Empire, Law, and Economic Growth[1]

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Abstract

The article explores three concepts in global history – empire, law, and economic growth – and their coming closer together to form a new discourse. Two recent tendencies contribute to the making of the discourse. Imperial history moves away from a view of empires as extractive machines towards a view of empires as legislating states. Economic history, on the other hand, underscores the role of legislation as a foundation for modern economic growth. Law, then, is the new bridge between empire and economic growth. Does this emerging equation help us understand Indian history?

In recent years, interest has revived in the history of the European empires that ruled much of the non-European world for the last 500 years. The new scholarship is in part about culture – how empires forged new identities, and how empires ruled by means of cultural domination, that is, by manipulating education, ideas about governance, and the writing of history in the colonies. In this meaning, the phrase 'new' imperial history has established itself as a brand in some schools of history, mainly of North America.[2] There is another strand which revisits the subject of political economy. Although interest in political economy is quite old, the new writing on the subject is somewhat novel in its orientation. New imperial history of the former kind is not relevant to the present paper. It is the new imperial history of the latter kind that forms the subject of this essay.

The trend was set with the five-volume Oxford History of the British Empire published in 1998-1999. This was followed by C.A. Bayly's *Birth of the Modern World*, Niall Ferguson's *Empire: How Britain Made the Modern World*, and John Darwin's *After Tamerlane: The Global History of Empire*.[3] In part relevant are also Ronald Findlay and Kevin O'Rourke's *Power and Plenty*, shorter treatments such as Stephen Howe's *Empire: A Very Short Introduction*, an anthology edited by Howe, and numerous articles and review articles.[4] Between these works, there is not a lot in

[1] The paper is the modified version of the text of the Twelfth Pranab Sen Memorial Lecture, held at Jadavpur University, Kolkata, on 18 June, 2011. I wish to thank the participants, especially Binay Chaudhuri and Lakshmi Subramanian, for useful questions, comments and suggestions, and the organizers of the lecture series for giving me a chance to honour the memory of one of the most distinguished philosophers of contemporary India.

[2] See, for example, Kathleen Wilson, ed., *A New Imperial History: Culture, Identity and Modernity in Britain and the Empire, 1660–1840*, New York: Cambridge University Press, 200.

[3] C.A. Bayly, *The Birth of the Modern World 1780-1914*, Cambridge: Cambridge University Press, 2004; Niall Ferguson, *Empire: How Britain Made the Modern World*, London: Allen Lane, 2003; John Darwin, *After Tamerlane: The Global History of Empires*, London: Bloomsbury, 2008.

[4] Ronald Findlay and Kevin O'Rourke, *Power and Plenty: Trade, war, and the World Economy in the Second Millennium*, Princeton: Princeton University Press, 2007; Stephen Howe, *Empire: A Very*

common. These books sometimes overlap in their arguments, but do not necessarily follow a single train of thought. For example, both Bayly's *Birth of the Modern World* and Ferguson's *Empire* share an interest in market integration led by empires, but the main point of emphasis in Bayly is the transformation of European states, whereas Ferguson's book is mainly interested in the role of British private enterprise in forging empires.

These works are written by historians. Independently, economists have also developed an interest in empires. The institutional approach to economic history introduced by the American economist Douglass North and others suggests that the origins of economic growth in the modern world can be traced to institutions, that is, manmade rules that keep costs of conducting market exchange within reasonable limits. The usual examples of institutions are property rights and contract law. In North's own application, the idea seemed to explain the so-called 'rise-of-the-West', namely, the economic development of Western Europe from the enlightenment to the Industrial Revolution. But a theory of success cannot be validated with reference to only examples of success. It should explain the failures of growth as well. The school of thought that developed around North was more at home with the West than the non-Western world. With one-sided evidence, the institutionist claim to having found a theory of economic growth took on a tautological character. In the manner of Louis XIV who quipped that when we see men behave badly we should look for the woman, the theory claims that when we see growth or stagnation we should look for the institution responsible.

In the last ten years, a group of economists have been making amends to this deficiency.[5] A large part of the enterprise engages in rethinking the concept of empire. They read the European empires as agents in institutional change in the non-western world. They recognize that the modern empires recast property rights and contract laws in the non-western world, and investigate the quality of the property and contract law that emerged from the imperial project in order to explain the relatively poor growth record in the tropics.

