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Anglo-Japanese Conference of Historians 2015
Changing Networks and Power in British History:
Politics, Society, Trade

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Law, Agency and Emergency in British Imperial Politics: Conflict between the Government and the King's Court in Bombay in the 1820s

Haruki Inagaki*

Abstract. Britain's Indian empire transformed itself in the early nineteenth century: a hybrid commercial empire of port cities became a sovereign 'despotic' rule over the vast inner territories. This article tries to understand the nature of this transition from the perspective of conflict between the rule of law and emergency, emphasising the role of the Indians' legal practices in the structural transformation of imperial judicial politics. As a case study, it looks at two legal cases in Bombay in the 1820s in which the government of the East India Company was challenged by Indian merchants in the King's Court, which was independent from the Company. The first case involves a Parsi merchant going against the Company. He demanded compensation for the Company's breach of contract in the Second Maratha War. The other case is a Hindu merchant's fight against the governor of Bombay and the collector of Poona. The issue was the confiscation of private property as wartime booty during the Third Maratha War. In both cases, the merchants used multiple legal methods to realise their demands, and the King's Court ruled in favour of them. The judges rejected most of the evidence submitted by the government and claimed that the King's Court had the power to check the conduct of government officers in times of war and emergency. So, in Bombay, the government's logic of emergency was denied by the judges' logic of law. But this heightened the government's sense of danger, which was still involved in a series of disturbances and revolts in the Deccan and Gujarat in the 1820s. The government appealed the cases to the Privy Council in London, and the decisions were overturned. This meant that the rule of law was nullified and the logic of emergency was sanctioned in the appellate structure of the empire. By looking at these developments, I argue that the Indians' agency in using the law against the government and the King's Court's support for it resulted in weakening the control of civil law over the government and its officers.

Introduction

Historians have suggested that the mode of colonialism in India crucially changed in the late eighteenth and early nineteenth centuries: hybrid, plural and networked colonial politics centred on maritime coastal cities was transformed into a sovereign, bureaucratic and militarist territorial domination based on 'colonial knowledge'.¹ Legal historians have given

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1 C. A. Bayly, *Imperial Meridian: The British Empire and the World 1780–1830*, Harlow, 1989; Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India*, Oxford, 1998; Robert Travers, *Ideology and Empire in Eighteenth-Century India: The British in Bengal*, Cambridge, 2007; Jon E. Wilson, *The Domination of Strangers: Modern Governance in Eastern India 1780–1835*, Basingstoke, 2008; Philip J. Stern, 'Rethinking Institutional Transformations in the Making of Modern Empire: The East India Company in Madras', *Journal of Colonialism and Colonial History*, 9: 2, 2008.

a fresh insight on this transition by pointing out a parallel development: hybrid and multi-centred legal pluralism in the eighteenth century was transformed into a more state-centred sovereign form of justice in the early nineteenth century.² This transition entailed a significant consequence: British colonialism became more despotic in the early nineteenth century. The civil government was subordinated to garrison-state militarism, and the executive was allowed discretion to pursue its fiscal-military imperatives unrestrained by the judiciary.³ An earlier attitude of enlightenment universalism was replaced by utilitarian liberal authoritarianism, justifying the colonial state's despotic rule which would have been regarded as unconstitutional at home.⁴ Understanding the nature of this transition has been one of the most important themes of British imperial history.

The key to understanding this transition is the dilemma of the 'rule of law' and 'emergency'. Political theorists and postcolonial scholars have pointed out that there was no rule of law in the colonies—colonialism was a 'state of exception' in which the colonised were debased to the disposable and exterminable 'bare life'.⁵ While some historians counter-argue that the rule of law actually reduced the coerciveness of the British colonial rule,⁶ others endorse it by emphasising the vast amount of evidence of everyday violence.⁷ But a more persuasive line of argument is offered by Nasser Hussain, who examines the cases of martial law and suspension of habeas corpus in colonial India and argues that the state of emergency was not outside the rule of law but constitutive of it.⁸ Lauren Benton and Mark Condos further elaborate that the logic of war and emergency was incorporated into a new conception of the rule of law in nineteenth-century colonies; the state of exception at the moment of conquest was institutionalised in the civil government of the post-conquest era.⁹

The problem of this historiography is that the relationship between the rule of law and emergency has not been sufficiently contextualised, and the driving force of the

2 Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History 1400–1900*, Cambridge, 2002; Gagan D. S. Sood, 'Sovereign Justice in Precolonial Maritime Asia: The Case of Mayor's Court of Bombay 1726–1798', *Itinerario*, 37: 2, 2013, 46–72. See also, Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia 1788–1836*, Cambridge Mass, 2010.

3 Bayly, *Imperial Meridian*; Douglas M. Peers, *Between Mars and Mammon: Colonial Armies and the Garrison State in India 1819–1835*, London, 1995; Robert J. Smith, 'John Bull's Proconsuls: Military Officers who Administered the British Empire 1815–1840', Kansas State Univ. PhD thesis, 2008; Mark Condos, 'British Military Ideology and Practice in Panjab c. 1849–1920', Cambridge Univ. PhD thesis, 2013.

4 Eric Stokes, *The English Utilitarians and India*, Oxford, 1959; Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought*, Chicago, 1999; Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France*, Princeton, 2005; Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism*, Princeton NJ, 2010.

5 Johan Geertsema, 'Exception, Bare Life and Colonialism', in *Emergencies and the Limits of Legality*, ed. Victor V. Ramraj, Cambridge, 2008, 337–59.

6 R. W. Kostal, *Jurisprudence of Power: Victorian Empire and the Rule of Law*, Oxford, 2005; Martin J. Wiener, *An Empire on Trial: Race, Murder and Justice under British Rule 1870–1935*, Cambridge, 2009.

7 Elizabeth Kolsky, *Colonial Justice in Britain: White Violence and the Rule of Law*, Cambridge, 2010; Jonathan Saha, *Law, Disorder and the Colonial State: Corruption in Burma c.1900*, Basingstoke, 2013.

8 Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law*, Ann Arbor, 2003.

