

Zitierhinweis

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The Influence of Mughal Law on the Creation of the British Colonial State in India*

In this insightful monograph, Robert Travers traces how the English East India Company (EIC or the Company) adapted the legal and administrative practices of the Mughal empire to establish the basic structures of the colonial state in late 18th-century South Asia. More specifically, Travers focuses »on the way the Company built its new state by co-opting and transforming late Mughal practices of administering justice to petitioning subjects« (6). By reconstituting Mughal law amidst a series of tense and unequal exchanges with South Asian experts and interlocutors, the EIC was able to build the basis of an entirely new system of colonial legal order, including the rhetoric of the British »rule of law« in contrast with the »despotic« Mughal past (26–27).

The book's focus is on the Mughal province of Bengal, over which the EIC acquired a *diwani* (right of revenue collection) following a military conquest in 1765. The first two chapters provide the background within which to examine the establishment of the colonial state. Chapter 1 of the book examines late Mughal notions of justice and administration to provide the historical context for the EIC appropriation of these ideals to create the colonial order. There was, Travers argues, a close link between fiscal centralisation and judicial state-formation, with the levy of taxes and the grant of justice (particularly in revenue and land disputes) considered to be key to rulership in the late Mughal period (47). Travers contends that the EIC also established fiscal and judicial structures along the same lines, linking legal centralisation with efforts to stabilise tax revenues by subjecting local authorities to greater control, but simultaneously claiming that English law would provide protection to subjects that had only been provided »arbitrary« justice by »despotic« governments (63). Chapter 2 examines the legal and political reforms

undertaken by Warren Hastings in 1772 to argue that they drew on the so-called Mughal »ancient constitution« but created a judicial system that extended the Company's claims to adjudicate all civil disputes as the *diwan*, while relegating the *nizamat* courts to the sphere of criminal law (78). In addition to the new law courts, the *khalsa* (a reconstituted version of the head revenue *kachabri*) was also developed as an important system for the adjudication of disputes (91). With the establishment of a permanent Superintendent of the Khalsa Records, the *khalsa* was transformed into an investigative body that managed enquiries into political controversial disputes (104–105).

The next three chapters form the heart of the book's argument, with Travers focusing on specific case studies to cement his argument that Mughal legal practices were recast during the process of the formation of the Company state. In chapter 3, Travers examines records of the judicial investigations conducted by the *khalsa* Superintendent in two complex inheritance cases to demonstrate that officials and litigants deployed arguments from a wealth of sources, including the *dharmashastra* (Sanskrit ethical and jurisprudential writings), *shari'a* (Islamic law), local custom, Mughal deeds of entitlement, and Persian agreements between parties (115). Although British officials reached their conclusions based on this maze of factors, they also expressed discontent at the uncertain nature of the rulings, reinforcing ideas of civilisational difference and leading to efforts to subject *zamindars* (tax-paying intermediaries) to a more rigid and state-centred version of property rights (116). Travers notes that the quest for »final« judicial decrees formed the backdrop within which the Permanent Settlement was introduced, fixing the tax demands and revenues of Bengal in perpetuity (160–161). Chapter 4 focuses on conflicts

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among *banians* (commercial agents engaged in revenue farming), creditors and *zamindars* to explore the »plural and hybrid forms of legality underpinning the emergent fiscal order of early Company rule«, including Persianate documentation, EIC written regulations and court proceedings (166). Travers traces how the Company castigated the corrupting influence of *banians* while claiming to uphold the »ancient« rights of the *zamindars* and demonstrates how this strategy was designed to secure land as a marketable commodity, ultimately securing EIC revenues (203). Chapter 5, perhaps the most fascinating in the book, recasts the *Siyar-ul-muta'akbkhirin*, Ghulam Husain Khan Tabataba'i's Persian-language history of the decline of the Mughals and the rise of regional states and the Company as »a kind of petition of appeal, a form of legal self-representation, designed both to defend Ghulam Husain's family landholdings (*jagir*) as a form of hereditary property and more broadly to persuade the Company to restore the once-great Mughal system of *intizam*, or proper order, including Mughal practices of responsive and consultative rulership« (209). Drawing on Mughal practices of legal entitlement, Ghulam Husain sought the Company's intervention to secure his family's rights while also lamenting that the Company had lost sight of »Mughal traditions of public audience involving the conciliation of established elites and tax-paying subjects« (211). By connecting his own travails with the wider issues faced by fellow South Asian inhabitants, Ghulam Husain provided an incisive critique of Company governance as well as possible ideas for reform that included a return to Mughal forms of public audience (227–228). Although Ghulam Husain relied on Mughal entitlements to further his claims (and to argue for the political reform of Company governance), his situation also revealed the manner in which the EIC first appropriated Mughal practices and then transformed them into state-made written regulations (238).

In the concluding chapter, Travers builds on his narrative to provide an alternative view of Lord Cornwallis' reforms (particularly the Permanent Settlement), which have generally been characterised as a decisive moment of Anglicisation in India

and the subjection of governance to the »rule of law« (241–243). Travers argues instead that the system established by Cornwallis »represented the culmination of this decades-long process of imperial co-option, whereby British authorities had gradually expropriated and recast a late Mughal system of taxation and justice for its own ends« (244). By presenting reforms »as a seismic shift from despotism to law«, Cornwallis managed to cast the earlier petitioning of Indian subjects »as a pathological consequence of despotic governance« rather than »evidence of a culture of rights or sense of justice«, and thereby also negated »the entanglements of Company justice with a prior history of Mughal and *nawabi* justice, and the role of Indian officials and litigants in shaping official norms with their own conceptions of justice and legal order« (260–261).

The book is richly detailed and is based on extensive archival research, relying on both English- and Persian-language sources. It reveals the intricate links between law and political economy in early modern South Asia and how they shaped each other and in turn shaped the colonial state. By focusing on the nuanced legal arguments adopted by litigants and the complex efforts of British officials to make sense of them, Travers is successfully able to provide an alternative history of the Permanent Settlement that goes beyond the focus on intellectual influences that have been key to existing scholarship. The book is also a particularly critical addition to the literature on law during the transition between the Mughal and British empires, a relatively under-studied period in the otherwise rich world of South Asian legal history. There is also a tantalising glimpse into parallels between Bengal and other parts of early modern South Asia when Travers discusses Ghulam Husain's combined petition and historical narrative with similar texts produced in western and southern India, but this remains all too brief and could have been developed further in other chapters. Nevertheless, the book is an enriching and essential read for all scholars interested in South Asian legal history but also more broadly in the history of modern South Asia. ■