Why a rethinking?

It should be clear that the new imperial history (in the sense in which I use the label) cannot be defined as a single movement because these writings on the subject do not adhere to a common set of ideas and assumptions. Historians rewriting the empire and the economists rethinking the empire are doing so for different reasons, and there are deep differences also in the points of emphasis of individual writers. Why, then, is there a sudden outburst of interest in the same subject? Is this coincidental, or is there an underlying intellectual current? I suggest that there are three underlying intellectual currents behind the rethinking.

Short Introduction, Oxford: Oxford University Press, 2002; Stephen Howe, edited, *The New Imperial Histories Reader*, London: Routledge, 2009. For an example of a long review, Frederick Cooper, 'Empire Multiplied. A Review Essay', *Comparative Studies in Society and History*, 46(2), 2004, pp. 247-272.

[5] For example, Daron Acemoglu, Simon Johnson, and James A. Robinson, 'The Colonial Origins of Comparative Development: An Empirical Investigation', *American Economic Review*, 91(5), 2001, 1369-401, Stanley L. Engerman and Kenneth L. Sokoloff, 'Factor Endowments, Institutions, and Differential Paths of Growth among New World Economies' in *How Latin America Fell Behind*, Stephen Haber, ed., Stanford, CA: Stanford University Press, 1997, 260-304, R. La Porta, F. Lopez-de-Silanes, A. Shleifer, R. Vishny, 'The Quality of Government', *The Journal of Law, Economics & Organization*, 15(1), 1999, 222-79. For a useful survey, see Ross Levine, 'Law, Endowments, and Property Rights', Working Paper 11502, National Bureau of Economic Research, Cambridge, MA., 2005.

First, there has been a move away from what we might call the old imperial history, namely the neo-Marxist paradigms that ruled the historiography of the empire until the 1980s. Marxist theories of underdevelopment read the European expansion eventually leading to colonial rule as a process that entailed extraction of resources from the tropical world, leaving the tropics poorer, and in possession of a distorted-exploitative class structure. The scholarship exploring the relationship between empires, dependency, 'backwardness' and underdevelopment from a Marxist perspective is very large. Formative writings by Paul Baran, Walter Rodney, and especially André Gunder Frank considered imperialism to be the main cause of poverty and underdevelopment in the twentieth century world.[6] Interpretations of the mechanism, however, emphasized either trade (that is, exchange relations) or class (that is, production relations). Much of the analysis had little in common with classical Marxism except a shared interest in surplus appropriation. Karl Marx himself, as we know, was upbeat about the British Empire in India, and expressed the hope that the entrepreneurial and aggressive Britons of his time would eventually beat the lazy and passive Indians into shape.

Examples of extractive and exploitative empires can be found. One example commonly cited is Congo under the Belgian king Leopold II, who made no secret of his intention to strip Congo of its commercially valuable natural resources for personal enrichment. But as a general theory of empires, extraction and exploitation pose too many problems. It is not easy to define the nineteenth century European empires in Asia and Africa as a common bundle of intentions, strategies and effects. As the maverick Marxist Bill Warren pointed out long ago, the belief that the empire underdeveloped the tropical world overlooked a number of positive changes in the third world that had owed their origin to the imperial connection.[7] The beginning of factory industrialization in India serves as an example of Warren's point. Putting the burden of underdevelopment upon empire raises the question, what about China, which was not colonized; and what about the New World colonies like Australia, New Zealand, United States or Canada, which were colonized but still developed?

A second universal tendency is a renewed interest in the history of globalization. After a 60-year gap, dating from the Great Depression in 1930 to the collapse of socialism in Eastern Europe, end of Cold War, and economic reforms in the third world in the 1980s, restrictions on trade in the world have fallen away. The world today trades more than it did in the recent past, and in that respect, the world resembles the nineteenth century more than the recent past. This apparent resemblance induces historians to look at the empires of the last two centuries in a different light, rather less as an extractive machine, and rather more as an agent in globalization, that is, worldwide market integration. In the ancient and medieval times, the aim of empires was to maintain the flow of taxes and tributes between regions. Protecting private enterprise and integration of markets was at best a byproduct of the enterprise. In the nineteenth century, the empires were capitalistic in aim. They wanted to create and maintain a cross-border market for goods, capital, labour, and technologies; and cemented these with a compatible, if not a common, institutional framework between the colonist and the colonies.

