Law of Nations Theory and the Native Sovereignty Debates in Colonial India

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Perhaps few topics are more invidious in colonial legal history than the definition of “paramountcy” in British India. Alternatively cast as a feudal compact with subordinate native princely states, a noninterventionist policy supportive of semi-sovereignty, and a doctrine invented to justify colonial “earth hunger,”¹ the concept elicited significant debate in the mid-Victorian era. But epistemological and practical issues bedeviled any comprehensive understanding of the term. Did the colonial government inherit its legal purview over the states as rightful successor to the Mughal throne, or did its strategic resurrection of principalities in the aftermath of the Anglo-Mysorean and Mahratta wars entail their thrall-dom? These abstract concerns acquired a tangible reality in the 1840s, as John Hobhouse, the President of the Board of Control, conspired with Governor-General Dalhousie to dethrone the Mughal emperor and annex heir-less Hindu states through the doctrine of lapse.² Claiming authority for the East India Company (EIC) as a “successor by conquest,” Dalhousie had hoped that his acquisition of the Mahratta state of Satara in 1849 would establish a precedent for the

¹. F. W. Chesson, The Princes of India; their Rights and our Duties (London: William Tweedie, 1872), 21. Chesson was the son-in-law of prominent India reformer George Thompson and the secretary of the Aborigines’ Protection Society.

². Dalhousie’s scheme to unseat the Mughal emperor encountered stiff resistance from eighteen of the Company’s directors. See John Hobhouse to James Broun-Ramsay, Marquess of Dalhousie, December 6, 1849, British Library (hereafter BL), Mss Eur F213/27, f. 241.

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absorption of “petty intervening principalities, which may be made a means of annoyance.”

From the late 1830s to the 1870s, India reformers associated with the metropolitan British India Society (BIS), India Reform Society (IRS), and East India Association (EIA) advocated for the conservation of native states. Abolitionists, Quakers, and retired company officials behind the BIS engaged in early defenses of princely rule by denouncing the extralegal dethronement of Pratap Singh, the Raja of Satara. In the lead up to the charter renewal of 1853, members of the newly established IRS published numerous pamphlets that exposed the Company’s coercive attempts to undermine the precolonial system of layered sovereignty. The traumatic 1857 Uprising further confirmed reformers’ suspicions that the colonial state, as a foreign entity, could administer India but could not effectively govern its people, because the British lacked “a hold on their affections and passions.” Native sovereigns, in contrast, were “natural leaders” who might very well evolve into constitutional monarchs with proper encouragement. Although the home government drained much of the revenue collected in the Indian territories under British rule, princes maintained elaborate patronage networks and recirculated their assets locally. Offering ample employment opportunities, their administrations also made “use of the much neglected and almost forgotten agency of Native diplomatists.” Reformers therefore demanded a “golden bull” that would outline both the princes’ obligations to the Indian government and the reciprocal duty of the British to maintain these rulers’ internal sovereignty. In the meantime, classical law of nations theories, with their recognition of unequal alliances and unequal treaties, offered a template for equitably adjudicating interstate relations.

The topic of paramountcy lies at the intersection of several strands of historiography, yet few scholars have linked its conceptualization to political agitation in an imperial public sphere. Michael Fisher and Matthew Stubbings compellingly describe the activities of princely deputations in

4. John Dickinson, the son of a wealthy paper manufacturer, and Quaker MP John Bright helmed this London-based organization, which was eventually overshadowed by Dadabhai Naoroji’s East India Association in the late 1860s.
London and note Britons’ reactions to these “exotic” specimens, but neither focuses on reformers’ legalistic defenses of Indian sovereignty. Other historians have given the topic shorter shrift; Thomas Metcalf went so far as to attribute the restoration of Mysore to native rule entirely to the appointment of a new Tory secretary of state for India. Foregrounding party politics, however, grants limited insight into the legal frameworks that shaped the contentious and prolonged sovereignty debates both at home and abroad. Colonial agents associated with the Government of India’s Foreign Department regularly engaged in what Lauren Benton has termed “creative legal posturing.” Rather than imposing a “state of exception,” these officials called for a pragmatic kind of imperial law predicated on usage and divisible sovereignty to fill the gray area between international and municipal law. Not all agents took kindly to this murky process, which could perpetuate a state of legal indeterminacy. In one famous instance, the British resident at Baroda aggressively attempted to extend colonial jurisdiction over criminal cases in the princely state and was targeted for poisoning as a result.

In more recent work, Benton and Lisa Ford have shelved the opinions of professional international lawyers and focused their attentions on “recover[ing] the juridical thought of low- and mid-level bureaucrats and their antagonists and allies.” These actors were often at the epicenter of jurisdictional strife; their actions resulted in the extension of Crown authority over unchecked petty despotisms in the colonies through the appointment of a loyalist “middle power.” One of Benton and Ford’s principal aims is to emphasize how practical realities of empire “framed visions of global order” in the early nineteenth century to a greater extent than legal naturalism or any standard of civilization. Although they acknowledge that “colonial schemes and local debates” drew on “often vague and

11. Ibid., 244, 258.
13. Ibid., 21.
occasionally precise understandings” of the law of nations, they conclude that the “dry speculations of Vattel and his confreres” were less central to imperial legal change than the reports of commissions of inquiry and the judgments of admiralty courts. This article, however, contends that any analysis of colonial sovereignty in India necessitates sustained attention to the public consumption of early international law. Admittedly dusty law of nations theories were regularly re-forged as polemical tools by reformist critics operating in and outside of officidom.

In emphasizing the use-value of legal texts in particular debates, I am taking a somewhat different tack from scholars who have charted the transition from a universal “naturalist international law” to an exclusive “positivist international law” shaped by colonial encounters with cultural difference.14 The early nineteenth century saw a new empiricist focus on extant treaties, as historicist jurists began to emphasize the European origins of international law and circumscribe its boundaries.15 Late-Victorian legal positivists further located international law in the regulations and norms to which independent states had assented. With a sociological sensibility, they taxonomically ranked societies on a continuum of civilization to determine their admittance to international society. Clarifying this membership, however, could be a fraught process. The fact that native powers had brokered treaties with Europeans in the past or continued to exercise forms of sovereignty did not necessarily ensure their inclusion into the family of nations (which itself was no guarantee of equitable treatment). Reflecting on this ambiguity, Antony Anghie concludes that positivism’s “failure to coherently place and incorporate the non-European entity into its overall scheme” exposed its profound limitations.16

An analysis of the India reformers’ eclectic polemic clarifies the practical ramifications of this conceptual muddle and reveals how naturalist and historicist legal texts alike could be instrumentally interpreted in a “counter-imperial” manner.17 Crucially, the restrictions that professional


15. In search of rules of conduct, some positivists were concerned that an excessively historicist understanding of international law would produce a “debilitating awareness of flux and contingency.” See Anghie, *Imperialism*, 51.

16. Ibid., 81.

lawyers placed on the application of international law were routinely contested. Shirking “standard of civilization” arguments that ostracized non-Western actors, defenders of native rule continued to use analogies and amalgamate disparate theories to assert the “independence and equal standing of small and weak States in their intercourse with the most powerful.”\(^{18}\) Contemporary jurists did not simply replace early-modern authorities such as Emmerich de Vattel and Hugo Grotius; in many cases, reformers cited their texts concurrently. This article will first provide an overview of the various legal concepts in play and speak to the opaque nature of paramountcy in the period. It will then probe the reformers’ legalistic opposition to colonial expansionism in Awadh, the Carnatic, and Mysore, and explicate their schemes for an international tribunal that could function as a court of appeal.

**Microcosmic and Macrocosmic Approaches to the Law of Nations**

Scholars have vehemently debated whether the extra-European extension of *jus gentium* theories supported equal treaty partnerships,\(^{19}\) provided conceptual scaffolding for European dominion,\(^{20}\) or was ever intended to furnish a “global principle of justice” in the first place.\(^{21}\) In particular, Edmund Burke’s invocation of the law of nations during the trial of former Governor-General Warren Hastings (1788–95) continues to generate a fair amount of controversy. For Mithi Mukherjee, Burke pushed this theory to its limits by endowing Hastings’ oppressed native subjects with a “natural right of resistance” to his unjust warring. It was therefore incumbent on the House of Lords to engage in a “supranational and deterritorialized discourse of justice” and quell this resistance before it developed into a full-blown civil war.\(^ {22}\) Jennifer Pitts, too, notes that Burke extended the law of nations to non-European societies, although she clarifies that he primarily

assumed a “posture of auto-critique” to “chasten European power” and ward against geographical morality.23 Mid-century reformers valorized Burke as a staunch defender of princely interests and represented the recent annexations as a return to the Company’s unscrupulous practices of yesterday. In dealing with the native states as unequal treaty partners, the Indian government had effectively taken “the mutual relations between the two parties out of the realm of politics and brought them into that of law.”24 This shift presented a methodological quandary: were the treaties to be interpreted in conformity with the classical law of nations, Victorian legal theory, or indigenous practice? Some princes had provided valuable assistance to the British in the eighteenth century, and had gained recognition as sovereign allies in global conflicts. Later treaties with “resurrected” states, however, were framed as instrumentalist compacts between paramount and subordinate powers.