9 Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires 1400–1900*, Cambridge, 2010; Condos, 'British Military Ideology and Practice in Panjab'. See also, Elizabeth Kolsky, 'The Colonial Rule of Law and the Legal Regime of Exception: Frontier "Fanaticism" and State Violence in British India', *American Historical Review*, 120: 4, 2015, 1218–46.

transformation remains unclear. Historians have pointed out that the colonial government had a desire to retain power of discretionary intervention in times of emergency, but this is often assumed just by referring to abstract theories of state and state-formation.¹⁰ Besides, although most of the studies have centred on the analysis of the British ‘colonial state’ as a monolith, the British authority was unstable and fractured in this period, and the conflict within the British was as important as the conflict between the British and the Indians in shaping the future form of governance.¹¹ Relatedly, while Foucauldian scholars have produced rich scholarship on colonial governmentality (internal exertion of power through knowledge), this should not divert our attention from the dimension of sovereignty (external exertion of power through coercion) and officials’ anxiety about it.¹² More attention should be paid to the interactions between multiple actors in practical circumstances which suppressed the rule of law and strengthened the logic of emergency. More specifically, to use A. V. Dicey’s criteria, we need to examine how and to what extent the British imperial and colonial governments denied predominance of regular law, exempted their servants from municipal courts, and constructed colonial constitutions which were not based on the natural rights of the subjects.¹³

Recent studies of social history of law in India give us a useful perspective, as they tell us that the agency of the Indians was the driving force of the dynamics of social changes in colonial legal history. The Indians actively used the court of law in business and demanded new legislations, which led to the remodelling of social and economic institutions.¹⁴ The British court was popular as a means of dispute resolution because the British judges could not understand the details of the cases and the Indian litigants could easily manipulate the result.¹⁵ Thus, the social policy of the colonial government often involved complex and protracted negotiations with the Indian groups, particularly in the realms of family, property, charity and caste.¹⁶ The everyday legal practices of Indians shaped the political culture of

10 Hussain, *Jurisprudence of Emergency*; Benton, *Search of Sovereignty*; Mithi Mukherjee, *India in the Shadows of Empire: A Legend and Political History 1774–1950*, Oxford, 2009.

11 Wilson, *Domination of Strangers*; Frederick Cooper and Ann Laura Stoler, eds., *Tensions of Empire: Colonial Cultures in a Bourgeois World*, Berkeley, 1997; Zoë Laidlaw, *Colonial Connections 1815–45: Patronage, the Information Revolution and Colonial Government*, Manchester, 2005.

12 Deana Heath, ‘Bureaucracy, Power and Violence in Colonial India’, in *Empires and Bureaucracy from Late Antiquity to the Modern World*, ed. Peter Crooks and Tim Parsons, Cambridge, 2016; Jon Wilson, ‘The Temperament of Empire: Law and Conquest in Late Nineteenth Century India’, in *Subjects, Citizens and Law: Colonial and Postcolonial India*, ed. Gunnel Cederlof and Sanjukta Das Gupta, London, 2016.

13 A. V. Dicey, *Lectures Introductory to the Study of the Law of the Constitution*, ed. J. W. F. Allison, Oxford, 2004.

14 Niles Brimmes, ‘Beyond Colonial Law: Indigenous Litigation and the Contestation of Property in the Mayor’s Court in Late Eighteenth-Century Madras’, *Modern Asian Studies*, 37: 3, 2003, 513–50; Tirthankar Roy, ‘Indigo and Law in Colonial India’, *Economic History Review*, 64: S1, 2011, 60–75.

15 Pamela G. Price, ‘The “Popularity” of the Imperial Courts of Law: Three Views of the Anglo-Indian Legal Encounter’, in *European Expansion and Law: The Encounter of European and Indigenous Law in 19th- and 20th-Century Africa and Asia*, ed. W. J. Mommsen and J. A. De Moor, Oxford, 1992, 179–200.

16 Ritu Birla, *Stages of Capital: Law, Culture and Market Governance in Late Colonial India*, Durham 2009; Hiroyuki Kotani, *Indo Shakai Bunkashi Ron: Dento Shakai kara Shokuminchi teki Kindai e* [Social and Cultural History of India: From ‘Traditional’ Society to Colonial Modernity], Tokyo, 2010; Rachel L. Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law and Women’s Rights*, Cambridge, 2012.

particular legal institutions,¹⁷ as well as their identities.¹⁸ In summary, the social, economic and political life of Indians was deeply embedded in the colonial state's legal framework, and the active participation of the Indians in this 'self-conscious site of contestation' produced changes in colonial legal institutions.¹⁹ Based on these insights, this article emphasises the role of Indian agency and legal practices in provoking the transition to despotism in the colonial judicial structure.

This study looks at two cases in the 1820s in which Bombay merchants and bankers used the King's Court to challenge the government. The King's Court was established by royal charters independently from the East India Company (EIC). It had jurisdiction over Europeans and Indians in the presidency town of Bombay, while the rural districts (*mofussil*) were under the jurisdiction of the Company's Court. However, the Indians in the *mofussil* came to Bombay and instituted suits in the King's Court for various purposes, and the King's Court started to claim their extended jurisdiction, causing frictions with the Company's judicial authorities.²⁰ The most notorious was the battle between Elijah Impey's Calcutta Supreme Court and Governor Warren Hastings.²¹ In this context, the King's Court was an institutional embodiment of legal pluralism.

In the first case, a Parsi merchant sued the government for breach of contract during the Second Maratha War (1803–05). In the second case, a Hindu merchant/banker filed a suit to recover personal property that was confiscated as wartime booty in the Third Maratha War (1817–18). Naturally, the government's conduct in times of war and emergency became the main issue in the court. In both cases, the King's Court ruled in favour of the merchants, the government appealed to the Privy Council in London, and it overturned the decisions in Bombay. Nonetheless, the effect of these cases was not small. The Indians became confident that the King's Court would support their claims, while the government started to fear that their authority would be impaired and a huge amount of losses would be incurred by paying out compensation in the future.

I examine how the merchants tried to realise their demands inside and outside the King's

17 Arthur Mitchell Fraas, "They have Travailed into a Wrong Latitude": The Laws of England, Indian Settlements and the British Imperial Constitution 1726–1773', Duke Univ. Ph.D thesis, 2011; Abhinav Chandrachud, *An Independent, Colonial Judiciary: A History of the Bombay High Court during the British Raj 1862–1947*, Oxford, 2015; James Jaffe, *Ironies of Colonial Governance: Law, Custom and Justice in Colonial India*, Cambridge, 2015.

18 Mattison Mines, 'Courts of Laws and Styles of Self in Eighteenth-Century Madras: From Hybrid to Colonial Self', *Modern Asian Studies*, 35: 1, 2001, 33–74; Chandra Mallampalli, *Race, Religion and Law in Colonial India: Trials of an Interracial Family*, Cambridge, 2011; Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture 1772–1947*, Cambridge, 2014.

19 Sandra den Otter, 'Law, Authority and Colonial Rule', in *India and the British Empire*, ed. Douglas M. Peers and Nandini Gooptu, Oxford, 2012; Zoë Laidlaw, 'Breaking Britannia's Bounds? Law, Settlers, and Space in Britain's Imperial Historiography', *Historical Journal*, 55: 3, 2012, 807–30 at 822; Nandini Chatterjee and Lakshmi Subramanian, 'Law and the Spaces of Empire: Introduction to the Special Issue', *Journal of Colonialism and Colonial History*, 15: 1, 2014.

20 The Mayor's Court of Bombay was established in 1726, whose judges were all merchants. The Recorder's Court superseded it in 1796. A barrister was sent from Britain as the recorder, or the chief justice. James Mackintosh was the most famous recorder. The Supreme Court was established in 1823. Three barristers constituted the bench. It was merged with the Company's Court in 1862 in the newly established Bombay High Court. A reliable history of Indian legal institutions is M. P. Jain, *Outlines of Indian Legal and Constitutional History*, 6th edn., New Delhi, 2006.

