

An early environmental debate: The making of the 1878 forest act

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In 1982, a raging controversy broke out over a forest act drafted by the Government of India. This act sought to strengthen the already extensive powers enjoyed by the forest bureaucracy in controlling the extraction, disposal and sale of forest produce. It also gave forest officials greater powers to strictly regulate the entry of any person into reserved forest areas. While forest officials justified the act on the grounds that it was necessary to stop the continuing deforestation, it was bitterly opposed by representatives of grassroots organisations, who argued that it was a major violation of the rights of peasants and tribals living in and around forest areas.¹

The debate over the draft forest act fuelled a larger controversy over the orientation of state forest policy. It was pointed out, for example, that the draft act was closely modelled on its predecessor, the Forest Act of 1878. The earlier Act rested on a usurpation of rights of ownership by the colonial state which had little precedent in precolonial history. It was further argued that the system of forestry introduced by the British—and continued, with little modification, after 1947—emphasised revenue generation and commercial exploitation, while its policing orientation excluded villagers who had the most longstanding claim on forest resources. Critics called for a complete overhaul of forest administration, pressing the government to formulate policy and legislation more appropriate to present needs.²

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List of Abbreviations:

HD (F)	: Home Department (Forests)
LD	: Legislative Department
NAI	: National Archives of India
PWD (F)	: Public Works Department (Forests)
R & A (F)	: Revenue and Agriculture (Forests)
TNSA	: Tamil Nadu State Archives

¹ W. Fernandes and S. Kulkarni, *Towards a New Forest Policy*, Delhi, 1983.

² R. Guha, 'Forestry in British and Post-British India: A Historical Analysis,' *Economic and Political Weekly*, in two parts, 29 October 1983 and 5 November 1983.

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That debate is not over yet. The draft act was shelved, though it has not as yet been formally withdrawn. Meanwhile, the 1878 Act (as modified by an amendment in 1927) continues to be in operation. In response to its critics, the government has made some important changes in forest policy, e.g., no longer treating forests as a source of revenue, and stopping ecologically hazardous practices such as the clearfelling of natural forests. At the same time, it has shown little inclination to meet the major demand of the critics of forest policy—namely, abandoning the principle of state monopoly over forest land by handing over areas of degraded forests to individuals and communities for afforestation.

While we shall return to the contemporary debate later, this article reconstructs a debate over forest policy that took place more than a century ago. For the 1878 Forest Act itself was passed only after a bitter and prolonged debate within the colonial bureaucracy, in which protagonists put forward arguments strikingly similar to those being advanced today.

As is well known, the Indian Forest Department owes its origin to the requirements of railway companies. The early years of the expansion of the railway network, c. 1853 onwards, led to tremendous deforestation in peninsular India owing to the railway's requirements of fuelwood and construction timber. Huge quantities of durable timbers were also needed for use as sleepers across the newly laid tracks. Inexperienced in forestry, the British called in German experts to commence systematic forest management. The Indian Forest Department was started in 1864, with Dietrich Brandis, formerly a Lecturer at Bonn, as the first Inspector General of Forests. The new department needed legislative backing to function effectively, and in the following year, 1865, the first forest act was passed.³

Hurriedly drafted, the 1865 Act was passed to facilitate the acquisition of those forest areas earmarked most urgently for railway supplies. It merely sought to establish the claims of the state to the forest land it immediately required, subject to the provision that existing rights not be abridged. Introducing the Bill, the Law Member, Henry Maine, remarked that even if rules were to be made on all subjects covered by the Bill, and maximum penalties prescribed for its transgression, the forest code would be 'infinitely milder and less stringent than that which is in force in most European countries'. A further comment by Maine is worth noting in the context of the debate over the 1878 Act which was to follow—namely that the rights of individuals, villages and 'wandering tribes' exhibited 'such diversity of

³ *Ibid.*, Section I. The financial difficulties faced by the Raj after the revolt of 1857 may have also been an important influence on forest policy. Thus the Madras Presidency (which, as we shall see, was very reluctant to introduce forest legislation) was repeatedly chastised by the Financial Department for failing to show a surplus in its forest operations. See Progs Nos. 8–23, October 1879, R & A (F), NAI.

character that it is impossible to include them for purposes of reservation, in any one definition'.⁴

However, as far as the forest department was concerned, the 1865 Act exercised only a tenuous control over the forest estate, and the search commenced for a more stringent and inclusive piece of legislation. A preliminary draft, prepared by Brandis in 1869, was circulated among the various Presidencies. A conference of forest officers, convened in 1874, then went into the defects of the 1865 Act and details of a new one. The conference provided the basis for a memorandum on forest legislation, prepared by Brandis in 1875. The latter memorandum, further worked on by Brandis and a senior civil servant, B.H. Baden-Powell, culminated in the Indian Forest Act of 1878.

In these successive iterations the state was concerned above all with removing the existing ambiguity about the 'absolute proprietary right of the state'. A vocal advocate of state monopoly deplored the 'unfortunate but irrevocable action of government authorities in days past' which had taken many forest areas wholly out of the category of state property. Even forests where the state had in theory retained its 'absolute' proprietorship, were 'everywhere used by all classes to get what they wanted'. Villagers had got accustomed to graze cattle and cut wood wherever they wished, the writer complained, because 'nobody cared whether [they] did or not'.⁵

Of course in many parts of India customary use of the forest was closely regulated by local institutions—access was not 'free' as Baden-Powell represented it to be, but controlled by a web of customary relations within and between villages. So far as state forest management was concerned, however, a firm settlement between the state and its subjects over their respective rights in the forest represented the chief hurdle to be overcome. As Brandis put it, 'Act VIII of 1865 is incomplete in many respects—the most important omission being the absence of all provisions regarding the definition, regulation, commutation, and extinction of customary rights . . . [by the state] . . .'.⁶ In the heated debate about how best to accomplish this separation of rights three distinct positions emerged. The first, which we call *annexationist* held out for nothing less than *total* state control over all forest areas. The second, which one can call *pragmatic*, argued in favour of state management of ecologically sensitive and strategically valuable

⁴ Henry Maine, 'Statement of Objects and Reasons' dated 14/9/1864, in A Progs Nos. 1–6, October 1864, LD, NAI.

