The Authenticity Game:

Order, Recognition, and Customary Rule from Empire to the International System.



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Abstract

This thesis attempts to diversify International Relations' understanding of the patterns of ordering that governed European empire in the 19th and early 20th–centuries, and in doing so to identify an overlooked but crucial precursor to the contemporary international order. IR research has overwhelmingly focused on liberal universalism and civilizing missions in Empire's politics of recognition, its ideas of difference, and its strategies of rule. This thesis argues that our focus has been too narrow, and draws from work in colonial history, political thought and anthropology, as well as original archival research, to illustrate the ideas and practices of customary rule that predominated in the British Empire after the 1857 Indian Rebellion. I argue that this form of rule was not simply a set of ideas, or a top–down imposed regime, but a 'game' of jurisdictional jockeying. In this game, life in colonized societies was increasingly bifurcated into 'traditional' and 'modern' spheres as local elites and colonial officials worked to define increasing swaths of governance as belonging to one or another, while avoiding violent responses to overreach on either side. From 1857 through the scramble for Africa and the League of Nations mandates system, I use records of official knowledge work to study the ways that colonized and colonizer alike vied to craft new language of legitimacy: language through which new subjects in international politics could be recognized and heard. Studying knowledge work as strategic interaction, I find that non–European intermediaries exercised crucial agency in crafting these new customary forms of governance, leveraging revolts and violence to narrate crisis to power in ways that shaped colonial and eventually international rule. Beyond its historical value, this work has implications for the ways IR understands the emergence of order from interaction, and for present debates on the questionably liberal nature of international order.

Finishing a thesis in summer 2020, amid jokes about Newton's plague–retreat miracle year, it has been hard not to think of Woolf, and the importance of "money, and a room of one's own." There are material preconditions of writing that trump any amount of inspiration. Luckily, not all of these can be dissolved by recession and lockdown, and I have benefitted from an embarrassment of riches in ways that matter most. All of those who follow are the absolute preconditions for this work's existence. Customary waivers of guilt for its contents may or may not apply.

I want first to thank my supervisor Edward Keene. He has believed in this project when I've flagged, encouraged me to chase after leads when there was every reason to doubt them, and has read with a charitable and incisive eye every word I've written. There was never a time when I left his office not feeling ten times as driven and supported, even if what I left with was a pile of rewrites, and a reading list a full term long. I am indebted as well to the community of historically–inclined IR students that has grown here in the last few years, particularly Julia Costs Lopez, Quentin Bruneau, Claire Vergerio, Tomas Wallenius, Arthur Duhé, Sharinee Jagtiani, and members of the fledgling society for the history of international politics. It is good to leave a community stronger than you entered it, even deserving none of the credit for that change.

I have consistently been pulled along by the feedback of others in the Oxford IR community, particularly Louise Fawcett, Duncan Snidal and Andrew Hurrell, all of whom have been models of compassionate reading and helpful criticism. Likewise, the administrative staff of the DPIR and the Social Science Division were both wonderful colleagues in my second year, and have kept me in logistical good–health through years of nothing but twists, turns and surprises.

I have been lucky to complete this project at a time when historical approaches to IR have flourished, and communities have been built to support it. Or Rosenboim and Maja Spanu have brought together a lasting group at Cambridge, that I cannot imagine doing this work without. At the LSE, George Lawson, Tarak Barkawi, Martin Bayly and others have put together an indispensable space for graduate students and researchers at all career stages to share knowledge across what can often be very high walls. The interdisciplinary nature of this work means that I have repeatedly relied on the perspective of others to orient myself. I am thus very grateful to Faisal Devji and Çemil Aydin, who at various small but critical points have helped clear historiographical brush so I could find the right track. Just as essential were the archivists at the British Library, The National Archives at Kew, the LSE archives, and the Bodleian library, without whose knowledge of the terrain I would never have found anything at all to write about. In IR, Stacie Goddard has stepped up several times to discuss panels of odd historical work, and has always helped to reorient that work in a broader field than my little corner of ground. From a desk away, Sam Rowan could always be counted on for the same.

I am indebted as well to my students and colleagues at Oxford Brookes, Advanced Studies in England, and University, Hertford and Worcester Colleges. Molly Cochran, Maia Pal, and Doerthe Rosenow are the sorts of teachers it is a joy to learn from and teach with, and it was a privilege to remake my ideas of how IR should be learned and taught alongside them. Likewise, there was no research migraine that an engaged group of students could not rescue me from, and no complacency of understanding that an earnest intro question couldn't shake me out of. I've been lucky to learn so much with them.

Some debts are years in the making. This project would never have happened in several senses if it were not for previous mentors. Among them, it was Mrs. Peggy Lee who taught me what it was to analyse a text in terms not only of what it said, but of the choices an author made for their audience and goal. It is probably the most important skill in this thesis, and to the extent that I use it correctly, she deserves the credit. Much later, it was John Breuilly who both encouraged my interest in theories of nationalism from a global perspective, and tactfully pushed me to do some

history to go along with it, just to be sure anything I wrote had ever actually occurred. Between those two, I owe Dan Davidson: for nurturing my love for the law, and for pushing me to do something other than practice it. However well he argued law and taught it, he took perhaps greater pride in his work making peace. And when he taught Law, he couldn't help but teach that too. While I have made my own peace with the hurdles that stretched this DPhil to the time it required, I can't help regretting that it wasn't done in time for him to read it. I hope there is something in it he would enjoy learning half as much as I enjoyed learning from him.

I am grateful, finally, for family of many kinds. At Brasenose I found a community I did not expect, and had no idea what to do with. I consequently used many hours I could have been studying instead building a haphazard family that I am determined never to lose. There are too many to list, and I would catch hell by leaving someone out, so I will thank everyone with whom I ever ran a garden party, argued in a meeting, stayed up talking, put on a tea, gave or heard a lecture, cleaned up a cocktail party, wasted an afternoon, wrote all night, lost a game, attended a mahjong tournament, or learned, shared, or made anything at all. You very well know who you are.

From my parents, I have had inspiration, love and support in ways I'll never fully count. They have modelled what it is to be curious, to annoy the world with questions, to care genuinely about the answers, and to do something good with them when you can.

From Mara, of course, I am grateful for everything, and dedicate everything in return.

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1. Recognition, Custom, and Civilization

> I am sure even if there were a few amongst Muslims who had thought in the past that the Muslims might gain their ends by alliance with British imperialism, they have now been thoroughly disillusioned. I say the Muslim League is not going to be an ally of anyone, but would be the ally of even the Devil if need be in the interest of Muslims.
>
> (A pin-drop silence suddenly appeared to seize the House at this stage).
>
> Mr Jinnah paused for a moment and then continued:
>
> It is not because we are in love with imperialism, but in politics one has to play one's game as on the chessboard. I say that the Muslims and the Muslim League have only one ally and that ally is the Muslim nation, and one and only one to whom they look for help is God.
>
> (Applause.)
>
> - Muhammed Ali Jinnah[1]

> Thus she has come into contact with the living time, and has accepted with eagerness and aptitude the responsibilities of modern civilization... All of this you must apply to the present situation, and out of it will arise a new creation and not a mere repetition.
>
> - Rabindranath Tagore[2]

The New Global Game

The 20th century saw the birth of new order in global politics. In ebbs and fractures the strength of European empires eroded, while leaders of colonized peoples decided, like Jinnah above, that the old game of power through collaboration had stalled, and that empire was now less an opportunity to be exploited than an obstacle to be overcome.[3] At the heart of this new order was what international relations (IR) scholars have called a new "sovereignty game."[4] Like any game, this one is defined by a set of constitutive rules: who might be a valid player, how to recognize one, what their legitimate goals might be, and what type of actions are permitted in pursuing

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[1] Qtd in Devji (2013) *Muslim Zion: Pakistan as a Political Idea* p.147
[2] (2010) *Nationalism* p.14
[3] Mantena (2017) describes in the South Asian case the novelty of empire–as–problem, and thus the contingency of fights for Indian representation as anti–imperial rather than explicitly within empire itself.
[4] The term is most directly Robert Jackson's (1990), but was used as early as Charles Manning (1962) and has been taken up by Amitav Acharya (2018) and others.

them.[5] The question of permitted action is the concern of work on the liberalness of modern order, and also the worry behind ongoing fears of its collapse. The mantra of a "rule–based order" implies as much; if an actor pursues her goals in unrecognizable ways, after all, she is playing a different game, and may be destabilizing the game she has left in the process.[6] This thesis, however, concerns not the rules of the sovereignty game, but rather the history behind our answer to the first two questions: of who is a player, and how we recognize one when we see it.

The quick answer to the first question is "sovereign nation states." States, however, precede the modern system. Their form may have changed, but just as crucial for International Relations is the fact that the ways we recognize them as legitimate players has changed as well. In the previous European system, states were recognized as such when they had demonstrated *de facto* control over a territory, population, and market. Players were treated as pre-existing the game in diverse forms. The role of international recognition was to nod to a fait accompli, and no expectation existed that all claims would be made from the same type of sources, in the same register of politics. In the contemporary system, however, sovereign statehood is as much constituted by recognition as it is affirmed by it.[7] The standards which international society has set for recognizing what is and is not a legitimate claim rest on a norm of self–determination. In contemporary international society, that "self" which determines and makes claims for recognition is almost invariably expected to be a nation: a cultural and historically defined people, inhabiting or seeking a state.

There was nothing inevitable, however, about this language of recognition. Just as it was not a given that leaders like Jinnah would work against rather than within empire to increase local authority, neither was it given that the game of anti–imperial independence would assume national selves as its players.[8] This thesis investigates one source of that international self, tracing the contestation of a key historical antecedent of this practice of recognizing members of international society only if they are legible as national peoples in want or possession of a state.

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[5] Jackson (1990) p.34
[6] Jackson (1990) pp.36-7
[7] Fabry (2010) *Recognizing States: International Society and the Establishment of New States Since 1776*
[8] The dual contingency of the national world is the subject of considerable work in IR and beyond; dual in that it is domestically contingent, being a modern form of political organization, and internationally contingent, being far from the only imagination of international sovereign personality in the minds either of anti– or pro–colonial leaders. For the first contingency, the classic works are Gellner (1983) *Nations and Nationalism*, and Anderson (1984) *Imagined Communities*. For the latter, Rosenboim (2017) *The Emergence of Globalism* provides a detailed overview of the nuances between global, international and transnational imaginations of politics, and of the strong emphasis on the former in European thought over the latter two. See Bell (2007) *The Idea of Greater Britain: Empire and the Future of World Order, 1860–1900* and Hansen and Jonsson (2014) *Eurafrica: The Untold History of European Integration and Colonialism* for the ways in which European powers imagined future world order in starkly different terms from a world of individually sovereign nation–states. Aydin (2007) *The Politics of Anti-Westernism in Asia* likewise demonstrates that pan-religious, continental and regional projects were at least as common in anti-European independence movements as nation-based imaginations or claims.

I begin by arguing that when international relations has studied the imperial projects which both conceived the contemporary order and were replaced by it, we have focused too narrowly on empire's liberal universalizing and 'civilizing' modes. We have missed that alongside the liberal civilizing mission was a fundamentally conservative and culture–oriented mode of empire, focusing its standards of legitimacy not on a dream of linear progress but of timeless custom. This cultural–conservationist outlook represented both a theory and a practice of global order. As a practice of order, "indirect" or customary rule understood global politics as being mapped by a world of ethnic elites speaking for peoples, and recognized them based on claims to authentic custom. This theory, furthermore, was the reigning form of politics in much of British colonial South Asia and Africa, and structured the laws and political assumptions of actors across the empire as they framed the 20th century's first international organizations, and planned for decolonization.

Missing this strand of imperial order has had two consequences for IR theory about the origins and nature of contemporary order. On one hand, absent attention to this practice of recognizing and ordering global polities as bounded cultural units, IR has treated the 20th century reordering as a far more unprecedented form of "revolt" than it was. On the other, the emphasis on universalizing rather than localizing modes of empire has left us tied too closely to expansionist models of this re–ordering, hampering our understanding of this ordering process as a hybrid one, driven as much by those subject to European empire as by those who formally lead it.