21 Travers, *Ideology and Empire*.

Court and how the judges and the government responded to it. I contend that the Bombay merchants' use of the King's Court caused a sense of crisis among the government officials. Particularly, they were concerned about the judges' interference in the government's military operation in times of emergency, as the government was still involved in a series of disturbances and revolts in the Deccan and Gujarat in the 1820s. I suggest that the government's sense of danger about the alliance between the Indians and the King's Court in such circumstances was an important context in which the King's Court's logic of law was suppressed and the government's logic of emergency was sanctioned in the appellate structure of the empire. I use the Bombay government's consultations in the India Office Records to reconstruct the process of negotiation in Bombay and to examine the government's discourse. Published reports of the judgements in the *Oriental Herald* and the *Asiatic Journal* are used to analyse the judges' discourse. The Privy Council Printed Papers are used to examine the debate in London.²²

Articulating the King's Court's Identity: The Case of Cursetjee Manockjee

The first case is *Cursetjee Manockjee v. EIC*. Cursetjee Manockjee, a Parsi merchant, became the government contractor for the provision of rice in December 1802. In the next year, the Second Maratha War broke out. The Bombay government was requested rice by Arthur Wellesley (later Duke of Wellington) for his Madras army, then stationed at Poona. Manockjee sold rice at the market rate, which was two rupees per bag cheaper than the contract rate, because he was told that it was not for public use. However, he later realised that the rice was supplied to the army and demanded compensation in 1804. This conflict, known as 'the rice case', continued for more than 25 years. Manockjee resorted to the King's Court when his claim was repeatedly rejected by the government. He sent several petitions to the government demanding for the principal sum of Rs 1,48,000. The Bombay government only admitted Rs 12,500. Manockjee also sent a petition to the Court of Directors in 1809, but they just increased the amount to Rs 43,500 in 1814. Manockjee finally instituted a suit in the Recorder's Court in 1820.²³

Manockjee was an important figure in the government's war efforts, as he was also in charge of supplying clothes, foods, military goods and ballast to various government departments.²⁴ As Randolph Cooper has shown, the EIC's military logistics increasingly relied on Indian-based military manufacturing, and the government had to be sensitive in its relationship with civilian contractors such as Manockjee.²⁵ Furthermore, he was also

22 The High Court Records of the Maharashtra State Archives including the proceedings of these cases are not catalogued and therefore inaccessible. Newspapers *Bombay Gazette* and *Bombay Courier* do not contain the court proceedings.

23 Gov to Court of Directors [CoD], Bombay Military Letter [BML], 25 Mar. 1825, IOR/L/MIL/3/1725.

24 Bombay Government [Gov] to George Norton, Advocate General, 21 June 1823, Bombay Military Consultations [BMC] 25 June 1823, 3655–60. Unless otherwise stated, references of government consultations are to British Library, India Office Records, Proceedings and Consultations [IOR/P].

25 Randolph G. S. Cooper, 'Beyond Beasts and Bullion: Economic Considerations in Bombay's Military Logistics 1803',

important as a leader of the Parsis in Bombay, who dominated the city's commercial activities, such as shipbuilding and cotton, silk and opium trade with China.²⁶ He was a member of the Parsi Panchayat ('council of elders') between 1818 and 1845. So the government's relationship with the business community was also potentially destabilised by this prolonged conflict.

The rice case was one of many claims demanded by Manockjee. He used multiple legal methods to realise his demands. First, he filed an equity suit in the Recorder's Court for his distillery claim, which was settled in his favour. Second, he claimed compensation for barracks which he built during the Second Maratha War. It was settled in 1825 by arbitration and the government paid Rs 2,40,000, including 6% compound interest.²⁷ Third, he filed a suit in the Recorder's Court against the government for his provision of sandals during the war. He demanded Rs 15,000, but the ruling was in favour of the EIC.²⁸

The point is that Manockjee was well acquainted with British legal procedures. He could use various legal tools to claim his demands both inside and outside the court. He filed his claims in multiple divisions in the Recorder's Court, and at the same time he sought alternative dispute resolutions outside the court. Arbitration was his preferred method. In the barrack claim, he proposed that he would accept a pension instead of reducing the rate of interest. In the rice case, he proposed that he would accept the result of the trial if the government would abandon their appeal to the Privy Council. In these endeavours, Manockjee collaborated with his attorney, Frederick Ayrton, whose critical attitude towards the government was notorious among government officials.

Manockjee succeeded in the Recorder's Court, but only the second time. It was first examined by Recorder Anthony Buller in 1822. He did not admit compensation for supply to the Madras army and awarded Rs 47,000 with 6% simple interest, or a total Rs 1,00,000. Manockjee applied for a new trial. It was held in 1823 before Edward West, a newly arrived recorder. He was an important figure in Bombay in the 1820s. He experienced a series of conflicts with Governor Mountstuart Elphinstone over various issues such as policing and press regulation.²⁹ In the trial, West overturned all objections of the government and judged in favour of Manockjee.³⁰ He awarded the full principal of Rs 1,48,000 with 9% compound interest, which amounted to Rs 5,27,000 in total. It was significantly higher than Buller's

Modern Asian Studies, 33: 1, 1999, 159–83.

26 Jesse S. Palsetia, *The Parsis of India: Preservation of Identity in Bombay City*, Leiden 2001, chapter 1.

27 The government admitted it not on the ground of law, but as a gratuity. Francis Warden to the Secretary and Translator in the Office of Country Correspondence, 4 Dec. 1809, Appendix to respondent's case, IOR/L/L/Box 620 (92).

28 Gov to CoD, BML, 17 Feb. 1826, IOR/L/MIL/3/1725; Gov to CoD, BML, 24 Feb. 1827, IOR/L/MIL/3/1726. The government was preparing a counterclaim on this case, amounting to Rs 2,25,000, but it was abandoned as the sandal claim was settled in favour of the government.

29 F. D. Drewitt, *Bombay in the Days of George IV: Memoirs of Sir Edward West*, London, 1907. He is now chiefly famous as a political economist. Maxine L. Berg, 'West, Sir Edward (bap. 1782, d. 1828)', *Oxford Dictionary of National Biography*, Oxford, 2004 [ODNB] does not give sufficient space for his career in Bombay.

30 The EIC's defence was based on three points: that Manockjee waived his rights under the contracts by acting under Major Moor; that Manockjee lost his remedy by his negligence in bringing the claim in earlier time; and that the purchased rice was supplied for the Madras troop and therefore not within the contract.

former award.³¹

The judgement was characterised by two points. First, West articulated the King's Court's identity in his criticism of the government. He said that the government treated Manockjee 'throughout the whole of the business most unjustly ... [and] shamefully'. He emphasised the timidity of Indians facing the tyranny of the EIC. For them, the 'government and despot are synonymous'; he could 'readily believe that nothing but the severe distress, or the grossest injustice' drove him to legal actions.³² In such a situation, the *raison d'être* of the King's Court was as follows:

I cannot allow it to be supposed for a moment that in this Court, the King's Court instituted as it has been by the Crown and Legislature of Great Britain, mainly for the very purpose of giving the natives of this country redress against the Company and the Company's servants, I say I cannot allow it to be surmised that the meanest or poorest native would not at any period of the existence of this Court obtain a full measure of justice against the Government.³³

In this way, West identified the King's Court as the sole protector of the Indians oppressed by the Company. This self-fashioning became the ideological basis of the judicial review over the conduct of the government in the 1820s.