⁵ See B.H. Baden-Powell, 'On the Defects of the Existing Forest Law (Act XIII of 1865) and Proposals for a New Forest Act', in B.H. Baden-Powell and J.S. Gamble eds., *Report of the Proceedings of the Forest Conference, 1873–74*, Calcutta, 1875.

⁶ 'Explanatory Memorandum on the Draft Forest Bill', by D. Brandis, IGF, dated 3/8/1869, in B. Progs Nos. 37–47, December 1875, R & A (F), NAI.

forests, allowing other areas to remain under communal systems of management. The third position (a mirror image of the first), we call *populist*. It completely rejected state intervention, holding that tribals and peasants must exercise sovereign rights over woodland. These three perspectives on state control dovetailed with three distinct views on the sociology, history, politics and ecology of forest resource use. They deserve to be reconstructed in full, for the issues they raised and debated with such intensity a hundred years ago are very much with us today.

The bedrock of the *annexationist* position was the claim that all land not actually under cultivation belonged to the state. Of course, it was not easy to wish away the access to forests, whether regulated or not, that peasants so patently exercised down the centuries right until the formation of the Forest Department. Officials argued that such customary use, however widespread and enduring, was exercised only at the mercy of the monarch. Here they selectively used precedents such as Tipu's edict banning the cutting of sandalwood, as proof that India's rulers had ultimately reserved to themselves the right of ownership over forests and forest produce. Claimed B. H. Baden-Powell: 'the state had not it is true exercised that full right: the forests were left open to any one who chose to use it: *but the right was there*'.⁷ In this strictly legalistic interpretation only those rights of use which were *explicitly granted by the state* (presumably only in writing) were to be entertained. Thus Baden-Powell made a clever distinction between 'rights' defined as 'strict legal rights which unquestionably exist and in some instances have been expressly recorded in land settlement records'—and 'privileges', defined as 'concessions of the use of grazing, firewood, small wood etc., which though not claimable as of legal right are always granted by the policy of the government for the convenience of the people'.⁸

This tortuous distinction (in effect, a legal sleight of hand) was buttressed by an early version of the theory of 'Oriental Despotism' in which Eastern chiefs were believed to have powers far more extensive than those enjoyed by their contemporaries in medieval Europe. Adducing no evidence, Baden-Powell nevertheless claimed that 'the right of the state to dispose of or retain for public use the waste and forest area is among the most ancient and undisputed (sic) features in Oriental Sovereignty'.⁹ 'In India', an official primer on forest law later affirmed, 'the government is by ancient law . . . the general owner of all unoccupied and waste lands'.¹⁰ Whatever the historical evidence for this claim (scanty, at best) its purpose was clear—to pave the way for the formal assertion of ownership over forests

⁷ Baden-Powell, 'Defects of the Existing Forest Law', pp. 4–5.

⁸ See 'Draft Forest Bill prepared by Mr. Baden-Powell', in source cited in footnote 6.

⁹ B.H. Baden-Powell, 'Concessions', *Indian Forester*, XXV, (1899), p. 358.

¹⁰ Anon, *A Manual of Forest Law Compiled for the Use of the Students at the Imperial Forest College, Dehra Dun*, Calcutta, 1906, p. 20.

and waste by the colonial state. The 'right' of Oriental governments in the forest, insisted Baden-Powell, 'passed on to and was accepted by, the British government'.¹¹ Others were more blunt. 'The right of conquest' thundered one forest official, 'is the strongest of all rights—it is a right against which there is no appeal'.¹²

The Madras government, which emerged as the most articulate spokesman for village interests in the controversy around the 1878 Act, had a tradition of upholding local rights. The official who was to lead its opposition, W. Robinson, sharply distinguished between the state's claim to a share of the produce from cultivated land—which he acknowledged to be an 'immemorial' one—and the absence of any such right on 'communal village woodland' which, he pointed out were 'village *property*, not village *privilege*'.¹³ In fact, based on reports from its Collectors, the Madras government had rejected a proposal to introduce the 1865 Act (comparatively mild as that legislation was) in the Presidency. In Madras, it observed, 'nearly all the jungles and forests are within village boundaries and are subject to the prescriptive rights of the village'.¹⁴ On this reading, it now rejected Baden-Powell's tendentious distinction between legally proven 'rights' and 'privileges' exercised without written sanction. 'All instances of the use of the forest by the people', it argued, 'should be taken as presumptive evidence of property therein'.¹⁵ Both 'private grantees and village and tribal communities', an early nationalist organisation pointed out, echoing these sentiments, 'have cherished and maintained these rights [in the forest] with the same tenacity with which private property in land is maintained elsewhere'.¹⁶ If this view was to be allowed, then it seemed the claim of the state was virtually non-existent. For,

There is scarcely a forest in the whole of the Presidency of Madras which is not within the limits of some village and there is not one in which so far as the Board can ascertain, the state asserted any rights of property unless royalties in teak, sandalwood, cardamoms and the like can be

¹¹ B.H. Baden-Powell, *Memorandum on Forest Settlements in India*, Calcutta, 1892, p. 9.

¹² C.F. Amery, 'On Forest Rights in India' in D.Brandis and A. Smythies eds., *Report on the Proceedings of the Forest Conference held at Simla*, Calcutta, 1876, p. 27.

¹³ Note by W. Robinson, dated 24/10/1874, in Progs Nos. 1–52, March 1879, R & A (F), NAI, emphasis in original.

¹⁴ Progs Nos. 113–116, September, 1869, PWD(F), NAI. The Secretary of State for India rebuked the Madras Government for its refusal to introduce the 1865 Act. See Progs Nos. 28, March 1870, PWD(F), NAI.

¹⁵ 'Remarks by the Board of Revenue, Madras', dated 5/8/1871 in A Progs Nos. 43–142, March 1878, LD, NAI. This file, containing many of the key documents pertaining to the 1878 Forest Act, is hereafter referred to as LD file of 1878.