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[6] Paul Baran, *The Political Economy of Growth*, New York: Monthly Review, 1957; Walter Rodney, *How Europe Underdeveloped Africa*, Washington DC: Howard University Press, 1974. A great deal of Frank's early writings dealt with contemporary Latin America. Perhaps the best long statement of his historical thesis can be found in *World accumulation, 1492-1789*, New York: Monthly Review Press, 1978. The thesis argued and illustrated in this book is that historically trade has been the mechanism for an unequal distribution of income and wealth in the world.

[7] 'Imperialism and Capitalist Industrialization', *New Left Review*, 81, 1980, pp. 3-44.

A yet third change in global history motivating the new imperial history is a revised understanding of states, especially the emergence of large fiscal states in Europe through the process of sustained military conflict. That the empires were causally linked to the transformation of European politics has long been known, but the transformation itself and its repercussions upon the extension of military power became major fields of study only recently. The European literature on the emergence of fiscal states is very large – associated with the works of Charles Tilly, Martin Wolfe, Patrick O'Brien, Michael Mann, and the book by Bayly I cited before.[8]

Taken together, then, the new imperial history can be defined by two characteristics: an interest in economic globalization, and an interest in a new kind of state trying to sustain the process. But how did the new kind of state sustain the process of capitalistic globalization? Attempts to answer that question take us closer to the economists' interest in empire as an agent in institutional change.

Capitalism cannot function without laws protecting private property and impersonal contracts. The new imperial history reminds us that the states that pursued capitalist integration were not only militarily strong, but institutionally different from their predecessors and contemporaries. So, doffing our hat to Douglass North, we can say that the empires were legislating states. A signal distinction between the old neo-Marxist imperial history and the new imperial history, then, is that in the former the state was an agent of resource extraction, whereas in the latter, the state was a legislator. Empires were law-makers.

How useful is this idea – that empires were a particular kind of legislators – to the study of Indian history?

British India as a legislating state

Our impression of the British rule in India tends to be coloured by the elaborate display of power and pomp in which the colonial ruling order liked to surround itself. The display itself was quite a complex thing, as it drew images and inspiration from a variety of roots. There was at one level an English penchant for recreating a fake aristocracy in whichever part of the world they ruled. But in implementing that drive in India, the English also borrowed ideas and symbolisms current in the world of the princely states. At times the real orient and the orientalism became almost indistinct. Be that as it may, from an economic history angle, the display of power was only an illusion. Although it was a militarily strong state, in fiscal terms, British India was one of the poorest states in the contemporary world.

In the 1820s, average tax per person in the three 'presidencies' of India was less than one-tenth of that in England, and half or less in relation to almost all the other British colonies, whether located in the temperate or the tropical regions. In terms of tax-per-person or tax-GDP ratio, the relative position of British India worsened in the early twentieth century when compared with the other emerging economies of the time, chiefly Japan and Russia. Why was tax collection recor so

[8] For a fuller discussion of the relevant scholarship, see Tirthankar Roy, 'Rethinking the Origins of British India: State Formation and Military-Fiscal Undertakings in an Eighteenth Century World Region', Working Paper, Economic History, London School of Economics and Political Science, can be downloaded from http://www2.lse.ac.uk/economicHistory/workingPapers/economicHistory/home.aspx. The term 'military-fiscal' is employed loosely in discussions on state formation in India, see P.J. Marshall, ed., *Eighteenth Century in Indian History: Evolution or Revolution?*, Delhi: Oxford University Press, 2003, pp. 1-30; and Seema Alavi, ed., *Eighteenth Century in India*, Delhi: Oxford University Press, 2002, pp. 1-56.

abysmal in British India? The policy of limited interference in local political structures, a form of indirect rule, made it difficult to raise revenues by almost any other means than the land tax. But then, geography and climate reduced the productivity of land to exceedingly low levels, and depressed tax collection in turn. However powerful the raj might pretend to be, its reach as a state was as severely constrained by these factors as that of any pre-European state in India.