However, this did not mean that West was totally in favour of Manockjee. Manockjee explained that the delay in filing the suit was partly due to his having sought redress from the Court of Directors in Britain. He tried to use every means to recover his damages and did not regard the King's Court as the only means of redress. Rather, the structure of dual or multiple powers was essential for his judicial and political manoeuvre, because he could resort to an authority to challenge another. However, the judge said that it was not necessary, 'as this Court was always open to him'.³⁴ It is hinted here that he did not approve of Manockjee's forum shopping and tried to impress on him that the King's Court was the only supreme tribunal in the presidency. West's conception of the King's Court as the defender of natives was accompanied by his assertion that the King's Court held sovereign status in the presidency.

The second point was that West based his argument on Indian practices and usages, rather than English precedents. The issue was concerned with Manockjee's claim on the interest on unliquidated damages. According to English case law, he was not entitled to the interest, but West articulated that the court of law in India should not be hindered by English precedent, 'especially as a very different practice has prevailed in the Courts of India'.³⁵ In effect, West advocated a system of Indian common law, distinct from the English one, which was to be formed by the King's Court.

31 *Oriental Herald*, 3, 1824, 267.

32 *Ibid.*, 269.

33 *Ibid.*, 269–70.

34 *Ibid.*, 270.

35 West even criticised the English practice based on the Indian usage; he said that the distinction between liquidated and unliquidated damages originated more in technical forms of action, rather than difference in principle. *Ibid.*, 268–9.

This attitude was supported by the non-official community in Bombay.³⁶ The other two aldermen judges, Benjamin Philipps, a surgeon, and William Ashburner, a merchant, decided more favourably than West on the matter of interest.³⁷ British merchants and lawyers testified in favour of Manockjee. David Malcolm, a member of an agency house, stated that the interest should be compound rather than simple. James Henry Crawford, of one of the large agency houses, also stood as a witness for the plaintiff. John Sandwith, an attorney, even said that although he did not know the cases in which an interest was charged on unliquidated debts, it might have been so.³⁸

The government officials expressed several concerns about the judgement. First, the Indians' litigiousness was troublesome. Francis Warden, a member of the governor's council, commented that the Indians were not timid in making lawsuits against the government; on the contrary, they had well understood the value of the King's Court and had fearlessly gone to the court and made suits against the government in the same way as against a private individual.³⁹ Second, West's award of compound interest was problematic because the same high rate of interest might be awarded in Manockjee's other claims.⁴⁰

But the government was most alarmed by the King's Court's interference in the military operation of the government in a time of war. The government contended that a contract made before war broke out should not be extended to the emergency supplies in a time of war. Manockjee insisted that the terms of contract should be broadly interpreted and the supply in wartime should be included. West supported Manockjee, which meant that the King's Court could review the government's military discretion and order compensation retrospectively. To make matters worse, the judge had an erroneous understanding of the military constitution. Warden explained that, while the three presidencies were totally independent in terms of military command and economy, West misconceived that the Indian army was one and the same and the damages incurred from supply to any army in any presidency should be compensated by the British government in India.⁴¹

In a move that was designed not only to deny the merchant's claim for interest, but also to maintain the distinction between the civil and the military and to keep its autonomy and discretion in cases of emergency, the government prepared to appeal to the Privy Council,

36 For the radical culture of the presidency towns, see, for Calcutta, P. J. Marshall, 'The Whites of British India 1780–1830: A Failed Colonial Society?', *International History Review*, 12: 1, 1990, 26–44, and, for Bombay, C. A. Bayly, 'Bombay's "Intertwined Modernities" 1780–1880', in *Trans-Colonial Modernities in South Asia*, ed. Michael S. Dodson and Brian A. Hatcher, London, 2012, 231–48. Bayly briefly mentioned the Cursetjee Manockjee case in his *Recovering Liberties*. C. A. Bayly, *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire*, Cambridge, 2012, 82–3. But Bayly's argument that the Indian merchant claimed 'right to trade as British subjects' is inadequate as it identified the claim of the London radicals with that of merchant himself, ignoring the discursive function of network.

37 They admitted interest between 1804 and 1815. West only admitted it between 1804 and 1809. *Oriental Herald*, 3, 1824, 269.

38 IOR/L/L/Box 620 (92), Appendix to respondent's case, 21–3.

39 Warden said the same tendency was observed in the *mofussil* as in the presidency. Warden, minute, 17 Apr. 1825, BMC 4 May 1825, v25.

40 Morgan to Gov., 31 Mar. 1825, BMC 4 May 1825, v20.

41 Warden, Minute, 14 May 1823, BMC 21 May 1823, 3025–54.

the final court of colonial legal affairs.⁴² In the appeal paper, it insisted that the terms of the contract could not be applied to ‘an extraordinary and accidental supply of rice’ to the Madras army. It also argued that the judgement was ‘contrary to the established rules of the law of England respecting the allowance of interest’.⁴³

The appeal was granted in the Recorder’s Court in June 1823, but the debate in the Privy Council did not start until June 1828. During the interval, Manockjee continued his negotiation with the government. First, Manockjee published an open letter to the governor of Bombay in the *Oriental Herald* to abandon the appeal; he also proposed lowering the rate of interest if the government would not appeal.⁴⁴ After these attempts failed and the appeal was lodged, he published an open letter to the Court of Directors in the *Oriental Herald* in December 1826. Manockjee actually demanded more in the letter. He requested that they order the Bombay government to pay the additional five years’ interest, which was rejected by the King’s Court.⁴⁵ This meant that Manockjee was trying to pit the Company against the King’s Court to increase the amount of compensation. Manockjee also tried to get support from a director of the EIC, John Morris, a former Bombay civil servant.⁴⁶

Meanwhile, the radicals in London picked up the case as an example of the Company’s oppression of the Indians. The main organ of their criticism was the *Oriental Herald*, a monthly journal edited by James Silk Buckingham, a central figure of colonial reformers in this period.⁴⁷ It reported West’s judgement and Manockjee’s open letter, and the editor also published an article titled ‘Fraudulent and Disgraceful Transaction of the Bombay Government’, in which he linked Manockjee’s case with his cause of the freedom of the press in India.⁴⁸ In this way, Manockjee’s case gradually became famous in London as well as in Bombay. In such a situation, the discussion in the Privy Council was held before Judge John Leach, whig Master of the Rolls.