¹⁶ Memorial, dated 3/3/1878, from Poona Sarvajanik Sabha and the inhabitants of the city and camp of Poona in LD file of 1878.

considered as such, until very recently. All of them, without exception are subject to tribal or communal rights which have existed from time immemorial and which are as difficult to define as they are necessary to the rural population . . . Nor can it be said that these rights are susceptible for compensation for in innumerable cases, the right to fuel, manure and pasturage, will be as much a necessity of life to unborn generations as it is to the present . . . [In Madras] the forests are, and always have been common property, no restriction except that of taxes, like the Moturpha [tax on tools] and Pulari [grazing tax] was ever imposed on the people till the Forest Department was created, and such taxes no more indicate that the forest belong to the state than the collection of assessment shows that the private holdings in Malabar, Canara and the Ryotwari districts belong to it.¹⁷

In its remarks of 5 August 1871, the Madras Board of Revenue succinctly stated its main reasons for rejecting Brandis' draft Bill:

First, because its principles, scope and purpose are inconsistent with the existing facts of forest property and its history.

Second, because, even if the Bill were consistent with facts, its provisions are too arbitrary, setting the laws of property at open defiance, and leaving the determination of the forest rights of the people to a Department which, in this Presidency at all events, has always shown itself eager to destroy all forest rights but those of Government.

Third, because a Forest Bill, which aims at the regulation of local usages ought to be framed, discussed and passed by the local legislature.¹⁸

A further elaboration of these core objections to the bill are to be found in the collectors' remarks solicited by the government in Fort St. George.¹⁹ Here, inter-departmental rivalry emerged as an important reason for the reservations, expressed by many Collectors, to the provisions of the proposed Act which greatly enlarged the powers of the forest administration. Thus the Collector of Vizagapatnam considered it 'very objectionable' that under the act, forest officers were to help adjudicate on disputed forest boundaries. He suggested that a 'less interested' tribunal deal with contested cases, as 'zeal for the interests of the department may prevent [forest officers] giving due weight to adverse claims'. The Collectors of Kurnool

¹⁷ Source cited in footnote 15.

¹⁸ Ibid.

¹⁹ No. 177, from Collector of Kurnool to Administrative Secretary to the Board of Revenue, dated 27/5/1871; No. 145 from Acting Collector, Trichnopoly to Acting Secretary to the Board of Revenue, dated 20/5/1871, in Board of Revenue, Progs Nos. 5739 to 5789 for 5th August 1871, TNSA.

and Trichnopoly were more explicit in calling for the retention of the existing system, in which forest officials were strictly subordinate to the civil administration—by contrast, the new Bill ‘all but ignored all other officers of Government except those of the forest department’. Forest officials reacted sharply to such insinuations. Thus Colonel Beddome, the Conservator of Forests in Madras Presidency, sarcastically observed that if Collectors continued to be in charge of forest areas, these would be totally neglected for ‘jungle fever is a forest officer’s inheritance, but it is very doubtful how far Collectors would be willing to expose themselves to it, and tahsildars perfectly dread the forests and hill tracts.’²⁰

These reservations of civil officials were used by the Madras Board of Revenue to make a more general case against the creation of new departments; ‘the last fifteen years have seen so many new departments launched amongst the people that the ryots quite dread the advent or extension of a new one’ If forest administration was to continue, it argued, it must be associated with regular land administration, with Collectors themselves functioning as Conservators of Forests.²¹ In urging against the creation of a parallel forest administration, they invoked the authority of Sir Thomas Munro. Between 1806 and 1822, the requirements of the Bombay dockyard for teak and poon spars had led to vigorous attempts at enforcing state monopoly over forests in the districts of the west coast. At the time, Munro had only harsh words for the over-zealous conservator, pointing out that ‘a system to which the whole country is hostile, can never succeed. The inhabitants will neglect or destroy the trees which they cannot gain by’²² Such precedents were used by W. Robinson, the most vocal of Madras officials, to caution against the introduction of radical laws. Quoting Munro to the effect that in India forest legislation should be both cautious and conservative, Robinson pointed out that the draft act would be ‘at once rejected by the English legislature as foreign to its own safe principles of legislation’.²³

Neither jealousy of the forest department nor fear of popular discontent fully accounts for the hostility of Madras officials to the new proposals. They were also convinced that the new forest laws, by sharply restricting customary use, would adversely affect the agrarian economy. The Collectors of Kurnool and North Arcot claimed that restrictions on pasturage and seasonal migration would lead to a decline in animal husbandry in several districts. The former also pointed out that section 26 of the act would inflict great hardship ‘on hundreds of helpless women whose only means of

²⁰ No. 1931, dated 24/2/1870, from Offg. Conservator of Forests, Madras to Acting Secretary to Govt. of Madras, in Appendix KKK, LD file of 1878.

²¹ ‘Remarks by the Board of Revenue,’ dated 18/1/1870, in *ibid.*

²² See Progs Nos. 32–52, May 1879, R & A (F). NAI.

²³ Minute by W. Robinson, dated 3/2/1878, in Appendix SSS, LD file of 1878.

livelihood for several months of the year consists in gathering for sale jungle produce', while 'inconvenience will also be felt by native doctors, most of whose medicines are found in the forests, probably at the very season when the forests may be closed'. And as these customary rights of use by different segments of agrarian society were both 'indefinite and contingent', codification would serve little purpose. Here the procedures of compensation and regulation of rights, envisaged by the forest act, was criticised as violative of inter-generational equity, for 'the present generation has only a life interest in [forest rights], and must hand them down to future generations as they received them'.²⁴

Interestingly, the Indian officials asked to comment on the bill were even more critical than their European superiors. Venkatchellum Puntulu, Deputy Collector of Bellary, argued that the burden of the new legislation would fall most heavily on the poor. While Inamdars would find it relatively easy to retain their forest property, in the absence of explicit grants peasants would not be able to prove rights of ownership, even though forests had traditionally been used by them as common property. Criticising the detailed rules prohibiting the collection of many kinds of forest produce, Puntulu made the penetrating observation:

. . . the provisions of this Bill infringe the rights of poor people who live by daily labour (cutting wood, catching fish and eggs of birds) and whose feelings cannot be known to those whose opinions will be required on this Bill and who cannot assert their claims, like influential class, who can assert their claims in all ways open to them and spread agitation in the newspapers.

