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Law between Empires: Bengal under British Rule in the Age of Revolutions

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ROBERT TRAVERS. *Empires of Complaints: Mughal Law and the Making of British India, 1765–1793*. Cambridge, UK: Cambridge University Press, 2022.
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Introduction

Was there a Mughal law? This is a question that European travellers to India asked repeatedly from the seventeenth century onwards and generally answered in the negative, using the trope of lawlessness to generate the image of Oriental despotism. And, yet, the matter was never settled, not even among British commentators deeply enmeshed in the formation of a colonial state out of the depredations and acquisitions of a trading company run wild on the ruins of the Mughal Empire, which had ruled most of the Indian subcontinent between the sixteenth and eighteenth centuries.

In his first book, Robert Travers (2007) masterfully discussed the highly stylized debates among the British East India Company officials about the nature of the Mughal constitution, and the company's consequent rights, based on the Mughal grant that they had received in 1765, albeit from a defeated, arm-twisted Mughal emperor. These multi-directional debates in legal history were not academic in the least—they were, instead, about guarding a private company's privileges against British parliamentary supervision, about charges of corruption and tyranny in public service and defense against such allegations, and about major demographic and commercial events such as a devastating famine in Bengal and in eastern India in 1769–70 and the bankruptcy of a private company that had at least two countries in its tentacles.

It is hard to reconstruct what ideas and practices of law might have been like in South Asia across such historical fracas and its smoke cloud. Those of us wanting to research "Mughal law" are compelled to work through the detritus of at least two empires—the British and the Mughal—the latter having been ingested, both conceptually and archivally, by the former. Recently, both Travers and I have

published books with "Mughal law" in the title. In order to do so, we have tackled completely different archives and worked with very different methodologies. I am grateful for the complementarity thus produced and the enabling of conversations, including this one.

Law in the Mughal Empire

In order to understand what people in Indian villages under Mughal rule took to be the law and how they went about making money and protecting their rights while using law, but also despite it, I reconstructed the household archive of a family of landlords. The materials in this archive consisted principally of Persian-language handwritten documents recording specific legal episodes, whether these were receipts, withdrawals, or confirmations of titles to lands or revenues; inter-personal contracts; or proceedings in law courts (Chatterjee 2020). *Empires of Complaints* takes off where my book leaves off—in the late eighteenth century. It is also at the other end of the scale in terms of the volume of archival material on which it is based. Travers guides us through the jungle of the tremendously complex records related to the British East India Company but with an eye to very similar questions. In this period of dramatic changes, what counted as law, and even justice, to Indians caught in the teeth of a declining empire and a rising one?

Despite all the dislocations entailed in the rise of regionally entrenched kingdoms such as the Bengal Nawabi in the early eighteenth century, and their hollowing out by the fiscally covetous and militarily aggressive East India Company within another half a century,[1] much of what Travers encounters in the records seems deeply familiar to me. In the eighteenth century, the *zamindars*—that eclectic group of rural powerholders—were still at the crux of every significant fiscal crisis; they were still indispensable for extracting peasant surplus but a turbulent headache for both the revenue officialdom and the *jagirdar* nobility; they still had complex extended families with whom they squabbled endlessly (Hasan 1964). And in the late eighteenth century, Bengali-speaking *zamindars* and their employees still used long-established Persian-language documentary forms and their associated formulae and conventions to write petitions, record contracts, and raise disputes. In those documents, they harked back to rights granted by Mughal emperors or the Bengal Nawabs, to Nawabi/Mughal style of accommodative governance, and, broadly, to Persianate standards of good rulership. In studying this milieu, Travers robustly responds to Nile Green's (2019) call to study various instantiations of the Persianate—that is, a widespread Eurasian cosmopolitan culture centered on the use of the Persian language and its association with a distinctive literary and cultural baggage. The late eighteenth

[1] The English (later British) East India Company was chartered by the English (later British) Crown to trade in the undefined vast region referred to as the East Indies. India, with its valuable re-exportable textiles, became a fulcrum for the company's global trade in ivory, spices, and tea and, later, opium. Initially currying favor with local regimes such as the Mughal Empire for permission to fortify warehouses and gain tax discounts, by the mid-eighteenth century, the company became a major military and political factor in South Asia, selling military services and making and unmaking regimes. The first major portion of territory it officially took over in the Indian subcontinent was the eastern province of Bengal.