First, it is important to note that the government’s claim of military emergency was rejected by the court. It shows that the Privy Council cannot simply be equated with the government. J. B. Bosanquet, the EIC’s standing counsel, emphasised that it was ‘an extraordinary demand’ made ‘in a sudden emergency’ outside the contract.⁴⁹ But Judge Leach rejected the view, as it was not supported by the evidence submitted to the court.⁵⁰ He decided that Manockjee was entitled to full compensation for the principal.⁵¹

As for the interest, however, the Privy Council reversed the decision of the Recorder’s

42 For the role of Privy Council in the colonial jurisprudence, see Peter Anthony Howell, *The Judicial Committee of the Privy Council 1833–1876: Its Origins, Structure and Development*, Cambridge, 1979; Bonny Ibhawoh, *Imperial Justice: Africans in Empire’s Court*, Oxford 2013.

43 IOR/L/L/Box 620 (92), Case of the appellant, the first and fifth reasons of appeal, 14–15.

44 *Oriental Herald*, 3, 1824, 270–4; Morgan to Gov, 12 May 1823, BMC 21 May 1823, 3025–54.

45 *Oriental Herald*, 10, 1826, 578–88.

46 Cursetjee to Morris, 26 Jan. 1825, IOR/L/L/Box 620 (92), unbound correspondence, 41–42. This letter was not answered.

47 Bayly, *Recovering Liberties*, chapters 2 and 3.

48 *Oriental Herald*, 3, 1824, 189–200.

49 IOR/L/L/Box 620 (92), Proceedings of Privy Council debates, II, 14 June 1828, 55.

50 *Ibid.*, 57, 63, 81–2.

51 IOR/L/L/7/761, Copy of judgement at the Privy Council by the Master of the Rolls, 21 June 1828, 2–3.

Court. The debate in the chamber was decidedly moralistic on this matter, chiefly due to the speech of Thomas Denman, counsel for Manockjee, who embodied the age of reform in the legal world.⁵² He criticised the case for being detrimental to the confidence of Indians towards the British legal system, stating that ‘the forbearing creditor’ should be compensated by ‘the fraudulent debtor’, or otherwise it would induce creditors to instantly resort to a legal action without giving their opponents a chance to settle the issue.⁵³ But Judge Leach was not persuaded. He argued that the interest on the unliquidated damages should not be allowed, because

if such a usage had prevailed, it is the duty of this court as the court of ultimate Appeal from India, to reform that usage and to declare that without the special authority of the Legislature in this country such a usage if it had prevailed would have been illegal.⁵⁴

This self-proclaimed role as the reformer of Indian legal practice led the Privy Council to reject the Manockjee’s argument. Leach was not an enthusiastic reformer in Britain,⁵⁵ but his defence of British legal practice resulted in the reform of Indian practice. As historian Ravinder Kumar argues, a conservative in Britain could be a reformer in India.⁵⁶ In this sense, he shared the Court of Directors’ anxiety over West’s judgement, which involved ‘a doctrine of such dangerous tendency and so subversive of all the means of check and controul established by the constitution’.⁵⁷ As a result of the judgement, compensation for Manockjee was reduced from Rs 5,27,000 to Rs 1,48,000. Manockjee petitioned that the next governor, John Malcolm, reverse the Privy Council’s decision, as it was ‘given either in total ignorance or direct disregard of the established usage and practice’. However, the government did not listen and decided that he should refund the money to the government in 18 years with annual payments of Rs 25,000.⁵⁸

Despite the failure of realising its claim, the case of Cursetjee Manockjee was important as an initial attempt of Bombay merchants’ resorting to the King’s Court to challenge the government. It heightened the government’s anxiety about the King’s Court’s interference, especially because they feared that their conduct in wartime would be shackled by the ignorant civil authority’s inspection. On a deeper level, this different recognition of the military constitution indicated that the King’s Court and the government had different views on British sovereignty in India. West thought that the governments in different presidencies constituted a unitary polity which had sovereignty all over India. Furthermore, the

52 Denman was a whig lawyer, common serjeant of London, who supported the Irish cause, criminal law reform, fight against corruption and abuses, and above all, abolition of the slave trade. He drafted the first reform bill as Attorney General in 1831. Gareth H. Jones, Vivienne Jones, ‘Denman, Thomas, first Baron Denman (1779–1854)’, *ODNB*.

53 IOR/L/L/Box 620 (92), Proceedings of Privy Council debates, III, 14 Jun 1828, 58–9, 95–7.

54 IOR/L/L/7/761, Copy of judgement at the Privy Council by the Master of the Rolls, 21 June 1828, 4.

55 Michael Lobban, ‘Leach, Sir John (1760–1834)’, *ODNB*.

56 Ravinder Kumar, *Western India in the Nineteenth Century: A Study in the Social History of Maharashtra*, London, 1968.

57 CoD to Gov, 15 Oct 1828, IOR/L/L/Box 620 (92).

58 Monackjee to Gov, 8 July 1829, and Monackjee to CoD, 23 Aug. 1831, IOR/L/L/7/761.

government of India was identical to the government of England. The territorial sovereignty of the British had already been established in his view. Within that territory, the sovereign justice of the King's Court should be available for all of the King's subjects. On the other hand, the government's understanding of the British constitution in India was pluralist. The Bombay government was distinguished from the governments of Bengal and Madras. This assumption of plurality was related to the officials' view of Indian politics. It was based on the idea that the British government was still essentially a regional power among other Indian chiefs. Their supremacy was still more nominal than real. Justice should be arranged in accordance with the reality, where different chiefs shared sovereignty with the government.⁵⁹ This contrast of civil and military visions of Indian politics was more noticeably disputed in the next case between another Bombay merchant and the government.

Refuting the Government's Military Ideology: The Case of Amerchund Bedreechund

The other notable case in which a Bombay merchant/banker sued the EIC and its higher officials was the case of *Amerchund Bedreechund v. Mountstuart Elphinstone, Henry Dundas Robertson and the East India Company*. The process was similar to the Manockjee case: the native merchant petitioned the government to realise his demand; the government rejected it; the merchant resorted to the King's Court; the King's Court decided in favour of the merchant; the government appealed the Privy Council; the Privy Council reversed the decision of the King's Court. The King's Court's interference in the military affairs was also the main issue of dispute. The contrasting visions of Indian society became the focus of debate in the court room, and the government's military conception of society was challenged by the King's Court's civilian perspective.

The case originated in the capture of a Peshwa's treasurer during the Third Maratha War. In 1817, Narroba Outia, the treasurer, was in charge of the fort at Rhygur when it was besieged by British troops. Narroba agreed to the terms of capitulation and surrendered the fort; the treasure was captured by the British army. However, Captain Robertson, the collector, judge and magistrate of Poona, suspected that Narroba hid some of the treasure in his house at Poona. Robertson searched Narroba's house and found a large sum of gold. Robertson seized it as booty of war. Narroba claimed it was his private property, demanded compensation and started to complain about the harsh treatment he received from Robertson. Narroba sent petitions to the Deccan Commissioner, William Chaplin, who made an inquiry in November 1819 and rejected Narroba's claim. Narroba filed a suit in the Recorder's Court in 1822 but died soon afterward and the case was not heard. His trustee, Ameerchund

⁵⁹ For the sharing of sovereignty, see André Wink, *Land and Sovereignty in India: Agrarian Society and Politics under the Eighteenth-Century Maratha Svarajya*, Cambridge, 1986; Ajay Skaria, *Hybrid Histories: Forests, Frontiers and Wildness in Western India*, Oxford, 1999.