To begin repairing this historical and theoretical gap, I offer an account of the norms and practices that made up customary rule, tracing their transformation from an approach to imperial order into the framework of international recognition which followed it. To do so, I propose that we think of customary rule as a game–like order itself, and thus that the complex interplay of intermediation, governance and knowledge–work in empire should be understood as strategic interaction, ultimately forming a part of a new sovereignty game as its rules evolved and were shaped by its players on all sides. I then trace these games through three major eras of contestation and diffusion, from imperial crises of the 19th century, to the birth of modern international organisations and early politics of self–determination in the 20th.

This thesis is not an attempt to construct a history of the idea of international cultural recognition, nor to uncover a singular big-bang moment for internationalism of the kind IR has ascribed to dates like 1648.[9] While this project relies immensely on work being done in History of Political Thought on concepts like indirect rule, popular sovereignty, self-determination, and

[9] Apart from the questionable history of certain dates in particular, the problem with "big bangs" in general is that they over–state the insularity of one era from another, draw hard boundaries around times which heavily flowed into one another, and collapse the contention and complexity which are the stuff of politics into simple periodization. Carvalho, Leira and Hobson (2011) "The Big Bangs of IR: The Myths That Your Teachers Still Tell You about 1648 and 1919" *Millennium*

global order, I focus instead on the practices of governance these ideas underpin, and on questions of why each rose or fell which are not reducible to the intentions or words of 'thinkers' great or small. Following on other constructivist and historical IR work on global order, I accept that concepts and practices often have multiple beginnings and incomplete ends, and that we advance best not by seeking their pure origins but by asking how they have been negotiated and contested in actual use. By doing so, we are better able both to understand ordering as an open process in which agents and structures constantly recreate one another, and to understand our current order as something constructed for contingent reasons, both intentional and structural. This sort of understanding is especially important if we believe that history is not over, that orders may change not only in arrangement but in nature, and that it is the job of IR to understand the processes by which practices today may be evolving towards new orders in the future.

This thesis builds this narrative as follows. First, in the remainder of this introduction, I introduce the system of customary rule which was a key alternative to the progressive-civilizing mission in the British Empire, and a potential antecedent for our contemporary systems of culture-focused order. After sketching out the beliefs and practices this implied, I discuss the consequences of IR's lack of attention to this alternative approach to order. In doing so, I discuss the orthodox expansion theory of the current order's emergence, and argue that while much recent work has criticized the overgeneralization and eurocentrism of this narrative, the promise of alternative theories to replace expansion has been hampered by this historical omission. I close with suggestions of why we should regard this mode of imperial order as not merely a curiosity of imperial history, but a key antecedent of a contemporary recognition order built on national self-determination as well.

In Chapter 2, I discuss what it might mean to think of order and ordering as games. In part, I suggest here that we take more seriously the game metaphors favoured both by scholars of this period and actors within it. I argue that we should think of games as a way of "inscribing agency", recording something crucial about what it is to occupy and perform a certain type of political self, in a certain type of world. From this starting point, I suggest that we might understand the authenticity game of customary rule as a coordination game, and that this in turn teaches us something about why this form of rule was turned to by those within it, what sorts of agency was available to them within the imperial knowledge work it involved, and what sort of order we should expect it to have created. I close with a reflection on this thesis' historical methods and game theoretic ideas, and suggest ways in which these work together to sharpen our understanding of ordering.

In Chapter 3, I begin by examining the process through which custom was chosen over other explanations for the 1857 revolt, and then by which new concepts of customary rule were enshrined in colonial practice. This chapter responds to existing calls to bring 1857 in as a benchmark date in IR by examining the political and epistemological forces that turned a crisis

into an 'information panic,' and thus a re–ordering moment.[10] Whereas previous work on this post–mutiny turn has almost entirely bracketed this interpretive process, treating the outcome as a structural given of British orientalism, I use India Office Records to explain this policy innovation as an active political process, one with inputs from British and Indian voices alike. Similarly, rather than treating this turn simply as a shift in ideas, I examine the ways in which the "post–mutiny consensus" as a strategic game was made commonly known throughout India, and ways in which this common–knowledge creation was contested from the outset.[11]

In Chapter 4, I study the diffusion of customary rule from India outwards through Africa. This chapter first discusses the gradual evolution of a general post–mutiny consensus into a broader policy of 'native rule.' From there I examine the ways in which customary rule continued to be emerge not as an ideological first choice, but as a response to crisis. For colonial authorities, this often meant that it was turned to as a response to crisis and revolt, and as with 1857, this process often heavily involved the interpretive input of local intermediaries. For local elites, the choice of customary rather than modernizing modes of legitimation often reflected poor alternatives: either by parties with less power in extra–colonial systems of authority, or as a reflection of the ongoing destruction of local political life that colonial state–building entailed.

Chapter 5 examines the ways in which this language and practice of customary rule transformed from imperial to international practice. Focusing on new public fora as vehicles for contestation and knowledge–creation, this chapter examines the practices of the Judicial Committee of the Privy Council and the League of Nations mandates system, and the ways in which their publicness amplified the ideas of customary rule, and in doing so created common knowledge and convention around certain approaches to recognition, and modes of order. In particular, new levels of public visibility in this era meant that the language of custom became generalized beyond those who originally fell under the rubric of customary rule, and evolved into a language of legitimation more broadly.

Finally, in Chapter 6, I close by looking forward to the ways that customary standards of recognition outlived customary rule itself. Through Muhammad Ali Jinnah and Jomo Kenyatta, I examine the ways in which the rules of recognition produced by these public contests emerged essentially as convention: not continuing because of particular fitness for purpose, but rather because of the inertia exercised by solutions to coordination problems on such a grand and visible scale. The thesis closes by considering what this history pushes us to reconsider about the liberalness of global order, the dynamics of ordering beyond expansion, and the nature of agency in each.

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[10] Buzan and Lawson (2014) Rethinking benchmark dates in International Relations. *European Journal of International Relations* 20:2 pp.437-462; The idea of an information panic is borrowed from Bayly (1996).
[11] The term "post–mutiny consensus" is taken from Mantena (2010) *Alibis of Empire*. P.5

Two Types of Order

To dramatize the historical novelty of the contemporary sovereignty game, Robert Jackson's *Quasi-States* begins with a bit of social science fiction. Imagine, he suggests, taking a time machine to 1936 to speak with a civil servant at the Colonial Office.[12] Conversation turns predictably towards the British Empire, and we mention that in our time it no longer exists. Our poor imagined civil servant is horrified.

> He asks how it was possible to decolonize so soon throughout the world? We reply that it was relatively easy: by transferring sovereignty to indigenous politicians. He persists in wanting to know how independence could be granted to so many different colonial peoples at various stages of development. How did they so quickly become conversant with the language, institutions, and techniques of modern self-government? Were they prepared for the transfer of power? Some were, we reply, and some were not. It did not matter, however, because they all acquired the right of self-determination which is now universally recognized by international law.[13]

The civil servant eventually concludes we are insane and makes his excuses to leave. Jackson's style is more imaginative than the typical IR argument, but his themes remain entirely mainstream. There are two he is working here to convey. First, that the delegation of political authority to indigenous leaders, regardless of their level of development and possession of certain modern institutions, was so novel as to sound almost absurd from the worldview of the Colonial Office as late as the dawn of the Second World War. Second, that the reason for this radical break was the invention of something called self-determination. The implication here is that empire was run with a deeply developmental mindset, a civilizing mission for which authority depended on progress towards modern institutions, and that a world in which authority was based more on indigenous representation of locally distinctive 'selves' was almost unthinkable.

Luckily for our disturbed civil servant, while the pace of decolonization likely was a surprise to many, a world in which authority was recognized based on claims to indigenous right rather than modern progress was not only thinkable within the Colonial Office, but by 1936 was in many places the assumed practice of empire. To begin with, the idea of self–determination was hardly new, hardly un–British, and hardly anathema to the policies of the Colonial Office itself. While Jackson and IR scholars in general have focused on US President Wilson's role in propagating self–determination as a rule of international legitimacy, and in doing so have framed it as a liberal challenge to empire, more recent histories of Wilson and the Versailles peace have stressed the outsize impact of British Colonial ideas and personalities on the emerging norm of

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[12] Jackson (1990) p.13
[13] Ibid

self-determination.[14] Jan Smuts — former Prime Minister of South Africa, member of the Imperial War Cabinet and British negotiator at IR's 'big bang' at Versailles — seemed in his correspondence to have believed that Wilson's ideas "(may I confess it?)" were almost entirely taken from him.[15] Some historians have been inclined to agree, but whether or not Smuts deserves credit for norms of self-determination at Versailles, his desire for that credit suggests that the idea could hardly have been beyond the pale for the top echelons of the British Empire.[16] Instead, Smuts fit neatly within the "segregationist" philosophy of empire; a concept of rule opposed to civilizing impulses, which viewed peoples and their leaders not as perfectible modern men in waiting, but members of whole and unchanging cultures, best left as they are, in the company they naturally keep. Self-determination, with its search for local determinants of legitimacy, was for Smuts a natural outgrowth of this philosophy of rule.

Just as the language of self-determination was not strange to the governors of a colonial world, neither was the universalizing notion of 'modern' language and institutions so deeply entrenched in their thinking. If Jackson's civil servant had even a decade of experience, he may have remembered Secretary of State for the Colonies Leopold Amery's declaration to the Colonial Office conference that:

> Each colonial government and each colonial service, has grown up on the spot by a continuous process of local evolution… each government and each service, therefore, is autochthonous, racy of the soil, adapted to local conditions and intuitive in its understanding of these conditions and in its sympathy with the population it administers.[17]

Localization, in other words, and not universalism, was recognized by the Colonial Office as the stuff global rule was made of, and the process by which local governments achieved and maintained their legitimacy.

Many voices beyond Smuts and Amery could be revived to make this same point; many will be in the chapters to follow. These are furthermore only metropolitan voices, British voices, white voices. If Jackson's man was inclined to take claims of the colonized seriously, he may have read a pamphlet published the same year we met him by South African activist H. Selby Msimang entitled *The Crisis*, which turns a quote from Jan Smuts back on colonial rule, avowing that "To suppose that in the modern world… you can govern without the free consent of the governed, is

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[14] See especially Mazower (2009) *No Enchanted Palace*; Getachew (2019) *Worldmaking After Empire: The Rise and Fall of Self–determination.* The automatic association of Wilson and the United States with anti–colonial stances, furthermore, also has more to do with endorsing a certain American self–image than with understanding the complex then–growing American empire. See most recently Immerwahr (2019) *How to Hide an Empire.*

[15] Smuts to M.C. Gillett, Paris, 20 January 1919, 889 vol. 22, no. 197

[16] Mazower in particular argues that Wilson arrived at Versailles with a great swell of global hope behind him, and very little idea of what ideas to put that swell behind until he met Smuts.

[17] Qtd in Ashton and Stockwell (1996) p.*xxvi*

to fly in the face of decent human nature as well as the facts of history."[18] If Jackson's colonial officer had read this or the many similar pamphlets, periodicals and speeches urging independence he may have been far less surprised by our news. The point, however, is not simply that some voices dissented from the liberal–developmentalist mode of recognizing global political legitimacy; it is that those who did so often made policy at all levels of the global order that was the British Empire, and would shortly help to shape the contemporary international system.

In short, while Jackson is certainly right that the speed of decolonization was foreseen by very few (rapid global changes rarely are), his focus on the liberal–developmentalist notion of empire has lead him to miss half of the story.[19] He is not alone; rather he dramatizes an assumption still shared by most IR theory on the shift from empire to the contemporary international system, and thus about the roots of contemporary order. Below I will briefly describe this tacit consensus, introduce the pattern of order it has ignored, and suggest some consequences of this blind spot for IR theory.