Narain Row, Deputy Collector of Nellore, placed cattle along with the labouring poor in the category of voiceless users of the forest. Anticipating the forester's objection to the destruction of young saplings by grazing, he said: 'it has been the established experience of India that less harm is done to the trees by way of eating foliage than good by supplying manure'. Row was also emphatic that the new legislation had no historical precedent, for 'there were originally no Government forests in this country. Forests have been always of natural growth here; and so they have been enjoyed by the people'.²⁵

Some of these objections were echoed by the Poona Sarvajanik Sabha, which commented on the likely alienation of peasants from forests whose growth they had earlier helped to nurture. Contesting the new act's excessive

²⁴ No. 177, dated 27/5/1871, from Collector, Kurnool to Acting Secretary to Board of Revenue; No. 285, from Collector, North Arcot to Acting Secretary to Board of Revenue, both in TNSA source cited in footnote 19.

²⁵ 'Memorandum on the Forest Bill', dated Nellore, 8/5/1871; No. 186 dated 27/6/1871, from Dy. Collector to Acting Collector, Bellary, both in *ibid*.

reliance on state control, it argued that the maintenance of forest cover could more easily be brought about by

taking the Indian villagers into confidence of the Indian Government. If the villagers be rewarded and commended for conserving their patches of forest lands, or for making plantations on the same, instead of ejecting them from the forest land which they possess, or in which they are interested, emulation might be evoked between neighbouring villages. Thus more effective conservation and development of forests in India might be secured and when the villages have their own patches of forests to attend to Government forests might not be molested. Thus the interests of the villages as well as the Government can be secured without causing any unnecessary irritation in the minds of the masses of the Indian population.²⁶

Harmonising the interests of the state with those of the villagers was also the programme advocated by the Inspector General of Forests, Dietrich Brandis, the exemplar of what we have termed the 'pragmatic' approach. Brandis allowed that in certain cases the state had indisputable rights—however, he was with the Madras Board of Revenue in disputing Baden-Powell's contention that rights had to be 'proved' in writing before they could be said to exist. In most forest areas, he believed, villagers were accustomed to freely graze their cattle, cut wood, etc., subject only to some restrictions which rulers imposed from time to time. Drawing on a cross-cultural comparison he pointed out that 'the growth of forest rights in India has been analogous to the growth of similar rights of user in Europe. There are many well known cases in which forest rights in Europe have arisen out of a specific growth and in such cases the extent of the right is construed by the terms of the grant and is not necessarily restricted by the limitations adverted to. In most instances however, they have grown out of the use by the surrounding villages of the common waste or forest. Forest rights in India have had a similar origin and development as in Europe with that important difference that the arbitrary dealings of the Native Rules have interfered with the growth of these rights and have in many cases restricted or extinguished them.' Not that he was approving of such arbitrary action—contesting Baden-Powell's invocation of the case of the Amirs of Sindh, chieftains who had enclosed forests for hunting, Brandis said:

. . . the fact that the former Rulers in many cases have extinguished such customary use of the forest in a summary manner and without compensation is hardly an argument in point, for these were cases of might

²⁶ Source cited in footnote 16.

versus right. As against other individuals and communities the customary rights to wood and pasture have as a rule been strenuously maintained.²⁷

Other officials used the European analogy to quite different ends. If for Brandis the forest history of Europe called for a similar treatment of village rights in India, for others it merely served as a warning not to grant these rights. Thus a committee set up by the government of Bombay in 1863 went so far as to claim that in both India and England the governing powers could assert a total state monopoly whenever they wished. Claiming the right of the sovereign in England since ancient times to 'make forest of any extent over the lands of his subjects', they urged the application of a similar principle in India.²⁸ For Baden-Powell, the lesson of European forest history was not to allow, in India, the building up of rights which could encumber timber production by the state.²⁹ Moreover, even if the development of common rights was analogous, the rights permissible to free born citizens in England were not feasible in a colonial territory:

. . . in England by the Common Law, all proprietors of land own everything up to the sky and down to the centre of the earth except gold and silver mines, which by prerogative belong to the crown. But in a ceded and conquered country like India, this English Common Law and Crown prerogative does not apply, at any rate beyond the limits of the Presidency towns.³⁰

Brandis, a comparative newcomer to colonial administration (and from a country which was at the time very much a beginner in the colonial game) took a different stance. The settlement of rights, he insisted, must be done in a 'just and equitable manner'.³¹ For him, identical acts could call upon the same legal justification, even if one was committed in colonial India, the other in 'free' England. As he told a meeting in Brighton in 1872:

There has been much thoughtless talk as if the natives of India, in burning the forests and destroying them (sic) by their erratic (sic) clearings were committing some grave offence. If the matter is carefully analysed they will be found to have the same sort of prescription which

²⁷ D. Brandis, *Memorandum on the Forest Legislation Proposed for British India (Other than the Presidencies of Madras and Bombay)*, Simla, 1875, pp. 13–14.

²⁸ See A Progs Nos. 32–38, February 1865, LD, NAI.

²⁹ Baden-Powell, *Memorandum*, p. 7.

³⁰ B.H. Baden-Powell, *A Manual of Jurisprudence for Forest Officers*, Calcutta, 1882, p. 50.