Bedreechund, a Hindu banker and merchant,⁶⁰ sued the EIC in the Supreme Court in 1826.⁶¹

The trial of *Amerchund Bedreechund v. Elphinstone, Robertson and EIC* decided in favour of the plaintiff. Bedreechund employed James Morley, notorious for his anti-government attitude, and another barrister as his counsel. The Company was defended by George Norton, Advocate General, and two other barristers. This meant that five out of the seven barristers in Bombay were involved in the case. The trial was held between the 25th of September and the 14th of November 1826, and the judgement was given on the 28th of November 1826. Morley harangued that the defendants were guilty of exercising illegal authority; Robertson's atrocity was only comparable to the deputies of the French Revolution. He continued that this trial would prove that the Supreme Court had the authority to redress their injustice; hundreds of similar cases were to be applied and thousands of people would come to complain their torts against the Company.⁶² Edward West, the chief justice, and Charles Chambers, the puisne judge, endorsed this view and gave a judgement in favour of Bedreechund. The court ordered the defendants to pay Rs 17,50,000, with costs of Rs 16,000.⁶³

The judgement was based on three points which highlight the difference between the judges and the government over the law and governance in the newly conquered territories. Firstly, West strongly criticised the Company's oppressive treatment of Naroba, which was, according to him, 'the most important feature of the case'. He detailed Robertson's oppressions and criticised the Deccan Commissioner's examination for also being unreasonably harsh. He concluded that, as the confession of Naroba was obtained 'by means the most illegal and oppressive', it was not proven that the money was the Peshwa's.⁶⁴

Secondly, West argued that the government's seizure of Narroba and his property occurred after the end of the war. Citing Lord Mansfield, West argued that Poona was already in a state of peace because: (1) a proclamation had been issued by Governor Elphinstone, which promised that 'all property, real or personal, will be secure', and (2) the courts of justice had been introduced. Therefore, Narroba had ceased to be an alien enemy when he was captured, and thus he should have been under the protection of the government as a King's subject. West added that the seizure was not based on *jure belli*, since Naroba was under the protection of the conqueror, and rejected the government's claim that the seizure was done *bona fide* as booty.⁶⁵

The judges' third and most important argument was that the King's Court had jurisdiction over the government's military operation. West articulated that the acts of a

60 He dealt with piece goods, joys, jewels and precious stones both in Bombay and Poona. Maharashtra State Archives, High Court Record, Supreme Court equity bundle, 1829, no. 97/82–86.

61 There was another related case in the King's Court, *King v. Bedreechund*, which I do not discuss in this article because the major points of controversy were the same.

62 George Norton, Advocate General, to Gov, 30 Nov. 1826, Bombay Political Consultations [BPC], 6 Dec. 1826, v57.

63 The judgement is printed in the *Oriental Herald*, 14, 1827, 1–40; 2 State Trials, 370–458. Citations below are from the former.

64 *Oriental Herald*, 14, 1827, 12–18.

65 *Ibid.*, 19–21.

government were subject to the jurisdiction of municipal courts. In order to emphasise the tyrannical nature of the claim of the government, he quoted Mansfield's judgement in *Fabrigas v. Mostyn*, which stated that 'to maintain here that every governor, in every place, can act absolutely; that he may spoil, plunder, affect their bodies and their liberty, and is accountable to nobody, is a doctrine not to be maintained'.⁶⁶

Judge Chambers went further to insist that it was not the government but the King's Court that had the power to decide on the state of exception. He admitted that the officers should be allowed latitude of conduct in times of war, but this should not be applied in every case: 'such exceptions, however, when they occur, must be shown to rest upon their proper and distinct grounds, and cannot be presumed to be right unless the particular expediency or necessity is pointed out'.⁶⁷ In other words, if the King's Court declared so, any acts of the government in times of war could be amenable to its jurisdiction. These arguments by West and Chambers were important, as they would enable the King's Court to check the government's wartime activities. This assertion of military jurisdiction generated a strong sense of danger among the government officials.

The problem was that, as in the case of Manockjee, the government could not prove the state of war because of the court's rulings of evidence and therefore could not protect their officers from the suit in the King's Court. Advocate General Norton reported that much of the defendant's evidence was unfairly rejected by the court. For example, the correspondence of the government officials and even the government's proclamation in the Deccan were rejected because the originals were not produced. He explained that since it was almost impossible to prove the very existence of war, and thus the rights of war and conquest, all future proceedings of the EIC servants in these emergencies were to be judged by the mere municipal law, rather than as acts of state in *bona fide* execution of the rights of war.⁶⁸

Furthermore, Elphinstone had to worry about a more direct surveillance of the military operation, as Bedreechund demanded the government to produce its confidential papers relating to the war as evidence. Elphinstone cautioned that 'if the records of every department are once placed at the mercy of every attorney who makes an application to the Supreme Court, there can be no secrecy in any affair, foreign and domestic, and no confidence in our own deliberations, or in the persons with whom we have to communicate in any transaction'.⁶⁹

Elphinstone's anxiety was based on his understanding that the Deccan was still in a state of war. He pointed out that the judges had a false view of the state of Poona. It was 'the turbulent capital of a country of which the conquest was still in progress'.⁷⁰ Indeed, the Deccan in the 1820s was still in a state of crisis. Highway robberies by the 'hill tribes', such as the Bhils and the Ramusis, were prevalent, and in 1824, as a development of the Burma

66 Ibid., 22–3.

67 Ibid., 30–1.

68 Norton to Gov, 30 Nov. 1826, BPC 6 Dec. 1826, v57.

69 Elphinstone, minute, 19 Sep. 1826, quoted in Thomas Edward Colebrooke, *Life of the Honourable Mountstuart Elphinstone*, London, 1884, ii, 182.

70 Elphinstone, minute, [22 Jan 1827], BPC 14 Feb. 1827, v96.

War, there was a rumour that a brother of the Peshwa would ally with the Pindari (another major hill caste) and rise against the British.⁷¹ In the same year, the British Political Agent was killed in a large scale rebellion in Kittur in the Deccan.⁷² In such a situation, the priority of the government in the area was to maintain its tranquillity, and thus the government's military operation should be free from the vigilant eyes of the King's Court.