The scholarly linking of liberalism and British empire was not invented by IR, but has come to us through the histories we've built upon. The association dates at least from Eric Stokes' 1959 *The English Utilitarians and India*, which traced the ways in which 19th century progressive liberalism was not simply a moral philosophy, but a conception of society which actively shaped the practice of world governance in British empire.[20] The founding IR text on the re–ordering of the international system from empire, Bull and Watson's *The Expansion of International Society*, was underpinned by this same assumption; universalism was treated as a basic foundation of the European society of states. Similarly for Martin Wight "A states–system presupposes a common culture" and "it is clear that only this European view of the individual human being allows for meaningful universalization."[21] The expansion, then, was a project of the universalization of a liberal–individualist political culture. And furthermore as "individualism stands for inventiveness" and "inventiveness makes for international development" Ada Bozeman argued, it was a mission of development which drove imperial order.[22] To the extent that liberal IR theory as engaged with this question it has echoed the same assumptions, as on the first page of *Liberal Leviathan* on which John Ikenberry asserts that "in the nineteenth century, Great Britain was the vanguard of the liberal ascendency."[23]

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[18] in Msimang (1936) *The Crisis* p.10 Msimang, then General Secretary of the All African Convention, here is using the public visibility of Smuts and the League of Nations to argue that Smuts' own words invalidate ideas of government as "tutelage". Reflecting customary rather than universalizing routes to liberation, he cites "stricter codification of Native Law" as a sign of progress towards self–determination. p.2

[19] On unexpected rapidity, see for instance even Ralph Bunche's belief that genuine African independence was, in the 1930s, "many generations removed from the present day." Qtd in Pedersen (2015) *The Guardians*

[20] Stokes (1959)

[21] Wight (1977) *Systems of States* p.43

[22] Bozeman (1984) p.390

[23] (2011) p.1 In one sense, Ikenberry's approach to liberalism and empire stands strongly apart from other

As IR has developed a conversation critical both of empire and of *The Expansion* thesis, this assumed liberalness of empire has nonetheless remained. For Edward Keene's critique of "the orthodox theory of order" offered by Bull et al, the key historical fact of 19th and early 20th century European world was a division between two normative and institutional orders: a hierarchically flat intra–European order of "toleration" on one hand, and a steeply variegated extra–European order of "civilization" on the other.[24] Similarly, in his historical introduction to international political thought, the entire chapter on the 19th century is devoted to the concept of civilization, and re–asserts the centrality of liberal thinkers thereto.[25] A 2014 conference and ensuing special issue of *Millennium* on imperial hierarchies was devoted entirely to "Rethinking the Standard(s) of Civilisation(s)."[26] In Ayşa Zarakol's *After Defeat*, the key experience of political and social "stigma" which shaped Turkey, Russia and Japan's entry into international society was "being behind the 'West,' not being 'modern' enough, not being developed or industrialized or secular or civilized or Christian or democratic enough."[27] The liberal standards of civilization, again, were the metric by which international legitimacy was measured and recognized.

As with the generation that discovered Stokes, the current group of critical scholars have relied largely on legal and intellectual histories of empire which reinforce the centrality of liberalism. For Anthony Anghie, for instance, the sin qua non of British imperialism was:

> the civilizing mission, the grand project that has justified colonialism as a means of redeeming the backward, aberrant, violent, oppressed, undeveloped people of the non-European world by incorporating them into the universal civilization of Europe.[28]

There is, of course, vibrant disagreement in this literature on the nature of liberalism's relationship to empire, and the extent of one's culpability in the other's crimes. Jennifer Pitts, for instance, offers an account of liberalism before the era of J.S. Mill and Fitzjames Stevens' intellectual and practical impact on empire. Responding to the question of "what happens when liberalism encounters the world" she investigates "the articulation of liberalism as a practice" which emerged as liberal thinkers were pressed to apply their thought to the unfolding practical problems of justice, governance and difference.[29] This is not a simple condemnation of liberal thinkers as hypocritical, nor the creation of a distinction between liberalism in practice and as an idea. Rather,

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works cited here, falling close to what Duncan Bell has called the "rejectionist" school of thought which treats empire as illiberal, while most others are engaged in tracing the ways in which liberalism at least supported empire, if it did not necessarily require it. See Bell (2016) *Reordering the World: Essays on Liberalism and Empire*. In another, however, all reinforce the notion that some form of liberalism is what British power was being used to implement.

[24] Keene (2002) *Beyond the Anarchical Society*

[25] Keene (2005) *International Political Thought: A Historical Introduction* p.161

[26] (2014) 42:3

[27] (2010) *After Defeat.*p.4

[28] Anghie (2005) *Imperialism, Sovereignty, and the Making of International Law.* p.3

[29] Pitts (2005) *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France.* pp.4-5

like Stokes, Pitts is interested in the ways in which the view from liberalism constituted the world for practitioners of empire and framed their perspective on problems of difference and development, and likewise the ways in which the entrenching of empire shaped the way liberalism itself grew to conceive of those it excluded. Nonetheless, liberalism remains the primary ideological pair to imperial practice.

This is not to say that no one in IR has read or cited histories of culture–focused indirect rule. Patricia Owens' *Economy of Force* argues for the centrality of patriarchal and communally–focused social theory in nineteenth century counterinsurgency, using the reception of Henry Maine to shift our understanding of counterinsurgency from politics to "household administration".[30] Maine was considered by some the arch theorist of indirect rule, and Owens' focus on other forms and spaces of war and empire pulls the debate in a more balanced direction. In tacking away from politics, however, *Economies of Force* leaves aside any idea of the implications this more social, patriarchal and household–focused mode of rule may have had at the level of global order. Similarly, while Paul Macdonald veers close to acknowledging this alternate pattern of order by focusing on the necessity of collaborators to imperial rule, he is far more interested in the groundwork of empire rather than any implications of collaboration which may have bubbled up to the level of global order.[31] Finally, while Keene refers to Maine as another theorist who observed that sovereignty was inherently divisible rather than absolute, the question of how this sovereignty was divided in practice is left abstract, subsumed again into the rubric of "civilization."[32]

The general staying power of this focus in contemporary IR has most clearly been illustrated by Buzan and Lawson in their account of the 19th century 'Global Transformation' in international relations.[33] As they describe it, "ideologies of progress" formed one of three pillars of this transformation, the particular configuration of which altered the very nature of global life.[34] These ideologies of progress are not simply reduced to liberalism; socialism, nationalism and scientific racism are treated alongside it. The philosophical mission of empire, however, is described as "vast programs of social engineering" constituting "an assault on dynasticism and religion."[35] This is embedded within a directional sense of history and development, and while alternatives to liberal individualism were present and powerful throughout the nineteenth century,

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[30] (2015) *Economy of Force: Counterinsurgency and the Historical Rise of the Social.* see especially p.18
[31] Macdonald (2014) *Networks of Domination: The Social Foundations of Peripheral Conquest in International Relations.*
[32] Keene (2002) pp.107-8; In another article Keene digs deeper into the mechanisms of hierarchy in British treaty making, but maintains the focus on standards of civilization. "A Case Study of the Construction of International Hierarchy: British Treaty-Making Against the Slave Trade in the Early Nineteenth Century" *IO.* pp.311-339
[33] Buzan and Lawson (2015) *The Global Transformation: History, Modernity and the Making of International Relations.*
[34] Ibid p.1 The other two key elements listed are industrialization and rational state–building, giving a sense of the pride-of-place this account attached to progressivism in the genesis of modern IR.
[35] Ibid pp.98-101

it was mainly capitalist and liberal individualism which motivated empire, and it was these which ultimately seem to have triumphed in the 20th–century which followed.[36] Just as telling as their account of liberalism is their description of dissent from it. Communitarian dissent from liberalism is mentioned largely as a coda to the transformation: as a contentious form of politics critiquing the legacies of empire and its lingering financial and social systems.[37] It is a narrative of the present, the oldest work cited being Foucault in 1969, and also one of political critique, being filled out almost exclusively with figures of critical theory and subaltern studies.[38] Faced with the presentism and radicalism of this narrative, the conclusion one might draw from Buzan and Lawson is that communitarian social thought — ideas encouraging the preservation of tradition, or emphasising communal identity — have mainly been the stuff of opposition to empire, rather than ever having constituted imperial practice itself in the sense shown of liberalism by Stokes and Pitts.

And yet imperial liberalism never enjoyed the monopoly on imperial thought in its lifetime which it has found in its scholarly afterlife. When it came to international order, its primary challenger was the strain of conservativism being born in the 18th and 19th centuries as a response to political upheaval and social crisis.[39] If liberalism demanded 'universal civilization' and 'improvement', this early conservativism stressed pragmatism, preservation, and the organic and timeless dignity of individual civilisations in plural. Its notion of imperial pluralism was captured well by Edmund Burke. "I never was wild enough to conceive," he suggested,

> that one method would serve for the whole; that the natives of Hindustan and those of Virginia could be ordered in the same manner; or that the Cutchery court and the grand jury of Salem could be regulated on a similar plan. I was persuaded that government was a practical thing, made for the happiness of mankind, and not to furnish out a spectacle of uniformity, to gratify the schemes of visionary politicians.[40]

As Jennifer Welsh has argued, Burke's philosophy was not merely a negative response to an age of revolution, but rather a positive vision of international legitimacy. The point of international order in this view was not civilization, but rather "the upholding of historical rights, traditionally established... against theoretical rights, rationalistically established."[41] In particular, this was a view of politics stressing that peace and stability were only sustained by the slowly woven social fabric of generations, whereas "natural rights could only be realised through the utter destruction

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[36] Ibid p.114
[37] Ibid p.126
[38] For example: Badiou, Rancière, Žižek, Adorno, and Spivak.
[39] For conservatism as a new and distinctly 19th century philosophy, see Goldman (2011) "Conservative political thought from the revolutions of 1848 until the fin de siècle" *The Cambridge History of Nineteenth–Century Political Thought* Stedman Jones and Claeys eds.
[40] *Letter to the Sheriffs* in *The Works of the Right Honorable Edmund Burke* qtd in Welsh (1995) *Edmund Burke and International Relations* p.60
[41] Welsh (1995) *Edmund Burke and International Relations* p.60

of society, which rests instead on painfully acquired conventions."[42] It was an idea of order in which any legitimate rule must conform to the "character and circumstances" of the people, and any legitimate ruler must "preserve the laws, rights, usages and customs of the natives, and to pursue their benefit in all things."[43] It was a theory that saw danger in external schemes for reform.

For just over half a century after Burke's dramatic but failed impeachment of Warren Hastings, this philosophy of order took a back seat to the mission of progress and transformation promised by the liberalism. When in 1857 over 130,000 Indian soldiers sparked a large-scale revolt against the British East India Company, however, it began a series of convulsions in the moral certainty of empire which re-oriented the legal justifications of rule, reframed the structure of global government they supported, and empowered new agents to establish themselves as the brokers of power, gatekeepers of jurisdiction, and the rightful translators between native custom and colonial ambition. The official British interpretation of the mutiny saw it as an eruption of religious fundamentalism, and thus interpreted the failure of company administration not as the illegitimate appropriation of foreign land, treasure and lives, but as the failure to respect local tradition and custom.[44] By "framing the cause of the revolt as epistemic," understanding the claims of rebels not as political complaints but as "cultural outbursts," the response of the colonial administration was overall the triumph of anthropology over politics.[45] "The rebellion," Mantena argues, was read "as an anthropological failure rather than a political or economic event." This interpretation, on the one hand, refused to read native disenchantment as a fundamental, and self-consciously political, challenge to the imperial order. On the other hand, it privileged and enabled the expansion of a particular anthropological form of knowledge as foundational to what Dirks has simply called "the ethnographic state."[46]

The lessons of this episode were not confined to India, but were generalized to ensuing colonial relationships and crises, and were made the blueprint for British rule in the scramble for Africa which followed. The result of this reading of revolt was a strategy of rule (and thus of hiring administrators, supporting collaborators, drawing jurisdictional boundaries, and dividing rights and property) based not on a question of "what is most civilizing" but of "what is the most

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[42] Hampsher–Monk (2006) "British radicalism and the anti–Jacobins" in Goldie & Wokler eds. *The Cambridge History of Eighteenth–Century Political Thought.* p.674

[43] Ibid; While recent literature has largely born out this image of Burkean Pluralism in the case of India, an important contrasting view in Burke and Mill's views on slavery in the West Indies is discussed in Kohn and O'Neill (2006) "A Tale of Two Indias: Burke and Mill on Empire and Slavery in the West Indies and America" *Political Theory* 34:2 pp.192–228

[44] Mantena 2010 pp.4-6; This framing, I will argue in Ch.3, cannot be understood simply as a neutral effort to "bring those claims to the reach of their [Europeans'] understanding," but rather as a strategic choice to re-cast political claims as less-powerful cultural complaints. For a discussion of native claims–making in imperial law more generally see *Belmessous* ed. (2012) *Native Claims: Indigenous Law Against Empire 1500–1920.* p.5.

