sup> This, however, seems facile, for the 'conservatism' took place in the context of qualitatively new socio-economic pressures and involved the elaboration of a qualitatively new form of state, while the activity of the earlier years masked continuation of 'ancien régime' state-craft. By situating the raj in the context of forces, both from within and without, which generated imperatives upon it, we may be able to grasp its structural evolution more firmly. This evolution is important not only if we wish to understand the 'colonial' but also the 'indigenous' side of Indian history.<sup>199</sup> It is very difficult to see how the development of Indian society is to be comprehended without reference to the precise economic and political pressures to which it was subject and which composed its immediate historical context.

Second, our perspective may help to dispel the images of British rule as monolithic and omniscient, which still are very widespread in

<sup>197</sup> This is implicit in, for example, Cohn, 'Notes' and 'Anthropological Notes'; and, for the period to 1885, in 'Structural Change'.

<sup>198</sup> Metcalf, *Aftermath*, chs. 4-6.

<sup>199</sup> This is not a distinction which the author finds meaningful but it is one stressed in much of the social history informed by American cultural anthropology. As far as the author is concerned, the raj was part of the same social field as its subjects.

assumptions about the colonial period. Again, by considering the pressures upon it, we can see the particular points of weakness and the deepening contradictions in the structure of the raj. These provide valuable information for construing its response to events, which, in comparative terms, often seems idiosyncratic. Of course, to suggest that colonial rule was weak might appear to suggest that its impact on Indian society was minimal. But this would be a false inference. Indeed, the greatest significance of the raj for Indian history may have lain precisely in the severity of its contradictions. These meant that it was unable to pick up the forces of capitalist development, which had been released partially as a consequence of its own actions, and support them politically in a programme of social transformation. The 'dynamic immobility' of the Indian economy reflected, and was constrained by, a 'dynamic immobility' in the social and political principles of later British rule. In effect, the colonial state proved a poor vehicle to convey the social imperatives of capitalist development, to the long-term cost not only of India but even of the metropolis itself.

And third, our view from the law also may raise questions about how the law itself should be conceptualized. Clearly, we have not treated the Anglo-Indian law as an autonomous field of sociological inquiry, whose norms and institutions can be separated from the wider context of society and analysed meaningfully in their own terms. Constantly, we have tried to relate the law to other aspects of the state and the developing class structure and have looked for its meanings in those relationships. There are two contextual justifications for this approach. First, the notional independence of the judiciary from the executive, proclaimed in the Permanent Settlement, was never realized. Colonial India had no independent legislature or written constitution to act as a check on the executive, which actually appointed the judiciary as part of the civil service and changed the law as it pleased. The supposed autonomy of the judiciary was an illusion, perpetuated by colonial legitimating ideology, and the law was a department of the executive. Second, undoubtedly the most important changes of the period were those emanating from the socio-economic context and progressively altering the nature of the value in landed property. It is very hard to see how rules for the protection of property may be understood apart from the conditions creating 'social' value in that property in the first place. One worry about the more conventional approach to the study of the law is that it tends to exclude both the state and the class dimensions and to proffer judgements of significance in terms of abstract sociological principles (which, if traced back, lead into the wilderness of Parsonian/

modernization theory speculation). This can be very misleading. It is not clear, for example, what should be made of the popular saw that the possession of land underwent a fundamental change during the colonial period from a function of political power and rulership to a function of 'economic' property ownership. While the forms of political relationship on the land indeed were given to change, effective access to land was not divorced from the functions of political power in the dominant caste and kinship 'corporations' of the locality and, increasingly, in the apparatus of the emergent nation state.<sup>200</sup> This abstraction of the law is suggestive of a species of ethnocentrism (or false universalism) which holds that the social role of the (formal) legal apparatus was the same in colonial India (and universally) as in the West where judicial autonomy was more highly developed and the class base of property ownership had become fixed in different ways much earlier. Moreover, from its Parsonian influence, it may represent a class-centric view too: the notion that, even in the West, access to property is a function of the economic rather than the political (class) system reflects 'pure' bourgeois ideology.

In addition to raising some questions about the historical interpretation of India's colonial experience, our perspective also may throw light on some problems of conceptualization involved in the analysis of social change. For analysts working within the framework of modernization theory, India's empirical record has proved a constant source of nightmare. It can be construed as a history of 'ongoing social modernization' only at the expense of a degree of blindness and eclecticism unusual even by the notoriously lax standards of modernization theory. The past and tradition have simply refused to go away as they should and only by a remarkable flight of fantasy can Indian social history be read as the growing replication of modern Western society, which the theory anticipated. To cope with the unpalatable facts of continuity and difference, the original theory has been twisted round in several interesting ways. Concepts of 'dualism' have been introduced to show that, for various reasons, modern Western society did not establish contact with the bases of Indian tradition. Somewhat mystical formulations of 'the modernity of tradition',<sup>201</sup> 'traditionalisation as a process of modernisation',<sup>202</sup> and 'the absorption of tradition into modernity'<sup>203</sup> have been

<sup>200</sup> This point is borne out in innumerable anthropological studies of the village context. For example, Kessinger, *Vilyatpur*, ch. 2.