Elphinstone anticipated a difficult situation in which the government officials would be involved in the future. He vindicated Roberson's conduct in the 'arduous situation at a season between war and peace when he was neither safe from the plots of the enemy nor from the scrutiny of a municipal court—he had not regulations to direct him and is attacked for following the practice of the Marrattas by which alone he could be guided'.⁷³ In other words, if they could not sufficiently enforce their military control, they would be preyed on by their enemies; but if they were too vigilant and too strict in following the military (Maratha) way of rule, they could be prosecuted in the King's Court. Elphinstone feared this legal anomaly in which the government officials would be left with little scope to achieve the just balance of their military manoeuvre.⁷⁴

The case of Amerchund Bedreechund raised another important concern among the government officials which was not observed in the case of Cursetjee Manockjee: the summons of the *sardars* (Indian aristocrats). Towards these 'real rulers in the country',⁷⁵ the government took a general policy of conciliation, as their cooperation was essential for maintaining the order and tranquillity in the localities. The government secured their privileges and exempted them from the EIC's judicial process as in the same way as under the Maratha polity.⁷⁶

In the case of Bedreechund, however, the King's Court summoned the *sardars* and their subordinates to Bombay, including the most powerful of them, Chintaman Rao Patwardhan.⁷⁷ If they refused to attend, they might be prosecuted for contempt of court. The government was particularly concerned about the complaints made by the rajas of Satara and Vinchorekur. When the servants of the raja of Satara were summoned, the raja expressed his surprise that it was issued without any previous intimation. The government stated that it would prevent its recurrence and solicited him to send the witnesses to Bombay. The raja did so, but further complained that the judicial business in his court was delayed by it.⁷⁸ The raja of Vinchorekur was also told by the agent of Bedreechund that he himself would be summoned. He complained to the government that 'this was a great innovation, and that the chief's dignity would be entirely ruined in the world should he be obliged to appear at the

71 Dirk H. A. Kolff, 'Rumours of the Company's Collapse: The Mood of Dasahra 1824 in the Punjab and Hindustan', in *Mutiny at the Margins: New Perspectives on the Indian Uprising of 1857: Vol. 1, Anticipations and Experiences in the Locality*, ed. Crispin Bates, New Delhi, 2013, 25–42.

72 Edward W. West, *A Memoir of the States of the Southern Maratha Country*, Bombay, 1869, 199–203.

73 Elphinstone, minute, [22 Jan 1827], BPC 14 Feb. 1827, v96.

74 cf. Hussain, *Jurisprudence of Emergency*, 105.

75 Colebrooke, *Elphinstone*, i, 250–1.

76 Kenneth Ballhatchet, *Social Policy and Social Change in Western India 1817–1830*, London, 1957, 210–3.

77 Privy Council Printed Papers, Appendix, TS 11/123.

78 J. Briggs, Resident at Satara, to Gov., 26 and 29 Aug. 1826, BPC 21 Feb. 1827, v77.

bar of the court at Bombay'.⁷⁹

Receiving these reports, Elphinstone expressed his grave sense of danger. He said these proceedings would certainly convince the *sardars* that the Supreme Court could threaten them and the government had no power to prevent it. In consequence, he continued, chiefs would feel considerable uneasiness at the Supreme Court's 'exercise of sovereignty' within their territories and think that the King's Court was equal to the government. He concluded that 'a good deal of the ferment in the Deccan was produced by the general circulation of these summonses'.⁸⁰

Indeed, Elphinstone anticipated that the King's Court's interference would provoke a collapse of the EIC's rule in the *mofussil*. He drafted a despatch to the Court of Directors to obtain an immediate redress.⁸¹ He warned that a false impression was spread in the Deccan that all who were opposed to the government would be supported by the Supreme Court. He predicted that 'great confusion will be produced ... [and] it will be necessary for us to keep up a more vigilant control over the Chiefs and to alter our plan of government to one of great strictness in all respects'. Elphinstone referred to an example of the raja of Kolhapur, who was reported to apply to the Supreme Court to set aside his peace treaty with the government.⁸² Elphinstone further cautioned that the Indians even believed the alteration of the government from the EIC to the Supreme Court at the expiration of the charter in 1834.⁸³ These comments illustrate the location of the sense of crisis caused by the King's Court in the *mofussil*: it would unleash the disloyal rallying of the independent chiefs and *sardars* around the King's Court to challenge the government.

So the government appealed to the Privy Council.⁸⁴ Bedreechund had died soon after the judgement of the Supreme Court, and now his cause was succeeded by his trustees, Heerachund Bedreechund and Jetmul Anoopchund. They employed reformist lawyers in Britain in the same way as Cursetjee Manockjee did. Their agent in London was John Hopton Forbes, solicitor and a relation of radical MP Charles Forbes. John Williams, KC, a staunch whig who was elected as an MP several times, and Thomas Denman, the counsel for Cursetjee Manockjee, spoke for Bedreechund and Anoopchund in the court.⁸⁵ The judge was Lord Tenderden, high tory Lord Chief Justice. The government asserted that the King's Court, as the municipal court, did not have jurisdiction over the military conduct of the government and that their evidence was unfairly rejected. The Bedreechund side reiterated that the property was Narroba's and that the seizure was civilly illegal as it was done in peacetime, not war.⁸⁶ The trial was held on the 3rd and the 19th of June, and the judgement

79 Eventually the raja was not summoned. W. H. Wathen, Persian Secretary, to Gov, 24 Aug. and 1 Sep. 1826, BPC 21 Feb 1827, v77.

80 Elphinstone, minute, 23 Jan. 1827, BPC 21 Feb. 1827, v77.

81 Elphinstone, minute, 30 Nov. 1826, BPC 6 Dec. 1826, v58.

82 Kolhapur was an independent chief in the Deccan. The raja repeatedly exhibited his territorial ambition towards the neighbouring state of Satara, which eventually induced the military intervention of the British.

83 Elphinstone, minute, 1 Dec. 1826, BPC 6 Dec. 1826, v60.

84 2 State Trial, 410–450; 1 Knapp, 316–61.

85 IORL/L/Box 54 (386).

86 The National Archives [TNA], TS 11/123; 2 State Trial, 409–10

was given on the 14th of July 1830. The Privy Council overturned the decision in Bombay.

It seems that party politics influenced the decision of the case. The course of debate was determined by the intervention of Attorney General James Scarlett, newly converted tory lawyer/politician and protégé of Wellington, whose influence over Tenterden was notorious.⁸⁷ He made a long speech in favour of the EIC.⁸⁸ Accordingly, Lord Tenterden judged in favour of the Bombay government, saying that the seizure was a hostile seizure and that a municipal court had no jurisdiction on the subject.⁸⁹ Bedreechund and Anoopchund did not abandon their cause there. They connected the Bedreechund case with a larger political controversy over the distribution of the Deccan Prize Money.⁹⁰ A month after the judgement, they petitioned the trustees of the Deccan booty, the Duke of Wellington and Charles Arbuthnot, which eventually led to another meeting at the Privy Council.⁹¹ However, Tenterden again rejected their argument.⁹² Wellington's influence was not small. He demanded the full attendance of the councillors at the meeting,⁹³ and this time his protégé Scarlett was the counsel for the Bombay government.