[45] Mantena (2007) p.129, 2010 p.10

[46] Dirks qtd in Mantena, and Mantena (2010) p.159

authentic?"

This notion emerged alongside a conservative political tradition stressing the organic integrity of historically-rooted cultures, and provided an image of the world as most meaningfully made up of traditional groups: what Muthu has called a political philosophy of "cultural agency"[47] Just as the development of survey mapping provided statesmen the impetus to think territorially, this notion of a world of cultures provided its own map of sorts: a guide to what there was in the world which naturally suggested that what one needed to know in order to rule it was knowledge of culture, history, and the peoples to which each belonged.[48] After the Indian revolt, the worldview from cultural agency was taken up as a means of reviving empire's legitimacy to a sceptical public, and what was once a critique of empire became in places its creed.[49]

Like the ideas on which it was based, post–mutiny indirect rule's reliance on collaborators was itself not new. Empire building in South Asia was always reliant on intermediation, and was always to some extent knowledge work.[50] In the post–mutiny empire, however, reliance on highly localized knowledge increased dramatically, justification of the Indian Civil Service's political privilege began to rest on its claims to special knowledge, and the "cult of friendship" took precedence over the "cult of uplift" in the attitudes of colonial officers themselves.[51] Beyond its motivating ideas, there was something specific about the type of political contest that occurred in this type of rule, which marks it out as something more than simply delegated power, carried out at a remove. Sources in this thesis vary in what they called this mode of governance: indirect rule, native rule, native administration, the post–mutiny consensus, the Punjab tradition. Indirect rule in the sense simply of the co-option and use of local elites, for expediency or legitimacy, was

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[47] Goldman (2011) p.694; Muthu (2003) *Enlightenment Against Empire,* Princeton University Press; Muthu's understanding of Burke as being "against empire" because he was against certain enlightenment liberal strands of it does not account for the ways in which these ideas would go on to underpin imperial practice over the following century and a half. Some have argued that it likewise overstates Burke's own personal opposition. Cf O'Neill (2009) "Rethinking Burke and India" *History of Political Thought* 30:3 pp.492–523

[48] For the impact of mapping see Branch, Jordan (2011) "Mapping the Sovereign State: Technology, Authority, and Systemic Change" *International Organization* pp.1-36

[49] Mantena (2010) draws a line from Burke and Hastings, ironically but convincingly grouped as early Orientalist champions of timeless Indian civilization, to the "Romantic-Paternalist school of Munro, Metcalf, and Malcom," and on to Maine. The novelty of Maine, however, was on the one hand his insistence on deeper knowledge not just of classical history but of current custom, and on the other his embedding of this theory of customary life within a stadial theory of human social progress. p.155

[50] For use of intermediaries as a broader phenomenon, see for example Newbury (2003) *Patrons, Clients, and Empire: Chieftaincy and Over–Rule in Asia, Africa, and the Pacific*; Burroughs (1999) "Imperial Institutions and the Government of Empire" in Porter ed. *The Oxford History of the British Empire: Volume III: The Nineteenth Century*; for knowledge–work in the Indian Empire before the mutiny, see most recently Bayly, M (2016) *Taming the Imperial Imagination: Colonial Knowledge, International Relations, and the Anglo–Afghan Encounter, 1808–1878*; and Winterbottom (2015) *Hybrid Knowledge in the Early East India Company World*; Schaffer et al eds. (2009) *The brokered world: go-betweens and global intelligence, 1770–1820.*

[51] Darwin (2009) *The Empire Project: The Rise and Fall of the British World–System, 1830–1970.* p.188; The mapping of the two administrative 'cults' here is Clive Dewey's, and his notion of 'friendship' should be taken as something quite restrained; less affection than some sort of interest in knowing rather than eradicating local ways of life. (1993) *Anglo–Indian Attitudes: The Mind of the Indian Civil Service.*.

endemic to essentially every stage of empire, and was in no way limited to the British. Indeed, scholars of contemporary global governance have suggested that it is not limited to empire at all, but rather that "most governance is indirect, carried out through intermediaries."[52] Whatever the truth of this in contemporary IR, the potential ubiquity of "indirect" governance is a reason to be more specific about the form of British imperial rule that emerged after the Indian rebellion of 1857, and which this thesis traces into the 20th century. I will tend to use the term customary rule, as it names the post–mutiny understanding both of what non–European societies were, and in turn of how they could most reliably be governed.

The core of customary rule, at least what differentiated it from other patterns of empire through intermediaries, was a different notion of what there was in the world, and how to know it. Two elements of customary rule are key for understanding the game to follow.

First, modern colonialism in general occurred in plural overlapping jurisdictions, and while it often entailed the erasure of extra–colonial jurisdictional boundaries in the service of a more absolute state, that state nonetheless had to continuously negotiate the boundaries between rival jurisdictions. These can be imagined as geographical, but more often than not jurisdictional boundaries were social, reflecting contested authority to rule on questions of this group, that commercial practice, this question of ownership or inheritance. "Jurisdictional jockeying," as Lauren Benton has termed it, was often an active contest to claim and reshape the boundaries of jurisdiction, thereby claiming authority over the related sphere of policy and life.[53]

Second, that after 1857 British colonial administrators increasingly imagined this world of plural jurisdictions as bifurcated into two overall spheres: one of modern (English) jurisprudence, and another of customary (native, religious, tribal) law. Custom, habits, timeless traditions were thought to mark out the cohesive 'social fabric' of non–European societies, and there were points past which it was impossible to move a native population, no matter how modern or enlightened the goal. As Mamdani puts it, theorists of customary life and law like Henry Maine:

> went on to closet the native in a separate conceptual world, shut off from the world of the settler by a binary: progressive and stationary societies… The native was said to represent a triumph of geography over time. India, from this point of view, resembled a house of custom, so complacent that geography could be said to signify history: "There is no country, probably, in which custom is so stable as it is in India."[54]

And custom, embedded as it was thought to be in a complex web of social tradition and history, was not only fixed but "inscrutable," unknowable to "the English mind" without new and complex

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[52] Abbott, Genschel, Snidal, Zangl (2015) "Two Logics of Indirect Governance: Delegation and Orchestration" *British Journal of Political Science.* p.719
[53] Benton (2001) *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900.*
[54] Mamdani (2012) *Define and Rule: Native as Political Identity.* pp.13–14

social sciences through which to study "real" Indian life.[55] There was, this post–mutiny consensus imagined, an unshakably real but largely unknowable layer of 'native' social life called custom. While every era of empire had relied to some extent or another on local collaborators, in this era the role of local elites increasingly became that of cultural intermediaries: both representatives of local peoples, and informants on inaccessible but necessary social truths. Motivating this shift was the spectre of revolt, the idea of disastrous consequences for officials who did not understand and preserve local custom. These shifts had far reaching implications for the politics and law of global rule.

Where once the role of colonial administration had been justified as the obliteration of superstition and the installation of modernity, by the time of the scramble for Africa the job for many was to discern the tribe, to 'find the chief,' to codify the customary, and to sell this platform as 'native rule.' Although vestiges of progressivism remained, where this approach took hold it represented a top-to-bottom reordering of rule, from its core philosophy (customary, tribal), to the administrators it empowered to rule (chiefs, religious leaders, codifiers of traditional law). "Indirect Rule represents a new development," wrote Malinowski as it still unfolded throughout Africa in 1945; "its charter is the re-shaping of sovereignty, of the sources of executive power, and of finance and revenue."[56] It was a re–shaping, in short, with profound implications for much that IR finds crucial.

Diversity and Ordering

Leaving this strand of imperial order unaddressed has had two broad consequences for IR's attempt to theorize the transformation from an imperial to an international order. First, the sense of empire as liberal/civilizing and its critics as cultural/conservationist has led to a mapping of liberalism as a norm of *order* and cultural authenticity as a norm of *justice*.[57] This is apparent in Buzan and Lawson's trajectory of civilizing empire to culture–focused critical theory. It is also a key assumption of Jackson's thesis in *Quasi States*, underpinning his argument that a negative–sovereignty game represents a form of "international affirmative action" for states which could not stand on their own in the previous, less normatively driven positive–sovereignty game.[58] Jackson, Buzan, Lawson and others have largely kept the periodization of *The Expansion*: standards of civilization at the beginning, "A Multicultural World" relegated to a chapter at the end, and one about "revolt" rather than continuation. This sort of argument is tenable, however, only if

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[55] Mantena (2010) *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* pp.153–4
[56] Malinowski (1945) *The Dynamics of Culture Change.* pp.139-41
[57] The type of dichotomy I have in mind here is simply that suggested by Bull (1977:2012) *The Anarchical Society: A study of Order in World Politics. p.75*
[58] (1990) pp.131-4

the "negative sovereignty game" based on recognizing national cultural units rather than ready–made states was designed as a handout for the weak rather than a project of rule for the strong. As I have argued, however, a system of culture–focused recognition existed long before Jackson's negative sovereignty game, and it was not a project of charity but of rule.

This normative correction is important on its own, in that it suggests we should not be complacent about the moral claims of culture–focused recognition in the same way that work on imperial liberalism has sharpened our critical stance towards the claims of certain universalisms. For this thesis, however, this correction is most useful for what it demands we reconsider about processes of ordering themselves. I am arguing here that customary rule in some ways prefigured a world organized to recognize peoples bounded by law, defined by supposed cultural likeness, and legitimately ruled according to their own standards and by members of their own people. Certainly it did so more than the modernizing erasures of people and place which many contrast with the modern nation–state based order. Its proto–anthropological ideas shared more with luminaries of romantic people–hood like Herder than the boundary effacing cosmopolitanism of Kantian liberals.[59] But more critical than its ideas are its politics of recognition. I am arguing here that a system of recognizing legitimate authority based upon claims to represent bounded 'cultural' communities was occurring on a significant scale long before decolonization began, and that this same system conditioned some of the international institutions that gave contemporary recognition its foundations. By revisiting this history, we are able to see the current system neither as a reversion to some natural normal, nor a revolution unprecedented in its content, but rather as an evolution of order from a world of multiple systems of recognition under empire, to one embedded in a system of states. The next chapter details the theoretical approach this project brings to this history. Before doing so, however, I want to close by reflecting on what I mean by customary rule as a system of recognition.