³¹ Brandis, *Memorandum on Forest Legislation*, p. 12.

justifies the commoner in the New Forest to exercise his right of pasture, mast and turbarry.³²

Differing perspectives on the forest rights of Indians vis-a-vis Europeans led to a sharp exchange at a major conference of forest officials at Simla in 1875. Reflecting on European forest history, one forest officer, C.F. Amery, claimed that Charlemagne regretted his recognition of the forest rights of the villagers of the Black Forest. The European experience, said Amery, was a warning to the state not to recognise private rights—as he put it ‘the government dare not go back from the position that it has, viz., absolute control of State land’. In his comment on Amery’s paper, Brandis rejected the assumption that the state need only recognise forest rights based on a settlement record or on an explicit grant. For as in Europe, forest rights in India invariably had their origin ‘in old usage and custom’; that being the case, the state ‘must respect them in India as much as in Europe’.³³

If Baden-Powell and his ilk concluded from European history that the colonial state must be more emphatic in asserting its claims, and Brandis that it must grant to its subjects the rights prevalent in Europe, the Madras Government sharply challenged the principle of state forestry in Europe itself. The Board of Revenue compared Brandis’ draft act to the French Code Forestier, that ‘most stringent of forest rules’, itself the consequence of ‘a long feudal tyranny followed by the storms of a revolution, and the despotism of an empire’—indeed ‘no system could be more opposed either in its history or its provisions to the corresponding circumstances in India’. Faced with the Indian Forest Act of 1878, the Governor of Madras had to go even further back to find an appropriate analogy from European history. Condemning the new legislation as a ‘Bill for confiscation instead of protection’, he said ‘it was probably the same process which the Norman kings adopted in England for their forest extension’.³⁴

Very different proposals flowed from these different readings of Indian and European forest history. The ‘annexationists’ urged the constitution of all wooded areas as state forests, following a settlement of rights on the interpretation advanced by Baden-Powell. Thus the Agricultural Secretary, Allan Octavian Hume, sharply rebuked the vocal Madras official W. Robinson for his opposition to state encroachment on customary rights. Commenting on his decision to recognise rights of ownership in forests cultivated in rotation by swidden agriculturists in South Kanara, Hume

³² D. Brandis, *Indian Forestry*, Working, 1897, p. 53. The Oxford Universal Dictionary defines ‘mašt’ as ‘the fruit of the beech, oak, chestnut, and other fruit trees, especially as food for swine,’; and ‘turbarry’ as ‘the right to cut turf or peat for fuel on a common’.

³³ Amery, ‘Forest Rights’, p. 30f.

³⁴ ‘Remarks by the Board of Revenue, Madras’, dated 5/8/1871, and Minute by the Governor of Madras, dated 9/2/1878, both in Appendix SSS, LD file of 1878.

cautioned 'the government of India to watch carefully and satisfy itself that [Robinson's] kindly and warm-hearted sympathy for the welfare of the semi-savage denizens of the Kanara forests does not lead him into a too lavish dissipation of the capital of the state'.³⁵ Sentiments such as Hume's informed the proposals for the general takeover of forest and waste by the state. As Brandis found to his dismay, the majority of participants at the crucial Forest Conference of 1874 disagreed with his more modest claims for state control, holding out for the constitution of all forest as state reserves controlled by the Forest Department.³⁶

The Annexationists' programme of state control also invoked an early version of the 'Tragedy of the Commons' model, a century before Garret Hardin was to lend respectability to Darwinian interpretations of human relations with nature.³⁷ Communal forests would 'end in destruction', claimed a Conservator of Forests in Bombay, because of 'the paramount feeling of self interest that prevails in opposition to all other interests, and which therefore leads the strong to prey upon the weak'.³⁸ Consequently, state management was held to be the only viable option for conserving forests.

In sharp contrast, the Madras government believed that state intervention should be minimal, fully respecting existing rights. The Collector of the Nilgiris, for example, insisted that forest officials actively seek out evidence of communal rights, rather than wait for headmen to put forward their claims. Objecting to Brandis' draft bill of 1869, he remarked that the procedure it envisaged would pit two unequal antagonists. Showing a prescient awareness of the territorial aspirations of the Forest Department, the Madras Government pleaded for the involvement of civil courts in the arbitration of forest rights. As it stood, the Bill had stacked the dice heavily against the interests of villagers, for the Forest Department, 'which acquires new importance by every forest right which it strangles will be the arbitrator'.³⁹

Typically straddling these two positions, Brandis advocated the restricted takeover of forests by the state. He justified this middle course both on the grounds of equity (respect for age old rights) and efficiency, as the only feasible course. Brandis urged the administration to 'demarcate as state

³⁵ Note by A.O. Hume, dated 24/6/1876, B Progs No. 10, September 1876, R & A (F), NAI.

³⁶ 'Memorandum by D. Brandis, IGF, on several matters discussed at the Forest Conference', dated 1/6/1874, in B Progs Nos. 3-8, July 1874, R & A (F), NAI.

³⁷ Garret Hardin, 'The Tragedy of the Commons' (1968), reprinted in R. Clarke ed., *Notes for the Future*, London, 1975.

³⁸ No. 2172, dated 14/12/1871, from Conservator of Forests, Southern Circle, to Chief Secretary to Government, Bombay in source cited in footnote 13.

³⁹ 'Abstract of Collectors' Reports on the Forest Bill', in LD file of 1878.

forests as large and compact areas of valuable forests as can be obtained free of forest rights of persons', while leaving the residual area, smaller in extent but more conveniently located for their supply, under the control of village communities. He hoped for the creation of three great classes of forest property, based on the European model: state forests, forests of villages and other communities, and private forests. State ownership had to be restricted on account of the 'small number of experienced and really useful officers' in the colonial forestry service and out of deference to the wishes of the local population. Thus 'the trouble of effecting the settlement of forest rights and privileges on limited well-defined areas is temporary and will soon pass away, whereas the annoyance to the inhabitants by the maintenance of restrictions over the whole area of large forest tracts will be permanent, and will increase with the growth of population'.⁴⁰

In Brandis' scheme, therefore, village forests would play a vital role, although they would be subject to the overall supervision of 'competent and professionally trained government officers'.⁴¹ Notwithstanding these qualifications, as compared to other forest officers the Inspector General did have a far greater respect for village institutions for forest conservation. He wrote appreciatively of the extensive network of sacred groves in the subcontinent which he termed 'the traditional form of forest preservation'. Displaying an early 'ethnobotanical' interest in indigenous systems of tree and plant classification, he circulated a list of local names, urging 'younger officers, with more leisure and more extensive opportunities, to take up the study of the names of trees and shrubs used by the [tribes] of Central India'.⁴² He also praised Indian rulers for their forest sense, singling out the Rajasthan chiefs who, in strenuously preserving brushwood in a dry climate 'have set a good example, which the forest officers of the British government will do well to emulate'.⁴³ He was especially keen on reviving and strengthening village communal institutions. When his requests for official initiative in the formation of village forests were repeatedly turned down, he instanced the fruits of well-managed communal forests, recognised by law, which existed in several European countries. On a visit to Mysore, he expressed the hope that at some future date he would 'find the advantages of true communal forests recognised not in Mysore only, but in all parts of India where a village organisation exists', for it seemed to him 'particularly

⁴⁰ This paragraph draws on three memoranda by Brandis, cited in footnotes 6, 27 and 36 respectively.