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century in India, or at least Bengal, seems a very likely candidate for a colonial Persianate.

To this admiring reader, however, this colonial Persianate is less exciting for the continuities that it entails than for the novelties that it produced and, contradictorily, for the short-lived windows that these moments of change open on to past concepts and practices of law. One thrilling chapter in *Empires of Complaints* is about inheritance disputes over the *zamindaris*. Looking in detail into the processes involved in the British East India Company's settling of two such major disputes, Travers complicates the simplistic idea, long repeated in scholarship on law in South Asia, that a fluid, accommodative world of land tenure and fiscal practice was replaced by colonial legal abstraction through the translation and application of *dharmashastric* commentaries and positivist understandings of Hindu law. He demonstrates instead how East India Company officials, especially of the revenue department or *khalsa*, consulted with Indian revenue officials from the nearly extinguished Nawabi regime in order to find the law from Mughal (or, strictly speaking, Nawabi) administrative rules and procedures and also from the Sanskrit legal treatises as expounded by Brahmin *pundits* or Hindu religio-legal scholars. Travers also shows how, especially in a key dispute that was handled at the East India Company headquarters in Calcutta—rather than at the regional centers where Nawabi officials were still vocal—there was an inexorable move toward simplifying these multiple legal sources and procedures by turning at least partially toward company-sponsored Hindu legal compilations and the authority of unqualified British East India Company Orientalists over the experience of Indian jurists and administrators.

For me, the chapter discussed above offers a wonderful opening up of the processes that may have taken place during the passing of inheritance and the ensuing disputes that I had studied in relation to *zamindar* families from another part of Mughal India a century earlier. Because of the nature of the archive with which I had been working, I read imperial and sub-imperial orders confirming the titles of *zamindars*, especially at generational boundaries, both of the landed families and the imperial dynasty itself. These orders, generally issued by *jagirdars*—that is, the Mughal noble/office holders assigned the proceeds of taxes from the region for the upkeep of a specified size of equipped regiment—showed explicitly how claims on land and its produce were layered and how property was not seen as something inhering in the rights-bearing individual in isolation but, rather, produced at the conjunction of the buildup of local power and the claims and acceptance of the trans-generational continuity of privileges (that is, inheritance), but always undetachable from the state's fiscal and military priorities.

Hindu Law and Islamic Empire

I myself had struggled, however, to understand how, if at all, *dharmasastra*, or the Sanskrit-language textual tradition that expounded on the rights and duties of individuals and groups, and which was taken by the British as the basis of Hindu law, might have fit into this legal matrix, at least for Hindu landed lineages. Given the absolute absence of any trace of discussions of such in the household archive that I used (and the many others that I examined), I had been entertaining the idea (let me put it out there) that sacred jurisprudence such as the *dharmasastra* may have been

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entirely an academic pursuit until the colonial transformation of it into law. I struggled, at the same time, to reconcile this hypothesis with the obvious evidence of the active seeking and receiving of authoritative opinions from Brahmin scholars based in Mughal Banaras by disputants based in the Marathi-speaking areas since at least the sixteenth century (O'Hanlon 2011). Since the points of dispute raised in these letters "back home" were about caste status and ritual matters such as co-dining regulations, I tentatively concluded that *dharmasastric* consultation in the Mughal Empire was limited to ritual matters, that it mainly concerned Brahmins, and that it was related to the peculiarities of caste formation in south-western India and the Deccan sultanate milieu.

This was not a conclusion that was popular with peer reviewers. I have lost count of the number of times I have been advised by scholars who generally do not work on law at all to take into account the working of Hindu panchayats or village/caste councils in the Mughal Empire and/or the services of Brahman assemblies that *must have been* available to the majority of subjects of the Mughal Empire. I should say here what I have persisted in saying to all such reviewers—I have seen no evidence that this was the case in matters relating to property, including tort, contracts, partnerships, and inheritable property, nor in relation to crime, marriage, children, and most such matters that we now take to be the domain of law, including, in some of these matters, Hindu or other religion-based personal law. As far as I could see, the only documented instance of systematic community-based adjudication, especially in commercial matters, was that of the Armenian diaspora.