While IR has moved little on its idea of the concepts that structured European imperialism in the 19th and 20th centuries, it has lately begun to develop new conceptual tools which may help to incorporate this new history as we develop it. In tandem with this thesis, a research program has emerged around questions of diversity and order in world politics, which helps at least to name some of what we see in this history. As this research relates to this thesis, three concepts stand out. First, as Christian Reus–Smit has argued, institutions of international relations perform "recognition functions" which structure the types of subjects who can be addressed by and interact

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[59] For earlier context on some of these ideas see Pross (2006) "Naturalism, anthropology, and culture" *The Cambridge History of Eighteenth–Century Political Thought* pp.218–247; For the notion of "ethnic" nationalism and its roots in these ideas see also Calhoun (2007) "Inventing the opposition of civic and ethnic nationalism" *Nations Matter: Culture, History and the Cosmopolitan Dream*. and for a critical reflection on the distinction from a postcolonial and Indian focused perspective see Chatterjee (1986) *Nationalist Thought and the Colonial World* pp.1–3

within those institutions.[60] Thus, these institutions not only authorize certain forms of social organization and erase others, but can be said to "produce political and cultural subjectivities" full stop. In a more recent volume, Reus–Smit and Andrew Philips have brought together a group of scholars to discuss the regimes for authorizing difference which they see partially governing the political and cultural subjects who can be recognised under various "diversity regimes."[61] This work, and another more solely theoretical work by Reus–Smit, takes aim at what they see as a pervasive assumption in IR that cultural commonality is either a prerequisite for or a product of international order.[62] Instead, they suggest, we should see the history of global politics in part as governed continuously by a range of different "diversity regimes," each recognizing a different type of diversity or universalism in culture, and thus each underlying the creation and persistence of a different set of subjects. In a slightly different vein, Philips and Jason Sharman have argued that IR has fixated too closely on the development of homogeneity through global interaction.[63] Rather than specifically culture, Philips and Sharman are interested in the diversity of "units" in international systems broadly understood. Again, however, they show that IR scholars have no reason to assume that interaction or ordering will necessarily produce "convergence" in unit types, but rather that they often settle into orders which are highly diverse, and stably so. "Diversity, rather than uniformity" they argue, is "the default condition of most international systems throughout history."[64] Taken together, this research suggests that we should be more careful in examining the links between international order and the various subjects it recognizes and reproduces.

Was customary rule thus a diversity regime? Certainly this thesis fits within a broader call to study the units and subjects of international order as varied, and as actively constructed by the recognition functions of orders themselves. It also offers one element of an answer to what Philips and Sharman pose as the puzzle of 20th century decolonization's "discontinuous and unprecedented" organization around, and "quickly acquired habits of thought and practice" of the nation–state.[65] The notion of a diversity regime likewise fits, insofar as customary rule was one of several "institutionalized ideas and practices that organize[d] cultural difference and legitimate systemic configurations of political authority" in the period before decolonization.[66] Two distinctions, however, may throw the subject of this thesis into sharper relief. First, while customary rule certainly governed and authorised particular forms of difference, and did conceive of some axes of difference as "cultural," it would be a mistake to think of customary rule as "about

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[60] Reus–Smit (2017) "Cultural Diversity and International Order." *International Organization* 71 pp.851–885
[61] Reus–Smit and Philips eds. (2020) *Culture and Order in World Politics.*
[62] Reus–Smit (2018) *On Cultural Diversity*
[63] Philips & Sharman (2015) *International Order in Diversity: War, Trade and Rule in the Indian Ocean*
[64] Philips & Sharman (2015) p.22
[65] (2015) p.203
[66] Reus–Smit and Philips eds. (2020) p.32

culture."[67] Customary rule was primarily a business of recognizing the legitimacy of certain elite claimants to political authority, and to the extent that 'native' life was imagined as a realm of static tradition rather than progress, the language in which that business was conducted took culture to be the substance that gave legitimacy its force. Second, and more crucially, is that this thesis is not a study of a "regime" in any static way, but rather of customary rule as a dynamic and evolving game. The details of what I mean by this will be explored in the next chapter, but what is crucial is both who I find customary rule was constructed by, and the ways in which it changed. Philips and Reus–Smit certainly consider the ways in which diversity regimes change, but the main mechanism for change in their account is "challenges to power holders' authority" from "novel recognition claims."[68] In contrast to this, I find throughout this history that customary rule was changed most continuously not by outside challengers with contrasting schemes, but rather by those that British Empire thought of as its subjects, and in ways which served on the surface at least to reproduce customary categories of recognition, rather than to challenge them. Again and again, the most transformative acts within this system were not phrased as new ideas, but rather consisted of re–appropriations of the language of customary rule in the form of claims which did not call for the replacement of the system, but rather bent it to new ends. I find thus that change was endogenous, and that the system was constituted, if not from the bottom up, then certainly from the middle out. With these caveats, however, customary rule was certainly at its core a system of recognition.

Ultimately, customary rule was a system of recognition in three senses. The first is the simplest and the most formal: it was a system of recognizing legal and political status. "Find the chief" was the marching order of indirect rule; it was an order to seek out and to recognize the legal and political status of a specific type of ruler, over a specific type of polity. Similarly, jurists involved in the more liberal modes of international order "debated these different views of the extent of civilization in terms of doctrines about recognition."[69] In its thinnest form, and especially where customary rule was mainly enacted as customary law, this sense of recognition can be thought of almost as standing: nothing confirming or denying subjecthood in full, but merely giving hearing in one or another arena. The modern international system may have more centralized organs for carrying this legal recognition out (though as Chapter 5 will detail, early international organizations were founded in large part on principles of customary rule), but the questions at stake remain similar.

The second sense is similar to what is meant by political theorists such as Charles Taylor

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[67] In demanding IR update its conception of culture, Reus–Smit at least is committed to these regimes being about culture as such, though in his view we should not see culture as a separate entity from the rest of life in quite the way this referential language implies. My distinction, then, is more a clarification of this project than a corrective to his.
[68] (2020) p.35
[69] Keene (2002) p.115

in the phrase "the politics of recognition," both in the sense of social recognition as a prerequisite for dignity and identity, and in the sense that the overriding need for recognition may force one into enacting an identity that is sub–optimal and even damaging if it is the only category society will recognize you in.[70] Mamdani's genealogy of the "tribe" as a product of the British inability to recognize native dissent as truly political is indirect rule's prime example of the latter; similarly, forceful misrecognition in the standards of civilization is a key mechanism of Zarakol's argument about stigma in international society.[71] As Reus–Smit, Philips and others argue, even political orders that do not demand conformity still demand adherence to certain social ontologies of difference in order for a person or group to be recognized.[72] In each, those with the power to recognize have selective sight, comprehending only a set list of categories, leaving any ruler who wanted (or was forced) to interact with the European dominated international system with a constrained list of recognition categories to fit themselves into.

Finally, customary rule was about recognition in the way the word is used in ordinary English: the act of seeing a thing as a member of a previously encountered class, and by doing so to fit it within one's understanding of the world and the things which might possibly be in it. To recognize here is the most basic thing possible, both the first step towards, and the necessary condition for, doing anything with anything. This recognition must happen against some background field of intelligibility.[73] Customary rule was this basic sort of background rule of recognition — a map of what there was in the world — most of all when it was not just a political doctrine, but a conventional worldview. The modern notion of serially sovereign nation states is this too, as often was the concentric map of civilization and its peripheries. As others have argued, each of these standards comes mainly as a set of rules, what a nation/tribe/civilized ruler does, but those rules do more than regulate a pre–existing entity; they *constitute* the thing they describe.[74] They do this, to borrow from Charles Manning and Wittgenstein, in the way that we know a knight in chess best not by its physical appearance, but by knowing how it is allowed to move.[75]

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[70] Taylor (1998) *The Politics of Recognition* pp.25-6; see also Fraser (1995) "Debate: Recognition or Redistribution? A Critical Reading of Iris Young's *Justice and the Politics of Difference*" *The Journal of Political Philosophy* 3:2 pp.166–180 for a perspective on the state of debate between recognition and other concepts of oppression or demands for rights in this vein. It is worth noting that this particular debate over recognition largely agrees with the periodization of Buzan and Lawson in defining the politics of recognition as a post–imperial reaction of the 20th century. As such, the history presented in this thesis may provide some ground for reconsidering these issues as well, though that is not the focus of the work at hand.

[71] Mamdani (2012) "What is a tribe?" *London Review of Books* 34:17; Zarakol (2010); for a skeptical account of attempts to bring psychological concepts of misrecognition into IR theory, see Iser (2015) "Recognition between States? Moving beyond Identity Politics" in Daase et al. eds. *Recognition in International Relations.*

[72] Philips and Reus–Smit (eds) (2020) *Culture and Order in World Politics.*

[73] For this project's discussions of law for instance, this is what Hart called a "rule of recognition" which sits behind other rules, and not only tells you if they are legitimate or not, but gives the ones which are all their force. Hart (2012:1961). Hart seemed to use this term interchangeably with "secondary rule" in much the way that Benton discusses "rules about rules" in European empire. (2010) p.298

[74] Fabry (2010) p.5

[75] Aalberts (2010) "Playing the game of sovereign states: Charles Manning's constructivism avant-la-lettre"

The rules which apparently regulate the piece's movement also constitute its identity, and are conditions of its recognition. Indirect rule's authenticity game and the contemporary sovereignty game alike contain rules for what pieces exist and how they may move. Native elites knew this when they acted in certain ways they expected to be legible to colonial expectations. It is tempting to think that Jinnah knew this when he made his move "as on a chess board" to seek recognition first inside empire, then against it: first as an Indian lawyer then as a Muslim representative of a nation. The ways in which this particular game of recognition was played, and in turn produced new languages of recognition and new order, are the subject of the next chapter.

European Journal of International Relations p.258

2. The Authenticity Game

> Reason is, indeed, far more cunning than the liberal conscience will care to acknowledge. It sets 'the passions to work in its service'; it keeps itself in the background, untouched and unharmed; while it sends forth the particular interests of themselves out in its stead. No, the universality — the sovereign tyrannical universality — of reason remains unscathed.
>
> - Partha Chatterjee[1]

> For it is as if mankind had one morning responded to the suggestion: 'Let's play sovereign states.'
>
> - Charles Manning[2]

Words and Things

In the previous chapter, I outlined what IR could gain by broadening its concepts of imperial order beyond liberalism: not by a full rejection of what we already know, but rather by a half–turn from civilization to authenticity. In this chapter I will explain what I hope to achieve by studying these dynamic of customary rule as a game.

In re–assembling the politics of customary rule for IR questions of order, I am attempting to trace something that is made of both ideas and practices, and to do so without allowing either to collapse into the other. This is partly because, in simplest terms, this project is an account of political order rather than a history of ideas, and for it to be so it must not only account for the practices that ideas underpinned, but also must be skeptical about the impulse to subordinate one to another. Bracketing ideas or actions is a reasonable way to look at order at a moment in time, but across a longer series of changes there are advantages to keeping both in view.

This is also because it is clear both politically and theoretically that "whose ideas matter" is an unavoidable aspect of any attempt to determine what ideas have meant across colonial and international orders, and I suspect that to point my analysis only at 'thinkers' is to stack that deck. As Hussein Omar has argued in the context of Islamic anti–colonial thought, there is a

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[1] (1993) *Nationalist Thought and the Colonial World: A Derivative Discourse?* p.168
[2] (1962) *The Nature of International Society* p.132

Eurocentric bent to any a–priori divide between "political theory and political practice" in 19th and 20th century contexts, one that creates "certain optical illusions" of taxonomy before analysis even begins.[3] In "the liberal cage" of analysis, as he puts it, the search for thought takes on certain formal assumptions, looking for treatises and steering around interventions that seem less systematic, less argumentative, less thorough, or even simply a bit too practical. This formal fixation on only certain things as 'thought' has tended both to silence political interventions that fall outside of our search terms, and also to build binaries of "derivative" and "authentic" texts when we do find things to recognize as thought.

I agree with Omar here, but will broaden his critique somewhat. By looking for the creation of new concepts of order beyond the standard forms of thought, this thesis not only discusses non–Europeans thinking and acting with political impact, but also highlights Europeans writing and thinking with deep consequences for order in forms not mainly describable as 'theory.' Indeed, it appears at several points in the ensuing chapters that IR's fixation on liberalism and civilization has been encouraged precisely by an attachment to certain types of 'thinkers' who cared very much about these issues, while others got on with governing the world in starkly different terms.[4] Likewise, stepping back from a search for thought in certain forms allows me to consider the choice of form itself — authentic, derivative or otherwise — as a strategic component of many political interventions. Given the extent to which the politics or empire were a game of confronting power in power's terms, I often find unique creativity precisely in those interventions which seem to mimic the forms and language of others.