Approaching a number of cases simultaneously, reformers dissected and sutured together classical and contemporary juridical theories to delegitimize colonial annexations. Many cited Swiss theorist Emmerich de Vattel’s eighteenth century treatise, which characterized each nation as being analogous to an individual in a state of nature with an innate right to self-preservation. This general position may be termed “microcosmic,” in the sense that it was most concerned for the longevity of independent political bodies in a society of nations.25 Whereas earlier theorists such as Grotius had tentatively approved of intervention in a non-European state’s affairs if a visible injustice was being perpetrated that “no good man living [could] approve of,”26 Vattel demurred that this justification would open a door to fanatical excess: “every mad-man [would] fancy that he is fighting in the cause of God.”27 Nations possessed only an

25. I am not disputing Vattel’s advocacy of an economic balance of power rooted in the belief that interstate commerce contributed to a nation’s self-perfection. Vattel sought to guarantee access to “necessities” at a “reasonable price”; if these conditions were not met, disadvantaged consumers would be justified in taking retaliatory action. See Isaac Nakhimovsky, “Vattel’s Theory of the International Order: Commerce and the Balance of Power in the Law of Nations,” History of European Ideas 33 (2007): 169–70.
“imperfect right” to “the offices of humanity” and could not “compel another nation to the performance of them.”

As Vattel deemed self-preservation to be a hallmark of natural law, he determined that states could enter into unequal alliances by way of a treaty of protection. A weaker party like his native Neuchâtel could thus “lawfully subject itself to a more powerful nation on certain conditions agreed to by both parties” without suffering a full loss of sovereignty. Acknowledging that these associations could lead to coercion, Vattel clarified that any form of future aggrandizement on the part of the superior party would have repercussions. Each nation invested its prince with sovereign powers in the interest of the salus populi; rulers who violated their state’s constitution were therefore subject to lawful deposition. Similarly, a protecting power that abused its position could be justly resisted by a subordinated state. Burke notably cited this clause in his defense of Benares ruler Chait Singh, who refused to furnish the exorbitant tribute and military forces that Hastings demanded. Still, Vattel acknowledged that an “inferior ally” would suffer a diminution of sovereignty if the dominant partner assumed authority over its war making and foreign policy. The Company’s subsidiary treaties were certainly unequal: they permitted the princes internal autonomy under the supervision of a British resident as long as they maintained a military contingent and refrained from unapproved communications with foreign powers. Reformers, however, did not perceive the imposition of these restrictions to be an indication of outright conquest. Rather, they declared that semi-sovereign powers and protectorates retained a degree of independence, and insisted that the unequal treaties should remain in force as long as native rulers fulfilled their conditions.

The geographical circumscriptions that some jurists placed on early international law were often contested, if not blatantly ignored, by reformers and annexationists alike. More crucially, positivists exhibited a “macrocosmic” concern for the formation and sustenance of a European balance of power; they thereby placed an emphasis on “usage” and contingency over contractualist treaty interpretation. Whereas Vattel had looked to original circumstances to indicate the proper terms in which treaties

28. Vattel affirmed the legitimacy of conventions with non-Christian powers, noting that “the law of nature alone regulates the treaties of nations: the difference of religion is a thing absolutely foreign to them.” See Vattel, The Law of Nations, 195. For a critical analysis of Vattel’s universalism, see Pitts, Boundaries of the International, 68–91.
30. Ibid., 203.
should be read, American diplomat Henry Wheaton contended that agreements were only viable if the “mutual relations” between contracting parties remained unchanged.\(^\text{32}\) This vague phrasing was subject to contrary interpretations in the native sovereignty debates. As reformers determined that the continuance of a ruling dynasty was sufficient to perpetuate any treaty,\(^\text{33}\) the authorization of princely successions by the paramount power took on a critical character.

In the hands of macrocosmic theorists, the concept of semi-sovereignty allowed for the recognition of the varying power differentials that were obscured in Vattel’s unequal alliances. It also offered a legal basis for the protectorates and federal arrangements that had arisen from both the American Revolution and the post-Napoleonic establishment of a Concert of Europe. Wheaton’s treatment of semi-sovereignty was most often cited in the colonial debates on account of his shifting application of the concept.\(^\text{34}\) He had initially declared that his law of nations theory only pertained to “civilized” and “Christian” nations, but by 1855, he was willing to accept non-European states into the fold as long as they “renounce[d] their peculiar international usages and adopt[ed] those of Christendom.”\(^\text{35}\) In other scholarly works, Wheaton recognized that certain situations required legal flexibility. European states interacting with Muslim powers were occasionally “content to take the law from the Mohammedan, and in others to modify the international law of Christendom in its application to them.”\(^\text{36}\) Subsequent editions of Wheaton’s *Elements of International Law* further acknowledged the conclusion of extensive treaties with non-Western powers. The Barbary States, for example, were of an “anomalous character,” because they paid tribute to the Ottoman Porte but were still generally regarded as independent sovereignties. Wheaton also offered the case of *The Cherokee Nation v. Georgia*, in which the Supreme Court in 1831 had ruled that the Native Americans—as a weaker power—did not surrender their “independence and right to self-government by associating with a stronger and taking its protection.”\(^\text{37}\) Justice Smith Thompson (in a dissenting opinion) even represented the

\(^{33}\) Bell, *Retrospects*, 314.  
\(^{34}\) Wheaton had initially characterized semi-sovereignty as a self-contradictory “solecism in terms,” although this warning was removed in later editions.  
Cherokee as a sovereign power that retained a “separate national existence” as a partner in a Vattelian unequal alliance with the American government.  

Although British jurist Travers Twiss also referenced the American federal system as evidence that states could possess a degree of independence while lacking international personality, he found semi-sovereignty to be an overly capacious term that required refinement. Unfortunately, his move to lump all Indian princely states under the category of “protected dependent states,” which seemingly approached a state of vassalage, only created more of a muddle because of the notable variations in the language of their treaties. His claim that the colonial government exercised virtual sovereignty also failed to clarify whether the inhabitants in the native states qualified as de facto British subjects. Twiss clearly put more stock in his notion of “protected independent states,” and framed it as a terminological correction of past misuses of semi-sovereignty in European diplomacy. The case of the Ionian Islands, which had been under British protection since 1815, afforded a key instance of such confusion. During the Crimean War, the Crown initially refused to recognize the islands’ claims to neutrality. Russia similarly presumed that it could capture Ionian sea crafts, until the British Court of Admiralty ruled that the sailors, as Ionian subjects, were not in fact combatants. Whereas Wheaton asserted that the dependent Ionian Islands were “not only constantly obedient to the commands of a protecting power, but . . . governed as a British colony,” Twiss concluded that the states retained their independence due to the fact that third-party European powers had jointly ratified the treaty that established the protectorate.

Wheaton and Twiss’s articulations of semi-sovereignty led reformers and Indian lawyers to favor the use of legal analogy. This tendency was especially evident in the 1891 trial of the Manipur princes, who had been charged with “waging war against the Queen” after a British effort to reinstate an ousted ruler went awry. Before an extralegal commission, attorney Mano Mohun Ghose portrayed the principality as a partner in an unequal alliance that had never expressly pledged its allegiance to the British Crown. Per Vattel, neither defensive arrangements with the colonial

38. Richard Peters, The Case of the Cherokee Nation Against the State of Georgia; Argued and Determined at the Supreme Court of the United States, January Term 1831 (Philadelphia: John Grigg, 1831), 197. Justice Marshall ruled that the Cherokee, as a “domestic dependent nation,” lacked the legal standing to sue a state of the Union. 

39. Some reformist commentators also looked to the American system as a template for a princely federation in India. See “The Foreign Policy of the Future,” Bombay Times and Journal of Commerce, September 1, 1859, 551. 