<sup>201</sup> Rudolphs, *Modernity*, ch. 1.

<sup>202</sup> P. Brass, 'The Politics of Ayurvedic Education', S. and L. Rudolph, *Education and Politics in India* (Cambridge, Mass., 1972).

<sup>203</sup> M. Galanter, 'The Aborted Restoration of Indigenous Law in India', *Comparative Studies in Society and History* (XIV), 1972.

evolved to suggest that the Indian past conditioned and was a formative influence on the way that India modernized. Both of these twists, however, are empirically and logically unsatisfactory. Dualism now seems wrecked on critiques both from 'underdevelopment' theory and from 'empiricist' history. On the one hand, most of the obstructions and hiatuses which it postulates between the worlds of tradition and modernity have been shown to be illusory: 'modern' capital, for example, clearly reached the 'peasant economy' through the commercial and credit systems;<sup>204</sup> there is no evidence of a pool of 'surplus labour' holding back production;<sup>205</sup> peasants are 'rational' economic producers given the nature of the situation which they face, etc. On the other hand, many of the institutions which dualism understands to be 'traditional' (the village community, the extended family, etc.)<sup>206</sup> have been shown by historians to have assumed their character under colonialism no earlier than the nineteenth century and to have been the product of change. The difficulties with the 'modernity of tradition' formulations are more profound. The 'classical' theory of modernization elucidates, and therefore rests upon the assumption of, a fundamental transformation in the nature of human society. Tradition and modernity are qualitatively different and antithetical types of society defined as opposites of one another. Modernity emerges through the progressive destruction of its antithesis. Given the historical condition which the theory conceptualizes and the way that it conceptualizes it, it is not at all clear that arguments supposing a continuity and a sympathy between tradition and modernity can be logically contained within its paradigm. Such formulations implicitly deny the existence of the qualitative antithesis and transformation and thus wreck the theoretical foundations of their own concepts. They may continue to use the terms 'tradition' and 'modernity' but they have rendered them meaningless.

Although, of course, the view of society through the law taken above was not informed by the theory of modernization, nor the Parsonian epistemology behind it, nonetheless what was seen there may help to put these problems into perspective. The central difficulty with 'dualism' appears to lie in its assumptions that the state and market apparatus of colonialism were 'modern' in the technical sense (or 'Western' in the

<sup>204</sup> See A. G. Frank, 'The Development of Underdevelopment', *Monthly Review* (1966); as early as the 1820s, the fate of Indian cash crops such as indigo involved the fortunes of London finance houses, see C. A. Bayly, 'The Age of Hiatus', C. Philips and M. Wainwright (eds), *Indian Society and the Beginnings of Modernization* (London, 1976).

<sup>205</sup> M. Paglin, 'Surplus Agricultural Labour and Development', *American Economic Review* (LV), 1965.

<sup>206</sup> See Kessinger, *Vilyatpur*, ch. 2; Leonard, *Social History*, chs. 7, 10.

same sense), that they were trying to engage Indian society in a modernizing social transformation and that they were blocked by the intransigence (cultural, social, political) of Indian tradition. But at least the first two seem not to be warranted by the evidence of the law, or at best to be highly questionable. And once they are questioned, the significance of the third begins to disappear. Indeed, the preservation of certain aspects of Indian tradition (if that, indeed, describes the process we are examining) appears to be functionally related to the character of the colonial 'superstructure'. There is no dualism, no break, although it is clear that the nature of what the British inherited played a considerable part in determining what they decided to do with it. Looked at from this angle, the 'problematics' also shift, partially away from the qualities of the inheritance and onto the context influencing the colonial authorities.