Why, though, might it help to look at customary rule as a game? There are, after all, several concepts one could use to carry this thought–practice combination through the histories I retell. One could, for example, talk about regimes in the IR sense, as arrangements of "norms, rules, and decision–making procedures" that function to shape actors' decisions and expectations.[5] There is certainly traction in the way the term has been used in the idea of "diversity regimes." Given that liberalism and customary rule were justifications for empire, or "alibis" in Mantena's terms, they also often take the form of ethical arguments: arguments that Neta Crawford has shown were key in shifting international order through decolonization.[6] Elements of it are captured by the more technical meaning of "practice" as used by Emmanuel Adler. Much that I

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[3] Omar (2017) "Arabic Thought in the Liberal Cage" Devji & Kazmil eds. *Islam After Liberalism*. The observation of eurocentrism is not that "thought" is somehow European, but simply that the category of "thinker" as it is often deployed in this literature is a historically and geographically contingent social position.

[4] See for instance the discussion of Mill and Carlyle at the end of Chapter 4, particularly in the context of Catherine Hall's argument that in Victorian Britain "thinker" was essentially a position in a particular contest for social capital, rather than some universal relationship to the making of ideas.

[5] Krasner (1982) "Structural Causes and Regime Consequences: Regimes as Intervening Variables" *IO* 36:2 pp.185–205

[6] Crawford (2002) *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention.*

am looking for here is captured in what Martti Koskeniemmi means by "sensibility," an arrangement of ideas and things "that connotes both ideas and practices, but also involves broader aspects of the political faith, image of self and society, as well as the structural constraints within which international law professionals live and work."[7] In keeping with its 19th–century British origins, I could study customary rule as a "question," in the sense highlighted by Holly Case: a particular unification of philosophical inquiry and practical policy concerns which expressed the union of 19th–century manias for governance and scientific analysis.[8] Various aspects of customary rule certainly were thought of by practitioners in this way as the native question, the Bantu question, and the related Eastern question.

Perhaps the closest way of thinking about these issues to mine — epistemes — comes most recently from IR work on imperial knowledge. Martin Bayly uses the idea of the "Elphinstone Episteme" to study the ways in which the British constructed Afghanistan as a political and geographical terrain through bureaucratic knowledge practices.[9] My project shares with Bayly a focus not only only official knowledge per se, but also on the ways in which this knowledge creation was driven by "knowledge entrepreneurs" and itself "contained the criteria that would guide policy–making."[10] Bayly's work is also a model of what IR can learn from engaging primary sources of knowledge creation processes, studying the shifts in political ontology happening at levels of language and categorisation that are often not captured by secondary literature.

This thesis of course differs from Bayly's work in subject matter, tracing the work of colonial knowledge into the 20th century, and to Africa and Europe from its South Asian roots. Beyond subject matter, there are three key theoretical differences in what I'm setting out to do. First, the broader scope of my project demands that I account not only for how these knowledge structures develop, but how they travel and are repurposed by new groups in new contexts. Second, while I am also interested in the work of knowledge entrepreneurs, I look at their work as multidirectional and strategic, focusing particularly on the ways in which local elites both playedback colonial knowledge tropes to win or protect authority, but also the ways in which scholarly, legal, and violent interventions by colonized peoples were central to the substance and structure of imperial knowledge in the first place. Ultimately then, the difference between "epistemes" and what I am setting out to do is the same thing that limits the use of regimes, sensibilities or even questions for this project. What I am after is not an account of customary rule as "an order" in situ, but rather as a dynamic process of ordering.

There are elements of reality that each of these concepts clarify, and elements that they

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[7] Koskenniemi (2001) *The Gently Civilizer of Nations: the Rise and Fall of International Law*
[8] Case (2018) *The Age of Questions*
[9] Bayly, M (2016) Taming the Imperial Imagination: Colonial Knowledge, International Relations, and the Anglo–Afghan Encounter, 1808–1878. pp.1–10; Bayly's work and mine each owe debts as well to Ruggie's work on "social epistemes," as well as literature on "epistemic communities."
[10] Bayly, M (2016) pp.72–3, 78

obscure. To study customary rule as a game is not to exclude these elements, but rather to arrange them, and to commit analytically to a certain functioning of that arrangement. The contention is not that a game is all of or only what customary rule entailed, but rather that it is a way for us to clarify the relationships between the micro–politics of individuals within it, and the larger orders it helped create.

Games in General

There is a remarkable consistency, in varied accounts of imperial and early international order, of describing the politics of recognition as a game. In international relations, Manning, Jackson and Acharya describe decolonization in part as the emergence of a new "sovereignty game." In history too, Susan Pedersen describes the League of Nations' management of colonized peoples as "the trusteeship game."[11] Mantena speaks of the end of empire representing "a new numbers game" for Indian Muslims.[12] Likewise for Osterhammel "if Japan had wanted to 'play the game' in the early modern world, it would undoubtedly have been recognized—like China—as a sovereign agent."[13] Ultimately, the game metaphor was an actor's term before it was a scholarly tool. There was of course the common idea of the 'great game' between empires, but game talk was an intra–imperial idea as well. To key practitioners of customary rule like Frederick Lugard, the essence of English gentlemanly order in Africa was an aptitude at "playing the game" of colonial governance, balancing various local and global political forces.[14] Likewise to Jinnah "the chess player" the metaphor laid bare both the ontological constraints and strategic opportunities of a politics on which one had to move with the pieces given rather than those in which one most deeply believed.[15]

In part, what I am suggesting in this chapter is to take these scholars and actors at their word. It is likely that many of them would deny meaning their metaphor to imply anything like contemporary game theory. I am not proposing, however, to subject them or this history to the full dread apparatus of formal rational choice theory. What I am proposing, is that there is benefit to being more specific about a concept that clearly feels so naturally applicable to such a range of scholars. I suggest that there is a benefit in taking a few steps from metaphor to model, by specifying what work is being done by the idea of these spaces and histories as being game–like,

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[11] Pedersen (2017) *The Guardians* p.122
[12] Mantena (2016) "Popular sovereignty and anti–colonialism" Bourke and Skinner eds. *Popular Sovereignty in Historical Perspective*. Cambridge p.317
[13] Osterhammel (2014) *The Transformation of the World: A Global History of the Nineteenth Century.* Princeton p. 415. Elsewhere he talks about "the game of power politics… an imperial game" and "the new diplomatic game" pp.59, 422, 499.
[14] Lugard (1922) *The Dual Mandate In British Tropical Africa.* William Blackwood and Sons, Edinburgh p.132
[15] This is the title given to Jinnah by Khilanani (2016) *Incarnations: India in 50 Lives.* pp.444–456. He is drawing here on Faisal Devji's description of Jinnah, discussed in Ch5.

and of what games in particular the people in this history saw themselves to be playing.[16]

What, then, is a game? In a recent book on the subject of actual games (that is, the plausibly fun kind), C. Thi Nguyen describes games as "the art form of agency."[17] Like other art forms, he argues:

> Games turn out to be part of the human practices of inscription. Painting lets us record sights, music lets us record sounds, stories let us record narratives, and games let us record agencies… Just as novels let us experience lives we have not lived, games let us experience forms of agency we might not have discovered on our own.[18]

While Nguyen here means playground games, board games video games and the like, his key insight is transferable to the various sorts of political games alluded to above. To play these games was to inhabit (or at least to enact) certain kinds of selves. To succeed in "the numbers game" of count–based democracy, for instance, was a very different proposition for elites than to succeed at a game of court advancement, or to derive power from land ownership, and to play each required one to act in a different sort of role. Likewise what Devji understands by Jinnah's chess playing is the fact that, whoever he may have been personally, he "could not play with different pieces."[19] As I will argue in Chapter 5, a focus on this sort of strategic inhabitation of a certain agency helps us make sense of the gulf between Jinnah's personal politics and his language of Pakistani self–determination. Most crucially, this focus on games as agency helps us to clarify not only how customary rule worked, but how it changed. This is especially crucial, as this thesis is not simply about a certain arrangement of rules, but also about the emergence of a certain kind of "self": a particular legal, social and political subject that emerges from customary rule and early twentieth century international institutions into a world of self–determination.

The way that games capture agency is also important. If painting records in brushstrokes, and music in tones, a game does so with players, rules, and decisions. In these three, games can illustrate a specific relationship between agency, ontology, and information. If this sounds unhelpfully abstract, consider the ways an imperial world was rendered by two actual British board games from the period discussed in this thesis.

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[16] For the differences between games as metaphors, analogies and models in IR see Snidal (1985) "The Game Theory of International Politics " *World Politics* 38:1 pp.25–57

[17] Nguyen (2020) *Games: Agency As Art*

[18] Nguyen (2020) p.2

[19] Devji in Khilnani (2016b) "Jinnah: The Chess Player. Incarnations: India in 50 Lives. [radio broadcast]" *BBC Sounds*. 10 March <https://www.bbc.co.uk/sounds/play/b072n5xh> accessed 6 Oct. 2020.

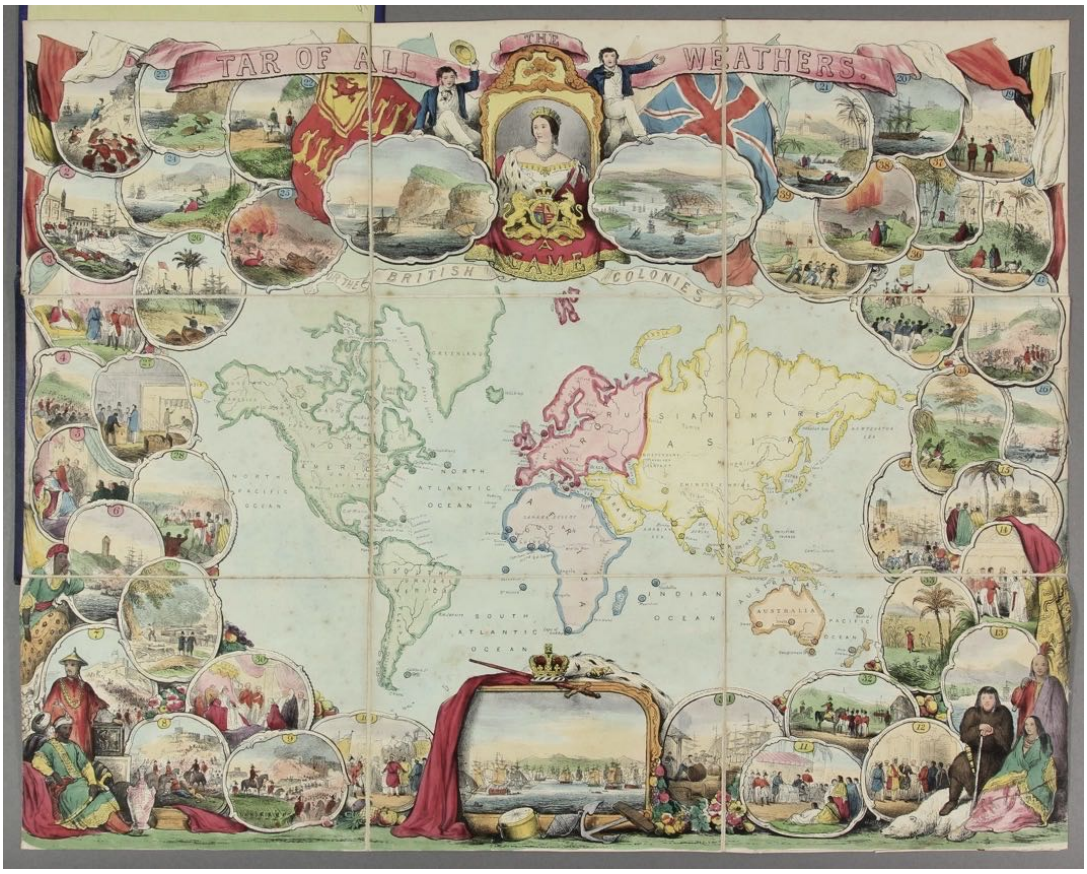

Figure 1 Tar of All the Weathers (1850)