In their campaign in London, the Indian merchants collaborated with the radicals. The case was reported in the *Oriental Herald* with comments by Buckingham. He argued that it exemplified the deficiency and corruption of the Company's judicial system in the *mofussil* run under 'despotic violence'.⁹⁴ The radicals also used the case to criticise the corruption of the Privy Council itself.⁹⁵ It was also alleged that Joseph Hume ordered Bedreechund and Anoopchund to write a petition in order to use it in the Commons debate.⁹⁶ The radicals emphasised Narroba's personal calamities and deprivation of his private property and, by doing so, pointed out the need for reform of the Privy Council.⁹⁷ The linkage strategy with the Deccan Prize Money case might be proposed by the radicals, who had used it to criticise the government before.⁹⁸ In this way, the Bedreechund case was used to vindicate judicial reforms both at home and in the colony. This did not necessarily mean that the Bombay merchants identified themselves with the causes of radicals, but it certainly meant that the Bombay merchants had a specific interest in radicalism in Britain, as it could increase their means to challenge the government. Nonetheless, the fact remained that, in India, the government could seize private property without compensation in cases of emergency, unrestrained by the judiciary.

87 G. F. R. Barker, 'Scarlett, James, first Baron Abinger (1769–1844)', rev. Elisabeth A. Cawthon, *ODNB*.

88 2 State Trials, 434–49.

89 *Ibid.*, 449–50.

90 For the Deccan Prize Money case, see Alfred Kinloch, *Abridgment of the Report of the Proceedings in the Case of the Deccan Prize Money, with Supplementary Papers, etc.*, London 1864.

91 Lawford to Melville, 10 Aug. 1830, IOR/L/L Box 54 (386).

92 2 State Trial, 450–8.

93 Kirkland to Maule, 10 July 1831, TNA TS 11/122.

94 *Oriental Herald*, 14, 1827, 7–11.

95 This was the period in which Whig Henry Brougham attempted its reform. Howell, *The Judicial Committee*, 16–7.

96 Lawford to Melville, private and confidential, 19 Jan. 1831, IOR/L/L Box 54 (386).

97 HC Deb., 6 August 1832, vol. 14, cc. 1136–56; HC Deb., 10 August 1832, vol. 14, cc. 1322–5.

98 HC Deb., 28 June 1825, vol. 13, c. 1408; HC Deb., 1 July 1825, vol. 13, cc. 1466–72.

Conclusion

This article has pointed out that the Indian merchants' demand for compensation for damages incurred in times of war resulted in the general debate on the character of British governance in India. The problem was that, in the midst of 1820s crisis, the government's militarist logic of emergency was denied by the judges' civilian claim of the rule of law. The officials feared that the King's Court's rulings would hinder its conduct of war in the future and disturb the tranquillity of the newly conquered territories. In the end, the government's insistence of state necessity was sanctioned in the appeal cases, and the judges' alternative vision of colonial governance was rejected.

These cases illustrate some features of the networks and power involved in imperial judicial politics. The Bombay merchants actively relied on the imperial network of lawyers and radicals. In Bombay, those lawyers who had an anti-establishment inclination such as Attorney Ayrton or Barrister Morley were essential for their challenge to the government. They were the source of legal knowledge and techniques and acted as agents inside and outside the court. In London, radical MPs such as Hume, Buckingham and Forbes and reformist lawyers such as Denman enabled them to access metropolitan journalists, lawyers and politicians. The network also determined discourse. Especially when the stage was moved to Britain after the government's appeal, the contest was put in the metropolitan ideological and discursive constellation which was distinct from India. It enabled the Indian merchants to gain support from the radicals, but they were, in the end, defeated by the conquest ideology of the tories embodied in the solid institutional structure of appeal in the empire.⁹⁹

In conclusion, I suggest that the Indian agency which generated the government's sense of crisis was the driving force of the transformation of political structure in the long run. These cases of Bombay merchants were part of a larger story of conflict between the government and the King's Court in Bombay in the 1820s. First, the King's Court criticised the government's encroachment of the autonomy of Bombay city, which was governed by powerful British merchants.¹⁰⁰ Second, the collection of revenue in the *mofussil* was hindered by the revenue defaulters' use of the King's Court to overturn the decree of the Company's Court. Third, the King's Court's summonses were repeatedly issued to the *sardars*, and, to make matters worse, the *sardars* and independent princes themselves started to resort to the authority of the King's Court to challenge the government. The sense of crisis culminated in the two cases of habeas corpus in 1828, in which the government directly interfered in the process of the King's Court. As a result of these conflicts, the government officials both in India and in Britain realised the need to make a unitary and hierarchical

99 Jon Wilson, 'The Silence of Empire: Imperialism and India', in *Languages of Politics in Nineteenth-Century Britain*, ed. David Craig and James Thompson, Basingstoke, 2013, 218–41.

100 On this issue, see Haruki Inagaki, 'Policing the Market: Metropolitan Ideas and Local Contexts in Police Reform in Early Nineteenth-Century Bombay City', in *Moving Around: People, Things and Practices in Consumer Culture*, ed. H. Shin, S. Majima and Y. Tanaka, Tokyo, 2015, 171–6.

structure of administration. The charter renewal in 1834 embodied this aspiration, which subordinated the King's Court to the governor-general's legislative council.¹⁰¹ In other words, the indigenous practices within eighteenth-century legal pluralism generated a new, sovereign legal system in India in the nineteenth century. A global transition from hybrid to sovereign legal regimes needs further comparative studies.¹⁰² Britain should also be included in such comparisons because, as Julian Hoppit's recent argument on the vulnerability of property suggests, it also shared many 'colonial' elements of politics.¹⁰³

101 These developments are fully discussed in my Ph.D thesis in progress. Haruki Inagaki, 'The Rule of Law and Emergency in Colonial India: The Conflict between the King's Court and the Government in Bombay in the 1820s', London Univ. Ph.D thesis forthcoming.

102 Benton, *Law and Colonial Cultures*; Benton, *Search for Sovereignty*; Ford, *Settler Sovereignty*; Hamal Foster, Benjamin L. Berger and A. R. Buck, eds., *Grand Experiment: Law and Legal Culture in British Settler Colonies*, Vancouver, 2008; Shaunnagh Dorset and Ian Hunter, eds., *Law and Politics in British Colonial Thought: Transpositions of Empire*, Basingstoke, 2010; Mark Hickford, *Lords of the Land: Indigenous Property Rights and the Jurisprudence of Empire*, Oxford, 2011; Saliha Belmessous, *Native Claims: Indigenous Law against Empire 1500–1920*, Oxford, 2012; Shaunnagh Dorset and John McLaren, eds., *Legal Histories of Empire: Laws, Engagements and Legacies*, Abington, 2014.

103 Julian Hoppit, 'Compulsion, Compensation and Property Rights in Britain 1688–1833', *Past and Present*, 210, 2011, 93–128. Cf. Mariam Dossal, *Theatre of Conflict, City of Hope: Mumbai 1660 to Present Times*, New Delhi, 2010, chapter 5: 'Law and the Acquisition of Land for Public Purpose c. 1830–60'; Debjani Bhattacharyya, 'History of Eminent Domain in Colonial Thought and Legal Practice', *Economic and Political Weekly*, L/50, 2015, 45–53. See also, Daniel Skinner and Leonard Feldman, 'Eminent Domain and the Rhetorical Construction of Sovereign Necessity', *Law, Culture and Humanities*, 11: 3, 2015, 393–413.