41. Wheaton, Elements of International Law, 36.
government nor the occasional mediation of dynastic successions impinged on its autonomy.42 If the Ionian Islands retained a degree of sovereignty under a protectorate, Manipur’s statehood was also worthy of recognition. The Manipuri guards were therefore fully justified by the law of nations in rebuffing the British contingent’s “sudden armed invasion of the Palace” to depose leading prince Tikendrajit Bir Singh.43 Most provocatively, Ghose claimed that Manipur’s royals were not in fact British subjects, and therefore could not be tried by the special tribunal. Although these jurisdictional claims were unsuccessful,44 the trial illustrated the perpetual colonial failure to adumbrate a comprehensive system of paramountcy that could encompass the great variety of Indian treaty relations. It was a further irony that colonial official William Lee-Warner, who refused to grant the native states a “shred” of international personality in his 1894 text on the subject, nonetheless acknowledged that the resemblance between the Ionian Islands and the Indian principalities was “very striking.”45

“Paramountcy” and its Detractors

By affirming the emperor’s nominal power and entertaining the conceit of “double government,”46 the Company maintained a simulacrum of what Bernard Cohn termed the Mughal “cultural-symbolic constitution.” Authorities participated in the ritual ceremonies of conferring nazār (coins) and receiving khelat (robes) that traditionally marked a lesser ruler’s incorporation into the royal body, although they deprived these acts of symbolic significance by viewing them solely as reciprocal economic

43. Ibid, 24.
44. Queen Victoria doubted that the government’s ploy to seize Tikendrajit in his own durbar was legally justifiable, and unsuccessfully urged Viceroy Lansdowne to commute his death sentence. Referencing Manipur, Lansdowne ruled that international law had no bearing on the relations between the Government of India and the native states. See John Parratt and Saroj N. Arambam Parratt, Queen Empress vs. Tikendrajit Prince of Manipur: The Anglo-Manipuri Conflict of 1891 (New Delhi: Har-Anand Publications, 1992), 168; and Benton and Ford, Rage for Order, 187.
46. Echoing Mutiny chronicler John William Kaye, Dirks disparages this concept as a “rhetorical sham of Company political theory.” See Nicholas B. Dirks, Scandal of Empire: India and the Creation of Imperial Britain (Cambridge, MA: Harvard University Press, 2008), 187.
exchanges.47 At the same time, however, some colonial agents attempted to disturb the Mughal system of nested sovereignty by encouraging the aspirations of princely subordinates.48 Soon after his arrival in India in 1814, Governor-General Lord Hastings began to chafe at the emperor’s ostensible supremacy, and accelerated the colonial acquisition of paramount power. Entertaining a scheme of creating a “Company dominated coalition” of Indian feudatories,49 he encouraged Ghazi al-Din Haydar, the Nawab of Awadh, to mint his own coins and anoint himself the true Shi’a king of his domain. This arrogation of authority incensed other prominent Indian rulers; even the Company eventually took the king to task for the audacious titles he had selected. Despite these machinations, it remained unclear how the colonial practice of making treaties with the emperor’s underlings effaced the Great Mogul’s sovereignty. Reformers, therefore, testified that the Company’s “shadowy succession” to power rested “upon no basis either of inheritance or of testament, of ancient forms or of modern compact.”50

Although the Company maintained the illusion of continuity with Mughal forms, its legal jurisdiction over the princes and their subjects was often determined on a case-by-case basis. Flustered officials turned to law of nations theories to resolve a host of practical issues.51 In 1832, Richard Cavendish, the Resident at Gwailor, wrote to the central government for clarification. A native servant employed in the residency’s postal office had recently been apprehended for theft. Cavendish noted that the regular punishment meted out to such offenders was flogging, followed by dismissal from service, but he personally rejected corporal punishment as ineffective. Moreover, he was not properly vested with judicial powers, and very well could be prosecuted in the Supreme Court for such

48. As Bayly notes, the Mughal emperor was effectively the “‘king of kings’, rather than king of India.” He martialed resources through ceremonial exchanges and distributing royal honors, but quotidian attributes of sovereignty such as the collection of revenue lay with the local Hindu rajas. See C. A. Bayly, Indian Society and the Making of the British Empire (Cambridge: Cambridge University Press, 1987), 13–14.
action. The following month, Cavendish received a reply from Governor-General William Bentinck that he was well within his rights to punish petty transgressions by the residency staff. If the employee, however, committed an “atrocious” crime, his prosecution was best left to the native government. This jurisdictional transfer, Bentinck specified, was fully in accord with Vattelian stipulations, which held that a native-born member of a foreign ambassador’s staff should be delivered up to the local authorities.

It was this sort of legal ambiguity that necessitated the addition of a fourth member trained in English law to the Council of India. But the Charter Act of 1833, which created this position, decreed that this councillor could only attend meetings that were of a legislative or regulatory nature. Bentinck took issue with this circumscription, as it hindered the legal member’s ability to accrue a practical knowledge of Indian society and the functions of government. Furthermore, issues “appertaining to international law, reciprocal jurisdiction, claims for fugitives, &c” arose in the course of many departments’ daily business. Logic dictated that the fourth member would offer his opinions in these cases, even if they did not necessarily fall under the hazy province of “legislation.”

The colonial government’s legal capabilities as paramount power were subjected to sustained debate prior to its controversial absorption of the princely state of Satara in 1849. The matter hinged on a question of whether two treaties convened with the state’s rulers had any bearing on their successions. The original 1819 treaty signed by Raja Pratap Singh had guaranteed the transfer of sovereignty to his “heirs and successors.” After he was deposed on dubious pretenses in 1839, the Company brokered a new treaty with his brother, Appa Sahib, who ruled until his death in 1848. Prior to his demise, the raja had adopted an heir from among the eleven Bhonsle families who traced their lineage to Shivaji, the founder of the Mahratta Empire. Per Hindu custom, this boy was entitled the full privileges afforded to an offspring by blood; moreover, Appa Sahib believed that the terms of the 1819 treaty still applied to the succession. Redoubtable legal agent Rungo Bapojee, who collaborated with members of the BIS throughout the 1840s, was insistent that Satara was not a mere fief that the Company could dispose of at will. The 1819 treaty, like similar
arrangements with Awadh and Hyderabad, had curtailed the rulers’ “rights as independent princes, but none of them lost the character of sovereigns.” The Bombay government dismissed this reasoning as specious. Governor-General Dalhousie concurred and issued a minute in August 1848 identifying Company self-interest as a legitimate pretext for the annexation of heirless states.

Once the Company’s Court of Directors (CoD) confirmed that a common lineage in this case did not entitle any relative to acquire the state, their decision became a lightning rod for reformist scorn. One former governor of Bombay inveighed that the administration’s policy on adoptions had hitherto been “inconsistent and capricious.” Only the “incorrigible misconduct of allies,” he concluded, furnished just grounds for the escheat of sovereignty. And yet, the colonial government had recently praised Appa Sahib’s “efficient and mild rule” and lauded his patronage of schools, hospitals, and vaccination programs. For former Satara Resident John Briggs, the non-recognition of an adoption obstructed a Hindu religious rite and threatened to sap “the foundation of that attachment which the native soldiers have hitherto evinced towards the British government.” Other critics took umbrage at the Company’s warped reading of its own treaties and declared that the terms of these arrangements ought to be equitably interpreted in accordance with the law of nations.

After the CoD declared a default of heirs, the India reformers continued to proclaim the significance of the incident beyond the borders of Satara. In the period between 1826 and 1846, the Government of India had dealt with sixteen cases regarding the exercise of native sovereignty and had violated the princes’ rights on fifteen occasions. Commenting on this dismal record, John Sullivan, an IRS polemicist and former member of the Madras Council, contended that the annexation of states such as Satara

57. Dalhousie later acknowledged that this formative articulation of the doctrine of lapse was “scandalously expressed”; he had only meant to refer to the rare phenomenon of “incomplete” adoptions. See James Broun-Ramsay to John Hobhouse, February 9, 1850 and March 25, 1850, BL, Add MS 36477, ff. 163, 182.
yielded neither remunerative nor political benefits. These dispossessions destabilized local economies by throwing the rulers’ soldiers and courtiers out of employ, casting them upon the land, and distressing the agrarian labor market. Nevertheless, the colonial state’s “settled purpose” was “to extirpate the ancient aristocracy from the land—an aristocracy in comparison of which, in the point of antiquity, every family in England is modern.”

Sullivan also took issue with the fact that vocal allies of the native rulers were quickly stifled. One unfortunate captain had recently been dismissed from his post for insinuating that the Sikhs, “according to the law of nations...had a fair pretext for war” against the Company. For the sake of transparency, Sullivan suggested that an independent tribunal modeled on the Judicial Committee of the Privy Council or the General Diet of the German states should arbitrate disputes between the British and the native rulers. At the very least, the Company’s Court of Proprietors ought to pass a resolution insisting that it maintain its treaty obligations and engage with the native states in conformity with “the general law of nations.” But Company directors were hostile to this proposal, which they believed would produce “universal anarchy and confusion throughout India.” Numerous proprietors also rejected the notion that their assembly should “become a court of review of judicial proceedings,” as it was simply “not fit for it.”