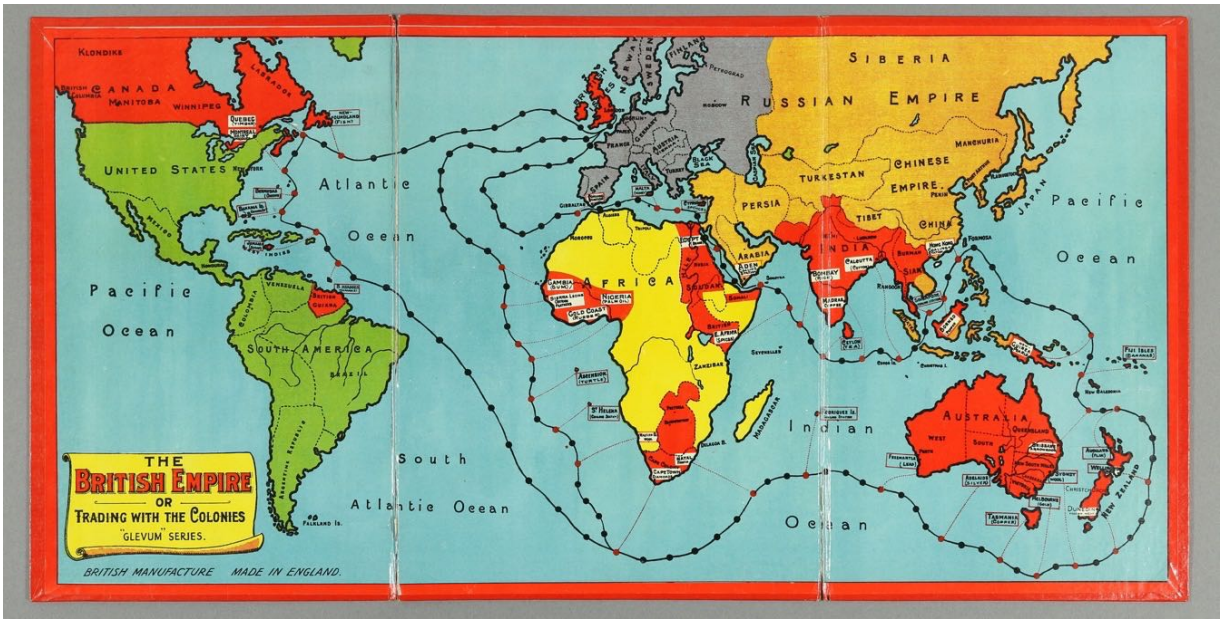

Figure 2 The British Empire or Trading With the Colonies (1920)

Each of these games was designed to be played by, to entertain, and to instruct British children on the proper way to think of, interact with, and perhaps to rule the world. They ask their players to take on certain roles in relation to the world: roles that are given in terms of choices and rules, but are not entirely exhausted by listing those, or by looking at the map. In the first game, the only visible boundaries are continental; each era is given place but not territory, and the job of the player is to correctly match the customary and historical vignettes around the edge with the place to which they refer.[20] The second is a heterogeneous world of some states (in Europe and white-ruled Australia) and some rough spaces of ports and colonies fading into frontiers.[21] The goal of this game is to move commodities between ports, extracting and selling what one can before closing the loop back to London. To know and to do the world of the first game, and to follow its rules, is to know its peoples by their traditions, histories and places and to correctly fit one to another. To know and to do the second world is to know what each place produces, and to maximize each's contribution to a global economy. If "every map is a theory," these are also a guide to practice and to agency.[22] As Jordan Branch has argued, the development of mapping as a way to represent the world also in some way changed the world. Likewise, new ways of structuring the world via colonial knowledge also presented new ways of acting and claiming authority within it

Considering these two side–by–side, mapping very different games onto ostensibly the same globe, highlights too the element of choice and contingency involved in seeing orders as game–like. In a classic definition of games, Bernard Suits described playing games as "the voluntary attempt to overcome unnecessary obstacles."[23] Every game player knows that there are other rules they could be playing under, other agencies they could inhabit, other goals to seek by other means. The word "voluntary" here is of course wrong in the deeply coercive scenarios of empire, or at least is normatively suspect. But it does speak to the experience of playing someone else's game politically: that is, performing roles and juggling social constructions which you know are neither natural nor necessary, but that may lead to a worthwhile goal. While Suits' "unnecessary obstacles" has often been read as light-hearted, it also captures some of the grim absurdity of the expectations colonized people were routinely expected to jump through to succeed in political games of empire, from often ambiguous tasks of legal reform, to menial and arbitrary standards of manner, dress and diet. The goal of these games was deadly serious, but there is no denying the obstacles they involved were often unnecessary.

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[20] *Tar of all the Weathers: The British Empire* (1850) Oglivy, Ballam Collection, Bodleian Library, Oxford.
[21] *The British Empire or Trading With the Colonies* (1920) Glevum, London. Ballam Collection, Bodleian Library, Oxford.
[22] Ziman (2000) p.126 qtd in Branch (2014) *The Cartographic State: Maps, Territory, and the Origins of Sovereignty.* Cambridge p.36
[23] Suits (1978/2014) *The Grasshopper: Games, Life, and Utopia.* p.43

The essence of games as performances of a certain kind of world and agency is no less applicable for those nominally in power. Charles Manning's notion of sovereign state order, for instance, saw it as beginning with a proposition — "let's play a game" — and it is the decision to describe a set of roles and actions, and to enact them, which brings the game into being. The echoes of later Wittgenstein are telling both in the constructivism and in the almost child–talk. Language in this game conception of order does not refer to an independently existing ideal concept (of 'state' or 'tribe' or 'prince' etc), it "is no longer an instrument to attach labels to the world as it is by itself, but to bring about a particular reality."[24] The game metaphor draws us to the ways in which order is about "intelligibility, performativity… the role of language, myth and metaphor" in a way that fits well with a study of recognition as both constituted by and constitutive of international politics.[25]

Ultimately, while it would be both methodologically absurd and morally horrible to describe a colonized person's choice of which imperial rules to play under as purely voluntary, it will nonetheless be clear throughout the history discussed here that it was consistently still a choice of some kind. This is certainly Osterhammel's sense, when he declares that Japan could have played a certain game "if it wanted to." That this was often a violently compelled choice, amongst harshly delimited options, is crucial to understanding the game in the first place. But if we were to ignore the element of volition entirely — in favour of an account of ideological hegemony, unconscious habitus, or pure material necessity — we would lose not only a sense of the agency that remained, but also of the dynamics of contingency and strategy which drove outcomes which we otherwise risk misunderstanding as more deterministically structural. We would lose the sense of creative agency through which parties to these games sometimes used them to craft space for themselves, their interests, their communities, their politics, or at the very least their survival. It would miss as well the contingency of the type of agency that emerged from this era as sovereign selfhood, and the strategic play involved in crafting it.

This sense of change, of crafting new games through play, is where the usefulness of static board games recedes, and the more formal theory of games steps in. Formal games — those of Von Neumann, Schelling, Ostrom and others — have the potential to relate individual strategies to larger structural change, by making it clear that not only are games and agents defined by rules (in the form of expected outcomes of choices), but also that the primary way for an agent to exercise any control over their situation is by changing the structure of the game. Just as Dessler argues that structure does not only constrain, but is "a set of materials that is 'appropriated' and 'instantiated' in action," game theory makes clear the ways in which rules, payoffs and preferences

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[24] Aalberts (2010) "Playing the game of sovereign states: Charles Manning's constructivism *avant–la–lettre*," *European Journal of International Relations* 16:2 pp.247–268 at p.255 Apparently "a colleague once referred to Manning as 'the Wittgenstein of International Relations.'" p.253
[25] Ibid p.252

are not only the stuff of structure, but also the media through which actions move.[26] In the rules of the two games above, for instance, nowhere does it tell children "pretend you are a Queen; pretend you are an anthropologist; pretend you are a city trader." Yet the effective play that emerges from the things, rules and goals on the board do ask this of players, and it is not hard to imagine a child enjoying the make–believe agenthood that is unstated, but clearly offered by the game. In turn we could imagine — on a more fluid board, or a more sparse one with fewer illustrations to coach one on what to make of the rules — a very long game in which the roles evolved with the play, and as players crafted slightly new agencies within the game, the rules (which after all are the medium in which these agencies are inscribed) shifted accordingly around them, until a slightly new game has formed. This, in essence, is what I argue occurs over the ninety years of this thesis' scope, as parties to customary rule use its rules and implied agencies to carve space for themselves and their political goals, and in doing so shift the meaning and scope of that game until it grows, changes, and becomes something slightly new.

Custom and Coordination Games

What sort of game then was customary rule, and what type of agency did it inscribe? As I argued in the previous chapter, the essence of post–mutiny customary rule was an increasingly bifurcated world of jurisdictional jockeying: one in which every area of life and law that was not given over to the modernizing impulses of the colonial state was instead given to the preserve of 'traditional authority,' and customary law. Under the banner of diversity, the political jurisprudence of customary law was in some ways a radical simplification of plural and overlapping jurisdictions down to a binary. The play of jurisdictional jockeying for colonial authorities, haunted by the spectre of the mutiny, was increasingly that of finding the dangerous line of custom, and building the colonial state just up to it. The task of local intermediaries who chose to play the game of custom was to define as much as they could under this untouchable jurisdictional label. To capture the sense of this agency, I suggest, we should think of the jurisdictional jockeying of customary rule as a coordination game.

A coordination game in its purest form is a two–player dynamic in which, given a set of options, each party prefers any outcome in which each chooses the same option to any in which their choices diverge. A classic illustration involves a couple separated in New York with no way to communicate, their only hope to meet at some common location. It does not matter where they meet, simply if they manage to pick the same location. This game is represented in *Figure 3*, where each choice *i-iv* represents some location in the city, and payoffs simply represent ascending

[26] Dessler (1989) "What's at stake in the agent–structure debate" *International Organization* p.452

		Player 2			
		i	*ii*	*iii*	*iv*
Player 1	*i*	1, 1	0, 0	0, 0	0, 0
	ii	0, 0	1, 1	0, 0	0, 0
	iii	0, 0	0, 0	1, 1	0, 0
	iv	0, 0	0, 0	0, 0	1, 1

Figure 4 A Game of Pure Coordination

		Player 2					
		i	*ii*	*iii*	*iv*	*v*	*vi*
Player 1	*i*	1, 6	0, 0	0, 0	0, 0	0, 0	0, 0
	ii	1, 5	2, 5	0, 0	0, 0	0, 0	0, 0
	iii	1, 4	2, 4	3, 4	0, 0	0, 0	0, 0
	iv	1, 3	2, 3	3, 3	4, 3	0, 0	0, 0
	v	1, 2	2, 2	3, 2	4, 2	5, 2	0, 0
	vi	1, 1	2, 1	3, 1	4, 1	5, 1	6, 1

Figure 3 Jurisdictional Jockeying

outcome preference order (here binary). In reality, they may prefer meeting at one place to another, either with the same or divergent preferences (as competing elites certainly prefer some norms and policies to others) as will be considered below. The main concern, however, is that any meeting is preferable to any non-meeting, and the challenge is that each must find a meeting place based only on their knowledge of the other, and their anticipation of their partner's knowledge of them in turn.

Following on this general game, I suggest that we can picture the jurisdictional jockeying of indirect rule as a strategic situation resembling the game in *Fig 4*. Here, colonial officials and local elite collaborators are represented as negotiating over where to slice spheres of colonial authority between modern and customary rule, with every choice representing a greater or lesser proportion of jurisdiction reserved for each.[27] Each side prefers a greater range of policies to fall under the jurisdiction in which they expect to have greater say, and each is afraid of the consequences of pushing this jurisdictional line too far. This is not to suggest that this captures a reality of the colonial world independent of the attitudes of those in it; the categorization of jurisdiction into 'modern' and 'customary' requires no uncomplicated belief on our part in teleology, modernization or development. Likewise, a higher expected payoff from a more customary policy

[27] Thus for example if "*i*" represented a maximum of jurisdictions given to colonial authorities, and "*v*" the minimum, Player 1 would model the position of local elites who chose to collaborate in a frame of customary rule. Coordination points yielding less than 7 overall can be thought of as leaving some jurisdiction on the table for other actors not represented in this game, and thus the process of pareto improvement for these Players is the process of coordinating to shut other actors out as they expand the remit of the colonial state, here represented as a bargain between modernizing and 'traditional' elites. This will be discussed further in the next section, and illustrated throughout the thesis, especially in Ch.4.

does not imply that customary rule was in some way objectively good for, or inherently preferred by, native peoples, or even the elites who vied to represent and rule them.