To the same extent that its capacity for direct development was constrained, the regime focused energies upon indirect development via globalization. According to one reading, proposed by the late Morris David Morris, the empire adapted to its own small size by taking a 'night-watchman' stance.[9] It saw itself as the means to create enabling conditions for private enterprise to flourish, by offering a single umbrella of law, one official language, and uniform channels of transaction in scientific and technological knowledge. British India represented a different and a more modern kind of state insofar as it created the economic institutions necessary for global capitalism to function.

An economic historian would immediately object, did capitalism not already exist in India before the empire? After all the whole reason that the East India Company was present in India was a share of Indian business. This is absolutely right. And because it is right, we cannot understand British Indian institutions without reference to the colonists' idea of the Indian business world. So, what did the English East India Company think it was doing in creating new institutions, rather new property laws, when it became serious about governance in the 1770s?

On this question, economists and historians part company.

What did the British think they were doing?

Economists, especially new institutional economic history, would see in law an instrument to address transaction costs. In a colonial setting these costs and their remedies may arise from particular sources, but law is still a solution to inefficient forms of market exchange. Historians, especially postcolonial historians, would treat law as a tool of governance and control. In a colonial setting, governance and citizenship are defined differently from a free society. But law is not a benign solution to an efficiency problem; it is an instrument of imperialism. These two views on colonial law do not meet; in fact, they are contradictory. Any suggestion that colonial law could be a solution to a societal problem is likely to be readily dismissed by the post-colonial historians, for whom discourses on 'rule of law' are a cover for imperialism. If we take the economists' road, the British were trying to strengthen the institutional basis for market exchange, where the pre-existing basis fell short in a number of ways. If we take the historians' road, the British were trying to appropriate means of regulation and control of Indian society.

I have difficulty in journeying along any one of these two roads without adding major qualifications. The postcolonial road is not good enough, because it assumes that private businesses had little agency in the making of modern institutions such as laws. Law, in this view, was a top-down supply-side phenomenon; rather than one that took shape in response to the demand by economic agents for more efficient and risk-free rules. A pure governance theory of law will never be convincing to an economic historian for what it omits from its vision, namely, demand for law, transaction costs, and the role of economic actors in making rather than simply adapting to colonial law.

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[9] 'Towards a Reinterpretation of Nineteenth Century Indian Economic History', *Journal of Economic History*, 23(4), 1963, pp. 606-18.

On the other hand, the economic theory that suggests that colonial law was a response to the failings of indigenous institutions, needs to first describe the indigenous institutions and make a convincing case that these were really not good enough to address modern forms of transaction. Institutional economists tend to assume that the Europeans transplanted European institutions on to the otherwise lawless tropics. In fact, the Europeans transplanted institutions piecemeal, depending on a conception of the indigenous laws of the tropics. This suggestion makes for a very important revision, but the idea is yet to sink in. The recent comparative history of institutions is singularly deficient in its understanding of early modern Asia or Africa to do the job well enough. Some contributors to the literature compensate for their poor sense of history with good use of econometrics, but the result is still a patchwork.

So, what did the East India Company think it was doing in the matter of legislation in the late-eighteenth century or the early nineteenth? Social historians of India suggest that the British in the eighteenth century had their actions guided by a conception of Indian society and about themselves as a superior power. I believe that they are wrong. The British in the eighteenth century had their actions guided by a conception of Indian business and this conception had been in the making during the preceding 150 years of doing business with the Indians. Imperial law had pre-imperial and economic root. The singular legacy of that root was the notion of a business community that restricted the exchange of trade secrets by restricting marriages within a small group. Where did that idea come from?

European visitors to Indian port towns in the seventeenth century observed that in India, significant social interaction with other communities was forbidden to merchants, bankers, and skilled artisans. Merchants lived in an insular social world, and mercantile law existed as social conventions of endogamous guilds. In the presence of these insular and wealthy communities in the late nineteenth century, the British Indian state was caught between two contradictory goals, to establish a modern, universal, and capitalistic legal infrastructure that would override the community and privilege the individual, and to recognize mercantile customs as common law, which would amount to strengthening the community. Legislation in British India formed in interaction between these two projects.