As the Company’s applications of the doctrine of lapse accelerated, the IRS increasingly found supporters among disaffected political agents in India. During the Uprising, Thomas Evans Bell had been stationed at the court of the recently annexed state of Nagpur and tasked with interrogating the claims of approximately 340 palace stipendiaries. These duties put him in close contact with the widows of the deceased raja, who urged him to secure a title and allowance for their adopted son. But Bell’s pleas to the local commissioner, George Plowden, went unanswered, forcing him to threaten resignation and notify Calcutta of Plowden’s dereliction of duty. Bell’s trials as intermediary between the royal family and the hapless colonial regime shaped his evolving political critiques. In one memo,

63. John Sullivan, Are We Bound by our Treaties? A Plea for the Princes of India (London: Effingham Wilson, 1853), 28.
64. Ibid., 57.
65. “East India House,” Morning Chronicle, April 18, 1850, 3.
67. When the Raja of Nagpur “abdicated very mal a propos” by dying without an heir in late 1853, Dalhousie rejected the notion of the “divine right of Rajahs” and predicted that the question of annexation would “turn on policy not on right.” See James Broun-Ramsay to F. Courtenay, January 4, 1854, BL, Mss Eur C204.
68. Bell credited Ranee Banka Baee with preventing local Brahmin notables from colluding in the Uprising.
he proclaimed that “the British Govt had not, either by ancient custom and precedent, or by the test of treaties, any right to interfere with the Hindoo law of inheritance and the family arrangements on the death of the late Rajah of Nagpore.” He also noted that similar instances of confiscations in Europe, namely the “mediatisation” of minor German principalities “commenced by the Emperor Napoleon and continued by the Congress of Vienna, were entirely violent and arbitrary, and were only justified on account of the existing previous state of war.” The ranees, however, were not state prisoners and were fully entitled to the property that they stood to inherit. Much to Plowden’s disdain, Bell began to articulate his theories of treaty right in the Anglo-Indian press, noting that both the Nagpur and Awadh annexations were “in flagrant defiance of the general law of nations.” Plowden malignant Bell for his “contumacious spirit” and his “perverted notions” of his “positions and duties,” but these protestations hardly improved his standing. In the fall of 1859, he was transferred to Midnapore while a special commission investigated the charges that Bell had levied against him.

The late 1850s and 1860s should not simply be seen as a prelude to the colonial state’s medievalist, bedazzling celebration of “feudal India” in later decades. Rather, this era was a transitional period in which various administrations continued to deal with the fallout of the Uprising. Reformers regaled Queen Victoria’s 1858 Proclamation, which reprobated any further territorial seizures, as “British India’s Magna Charta.” And yet, some prominent princes such as Tukoji Rao Holkar II, the ruler of Indore, were still kept at arm’s length on account of their alleged complicity in anticolonial violence. Dhar, another “rebellious” state, had been confiscated outright after the tumult, though the India Office eventually recognized that certain rajas could not be held legally responsible for the

70. George Plowden to Cecil Beadon, February 16, 1859, BL, IOR L/PS/6/477 Coll 36/2, f. 286.
71. George Plowden to Thomas Evans Bell, February 15, 1859, BL, IOR L/PS/6/477 Coll 36/2, f. 289.
74. Reformers suspected that Henry Marion Durand, the acting Resident at Indore, exaggerated Holkar’s disloyalty to distract from his mismanagement of the chaotic situation. Holkar also earned the disfavor of Calcutta authorities for supporting the restoration of Dhar. See Last Counsels of an Unknown Counsellor, 106–7, 137–47.
actions of their soldiery. Reformers operated as key conduits for the transmission of princely grievances, creating feedback loops in the process; the young ruler of Dhar himself petitioned the India Office in 1864 after reading John Dickinson’s *Dhar Not Restored* pamphlet. Whereas Dickinson’s supporters in India commended him for his “disinterested and unusual public spirit,” his detractors in the Calcutta press chastised him for the “mawkishness of [his] sentimentality.” The spirit of his agitation was the same one that inspired petitions “to relieve assassins and poisoners from the penalty of the gallows and would deprecate the application of the lash to the backs of garrotteers and pickpockets.” Although these critics mocked reformers for their misplaced sympathies, they had a rather more challenging time rebutting their legalistic rhetoric that legitimized the princes’ semi-sovereignty and endowed them with actionable rights in conformity with the law of nations and more recent legal tracts.

**Contested Annexations**

From the mid-1850s onwards, references to the classical law of nations and international law pervaded the debates over the legitimacy of past annexations and the justice of future restorations. In defending the durability of treaties convened with the rulers of Awadh, Tanjore, the Carnatic, and Mysore, India reformers latched onto Vattel, who had insisted that unilateral treaty violations would trigger a domino effect and inflict “a wound on the great society of mankind.” Unless distinctly odious to a contracting party, treaties in dispute were to be construed as permanent (or “real”) with advantage to the weaker power; these arrangements were contrasted with “personal” treaties, which expired on the death of the signatory. According to reformers, agreements between the Company and native princes resembled “the most modern form of treaty among civilized powers” that pertained to the sovereigns’ successors. These treaties, then, were accorded a higher status than “the slave-trade suppression treaties with African or Arabian chiefs,” which were implicitly personal. Shortly after the Civil War, reformers were warning that any denial of the native princes’ legal rights on the basis of race or “civilization” would prove

78. Ludlow, *Thoughts on the Policy of the Crown*, 44.
calamitous and signal “the introduction of the Dred Scott doctrine into the
region of International Law.”

The colonial absorption of the North Indian state of Awadh was long in
the making. As early as 1847, Hobhouse had prophesied that the kingdom
would never “be in a satisfactory condition until merged in the great
empire.” But cooler heads prevailed; Governor-General Hardinge noted
the strategic necessity of Awadh and Hyderabad, which offered “vents for
the employment of native men of talent, who cannot be employed under
our system.” Moreover, two treaties convened with Awadh in 1801 and
1837 hampered outright annexation. Although the 1801 treaty compelled
the nawab to practice good government and cede a portion of his territory
to pay for the upkeep of a subsidiary force, it implicitly disallowed the
employment of Europeans in the native administration. The 1837 agreement,
in contrast, permitted the EIC to temporary confiscate the state to promote
enlightened governance and balance the accounts. Complications arose
when the CoD vetoed at least one clause of the 1837 treaty, but failed to
inform reigning Nawab Muhammad Ali Shah of the cancellation. More
awkwardly still, the abrogated treaty was published in official volumes in
both 1845 and 1853. Hardinge even made reference to it when he granted
the new nawab, Wajid Ali Shah, a 2 year probationary period in 1847.

British residents at the Muslim courts of Awadh and Hyderabad had
long called for temporary confiscations to stabilize the administrations’
flailing finances. Yet Dalhousie, in the case of Hyderabad, had claimed
that any such interference would signal a complete disregard for “the pos-
tive obligations of international contracts.” It was not the mission of the
colonial government “to regenerate independent Indian States, merely
because they are misgoverned.” To justify his non-intervention in
Awadh, Dalhousie reasoned that attaching British officers to the native

79. Bell, Retrospects, 318.
82. Michael H. Fisher, Indirect Rule in India: Residents and the Residency System, 1764–
1858 (Delhi: Oxford University Press, 1991), 382.
Macmillan and Co, 1904), 310.
84. Bell, Retrospects, 63.
85. Governor-General Hardinge suggested that the Company might suspend its treaty with
the nizam to prevent a financial meltdown, noting that it was “ridiculous to permit our ally to
be getting into debt, to maintain nearly sixty thousand men.” See Henry Hardinge to John
Hobhouse, June 23, 1847, BL, Mss Eur F213/22, f. 48.
87. Quoted in Sarojini Regani, Nizam-British Relations, 1724–1857 (Hyderabad:
Swaarajya Printing Works, 1963), 281.
bureaucracy (as the 1837 treaty had intended) would constitute a breach of the Treaty of 1801. Confirming the independence of Awadh in this case was very much a chess move: if the nawab could not follow treaty stipulations, the subsidiary alliance would cease, and Dalhousie would withdraw the loaned regiments. Chaos would ensue, thereby furnishing grounds for the British to intervene and assume control in the name of border security. This plot to await Awadh’s self-implosion was controversial; Barnes Peacock, the legal member of the Council of India, even cited Vattel in his argument against it. According to his understanding, the Company, as an injured nation, could legitimately compel Wajid Ali Shah to adhere to the treaty by seizing control of his civil administration and retaining him as a figurehead.88

Despite the governor-general’s attempt to cloak his policy in the garb of international law, his annexation of Awadh in 1856 prompted reformers to martial their own legal theories that favored the retention of native sovereignty in the event of princely misrule. Referencing the law of nations and formulating legal analogies was quite strategic, as the seemingly frivolous habits of the kite-flying, poetry-composing Wajid Ali Shah were difficult to defend. Even George Thompson, the former BIS lecturer and erstwhile champion of the Raja of Satara, depicted the monarch as “a man of naturally weak understanding, now greatly impaired by sensual indulgence.”89 He further predicted that the nawab’s search for an appeal in London would prove “a foolish mission” in which “vast sums of money… [would] be devoured by human sharks of all kinds.” Such caution was prescient, as scurrilous operators falsely claimed to represent the deposed king in the metropolitan press.90

In protesting the injustice of the annexation, metropolitan critics contended that the Company’s official narrative detailing Awadh’s dwindling revenues, disorganized army, and general anarchical condition was a fabricated “Oriental romance.”91 Even if there had been a hint of truth in

88. Charles Lewis Tupper, Our Indian Protectorate (London: Longman, Green, and Co., 1893), 77. Ultimately, the CoD pressured Dalhousie to maintain British troops in Awadh and offer the nawab a new treaty; Wajid Ali Shah declined to jointly administer his state, and was deposed.
89. George Thompson to Amelia Chesson, September 19, 1856, John Rylands Library, REAS2/2, f. 58.
these allegations, the partially annulled Treaty of 1837— which authorized a temporary confiscation—was still in effect at the time. Citing Grotius, Travers Twiss had reflected on the case and challenged Dalhousie’s reasoning: a treaty ratified by a subordinate sovereign agent such as the governor-general only required confirmation from the home government if it contained provisions for the making of war or the guaranteeing of possessions. Once the Uprising broke out, reformer and Christian Socialist John Malcolm Ludlow derided the official line that Awadh’s “oppressed” and “helpless” inhabitants had cried out for relief at the cost of their “national life.” As Company officials cited an apparent exodus from the kingdom as evidence of tyranny, Ludlow wryly remarked that “Louis Napoleon might as easily establish the fact of British misgovernment by the number of English emigrants to Boulogne.” It logically followed that the Awadhi participants in the Uprising were fully justified in repelling the British in the interest of national self-preservation. Their apparent insurrection was “really a conservative proceeding,—an attempt to defend old usages, old rights, old privileges, against foreign innovation.”