This angle also helps us to put the 'modernity of tradition' formulation into focus. As Richard Fox has argued, part of its logical weakness lies in its insistence that the link between past and present, which determines what aspects of tradition are taken up into and condition modernity, is forged more out of the peculiar qualities of the past than the specific nature of the present.<sup>207</sup> In the arguments of S. and L. Rudolph, the important social functions of caste in 'tradition' provide the only clue to, and therefore presumably explain, why caste should play a prominent role in modernity.<sup>208</sup> Fox pointed out that this makes little sense, for the contextual pressures of the present, which the Rudolphs on a nexus between past and present but tries to understand its specificities in terms of the dynamics of a process of historical change. To make an old point, the real weakness of modernization theory is its our analysis of the law and the state may have highlighted some of the pressures leading to accommodations with, and sublations of, aspects of the inherited social structure in the new colonial design. But it may also have suggested that the specific characteristics of the past are themselves a pressure on the present. In effect, our analysis agrees with the Rudolphs on a nexus between past and present but tries to understand its specificities in terms of the dynamics of a process of historical change. To make an old point, the real weakness of modernization theory is its tendency to assume and not to demonstrate the dynamics involved in processes of historical change.<sup>209</sup>

<sup>207</sup> R. G. Fox, 'The Avatars of Indian Research', *Comparative Studies in Society and History* (XII), 1970.

<sup>208</sup> Rudolphs, *Modernity*, ch. 1.

<sup>209</sup> For an extended critique of the principles of modernization theory, see R. Bendix, 'Tradition and Modernity Reconsidered', *Comparative Studies in Society and History* (IX), 1967; D. Tipps, 'Modernization Theory and the Study of National Societies', *ibid.* (XV),

In the Marxist study of colonial India, the character of the mode of production has become an important focus of debate. The debate has been of major significance in developing a more sophisticated understanding of Marxist concepts and in reversing trends towards re-ification. But it still may not have gone far to resolving the historical problem, concerning the nature of agrarian change under colonialism, whence it started. Neither of the two most favoured formulations seems empirically sound. The argument, for example, that the relations of production in agriculture were becoming increasingly 'capitalistic', or adequate to the notion of capital, contains many difficulties.<sup>210</sup> It rests upon an implicit history of growing market production, land consolidation and wage labour. Yet if the existence of a considerable degree of (albeit 'coerced') market production in the pre-colonial period is taken into account, the qualitative increase under colonial rule may not have been very great<sup>211</sup> and, anyway, tended to come to a halt in many areas from the turn of the twentieth century. Equally, the evidence of any more than a marginal increase in the stratification of landholdings over the period 1850-1950 is not strong;<sup>212</sup> and while, certainly, the amount of wage labour in society increased, it is unclear that it was replacing rather than supplementing family-based units of production.<sup>213</sup> There was, of course, a considerable increase in the proportion of the population having no, or virtually no, land at all and dependent upon a precarious, casual wage labouring existence inside and outside agriculture. But this increase is suggestive more of a demographic than a qualitatively capitalistic dynamic. The other formulation, of a retained 'feudal' agriculture articulated to capital appears to fit empirical conditions rather better. But its weakness lies both in specifying the institutions through which the articulation took place and in explaining why capital functioned in this way. The recent argument of Gail Omvedt that colonialism perpetuated agricultural 'feudalism' in order to give European mine-owners, planters, and other capitalists in and around 1973; L. Shiner, 'Tradition/Modernity: An Ideal Type Gone Astray', *ibid.* (XVII), 1975.

<sup>210</sup> As in Banaji, 'Capitalist Domination'.

<sup>211</sup> See, for example, Habib, *Agrarian System*.

<sup>212</sup> See D. Kumar, 'Landownership and Inequality in Madras Presidency', *Indian Economic and Social History Review* (XII), 1975; Charlesworth, 'Rich Peasant'; Stokes, *Peasant*, ch. 9.

<sup>213</sup> Kessinger, 'Family Farm'. The strongest evidence of replacement comes from those areas in which, while land had been owned by locally resident village families, it had been leased out to sharecroppers. Here, the economic conditions of the 1930s seem to have started a trend which continued in response to land reform legislation after independence and in which the sharecroppers were evicted to be replaced by hired labour. But this represents a particular rather than a general case.

the South Asian economy a cheap labour force, whose subsistence costs were partially covered by toy-plot farming, is inadequate in many ways. It fails to establish that there were any special instruments forcing out migrant labour and preventing the development of agriculture: the raj did not possess the poll-taxes and bans on petty commodity production which the colonial régimes of East and South Africa used to develop migrant labour.<sup>214</sup> It fails to establish why the larger landowners, who were not dependent on short-term migrant labour and who held most of the land, did not develop a more progressive agriculture, or how indeed the existence of migrant labourers in the neighbouring economy affected them. And it fails to explain why it was in the interest of colonial capital to sacrifice the vast agrarian base of South Asia in order to service a tiny plantation sector, peripheral industry and such 'advanced' areas of production as Burma, Ceylon and the West Indies, where went most of the migrants.