The East India Company came into possession of the revenues of Bengal between 1757 and 1765, but it was not before 1772 and a devastating famine, that the Company became serious about taking the reins of civil administration. In the 1770s, when a serious discussion began about the principles by which the newly acquired East India Company territories in India should be governed, Warren Hastings, the first Governor General, represented a lobby that believed that India should be governed by Indian law. The foundation of business practices was seen to be religious, because clearly Hindu and Islamic code books were full of pronouncements on the superiority of the community, notions of purity ad collective order, and being virtuous by maintaining the rules of caste and the collective order. The Hastings project, therefore, led to an attempt to understand, reconstruct, and preserve indigenous religious codes; gave employment to scores of orientalist legal scholars; and saw the start of schools of Hindu and Islamic traditions in Benares and Calcutta. The concrete effect of that project was that property right was delivered to community and extended family, rather than the individual owner, on the understanding that this was the principle sanctioned by religious texts. It was held that under Indian tradition, property was typically held in common, and therefore, property should be held in common. This is the principle of impartible inheritance, and it worked in conjunction with a concept of the joint family or community.

But India was a plural society, with not one but many religious codes. The codes existed as ethos rather than as positive law. In this scenario, the government could only accord all religious law equal status. And in order to maintain strict equality, it instituted universal procedures and a universal system of courts. The legal regime that Hastings had set in motion was neither a completely new order nor a completely traditional order. It was traditional in modeling law after religious codes; it was modern in creating a single 'process' of law valid for all. Colonial law followed English common law precedence, but only in its attempt to create a single 'due process'. A single referee would arbitrate many players.

If this was the ideal, much of nineteenth century history of Indian law saw retreat from the ideal.

Conflicts[10]

From the early nineteenth century, press, literature, Indians, Europeans, and administrators (like the Governor John Shore) took a dim view of British Indian law. Courts and lawyers were unaffordable, served the rich and hurt the poor, were sites where perjury won the day - dark views such as these were expressed by everyone concerned. By the 1830s, the Hastings model was seen by many to be obsolete. The Benares and Calcutta schools of law that produced Hindu and Muslim legal experts had few backers. The famous or infamous education minute drafted by T.B. Macaulay (1835), which made the case that traditionalist Indian learning should be given up in favour of a westernized curriculum in state-aided Indian schools, was partly a reflection of the dwindling professional value of traditional learning in the British Indian law court. There was no immediate change of policy or jurisprudence, but the ideal was cracking under its own weight. What was the problem?

The pursuit of traditionalism in the contents of law and modernism in the process of law created an expensive system, expensive in money, in time, and in terms of disputatious potential. When we read through civil court cases in the early nineteenth century, we see that these disputes can be classified into three categories – conflict between the private and the public, conflict between the individual and the collective, and conflict between custom and contract. The wording in the last case, custom-versus-contract, is borrowed from Henry Maine, one of the key legislators in colonial India, but I use the phrase in a different sense from that of Maine.

The conflict between the public and private is a subject much written on. It was introduced but not completely followed up by David Washbrook.[11] A book on the Calcutta Marwaris by Ritu Birla is a recent attempt to deal with this sort of dichotomy in colonial law.[12] Birla has argued that the colonial state legitimized a private space within the economy where personal status ruled, and made it inferior to the public space where 'universal models of modern market practice' ruled. In this case, European ideology and Indian ideology are seen to have been so positioned as to underscore the inferiority of one to the other. I do not accept this interpretation on two grounds. First, a European imperial ideology did not exist readymade from the

[10] This section draws on Tirthankar Roy, *Company of Kinsmen: Enterprise and Community in South Asian History 1600-1940*, Delhi: Oxford University Press, 2009. For a shorter statement, see Tirthankar Roy, 'Law and the Economy of Early Modern India', in Jan Luiten van Zanden and Debin Ma, eds., *Law and Economic History*, Stanford: Stanford University Press, 2011.