In May 1858, the issue of Awadh’s combatant status was thrust into the parliamentary spotlight by a question of etiquette. Lord Ellenborough, the conservative President of the Board of Control, had recently transmitted a dispatch to Governor-General Canning repudiating his seizure of landed magnates’ property in Awadh. Once the censorious content of the memorandum came to light, one Whig MP attempted to arouse indignation in the House of Commons by claiming that Ellenborough had undermined colonial prestige. This partisan maneuver prompted a debate on the application of the international laws of war to colonial conflicts. Solicitor-General Earl Cairns led the charge to classify Awadh as a combatant nation engaged in a “just war” rather than as a participant in a mutinous military rebellion. As the general native population had not, in fact, pledged fidelity to the Crown, it was doubtful whether they could properly be regarded as British subjects in revolt. Citing Wheaton, Cairns also claimed that the

92. Ludlow was an associate of Dickinson’s and the nephew of Francis Carnac Brown, the former secretary of the BIS.
94. Ibid., 54–56. Ludlow believed that the Company should set up a “Hindoo confederacy” in the region rather than dealing with “an effete and do-nothing royal race of Mussulmans.”
95. Whig statesman Charles Wood took the bait: Indians, he warned, looked “upon the Governor General as the king of kings” and would misconstrue the imposition of metropolitan oversight over his actions as a sign of weakness. See Charles Wood, Speech to House of Commons, May 17, 1858, *Parliamentary Debates*, Commons, 3rd ser., vol. 150 (1858), col. 784.
British victors in the Uprising could only alienate “property belonging to the Government of the vanquished nation,” as “private rights are unaffected by conquest.” Vattel had also refuted similar instances of absolute conquest by challenging “such writers, who reduce men to the state of transferable goods or beasts of burden.” By staging a defense of universal property rights, Cairns thereby convinced critics that Canning’s confiscation was historically unparalleled. Having read his Vattel, a writer for the radical *Westminster Review* concurred that the Company could not disregard the laws of war simply by “invoking a bad name” such as “rebel” or “mutineer.” Even Karl Marx observed a certain amount of hypocrisy in the proceedings, as British commentators decried the seizure of estates by the Russian, Austrian, and French governments. By approving of Canning’s conduct, prominent Whigs had signaled their intention of fundamentally “upsetting the existing law of nations.”

As with the case of Awadh, governmental disdain for the “stipendary princes” of South India had been festering for some time. The *Friend of India*, which was commonly regarded as the mouthpiece of the Calcutta Foreign Office, regularly denounced both the Nawab of the Carnatic and the Raja of Tanjore as idiots and bigots who squandered their money, only to receive the support of sentimentalist reformers in the metropole. The annexation of Tanjore, however, clearly evidenced the limitations of the Company’s imperial judicial apparatus. After its princely line was declared extinct in 1856, a British agent “desecrated the sanctity of the Palace itself” to compile a registry of all royal goods and treasures. Many assets were auctioned off; the senior widow of the late raja proceeded to sue the Company for the return of this property and received a favorable ruling before the Madras Supreme Court. The Company appealed the decision and referred the case to the Judicial Committee of the Privy Council. In representing the raneees before this forum, Attorney-General Richard Bethell rejected the notion that all private and public property “falls into this universal drag-net of this all grasping

Company.”¹⁰¹ The Committee sympathized with the ranees’ plight, but nonetheless determined that the lower court could not employ municipal law to reverse an act of state. Leading members of the Madras intelligentsia bristled at this apparent miscarriage of justice and continued to challenge the annexation in the following years. One pleader at the Sadr Adalat invited his fellow members of the Madras Native Association to imagine an analogous, albeit inconceivable, scenario in which the Prussian government would absorb a minor German state upon a default of heirs.¹⁰² If anything, declarations of lapse in India were appallingly reminiscent of the “Decrees of the first Napoleon,” which had casually announced “that a kingdom had ceased to exist, or that a Royal Family had ceased to reign.”¹⁰³

A number of reformers associated with the Tanjore case were at the same time advocating on behalf of aspiring ruler Azeem Jah, the uncle of the recently deceased Nawab of the Carnatic, who claimed the right of succession by Muslim law. The Company had first solicited an alliance with the nawab in the mid-eighteenth century to counter French aggrandizement and had recognized him as an independent sovereign in the 1763 Treaty of Paris; the British subsequently renewed a treaty of perpetual friendship with the nawab in 1792 that was binding on his “heirs and successors.” Several years later, tensions arose when the nawab was accused (on questionable evidence) of supporting his coreligionist Tipu Sultan, the Company’s long-standing adversary in Mysore. In response, Governor-General Richard Wellesley declared that the nawab had violated the law of nations and placed himself “in the light of a public enemy” by undermining his alliance with the British.¹⁰³ Brokering a new treaty during a contentious succession in 1801, the Company seized control of the state’s civil and military administrations while allowing the new nawab to maintain his title and one fifth of the net revenues of the state. This arrangement remained in force over the course of multiple successions until 1855, when the governor of Madras Lord Harris refused to recognize Azeem Jah as a collateral heir. In the aftermath of the Uprising, reformers connected with the IRS took up the case and declared that Jah’s influence had quelled fanatical discontent in the region. Bell noted that Madras-based Muslims looked upon the nawab as a spiritual chief and “attribute[d] the repudiation and degradation of...the patron and guardian of their religious rites, to

¹⁰². Madras Native Association, Report of the Proceedings at the Presentation of an Address to John Bruce Norton (Madras: Scottish Press, 1860), 4, 44.
deliberate persecution.”

Indeed, an estimated 15,000 residents of Madras had signed a petition in 1861 opposing the confiscation, although annexationists cast aspersions on the legitimacy of the signatures.

While Harris appropriated tropes of oriental debauchery in his attack on “mock pageantry,” he also invoked international law in a rambling seventy-five point dispatch. Citing Wheaton, he decreed that treaties dissolved when “either of the contracting parties loses its existence as an independent state” or “the internal constitution of Government of either State” changed dramatically. Harris thus concluded that the “rank, consequence, and reputation of the Arcot family [had] sunk by the conduct of its representatives,” thereby rendering the treaty void. On the other hand, if the legitimacy of the 1801 treaty was admitted, it was surely a personal agreement with a “public enemy” that had been tacitly renewed with each succession. It was Vattel, after all, who had decreed that “real,” or permanent, treaties could only be contracted with independent states.

Once Dalhousie confirmed the governor’s ruling, the nawab’s attorney, Adam Burn, drafted a petition protesting the holes in Harris’s logic. As the 1792 treaty failed to specify any ramifications in the event of transgression, “the right of the parties fell to be regulated by the general law of nations.” Burn claimed that the Company in 1801 had falsely assumed sovereign powers that the reigning nawab never expressly bestowed. Even if the Company had somehow obtained full sovereignty, it had not adjusted the 1801 treaty in 50 years; any claims it might have possessed “must be held to be lost or abandoned by the operation of the law of prescription.” In the case of doubt, a reading of the venerable Vattel would suggest that “presumption is in favour of the possessor” of historic proprietary rights. And given that the Company had derived significant benefits from the treaty, its arbitrary termination would be a most dishonorable act.