⁴¹ D. Brandis, *Memorandum on the Democration of the Public Forests in Madras Presidency*, Simla, 1878, pp. 46–50.

⁴² D. Brandis, *Suggestions Regarding Forest Administration in the Central Provinces*, Calcutta, 1876, Appendix.

⁴³ Brandis, *The Distribution of Forests in India*, Edinburgh, 1873, pp. 24–25.

desirable to strengthen the old village organisation by consolidating and ameliorating the grazing grounds, forest and waste land of the village community'.⁴⁴

Brandis' task was an uphill one. His sentiments may have been noble, but they were not shared by his peers and masters in the British colonial system. Rapping him on the knuckles, Brandis' boss, the Agricultural Secretary, said the Inspector General's 'views as to rights of aboriginal tribes, forest villages etc., are to my mind clearly in advance of my own, and a fortiori of those of the government of India'.⁴⁵ Within official circles, the balance of opinion was clearly in favour of the Annexationists: and a policy of state annexation of forest land was embarked upon. The concrete proposals were embodied in Brandis' memorandum of 1875, which with Baden-Powell's paper in the Forest Conference of the previous year, formed the basis of the 1878 Act, passed with the approval of all local governments except Madras.

Based on Baden-Powell's distinction between 'rights' and 'privileges' the Act was a comprehensive piece of legislation, that by one stroke of the executive pen attempted to obliterate centuries of customary use by rural populations all over India. It provided for three classes of forest. 'Reserved' forests consisted of compact and valuable areas, well connected to towns, which would lend themselves to sustained exploitation. In reserved forests, a legal separation of rights was aimed for, it being thought advisable to safeguard total state control by a permanent settlement that either extinguished private rights, transferred them to protected forests or in exceptional cases allowed their limited exercise. In the second 'category', the so-called 'protected forests' (also controlled by the state), rights were recorded but not settled. However, control was firmly maintained by outlining detailed provisions for the reservation of particular tree species as and when they became commercially valuable and for closing the forest whenever required to grazing and fuelwood collection. Given increased commercial demand and their relatively precarious position from the government's point of view, protected areas were gradually converted into reserved forests where the state could exercise fuller control. Thus the 14,000 square miles of state forest in 1878 (the year the act was passed) had increased to 56,000 square miles of reserved forests and 20,000 miles of protected forests in 1890—the corresponding figures a decade later being 81,400 and 3,300 square miles respectively. The Act also provided for the constitution of a third class of forests, village forests, although the option was not

⁴⁴ Brandis' memorandum cited in footnote 6, and 'Memorandum by D. Brandis, IGF, on the district scheme of Mysore', dated 1/6/1874, in B Progs, Nos. 12–15, June 1874, R & A (F), NAI.

⁴⁵ Note by A.O. Hume, dated 19/8/1874, in Progs Nos. 43–55, March 1875, R & A (F), NAI.

exercised by the government over the most part of the subcontinent. Finally, the new legislation greatly enlarged the punitive sanctions available to the forest administration, closely regulating extraction and transit of forest produce and prescribing a detailed set of penalties for transgressions of the Act.

Even as the 1878 Act was passed and introduced into other provinces, the Madras government was under considerable pressure to accept its provisions. It was chastised by the Secretary of State for its 'laxity with respect to the forest rights of Government'.⁴⁶ Forcing its hand, Fort William then proposed to send Baden-Powell himself to supervise forest settlement operations in the Madras Presidency.⁴⁷ This proposal was dropped when Fort St. George wrote to the Secretary of State that it would draft its own forest legislation. In fact, under the influence of the indefatigable W. Robinson, the Madras government had in 1875 constituted a committee to draft a forest bill for the Presidency. Remarkably, the seven member committee had three Indian members, in pursuance of Robinson's belief that the native element must be 'well represented' in a committee which would 'have to deal with considerations such as only Native advisers thoroughly understand, will not unwittingly disturb, and may be surely looked to for comfort'.⁴⁸

By the time the Madras government did forward a draft forest bill to the Governor General, in March 1879, W. Robinson had retired. Yet the legislation bore his imprint, and, as one would expect, it evoked outrage in Fort William. While Madras had surprisingly disavowed its earlier contention that all forests in the Presidency were communal property, the draft bill laid great emphasis on the constitution of village forests. It also contained a provision for the government to financially reward villages who effectively conserved forest land allotted to them. Expressly asked by A.O. Hume to 'carefully criticise it for me', Baden-Powell wrote a nine page polemic on the Madras draft. He called it 'confused and contradictory', full of 'inconvenient expressions, not usual in legislative documents'. He objected to the bill's attempt to precisely define 'forest', pointing out that (from the point of view of the state) 'no legal or other difficulty ever arises from leaving it undefined'. Baden-Powell went on to criticise the bill for not banning shifting cultivation, for allowing villagers rights even in reserved forests, and for inadequately providing for the constitution of valuable timber areas as state reserves. Objecting to the clause rewarding villages for protecting their forests, he ominously concluded: 'By reading the Bill

⁴⁶ B. Progs Nos. 9-10, 1879, R & A (F), NAI.

⁴⁷ Progs Nos. 17-20 for October 1880 and Progs Nos. 25-33 for November 1880, R & A (F), NAI.