Even so, I have been dissatisfied with my understanding because I was not pleased with having imposed a ritual/legal distinction on jurisprudence and the field of juristic argumentation in a manner that is far too reminiscent of restrictions imposed by colonial legal systems. But when a *zamindar*, who, in the view of the Mughal dynasty, nobility and officialdom, was a local fixer and revenue collector, died, and his family members failed to agree on how his estate ought to be divided among them, who made the decisions, and how?

Persianate Hindu Law

In *Empires of Complaints*, especially in chapter 3, '*Zamindari* Succession Disputes and Persianate Hindu Law,' Travers provides a wonderfully rich answer to this question. When the *zamindari* of Lashkarpur in north Bengal became disputed in 1776, he shows that the officials of *khalsa*—the Nawabi revenue department now supervised by the East India Company—examined the validity of grants made by erstwhile Mughal emperors and Nawabs, but they also convened assemblies of Brahmin *pundits* to comment on the rules about adoptions in Hindu law. In a process comparable to contentious episodes of jury selection in American legal dramas, the *pundits* assembled no less than four times, and in different combinations, reflecting the preferences and objections of the litigants and the investigating revenue officials. They were specifically invited to comment not on the source of the *zamindari* title, which was clearly Mughal grants, nor on the validity of the partitioning of the title and the estate, although that was a legal point in dispute, but, rather, only on the validity of a key adoption in the family and, hence, the legitimacy of claims to a share in collectively held ancestral property. The *pundits* referred to a famous seventeenth-

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century *dharmasastric* commentary, which we know to have been authoritative in Bengal (so, no surprises there), but they also took into account a much more obscure fourteenth-century text that not even all the assembled *pundits* had read and that many disputed the local applicability of, as well as a Persian-titled and -styled permission document given by a now dead man to his wife. In the end, the decision was to accept the adoption as valid since the immediate parties had no objection and the *pundits* could not quite agree upon the rules, and not to reopen the question of partition since that had been settled several generations ago by Nawabi revenue officials. In other words, *dharmasastra* was consulted on demand on a specific technical point, but the decision was taken by revenue officials of the state with deference to the decisions of their predecessors while recognizing the wishes of the lineages.

This episode seems to me to be a perfectly plausible manner in which *dharmasastric* jurisprudence may have slotted into the wider mechanisms of Mughal law. It seems very intuitive—that is, if we are not blinded by the enormous colonial and postcolonial personal law tradition—that entitlements crucial to tax collections would be adjudged by the revenue department of the government and that they would pay utmost attention to royal charters and the like while also bringing in *dharmasastric* expertise on a consultative capacity where fine points of kinship were concerned. It is notable that, even in this case from 1776, the *pundits* seemed unable to quite grasp their brief when they were told that their opinion would be decisive in the case, perhaps because this had never been the case in the past.

What Law for Muslims?

If this is indeed the case—that is, that Brahmin jurists in the Mughal Empire acted in a consultative capacity as far as legal disputes over property were concerned—it is hard not to wonder what the case might have been if the parties were Muslim. We do know that there were state-appointed *qazis* or Islamic judges in the Mughal Empire. We know that *qazis* did adjudicate disputes over inheritance, including among Hindu litigants. They also validated contracts, sales, and receipts; itemized details of estates; and validated collective testimonies on various matters by affixing their seals on the documents and, in some cases, by writing a brief note. In some difficult cases, they took into account the opinions of *muftis* or Islamic jurists. What may have happened if a Muslim *zamindar*'s estate fell into dispute? Would the title still be evaluated by revenue officials? Would they still call in Islamic scholars on a consultative capacity only? We do know that there were *muftis* at the Nawabi capital at Murshidabad; it remains unclear, however, how their expertise was stitched onto that of the *khalsa* hierarchy. If only Travers had found a dispute that involved a Muslim lineage! But when such a dispute surfaces, we will know the questions to ask of it.

Continuity or Change?