Observing the reanimation of an annexationist spirit in the Carnatic case, reformers asserted that the India Office’s move to dissolve the nawab’s title in exchange for a limited annuity was thoroughly improvisational and at

104. Times of India, August 17, 1861, 2.
108. Vattel declared that “there would be no stability in the affairs of men, and especially in those of nations, if long possession, accompanied by the silence of the persons concerned, did not produce a degree of right.” See Vattel, The Law of Nations, 96.
In one tract, barrister and law professor John Bruce Norton invoked Grotius to establish the permanence of the 1801 Carnatic treaty. Although it had mentioned the reigning nawab by name, this inclusion merely indicated the identity of the signatory rather than the period of operation. One ought to presume the treaty to be permanent, as it had alluded to “perpetual friendship” and was designed “for the good of the kingdom.” This reading corroborated Twiss’s argument that an ambiguous treaty could only be regarded as personal if its terms were distinctly odious to one party. Robert Lush, the Queen’s Counsel, further concurred that the terms of the treaty were binding as long as a member of the nawab’s family sat on the throne. These various legal opinions enabled advocates in the House of Commons to motion for a select committee of inquiry and repeatedly cropped up in reformist literature. MP Patrick Smollett made use of Vattel and Wheaton to censure Lord Harris, who had claimed that the 1801 treaty was void simply because he deemed mock royalism in the Carnatic to be immoral. Even opponents of “sham sovereignties” conceded the case to be “one of those cruel ones in which all the legal right is on one side, and all the moral expediency on the other.”

An ardent advocate of native sovereignty, the prolific Major Thomas Evans Bell was surely among the reformers’ greatest assets. Seeking to stymie the further expansion of the costly, European-staffed bureaucracy that was ignorant of native custom and devoid of affection, he favored regenerating the princes as constitutional monarchs endowed with domestic autonomy. Although Bell acquired a reputation as an advocate for the Wadiyars of Mysore, who sought the restoration of rule after a 30...
year period of suspension, he had previously honed his legalistic argumentation in the case of Azeem Jah. Echoing Burn’s protests, he referenced Grotius’s theory of “usuacaption,” which held that “Possession, Time out of Mind, without Interruption or Appeal, should absolutely transfer a Property.” But more provocatively, he posited that subsequent conflicts between France and Britain had not in fact overridden the 1763 Treaty of Paris, which acknowledged the nawab’s sovereignty.

Legal commentaries on the case of the Newfoundland fisheries provided a precedent for Bell’s analysis. In negotiating the 1814 Treaty of Ghent, Britain had claimed that the War of 1812 abrogated the terms of the 1783 Treaty of Paris that guaranteed American fishing rights in the area. Jurists, however, soon realized that disregarding the 1783 compact would technically rescind American independence in its entirety. Reflecting on the case, Wheaton introduced the “transitory convention” as a permanent contract (usually involving boundary demarcation, territory cession, or a recognition of titles) that could not be annulled by the outbreak of war. He thereby broke with Vattel, who preferred to read treaties as unitary documents, and concluded that articles should be interpreted separately as either transitory conventions or standard arrangements subject to revision. As Article I of the 1783 treaty had survived subsequent conflicts, Bell suspected that Article XI of the 1763 treaty (which recognized the Nawab of the Carnatic as an independent sovereign) could be classified as a perpetual transitory convention pertaining to land cession and the “acknowledgements of title.”

Despite its global purview, the 1763 Treaty of Paris was “as much part of the public law of Europe as the Treaty of Vienna” and could not be dismissed simply on account of the nawab’s declining position. As reformers popularized these findings in the defense of Azeem Jah, Indian officials began to militate against the use of international legal terminology in the adjudication of paramountcy. Foreign Secretary Henry Marion Durand surmised that Twiss “might have chosen far more promising grievances for a Quixotic support” than the claims of the nawab.

Seeking to banish “the empty phantoms of departed greatness” once and for all, he chastised Indian officers and the home government for routinely misapplying the vocabulary of European international law to power

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119. Wheaton, Elements of International Law, 268.
120. Bell, Empire in India, 359.
relations in India. One recent and acclaimed compilation of Indian treaties recorded *sanads* that supposedly endowed protected Sikh rulers with “full sovereignty” over their territories. Such casual utterances resulted in the “inflation of native chiefs, due to the inspiration of false ideas, and the tendency to foster notions of independence pretty certain to encourage a willful opposition.”\(^{122}\) Officials continued to note this difficulty 30 years later: it was the rare policy maker who would cite abstruse Indian political law rather than boilerplate law of nations theory to justify his conduct before a nonspecialist parliamentary audience.\(^{123}\)

If the reformers’ defense of native sovereignty in Awadh, Tanjore, and the Carnatic incensed annexationist officials, their successful campaign to restore the Wadiyars of Mysore to power brought the matter to a head. Upon besting Tipu Sultan, Wellesley had brokered a partition treaty in 1799 that divided the conquered territory into three quadrants to be occupied by the British, their ally the Nizam of Hyderabad, and the recently liberated Krishnaraja III of the ancient Wadiyar dynasty. A subsidiary treaty subsequently stipulated that the raja should pay seven lakhs of pagodas annually to British coffers for a subsidiary force and contribute to the “extraordinary expenses of war.” In 1807, the Company annulled this latter clause and mandated instead that the raja perpetually maintain a body of 4000 horses.\(^{124}\) Per articles four and five of the original treaty, the Company was authorized to assume management of the native administration to ensure the payment of the subsidy or establish a European agency in its stead. As Mysore’s finances continue to deteriorate amidst armed risings, Bentinck confiscated the state and installed a two-man British commission to put the government on a firmer fiscal footing while scrupulously maintaining existing political institutions.\(^{125}\)

This wholesale diminution of the raja’s sovereignty was not strictly legal. Wadiyar’s payments to his irregular horse contingent were in arrears, but the original treaty only permitted the British to directly administer *particular* districts for the explicit purpose of settling this debt. Bentinck soon realized that the alienation would be anything but temporary; in 1834, he confessed that “the assumption was actually made on account of the

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122. Ibid., 406.
123. Tupper, *Our Indian Protectorate*, 80.
Rajah’s misgovernment” and urged the CoD to restore three quarters of Mysore to Wadiyar’s control. As the issue festered, a string of governors-generals concurred that Wadiyar’s “supersession was inconsiderate, unduly severe, and of doubtful legality.” The “provisional arrangement” also found scant favor with expansionists, who claimed that it “would have been quite consistent with our treaty obligations and with the law of nations to have annexed the conquered province” outright when the situation first became untenable.

In the early 1860s, Wadiyar began to brand himself as a reformed ruler who regretted his youthful impertinence. In his teenage years, he had been “encouraged by the Madras Government to resent the Resident’s close and strict supervision,” but he now vowed to uphold “the great method of established law and order, in financial, judicial, and administrative affairs.” This appeal was likely financially motivated, as his limited access to the state’s treasury inhibited his patronage and frustrated his efforts to cultivate rajdharma in a state of virtual captivity. In the spring of 1865 he was pleading with the commissioner to repair water tanks to mitigate the effects of a drought; the next summer, he unsuccessfully petitioned the viceroy for four lakhs of rupees to provide famine relief for government employees. Sensing his own mortality, he had attempted to secure the transfer of his annual stipend to his extensive royal family, only to be informed that these benefits expired upon his death.

Although Viceroy Canning had distributed sanads in the aftermath of the Uprising that guaranteed the government’s recognition of rulers’ adoptions, he had refrained from granting one to the aging Wadiyar. Quite simply, he considered the Company’s original investiture of sovereignty in 1799 as a “free gift” that would be resumed in the near future.

Reformers had long bemoaned Canning’s haphazard confirmation of

129. Krishnaraja Wadiyar III to John Lawrence, July 4, 1866, BL, MSS Mysore R/2/1/165.
130. Wadiyar’s debts were estimated at 40 lakhs in 1864. Ikegame further suggests that the maharajah accumulated 12 lakhs of debt in the period between 1864 and 1868. Even on a fixed income, Wadiyar continued to bestow inams and support a palace staff of nearly 10,000. See Aya Ikegame, Princely India Re-imagined: A Historical Anthropology of Mysore from 1799 to the Present (London and New York: Routledge, 2013), 24–25.
131. Krishnaraja Wadiyar to John Lawrence, July 1866, BL, MSS Mysore R/2/1/165.
honors and titles. Minor rajas, whose territories had similarly been confiscated “after a period of disorder and rebellion,” nonetheless received sanads as mediatized political stipendiaries. One reader of Bell’s Mysore Reversion publicly marveled at the viceroy’s transmutation “into an Indian politician fancying figments and adducing reasons” for his selections that “would damage the reputation of a village attorney.” Where Canning withheld any clear directives regarding the transfer of Mysorean sovereignty, his successor John Lawrence explicitly blocked the restoration in 1865. Categorizing Wadiyar as a “chief” rather than a monarch, the viceroy determined that the “principles of the Hindoo Law of Inheritance” did not apply to his situation. But this pre-emptory discouragement only forced the issue. Two months later, Wadiyar adopted an unsanctioned heir: Chamarajendra. Although the reformers had found the initial 1831 confiscation to be grasping, they judged any obstruction to this succession to be a “breach of religious toleration and an invasion of personal liberty, without any attempt at justification, and in ostentatious defiance of the law of the land.”