⁴⁸ Order No. 1371 of Madras Govt., dated 17/9/1875; 'Minute by acting Governor' (signed by W. Robinson), dated 28/7/1875, both in Progs Nos. 1-52, May 1879, R & A (R), NAI.

carefully, one can guess at the general intention underlying it' (i.e., the safeguarding of village rights against those of the state).⁴⁹

When the Governor General, basing himself on Baden-Powell's memorandum, conveyed his disapproval, the Madras government formed a committee to draft a fresh bill. With three Indian officials among its five members, this committee, while recasting and rearranging the provisions of the earlier bill, retained its thrust in favour of village rights. Commenting on the earlier draft, the second member of the Board of Revenue had observed that it provided for 'the substitution of the control of the villagers over their own forest lands for that of the Forest Department'. But the revised bill also called for the allotment by notification, *in every Government village*, of a sufficient area of state forests for 'the adequate supply' of forest produce for village needs. While the Indian members welcomed the 'proposed formation of village forests in the special interests of agriculture', the Madras Governor, the Duke of Buckingham, justified the formation of village forests on instrumental grounds. If forest areas were not set aside for the exclusive use of the peasants, he argued, 'it was not in human interest on the part of these people to resist taking what was an absolute necessity for themselves'. Indeed,

If forest conservancy results in an increased supply of fuel and wood for agricultural and domestic purposes being obtained cheaply, it will have the support of the people, and forest will thrive and those who commit real damage or injury will have no sympathy; but if with the introduction of improved conservancy supplies are restricted and prices enhanced, amounting in fact to an additional assessment, conservancy will be hated and forest plundered.⁵⁰

This subtle shift in rhetoric, from an ethical (*pace* W. Robinson) to an instrumental justification for the protection of village interests, failed to placate the Government of India. While the new draft was passed by the Madras Council on 9 November 1880, and approved by the Governor on 4 December, the Governor General refused to give his assent. Again, Fort William's objections were based on a lengthy (16 page) memorandum by the relentless Baden-Powell. He said that the Madras Forest Act rested on a very confusing interpretation of rights, in which 'strictly legal prescriptive rights' were often confused with 'customary rights' that were merely 'usages

⁴⁹ Note by A.O. Hume, dated 24/4/1879, 'Memorandum by B.H. Baden-Powell on the Madras Forest Bill', undated (probably May 1879), both in Progs Nos. 8-23, October 1879, R & A (F), NAI.

⁵⁰ 'Note on the Madras Forest Bill by the Second Member of the Board of Revenue, Madras' dated 29/5/1879; 'Memorandum of observations on Forest Bill of 1879', by G.N. Gajapathy Rao, Member, Select Committee for Forest Bill; speech by Governor in 'Abstract of Council Proceedings for 2/4/1879'; minute by Governor, dated 2/12/1880, all in Progs Nos. 1-37, October 1881, R & A (F), NAI.

of standing which are to receive consideration'. He maintained that the chapter on village forests would 'take away from Government not only the income and the use of all produce (which may be of comparatively little moment) but also the *control* of *nearly all* the forests that remain'. Baden-Powell contrasted this with the Indian Forest Act of 1878, where even village forests were under state control. Echoing Baden-Powell's objections, the Agricultural Secretary enumerated three main defects in the Madras Forest Act:

1. The compulsory creation of village forests, which would cripple forest administration by not leaving enough area for state reserves;
2. The proviso that the compensation, exclusion and commutation of rights was subject to the *consent* of the right holder;
3. The omission of the clause in the 1878 Act whereby forest officials could arrest suspected offenders without warrant.⁵¹

Having refused his assent to the Madras Act, in late 1881 the Governor General deputed Brandis to advise the Madras government on forest legislation and management. Brandis himself was keen that Baden-Powell, a senior I.C.S. official most likely to influence Madras officials, be sent, but when entrusted with the task of bringing the Madras government in line he did so efficiently. His arrival in Madras coincided with the departure of the Duke of Buckingham, and the arrival as Governor of Grant Duff. Evidently, the new Governor's views proved to be more congenial—as Brandis put it, 'with greatest kindness, and with painstaking care', Grant Duff 'entered into all my suggestions'.⁵²

While the new Governor appointed a committee (significantly containing only English members) to be 'associated with Mr. Brandis',⁵³ the Inspector General himself undertook the primary responsibility for drafting the new Madras Forest Act. Arriving in Madras on 3 November 1881, Brandis went on a six month tour in the districts. He submitted a rough draft of the bill in April 1882, and after suggestions from the Advocate General and the special committee, the bill was passed by the Legislative Council on 29 June. After receiving the assent of the Governor General in October, it passed into law.

Modelled on the Indian Forest Act and the Burma Forest Act of 1881,

⁵¹ 'Memorandum by B.H. Baden-Powell, B.C.S., on the Madras Forest Act', dated 28/4/1881, emphasis in original; Note by C.G. dated 27/1/1881, both in *ibid*. Explaining their decision to drop the 1878 Act's provision for arrest without warrant, the Madras Committee said they considered the provision to be 'open to abuse' and 'incapable of being adequately guarded in forest tracts and as regards forest tribes'. See 'Note to Governor by Select Committee on the Forest Bill', dated 15/8/1880, in *ibid*.

⁵² D.O. from D. Brandis to A. Mackenzie (Secretary, GOI), dated 28/8/1882, in Progs Nos. 9–31, January 1883, HD (F), NAI.