Where perhaps the difficulties with both sides of this debate lie is in their adoption of functionalist and economic approaches to the analysis of the relations of capital. Both appear to assume that the dominance of capital over the Indian economy, which colonial rule sustained, included a power to redesign the social structure entirely at will and to any specification optimal to an abstractly-conceived profitability. Neither side considers the implications and possible resistances of the inherited agrarian structure; neither considers the influence on possible economic activity of the need for a stable political base; neither puts the concept of profit (or rate of surplus value extraction) in a relative and competitive historical context; neither detects any contradictions in the relations and imperatives of capital. These are strange omissions, or contextual assumptions, for a history claiming to be informed by Marx. Our own analysis has tried to put these considerations back into agrarian history and to emphasize, again, that the relations of capital are not merely economic or material but also social and political, that they develop in definite historical contexts whose specificities cannot be assumed and that processes of historical change may best be understood in terms of the contradictions which arise within those relations. Whether or not we have adequately grasped the nature of the contradictions in this case, of course, is another matter and one which it is up to empirical research to decide.

<sup>214</sup> Omvedt, 'Migration'. Omvedt specifies only colonial instruments organizing labour for migration but not forcing it out in the first place nor deliberately preventing it from earning its living in other ways. Of course, this was because the colonial state did not need such instruments, as 'natural' conditions did its work for it. But this alters the meaning of the case.

Finally, colonial Indian history has been viewed through a range of theories of underdevelopment, which can be traced back to the earliest era of nationalist politics. These, whatever their theoretical foundation, share the common form of attributing India's poverty and economic stagnation to the operations of colonialism. One common difficulty with many of them, however, has been an adequate specification of the instruments and historical logic of the underdevelopment process. Several of the old theories, such as those of 'drain' or surplus extraction,<sup>215</sup> of monopolistic exploitation of commodity markets by European purchasing houses<sup>216</sup> and lack of sufficient infra-structural investment,<sup>217</sup> either do not stand up to scrutiny or raise more questions than they answer. Equally, neo-Marxist conceptualizations resting upon functionalist economist premises have been popular but are just as questionable as when presented in orthodox Marxist form.<sup>218</sup> These assume for the dominance of metropolitan capital the same absolute powers over social reconstruction. Yet if the colonial economy were a simple function of metropolitan dominance, then it must be presumed to have performed optimally to the needs of its metropolis. As we have suggested, this is a difficult presumption to make, at least without qualifying it in the light of the class structure and international market system, which would change its meaning.

Our own analysis could be said to fall within the range of underdevelopment theory, at least if that means seeing colonial rule as having had definite and negative consequences for the development of advanced capitalist forms of production. Where, however, it may differ from some other formulations for the colonial, although not the post-colonial, era is in emphasizing less the instruments of colonial exploitation than the class and state structures of colonialism in the creation of the conditions of 'underdevelopment'. Indeed, we have been inclined to see the specific forms of economic exploitation as determined by, in part, the class and state structures (and, in part, the logic of competition in the rest of the international market system). However, while this clearly does not removed any responsibility for India's condition from colonialism, nor suggest that Indian history would have been no different had there been no British empire, it does carry certain corollaries for the

<sup>215</sup> See K. N. Chaudhuri, 'India's International Economy in the Nineteenth Century', *Modern Asian Studies* (II), 1968.

<sup>216</sup> For the market stimulation caused by European cotton purchasing agents, see Banaji, 'Small Peasantry'; also Tomlinson, *Political Economy*, ch. 1.

<sup>217</sup> M. McAlpin, 'The Impact of Railroads on Agriculture in India', unpublished Ph.D. dissertation, University of Wisconsin, 1973.

<sup>218</sup> For example, Alavi, 'Colonial Mode'.

counterfactual against which underdevelopment should be understood. In a number of interpretations of Indian economic (especially industrial)<sup>219</sup> history from the late nineteenth century onwards, it is strongly implied that had India simply possessed a different, a national, state, she might easily have developed advanced forms of capitalist production and achieved a Japanese-style transformation. These interpretations are notable for excluding entirely from the context in which industrialization is discussed any reference to the class or international contexts in which it is supposed to take place. Returning India to these contexts, the validity of this counterfactual becomes very questionable. While it may be reasonable to suppose that a hypothetical national India at this time might have developed advanced forms of production faster, it is more difficult to see how the resulting class strains could have been contained or how much support for the effort would have been provided by international capital (and, if none, then the class strains would have increased). While indeed British rule may be held to have made a difference, it is not clear that its alternative was Japan. There seem stronger grounds for thinking that, in context, a more actively state-backed attempt to promote a capitalist socio-economic revolution would have produced results closer to the Chinese experience. But it may, in the end, be better not to formulate at all problematics in the light of quite such complex counterfactuals.

<sup>219</sup> Bagchi, *Private Industrial Investment*.