[11] 'Law, State and Agrarian Society in Colonial India', *Modern Asian Studies*, 15(3), 1981, 649-721; see also Peter Robb, 'Law and Agrarian Society in India: The Case of Bihar and the Nineteenth Century Tenancy Debate', *Modern Asian Studies*, 22(2), 1988, 319-54.

[12] *Stages of Capital: Law, Culture, and Market Governance in Late Colonial India*, Durham: Duke University Press, 2009.

beginning of colonial rule. The 'universal models of modern market practice' struggled to establish themselves through an interaction between community practices and corporate and individual enterprise in the sphere of Indo-European business. And second, as the previous sentence showed, ideas about commercial law formed in relation to business history, not in relation to a history of politics and colonial power.

But there was a public-private conflict present nevertheless. By private I mean, as would everyone else, a law that defined ownership of property as a legal right, at the same time delivering that right to a group, usually a joint family, rather than a single individual. By public I mean, unlike other contributors to the historiography, a universal procedural law, the existence of one platform and one due process of law to settle all possible disputes. This particular cleavage between a right and the institutional mechanism to uphold that right did not exist before, in a world where rights and institutions had both been decentralized into communities. It came into existence with the divorce of procedures from laws. Earlier, communities settled disputes by panchayats following their own rules, nobody needed to care about the constitution of these bodies or the rules that they followed; but now judges in British India courts settled community disputes according to community laws. These laws then needed to b written out. In this shift, the problems began.

The combination of joint rights and universal procedures was an explosive one. The very offer to recognize family tradition as legal tender created a moral hazard; it invited families and communities to reinvent tradition. A very large number of property disputes in the 1800s concerned one issue - where would the right of the kin to claim a share of a jointly held property end. An army of Pandits advised the judges on Hindu texts that seemed to indicate the degrees of relation who could claim shares in a joint family. It shifted the attention of the judges away from the contents of law to the origins of law. And it encouraged young recruits into the system to show off their knowledge of Hindu law to their superiors. To illustrate this point by quoting one judgment of 1854, of a property case in a zamindari estate: 'Held that under the Hindu law of inheritance current in Bengal, as laid down in the *Daya Bhaga* and the *Daya Karma Sangraha*, the maternal uncle succeeds in preference both to the paternal great grand-father's brother's daughter's son and to the great great great grand-father's great great grandson…' In modern eyes such words may seem grotesque. But it is easy for a historian to explain a judgment such as this one. These words represented a British judge's desperate attempt to discover formulas that would work to translate Indian civil-religious codes into a practical rule. Such attempts were frequent and almost always gave rise to fantastic patterns.

Admission of impartible inheritance of property also opened a flood-gate of conflict between individual and collective interests. For example, impartible inheritance worked on condition that women who married into the joint family had restricted claims on property. Otherwise, remarried widows threatened a division of the estate. Widows had a right to maintenance, but not a share in property. This was unjust when the deceased husband was the one who had created the wealth in the first place. In a society where many women married at 12 or 13 and life expectancy was 25 years, early widowhood was common enough. Women had two escape routes from this law, a bequest from the deceased husband, or adoption of a son. Bequests were not easy when property was jointly held. And a woman was required to produce documentary evidence showing her husband's consent to adoption. The Sudder Dewany Adawlut between 1800 and 1850 decided a large number of cases where a young girl produced a document purportedly signed by her dying husband sanctioning adoption, which document was challenged by the husband's family. In

the 1830s and 1840s, such claims had a reasonable hope to succeed; in the 1890s, these challenges were routinely dismissed. On what grounds were they dismissed? These laws were not only iniquitous, but inefficient because they interfered with the spirit of private enterprise, which was growing in the nineteenth century Company cities like Calcutta or Bombay.

Finally, there was conflict between custom and contract. To any observer of business in nineteenth century India, the indigenous institutions would have seemed to be more a hindrance than a help, either because customary laws were not specified enough to meet modern forms of business or because personalized enforcement systems would not work in impersonal transactions. The second form of difficulty can be easily illustrated. Think of a game of chess being played between a European and an Indian. The European moves a pawn two places and declares checkmate. The Indian objects to the move by saying that according to Indian rules, moving the pawn two places is invalid. The game will never end. Similarly in business, the transacting parties must agree to play by the same rules to conduct any business at all. If buying and selling are done by the most elementary rules such as auction, identity matters little; but if buying and selling are done by complex rules such as long-period contract that admitted of many contingencies, it is impossible to function smoothly if any one party can claim recourse to ethnic or religious laws. It was not as if laws of contract did not exist in India. The problem was that impersonal and secular laws of business could not be found anywhere written down; whereas at the same time, the scope of business transactions between parties that did not share similar ethnic and social customs expanded enormously from the eighteenth century.