⁵³ See B. Progs No. 30, April 1882, R & A (F), NAI.

the Madras Forest Act of 1882 stressed the constitution of important forests as state reserves, while it omitted any mention of village forests.⁵⁴ From the 1878 Act it took the detailed provisions for the settlement, definition and regulation of rights, the listing of valuable tree species as reserved wherever they were found, curbs on shifting cultivation, etc. In its neglect of village rights and the concomitant strengthening of state control, the act marked a radical departure from the draft of 1879 and the 1880 Act which had been refused the Governor General's assent. As even the Indian Forest Act and the Burma Act had provision for the constitution of village forests (albeit under state control), the absence of any such provision in the Madras Act called for some explanation. Although it is difficult to establish precisely why Brandis abandoned his consistent support for village forests, he himself claimed it was due to the lack of competent forest officers in Madras. Until forest administration in Madras Presidency was placed on a firm footing, he argued, there could be no thought of constituting village forests in the Presidency.⁵⁵

And so the resistance to the 1878 Act crumbled, and Madras fell in line with the rest of India. Yet while the opposition of Madras officials may have been in vain, we can perhaps retrospectively see its justification in the fulfilment of their direst predictions. Although Brandis had warned that the takeover of extensive forest areas could lead to discontent, other forest officials were more sanguine, 'The ryot is a short-sighted individual', claimed the Conservator of Forests in Madras, 'and probably will not see that his cherished popular privileges must disappear in any case before railroads and increased cultivation, and that his best chance, and in fact, only chance, is in a well conducted forest establishment'.⁵⁶ Other Madras officials and early nationalists were more prescient. Thus the Poona Sarvanik Sabha predicted that the act would increase the dangers of crop raiding by wild animals.⁵⁷ The collectors of North Arcot and Kurnool both pointed out that tribals who lived by hunting and gathering would now have no option but to take to crime.⁵⁸ This was echoed in a petition signed by 5,000 peasants in Kolaba (Bombay), on whom the burden of such

⁵⁴ See Progs Nos. 1-5, August 1882, R & A (F), NAI.

⁵⁵ See Explanatory Memorandum by Dr. Brandis, dated 3/4/1882, in Progs Nos. 18-27, July 1882, R & A (F), NAI; D. Brandis, *Suggestions Regarding Forest Administration in the Madras Presidency*, Calcutta, 1883, esp. p. 26. Shortly afterwards, when Brandis retired after 19 years as Inspector General of Forests, the Secretary of State observed: 'Dr. Brandis' exertions in the satisfactory reorganisation of the Madras Forest Department form a fitting close to a career of such distinction in its connection with Indian forestry'. In Progs No. 25, March 1883, HD(F), NAI.

⁵⁶ Letter No. 1931, dated 24/2/1870, from Offg. Conservator of Forests, Madras to Acting Secretary to GOI, in Appendix KKK, LD File of 1878.

⁵⁷ See source cited in footnote 16.

⁵⁸ See TNSA source cited in footnote 19.

'criminal' activity was likely to fall.⁵⁹ The Bill would fail in its main aims, the Governor of Madras pointed out, 'not because native people are averse to the maintenance and protection of forests', but because in the absence of security of tenure, peasants would not plant trees on private or common land on suspicion that the government would seize it. Finally, critics maintained that 'a procedure so sweeping, summary and severe, would not only be a grievous injury to the rural population, but would probably cause widespread popular discontent'. In the words of the Madras Board of Revenue, the Act would 'place in antagonism to Government every class whose support is desired and essential to the object in view, from the Zamindar to the Hill Toda or Korombar'.⁶⁰

All these predictions were to come true. Several hunter-gatherer communities did turn to crime when deprived of their traditional livelihood. And from the promulgation of the Act to the end of colonial rule, there was bitter and almost endemic conflict between the state on the one hand and hunter-gatherers, shifting cultivators, graziers, peasants and artisans on the other, in other words, all classes 'from the Zamindar to the Hill Toda'. Finally, and perhaps most significantly, the affirmation of state monopoly effectively severed the link between humans and forest; denied access and security of tenure, neither peasant nor tribal communities had any longer a stake in the maintenance of forest cover.⁶¹

In this manner, the 'internal' resistance to the 1878 Act prefigured the far more widespread popular resistance to colonial forest management. But perhaps the real vindication of those on the losing side in that debate is to be found in the contemporary debate on forest policy in India. Of course, the two situations are not strictly comparable—while the earlier debate was sparked off by a timber famine specific to the colonial state, the present controversy arose in the face of an environmental crisis which affects virtually every segment of Indian society. Yet the issues being debated with such intensity today are in many respects unchanged, viz., questions of ownership (state, individual or community), of technical competence (the theoretical knowledge of forest officers or the 'local' knowledge of forest users), and of the most effective set of controls (whether *external* to the majority of resource users, as in state management, or *internal* to resource users, as in village management).⁶²

As they draw their battle lines, however, participants in the ongoing

⁵⁹ Memorial to Baron Lytton, Viceroy of India, from inhabitants of Kolaba collectorate, dated 21/12/1877 (signed by about 5000 people), in B. Progs No. 54, March 1878, R & A (F), NAI.

⁶⁰ See Appendix SSS in LD file of 1878.

⁶¹ See R. Guha and M. Gadgil, 'State Forestry and Social Conflict in British India', *Past and Present*, No. 123, May 1989; R. Guha, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Indian Himalaya*, Delhi and Berkeley, 1989.

⁶² A. Agarwal and S. Narain eds., *India: The State of the Environment 1984-85: A Citizens Report*, Delhi, 1985, esp. pp. 95-98.

debate on Indian forest policy and legislation are wholly unaware of these parallels. Yet it is not only the terrain which bears an uncanny resemblance to the one which was fought over in the closing decades of the last century. The ideological weapons used by the protagonists have not changed all that much either. Upholding state monopoly, the forest department is openly skeptical of the ability of other individuals, groups and institutions to raise and protect forests. Meanwhile, radical environmentalists are as vehement as the Madras Board of Revenue in opposing state control, asking for forest areas to be returned forthwith to the village and tribal communities from whom they were sequestered a century ago. To complete the picture, a 'pragmatic' third path—resting on a judicious mix of individual, community and state control over forests—is being advocated by more moderate environmentalists and some concerned officials.⁶³ The ghosts of Baden-Powell, William Robinson, Brandis, and spokesmen of the Poona Sarva-janik Sabha, are very much with us.

⁶³ M. Gadgil, *Deforestation in India: Patterns and Processes*, Foundation Day Lecture, Society for the Promotion of Wastelands Development, Delhi, May 1989.