Utilizing legalistic rhetoric, reformers and Wadiyar himself critiqued both the grounds of the 1831 confiscation and the government’s intentional misreading of the partition and subsidiary treaties of 1799 that bound Mysore to Britain as a semi-sovereign power. The maharaja thus adopted a dual rhetorical register that exposed the discontinuity between Mughal and British forms of paramountcy, while also casting the resurrection of ruling dynasties as a quotidian act of European statecraft. The British, Wadiyar explained, misread turbulence in Indian politics as a sign of oppression. In reality, insurrection was “the chronic state of India, and may be compared with the cholera, as an epidemic from which the best governed states, as well as the best ordered constitutions, are never safe.” The raja’s diminished financial state in 1830, which allegedly prompted the risings, was the result of its treaty obligations. Historically a plundering state, Mysore had run out of revenue streams amidst colonial pacification.

132. Canning may have been influenced by Dalhousie’s 1856 minute, in which he signaled his intent of annexing Mysore upon Krishnaraja’s death. See Bell, The Rajah and Principality, 29.


134. “Indian Annexation,” Examiner, April 1, 1865, 195.

135. John Lawrence to Krishnaraja Wadiyar, May 5, 1865, BL, MSS Mysore R/2/1/164.


138. Krishnaraja Wadiyar to John Lawrence, January 25, 1865, BL, MSS Mysore R/2/1/164.
Observing that his family had remained an object of popular affection during their captivity, Wadiyar normalized the restoration of the royal line as a legitimate act of state that could not be rescinded. His installation in 1799 was a strategic maneuver, as the complete annexation of Mysore would have overtaxed British resources. Krishnaraja’s position was therefore comparable to that of Louis XVIII, who “was placed upon the throne of France by the allies after the downfall of Napoleon.” By conferring sovereignty in this case, Britain did not retain a right to sequester French land or assets ad infinitum. High-ranking officials such as Henry Rawlinson also took umbrage at this circumscription of sovereignty in the acrimonious parliamentary debates over the fate of Mysore. A “personal” partition treaty, he declared, would create a “life king—a thing monstrous and anomalous, and without parallel in our rule or in the history of the East.”

Wadiyar recognized that the subsidiary alliance granted the British a limited right to intervention in Mysore’s affairs, but declared that its “protective power” had been “strained beyond all limits.” All jurists, he reminded the viceroy, had concurred that international treaties were “to be equitably and not technically constructed.” Had the articles of the subsidiary alliance allotted for a permanent seizure of Mysorean territory, their wording would have indicated as much. In an analogous case, Britain had significantly diminished the independence of the Ionian Islands by establishing its protectorate in 1815, “yet it was never supposed that, in respect of those islands, any period of protection and government could merge into sovereignty.” Responding to these missives, Lawrence disavowed Wadiyar’s attempts to liken the 1799 partition treaty to the Treaty of Paris. The Nizam of Hyderabad, he opined, was not an equal partner to this agreement comparable to Austria or Russia in 1815 and, therefore, could not have contributed to the creation of a protectorate. Lawrence, like Twiss, thereby implied that “protected states” only retained their (suspended) independence through a joint accord between equal European powers.

As Wadiyar and Lawrence clashed over whether Mysore could legally be categorized as a semi-sovereign state, the viceroy’s decision to block the succession of any adopted heir catapulted the case into the public limelight. In building a case for the restoration, reformers circulated the


140. Krishnaraja Wadiyar to John Lawrence, January 25, 1865, BL, MSS Mysore R/2/1/164.

dissenting opinions of India Council members who declared that the entire affair recalled the “barefaced appropriation of Sattara” and exposed a gross discontinuity with historical forms of paramountcy that had permitted succession by adoption.\(^\text{142}\) Other critical officials confirmed Wadiyar’s French analogy, noting that Britain’s allies in the Napoleonic Wars “had no more right to eject the restored Bourbons than we have to eject the restored Hindoo sovereign” of a native state.\(^\text{143}\) Yet the precise nature of Anglo-Mysorean treaty obligations remained uncertain, as annexationists and reformers interminably squabbled over whether the treaties of 1799 were real or personal. Although the initial partition treaty was clearly binding on the raja’s “heirs and successors,” the subsequent subsidiary treaty omitted these terms; in their place, Wellesley had vowed to maintain amicable relations with Mysore “as long as the sun and moon shall endure.” Annexationists contended that this particular wording did not indicate perpetuity, but was merely indicative of “oriental phraseology.”\(^\text{144}\) Matters worsened following the discovery of treaty drafts in the British Museum in which the phrase “heirs and successors” had been crossed out, allegedly by Wellesley’s hand. The reform camp, however, retorted that the terms of the subsidiary treaty were irrelevant, as the prior partition treaty had created a state that was not tied to a particular prince’s rule. Leading Liberals such as John Morley likewise railed against the “personal treaty argument” and took issue with authorities’ “hair-splitting” over the fact that Canning had not named Wadiyar in his Adoption Despatch of 1860.\(^\text{145}\) The raja’s adoption thereby allowed his supporters to decouple the figure of the individual prince from the institution of the state and put the question of personal “fitness to rule” to rest.

Despite the reformers’ legalistic attempts to defend the sanctity of treaties, their adversaries did not always endow the documents with such importance. According to the expansionist Friend of India, treaties merely indicated “what claim a native state has . . . to be exempt from interference in any particular case.”\(^\text{146}\) Per this logic, the unilateral extension of colonial


143. “Dissent of Mr. Eastwick, July 25, 1865,” in *Copies of Correspondence between the Maharajah of Mysore and the Government of India*, 80.


paramount power was the rule rather than the exception. Annexationists also cast aspersions on treaties as vehicles of institutionalized injustice. Reanimating the motif of Oriental despotism, they alleged the princes’ interests to be inconsistent with the \textit{salus populi}; as “slaves of the most abandoned forms of sensualism,” the restored chiefs “would grind millions of Her Majesty’s subjects into the dust.”\footnote{147} Nefarious practices including the hook-swinging of accused witches had diminished under the political agents’ purview, but a transfer of sovereignty would usher in a return to social atavism.\footnote{148} Members of the metropolitan Council of India further speculated that the long minority of Wadiyar’s young heir would result in a weak regency. Given the number of strong-willed, non-official Britons who had settled in the region, spells of labor unrest reminiscent of the recent indigo disturbances in Bengal were likely to occur. In this event, the colonial government “would be utterly unable to control the English planters, otherwise than by acts of despotic violence, which would as surely provoke equally violent resistance.”\footnote{149}

Incidentally, clashes over the Wadiyar restoration also brought the source of the raja’s sovereign authority into question. As Mysoreans gradually attained the de facto rights of British subjects, the state had practically melded into British India. Severing a sector of the population from the body politic would constitute a direct violation of both natural law and modern legal theory.\footnote{150} Although Secretary of State Cranborne officially dismissed the possibility of annexation in February 1867 and vowed to transfer control to Chamarajendra when he came of age, he took issue with the reformers’ treaty analysis that reduced the 4,000,000 Mysoreans to “so many sheep or stock” under princely proprietorship.\footnote{151} Even if Cranborne had favored a plebiscite, which he surely did not,\footnote{152}

\footnote{147. “The Mysore Blue-Book,” \textit{Friend of India}, May 24, 1866, 606.}
\footnote{149. “Dissent by Sir. E. Perry, concurred in by Mr. Mangles,” East India. 1867. \textit{Copy of the Minutes of the Members of the Council of India, and of other Papers or Proceedings Relative to the Despatch Conveying the Instructions of the Secretary of State for India to the Government of India, Respecting the Claims of the Maharajah of Mysore} (HC, 271), 13.}
\footnote{150. Vattel prohibited any nation from transferring a portion of its population to a foreign power unless “indispensably obliged to it by the strongest reasons founded on the public safety.” See Vattel, \textit{The Law of Nations}, 6. Colonial officers in the early 1830s also cited this finding to challenge Wadiyar’s allocation of state property in grants to “unworthy persons” of his kin. See Ikegame, \textit{Princely India Re-imagined}, 21.}
\footnote{152. Cranborne dismissed the notion that native public opinion should have any bearing on the restoration of the cotton-rich Berar districts to the Nizam of Hyderabad. See Bharati}
gauging public opinion in Mysore was hardly a straightforward affair. When Wadiyar produced a petition of 7,347 signatures in favor of the restoration, colonial officials immediately discountenanced the document as the work of courtiers and merchants who fed on the raja’s “lavish and unprofitable expenditure.”

There are many reasons, both documented and conjectural, why the India Office acceded to reformers’ demands in the Mysore case. Certainly, authorities recognized after 1857 that princes had served as breakwaters against rebellion and could continue to subvert their subjects’ anti-British tendencies. There is also the possibility that Cranborne favored the restoration as a way of exerting executive dominance over his annexationist India Council, which he disparaged an “incubus upon the Minister.”

Inheriting the matter, Secretary of State Stafford Northcote was still mired in the fallout from the Orissa famine and informed Lawrence in late March of 1867 that he was overworked, feverish, and unable to give the Mysore question due consideration. The following month, he collected his thoughts and resolved that the “Partition Treaty sets up a separate state that we have no right...to destroy or absorb.” In a minute that left the details of the “model state” experiment to other parties, Northcote observed that the government could either invest Chamarajendra with “full sovereignty” when he reached his majority, or else parcel out sovereign powers piecemeal. In the meantime, it would be prudent “to establish something like a constitution for Mysore, and to bring up the young prince with reference to it.” This was a desirable outcome for the reformers, who had previously recommended that the colonial state become the guardian of young princes and temporarily administer their countries to instill the principles of good governance.