Sanskrit, Arabic, and Persian codes that the British Indian courts made use of were almost never successful in practice in settling trade disputes that came to the British Indian courts. In practice, businesses relied heavily on middlemen. The middlemen carried social power, that is, they were sufficiently stronger than the agents to be able to coerce or persuade the latter to fulfill the contract. The middlemen also carried knowledge power, that is, they were better-informed than the principal about the contractees. They, therefore, took advantage of the weakness of one and the ignorance of the other to cause serious trouble to both. The result was that contractual disputes exploded in Indo-European trade and often took on violent character. Transactions in cotton, wheat, textiles, silk, opium and indigo involved serious disagreements that turned political in the indigo case.

The system responded to these disputes in two ways, by adopting the common law principle of elevating court rulings into law and by legislation overriding tradition. In property rights, case judgments tended to uphold individual rights over collective rights. In the sphere of exchange, legislation disassociated itself from Indian tradition altogether and looked westward. In other words, an Anglo-Indian hybrid tended to converge clumsily towards a common law through the nineteenth and twentieth century.

Conclusion

I conclude by drawing out three theses – about empire, law, and development.

The empire thesis is the easiest one to state. I have tried to rethink the empire, not as an extractive agent as in Marxist historiography, but as a legislative agent as hinted at in new imperial history. The shift in perspective is not driven by a desire to 'whitewash' the sordid history of many empires. Rather, the intent is to move away from the one-dimensional narrative of power projected by the neo-Marxist and the postcolonial writers, towards the possibility of multiple narratives on empires.

The British Empire in India was a legislating state. And yet, as the preceding paragraph would suggest, not all empires and all legislating states were similar. Where would British India figure in the spectrum of legislating states? Modern European empires, unlike the medieval ones, pursued a more or less explicitly capitalistic aim – they wanted to aid private enterprise of some kind. But private enterprise could be quite variable. From the slave owning plantation in America to the jute mill of Calcutta, there is a very large shift. In keeping with the diversity of private enterprise, modern empires pursued three types of legislative strategy, which I call 'appropriation', 'incorporation', and 'standardization'.

Appropriation means taking outright possession of non-European land and labour by the European settlers with the aid of property rights on land deemed as *terra nullius* and property rights on labour via slavery. If this strategy worked in the case of the New World, it has little if any relevance for colonial India, where the imperialists were merchants and bankers foremost rather than landlords and planters. The second strategy, incorporation, would mean accommodating pluralism by offering juridical autonomy to groups. The principle is to give away legal powers to groups, in return for loyalty. Many historians have shown that this practice was very widespread, not only in the tropical world but also, as Dominic Lieven has shown in a recent book, in the Russian Empire.[13] Standardization would mean allowing one law for all, the principle of one law for one nation or one state, or *lex loci*. My thesis on law is that British India began with the second strategy, and was moving towards the third strategy, if at a glacial speed. In the process it unleashed a tremendous potential for contestation.

The third thesis is on economic growth. Recent research done in the institutional economics tradition tells us that the imperial legislative project did not work well in the tropical colonies because the colonist powers were not sufficiently motivated to transplant good European laws in the tropical colonies. It should be clear from the above that I do not believe in that story, and I do not see how any historian of India worth his or her salt could accept such a proposition. The problem in India was not how much good western law was imported, but how much Indian law was preserved, and in what manner. My argument is that the attempt to fit numerous religious, communal, and personal codes of conduct into the common law framework – where all codes were subject to contestation – created huge potentials for contestation. There were far too many court cases. And too many court cases are not good for economic growth. This is the third thesis.

[13] *Empire: the Russian Empire and its rivals*, New Haven: Yale University Press, 2002.