There is, again for this reader, the bigger question of "how do we know this is indeed a continuity of past practice?" This is not merely a historian's generic skepticism when forced to use sources that post-date the events and processes that they would study

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and to project backwards from them. There are so many indications in Travers's account that people were discovering new ways of doing things. To return to the Lashkarpur dispute itself, it is notable that the plaintiff himself initially based his claims entirely on Mughal grants; the appeal to *dharmasastras* was appended later. Was this an astute response to the British East India Company-sponsored legal collation and translation projects that were afoot, even if the collations were not directly referred to? Had Indian disputants learned that the new rulers were receptive to claims based on a thing called Hindu law?

There were other kinds of grade inflation afoot too. The last chapter in the book is a detailed discussion of the *Siyar al-mutakhirin*, the famous history written by Ghulam Hussain Tabatabai, himself a late Mughal *jagirdar* dealing with social and political dislocations and property troubles. Tabatabai was socially a rung above the *zamindars* and constantly troubled by them. Here again, I saw the reformulation of Mughal terminology in order to assert specific legal rights. *Jagirs* were assignments of revenue made to Mughal officials in lieu of cash salaries. There were cash payments available in certain exceptional cases, which need not concern us here. *Jagirdars* were expected to collect taxes in the designated region in order to offset the expenses of maintaining a specified size of regiment. Mughal policy was to keep the *jagirs* transferable such that revenue assignment holders did not turn these into little kingdoms. The only exception to this was made for the key and difficult allies of the Mughals—the Rajput warriors of north-western India who held the kind of privileged *jagir* known as *watan jagir*—their revenue assignments were their own former kingdoms that were not made transferable. In Ghulam Hussain's narrative, he claimed to hold a *jagir* assignment designated *altamgha*, and this, he asserted, and contemporary company officials recognized to be, the kind of *jagir* assignment that could not be recalled. The *Mongol* word "*altamgha*" designates a specific imperial symbol affixed to a document. In the many *Mughal* imperial orders that I have seen from the sixteenth to the eighteenth centuries, I have never come across the term—it is certainly not common. And, yet, in the late eighteenth century in Bengal, *altamgha* grants seem to have been accepted as a form of non-transferable revenue assignment, which essentially turned a salary source into inheritable property. How and when did this happen?

Conclusion

I do not know the answers to the questions I have asked above. But they indicate two things. First, that the adjective "Persianate" in itself is insufficient to judge continuity or change; new forms of Persianate emerged constantly. Second, and more importantly, *Empires of Complaints* is a book that stands at the cutting edge of research on law in South Asia, and it points us toward exciting new directions in which to take our enquiries. And it guides us on our future usage of the paradigm of legal pluralism, which has been deeply generative since Lauren Benton's (2000) reprisal of it in the 2000s (see also Benton and Ross 2016). In seeking law where empires meet, we should be deeply skeptical about anything that purports to be ancient, whether it be the Mughal constitution or Hindu law or, indeed, the rights of free-born Englishmen. But we may also be hopeful that excellent application of the historian's craft, as in *Empires of Complaints*, can tell us much about what

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law meant before Europe became the ideational and institutional model for the world.

References

Benton, Lauren. 2000. *Law and Colonial Cultures: Legal Regimes in World History*. Cambridge, UK: Cambridge University Press.

Benton, Lauren, and Richard Ross. 2013. *Legal Pluralism and Empires, 1500–1850*. New York: New York University Press.

Chatterjee, Nandini. 2020. *Negotiating Mughal Law: A Family of Landlords across Three India Empires*. Cambridge, UK: Cambridge University Press.

Green, Nile. 2019. *The Persianate World: The Frontiers of a Eurasian Lingua Franca*. Oakland: University of California Press.

Hasan, S. Nurul. 1964. "The Position of Zamindars in the Mughal Empire." *Indian Economic and Social History Review* 1, no. 4: 107–19.

O'Hanlon, Rosalind. 2011. "Speaking from Siva's Temple: Banaras Scholar Households and the Brahman 'Ecumene' of Mughal India," *South Asian History and Culture* 2, no. 2: 253–77.

Travers, Robert. 2007. *Ideology and Empire in Eighteenth-Century India: The British Bengal*. Cambridge, UK: Cambridge University Press.

——. 2022. *Empires of Complaints: Mughal Law and the Making of British India, 1765–1793*. Cambridge, UK: Cambridge University Press.

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