155. Stafford Northcote to John Lawrence, March 26, 1867, BL, Mss Eur F90/28, f. 13.
156. Stafford Northcote to John Lawrence, April 20, 1867, BL, Mss Eur F90/28, f. 68.
157. Stafford Northcote, “Paper recorded by the Secretary of State,” in East India. Copy of the Minutes of the Members of the Council of India, 6.
158. Stafford Northcote to John Lawrence, May 23, 1867, BL, Mss Eur F90/28, f. 98.
Conclusion: Appealing to International Law

While conservationist reformers and India Office luminaries were debating the validity of unequal treaties and semi-sovereignty in the metropolitan public sphere, colonial agents were relying on legal casuistry to resolve interstate jurisdictional disputes. Henry Maine’s affirmation of divisible sovereignty in an 1864 dispatch proved particularly influential, as it provided an open-ended blueprint for interference in princely affairs. Determining the 188 or so disputed Kathiawar chieftainships in Western India to be foreign territory, Maine nonetheless reserved the colonial regime the right to prevent the states from “hastening to utter anarchy.”

As Benton notes, Maine’s phrasing suggested that the paramount power “permitted” the chiefs’ “exercise of sovereign rights,” thereby resituating the colonial regime as the unitary source of political power. Maine danced around the application of international law to colonial relations, but his non-theoretical emphasis on de facto relations inspired a later generation of officials to innovate a system of positivist Indian political law located in the aggregated acts and legislation of the colonial government.

Significantly, Maine’s ruling did not banish law of nations theory from colonial sovereignty disputes, nor did it effectively resolve the Kathiawar debacle. Although the British government had acquired purview over the chieftainships in 1815, the character of its paramountcy had never been specified. This uncertainty prompted a flurry of debate among Bombay, Calcutta, and London as to whether Kathiawar technically remained independent or had been lawfully ceded to Britain by the 1802 Treaty of Bassein and subsequent arrangements with the Gaekwar of Baroda. Officials in the Bombay government contended that the states’ lack of external sovereignty entailed their absolute subordination to the paramount power. The India Office, however, retorted that the Indian government could not claim full sovereignty over the region, as the states’ inhabitants did not have access to colonial courts.

The Government of India’s gradual restoration of “scheduled villages” to the Thakur of Bhavnagar further complicated matters, as cases that were ongoing in the colonial judicial system fell into a void. In September 1864, Deoram Kanji had filed suit against Damodhar Gordhan for nonpayment on a

160. Maine served as law member of the Viceroy’s Council from 1863 to 1869.
mortgaged parcel of land near the village of Gangli, which was subsequently transferred to the thakur in 1866. As the case lingered in legal purgatory, Gordhan claimed that Kanji no longer possessed sufficient standing to pursue his claims before the Bombay courts. The case ultimately reached the Judicial Committee of the Privy Council in 1875, where it attained the character of a disquisition on the prerogatives of paramount power. Although the Indian government was entitled to acquire territory through a parliamentary delegation of power, the process of “dismemberment” remained rather opaque. William Forsyth, on the side of Kanji, determined that the case remain active, as no legal cession had in fact occurred. Citing Samuel von Pufendorf, Vattel, Twiss, and Wheaton, he claimed that the British nation, barring “necessity,” was obliged to “preserve all its members” during a time of peace.165 Aside from Charles II’s sale of Dunkirk to the French, history offered few precedents for the legitimate conferral of British land to a foreign power. The defense team, which included such imposing figures as James Fitzjames Stephen and William Harcourt, contended that the transfer was of a “constitutional and not international nature.” The Government of India had merely granted sovereign powers to the thakur as a subordinate feudatory “in the manner which was common to the earlier history of England.”

In 1876, the Judicial Committee determined that the cession was fictitious, even though the viceroy had issued a notification of its occurrence in the Government Gazette. The scheduled villages had simply been relocated “from a regulation province to an extraordinary jurisdiction” under the Kathiawar Political Agency.166 Although this ruling affirmed Forsyth’s law of nations reasoning, it sat rather uneasily with members of the Viceroy’s Council. T. C. Hope, who had personally negotiated the restoration of the villages in 1860, confirmed that the Bombay government had indeed intended “a complete and effectual cession of territory to a Foreign Power” and had purposefully referred to the thakur as an independent sovereign.167 He further undercut British pretensions to paramountcy in the region by suggesting that neither the gaekwar nor the Mahratta Peshwa “ever had any definite power other than that of levying tribute or black-mail” from the bulk of the Kathiawar villages.168 The British had inherited this “rent-charge,” but it hardly corroborated their claims to territorial sovereignty; in several cases, chiefs continued to pay tribute to both the colonial

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166. Ibid., 149.
168. Ibid., 369.
government and the gaekwar. If a state’s annual contributions to a foreign power were indicative of its sovereign status, Hope speculated that the German government could boast ownership of France from its collection of reparations following the recent Franco–Prussian War.

Because Kanji and Gordhan were technically British subjects, their case could be directed to the Judicial Committee on appeal. In contrast, it was the political agents operating under the auspices of the Foreign Department who were tasked with resolving disputes between princes or between a native ruler and the colonial state. More often than not, these were military men who were “mere amateurs in the law of nations.”169 Princes who sought an appeal could then dispatch representatives to the metropole to petition the secretary of state and persuade MPs to motion for a resolution on their case. For the reformers affiliated with the EIA, there were ample reasons why this costly and opaque system of redress was untenable. Some of the more savvy princes were able to manipulate official sentiment; an agent of the Raja of Kapurthala brought attention to his appeal by laying flowers at the tomb of Viceroy Canning, which earned him a mention in the *Daily Telegraph.*170 But other aspirants were less fortunate. Sakharam Sahib, who was married to a member of the “extinct” royal house of Tanjore, sought to elevate his wife to her former station and was swindled by “clumsy forgers” who promised him an easy victory. Bell further noted an alarming trend wherein native emissaries in London were hiring “parliamentary agencies” that produced petitions of dubious legitimacy. These slipups allowed annexationists to represent every Indian political case as a scam conjured up by a professional “grievance-monger.”171

To publicize the obscure operations of the Foreign Department and India Office, reformers called for the establishment of an “international tribunal” of the type that Sullivan, Norton, and Ludlow had previously recommended.172 Speeches delivered before the EIA suggested that this body could come into being as an extension of the Privy Council, a sub-agency of the Council of India, or a select committee composed of parliamentarians from both houses. Iltudus Prichard, who led the charge, was convinced that “no code of laws, no books of common law or equity, would be necessary” for its operations; it would simply function as a court of arbitration that relied on the “common sense” of its constituent members.173

Bell, however, insisted that such a tribunal should “pronounce its decrees in the language of our great publicists, in the language of international law.”\(^{174}\) Even if many of the princely states were no longer technically independent, they still survived as “distinct nations” with their own languages and customs. Yet some native attendees at the EIA discounted this scheme. In a rebuke of moral universalism, Hormusjee Pestonjee reasoned that international law would be an insufficient guide, for “different principles of natural justice” prevailed in different countries. Other skeptics were more concerned over the composition of the tribunal itself. If the Government of India exclusively nominated its own members, few “sovereign” princes would consent to its deliberations; to do so would be an implicit acknowledgement of their subject status.\(^{175}\) On account of this ambiguity, prominent members of the EIA lamented that they had fallen into a warren of “abstract proposition” and could not present parliamentarians with any concrete proposal.

Well into the 1870s, reformers charged the colonial government with exercising arbitrary power over the principalities despite the fact that sovereignty had never passed to it “by cession, by escheat or lapse, by Imperial act and proclamation, or by any process known to international law.”\(^{176}\) Seeking to clarify the basis of this paramountcy, agitators and high-ranking officials alike strategically manipulated various forms of legal thought. Classical law of nations theories, with their elucidation of unequal alliances and treaty obligations, allowed reformers to represent the perpetuation of native dynasties as an act of justice rooted in natural law. Legal literature on semi-sovereignty also invited princes and their representatives to identify analogies with European precedents. “Microcosmic” theories of sovereignty in the Vattelian tradition were thereby fused with contemporary “macrocosmic” guidelines for maintaining a European balance of power. In practice, such amalgamation blurred the boundaries between legal naturalist and positivist thought, while frustrating the circumscription of the so-called “family of nations.” Redirecting attention to the pamphlet literature, petitions, and parliamentary debates that propelled these cases reveals the ways in which the creative interpretation of international law offered native rulers and their advocates “limited, though important avenues for resistance” against direct colonial occupation.\(^{177}\)


\(^{175}\) Bell, “A Privy Council for India,” 321.

\(^{176}\) Bell, “Is India a Conquered Country?” 206.