To use these ideas, we need not even believe that timeless custom or static authenticity are things that independently exist. Game theory has, in John Elster's words, a "radically subjective nature"; all that is found in it is a picture of the world from the point of view of a few actors, the states of the world they see as possibilities, and payoffs representing their rankings of those possibilities.[28] The goal of rational choice, he argues, is to "explain actions... from the point of view of the agent, rather than to characterize them as useful or beneficial from the point of view of an external observer."[29] Contra suspicions of monolithic external reasoning, the starting point of any rational choice analysis is to ask why an action occurred from the point of view of the actor. Likewise strategic choice begins by asking what actors believe each other's world view to be. Every game theory, then, is at rock bottom an interpretive theory.[30] Game theory work which proceeds without any obvious signs of interpretation has simply assumed that it is operating in a special case, one in which structure is stable enough that a world-view for some type (a firm, a used car buyer, a nuclear power) can be generalized well enough to circumvent avoid empirical interpretation.

If games "inscribe" agency, there are three things about the landscape of customary jurisdictional jockeying, and what it was to be an intermediary in it, that this game helps us to see.

i. It is a type of bargaining game, and as such it is a set of rules that either side will only subject themselves to if they expect a higher payoff from it than their alternatives. These poor alternatives could take the form of feared violence, as well as both promised benefits from collaboration and destroyed alternatives.

ii. Solutions to this game are not based on mathematical equilibria, but rather depend completely on the mutual knowledge each player has of the other. This means that both colonial knowledge work, and one's actions as the subject of that work, can be understood as strategic impression management.

iii. The key type of durable solution to this game is a convention, even a conventional 'language,' rather than contractual agreement. This means that politics arising from the

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[28] Elster (2003) *More Nuts and Bolts for the Social Sciences* p.209

[29] Ibid p.59

[30] This is clearest in the classic assumptions of rational choice towards an agent's preferences. The requirement that they be transitive requires a weighting of options which are personally consistent, but without necessary basis in external reality. The 'completeness' requirement even more clearly requires an interpretive stance in order to refrain from absurdity. This is to say, either a game must include the infinity of possible actions available to an agent down to the smallest detail, or it must include a finite personal universe of options which an actor can comprehend. Not only is the former option absurd, it is also useless for a theory of rational 'choice', in that an actor cannot meaningfully choose something they cannot recognize. A set of rational choices is subjective. A strategic situation, a game, is intersubjective: a social fact.

> micro–interactions of customary rule will likely emerge as political languages and conventions, rather than be designed intensionally as ideal political institutions. It also means they will persist in certain ways that differ from liberal contractual politics.

Poor Alternatives

First, these are games expecting both potential mutual-gains, and catastrophic consequences for over-reach. In the wake of 1857, colonial officials realized that stable and productive governance was not a simple question of a policy's crude Benthamite utility — a pure trade-off between progress and backwardness — but rather a question of congruence with local custom, at least to just the right degree to command both local collaboration and local resources enough to justify one's job. Similarly, certain colonized elites stood to gain from participating in the state-building process of empire, gaining authority from the distinct legal sphere of customary rule which they lacked in older and often more pluralistic political orders. As Iza Hussin argues regarding post-mutiny Malaya:

> Studies of colonialism that understand colonial intervention as a zero-sum game, and the increase over time of European colonial power at the expense of local power, miss the fact that while many groups in the colonized regions did lose power, some made use of the opportunities colonial powers presented to increase their own status and resources at the expense of those of their competitors.[31]

Coordination games, like the colonial legal game Hussin describes, can be positive sum so long as players are moving from spaces of non-coordination to those of coordination (here representing a gradual move towards greater capture of life and policy by the colonial state). These games may be conflictual regarding *where* to draw the line between customary and modern authority, as lost friends may have preferences over where to meet, but one's position is expected to improve by moving towards coordination.

While colonial officials still sought to enlarge their power through modernization, the lesson learned from 1857 was that this could only occur up to a point. Paranoia was a constant companion as British power extended piecemeal throughout India and Africa, and for those subscribing to the ideology of customary rule, the thing about which a colonizer should be most paranoid was the wrath of a traditional culture pushed too far. As Robinson and Gallagher put it in their classic study of British empire in Africa, "the Victorians had learned that westernization was a dangerous and explosive business."[32] This is represented in the game above by the expectation of an immediate plummet to worst-case-scenario if colonizers reach too far into the realm of custom. More generally in all bargaining games (of which this is one), a person is only

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[31] Hussin (2016) *The Politics of Islamic Law* p.59
[32] (1961) *Africa and the Victorians* p.10

expected to enter into bargaining if they expect the outcome of that bargain to exceed their best alternative to negotiated agreement (BATNA). As we will see throughout the following chapters, colonial leaders and well–placed local elites alike often did not reach for customary rule as an ideal first choice, expecting better outcomes either from full–speed modernization or continuation of pre–colonial forms of authority. It was often only after their impression of alternatives were depressed — by revolt, or by empire's continual degradation of local life and authority — that each side approached the negotiation of customary rule as a viable option. Tellingly, when Nash first formalized the bargaining problem, and extended his reasoning to cooperative games in general, he did not yet refer to BATNAs; he simply talked about "threats."[33] In this game, as in customary rule, it is the fear of catastrophe or lack of options which encourages one to seek coordination.

This model of rule not only arose repeatedly in response to revolt, but also proved more flexible than others when violence inevitably occurred again. In part, this was because it relied on leaders who claimed only imperfect control over their subjects. A leader claiming full 'modern' command over law and order as the basis of their place in British rule lost that credibility in the face of revolt. As elites gradually found in India, Nigeria, Rhodesia and beyond, however, a leader who positioned themselves as explaining the traditions of a deeply custom-bound populace, rather than as fully leading a state into 'modernity', could weather a certain degree of "disturbances."[34] If anything, what under the civilizing mission signaled incommensurability was often customary rule's supporting evidence: a well-leveraged revolt could be used to remind colonial governments of the poor–payoffs awaiting over-reach, disciplining the British commitment to the limits of indirect rule.[35] Understanding this dynamic, one Indian elite after the 1857 revolts instructed British officials of the "ignorant," "bigoted" and "traditional" nature of their populace and suggested more locals be hired to educate them; a Sierra Leonean native official asked for more authority after a skirmish between tribes citing "the temperament of the people I have to deal with"; and a Yoruba chief contesting the confiscation of his lands wrote to the governor of Nigeria explaining that, while he of course understood the British need for order, he could not promise his people would not revolt if their customary rules were abused.[36] It was these sorts of

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[33] Nash (1953) "Two–Person Cooperative Games" *Econometrica* 21:1 pp.128–140 especially at p.130; (1950) "The Bargaining Problem" *Econometrica* 18:2 pp.155–162

[34] This propensity for revolt, and flexibility in its face, is a quality of iterated coordination games in general. If an actor assumes the coordination point can be changed in the future, they are more free to push for a point they prefer by defecting from the status quo, assuming that any immediate losses from failed coordination may be recouped by reaching a more favourable equilibrium in the future. See Snidal (1985b) "Coordination versus Prisoners' Dilemma: Implications for International Cooperation and Regimes" *American Political Science Review* 79:4 pp.923–942 at p.937

[35] Ranger (1968) "Connexions Between 'Primary Resistance' Movements and Modern Mass Nationalism in East and Central Africa. Part I" *Journal of African History* 9:3 pp.437-453

[36] "Munshi Mohan Lal to Brig. Chamberlain 11th Nov. 1857, with Account of the causes of the Mutiny 8th Nov. 1857" IOR/H/725 pp.392; Africanus Horton 16 Jan 1873 CO 96/96 412.

interventions, furthermore, that convinced British authorities that some revolts were not simply crises, but "information panics": ruptures in rule caused specifically by a failure of official understanding, and demanding the enlistment of knowledgeable locals to intermediate.[37]

By understanding customary rule from the beginning as a strategic bargain, rather than purely as an idea or a rote habit, we are able to look for the dynamics of choice involved in entering into this bargain, and to remain aware of the alternatives that remained, or were destroyed. Likewise, by looking for the role of fear and violence in the choice of customary rule, we are able to look for the ways in which colonized peoples steered the choices of colonial authorities even when denied access to any formal say in the mode of colonial governance they were subject to.[38]

Narrative, Agency and Information

> Play fool to catch wise.[39]

Second, this is a game without a clear mathematical solution, but rather is played entirely through a process of mutual learning, self–presentation, and in James Scott's terms "impression management." To be an agent in this game is to be both learner and the subject of learning. The game in *Figure 4* represents customary jurisdictional jockeying as something close to what is commonly known as a "divide the dollar" game. The usual story told here is that two people are given the opportunity to split a dollar by simultaneously naming the number of cents they want to receive. If their summed demands are equal to or less than 100 they each receive their demand, but if they demand more than the full dollar they receive nothing.[40]

What is crucial, for us and for agents in the game, is that this sort of coordination is fairly intractable to solution via standard equilibrium methods, as every paired outcome along the Pareto frontier (that is, every division that distributes the full dollar in any way, or gives the full scope of colonial jurisdiction to colonial officials and customary elites together) is a Nash equilibrium. This means that a player cannot divine any single best play, or even a usefully small

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[37] The phrase "information panic" is C. A. Bayly's, originally referring to worries around "thuggee" in the early nineteenth century. (1996) *Empire and Information* p.174

[38] This insight is especially key, given the common assertion that indirect rule was simply a response to the relative poverty of colonial administrations, rather than something in which colonized peoples had any hand.

[39] A "favorite proverb of Jamaican Slaves" according to Scott (1990) *Domination and the Arts of Resistance: Hidden Transcripts.* p.3. The source he gives is Chesnut (1905) *A Diary from Dixie,* quoted in Patterson (1982) *Slavery and Social Death,* but while Patterson does discuss Chesnut's diary where Scott points us (p.208), this proverb occurs without a citation on p.338, and the quotation does not seem to appear in *Diary from Dixie*, at least in the 1906 D. Appleton and Company printing. Even if not sourceable, the proverb expresses something strategic in performances of simplicity and authenticity that rings true in the actual interactions and self–representations documented in later chapters.

[40] See in general Brams & Taylor (1994) "Divide the Dollar: Three solutions and extensions." Theory and Decision 37 pp.211–231.

subset of best actions, simply from the structure of the game alone. Rather, the "solution" of a coordination game relies entirely on a player's knowledge of the other, and the extent of common knowledge available of their shared world.

"Common knowledge" here is used in a somewhat technical sense. Because each party needs to make sure that they do not over–reach the other's bid, they need not only to have first–order knowledge about the other, but also to know recursively what the other knows about what they know. Rather than as infinite recursion, we could express common knowledge as the knowledge at least that every relevant party to a coordination problem knows:

i. Some thing α about the other player(s) (say a preference about where to meet, a preferred policy area, etc).
ii. That every player knows α.
iii. That every player knows (ii) to be true.

Short of these level three levels of mutual knowledge, a move in a coordination game is a shot in the dark. Even worse, short of these three, knowing α with any doubt that another party knows that you know α might lead you into a spiral of guessing what they do know about you, and choosing against your own knowledge.

Returning to that canonical lost couple in New York, imagine first that they are tourists with no prior memories or traditions in the city, and have no idea where the other might be. Schelling sent out surveys to find out what random Americans might do, which suggested that they would likely pick the observation deck of the Empire State Building as a common meeting point, not because it is the easiest option, but because it is seen as the most iconic meeting point in the city, and thanks to popular imagery of New York *each knows that the other knows this*, or at least is more confident in that location than anywhere else. Likewise, native New Yorkers in this situation are more likely to choose the ticket hall of Grand Central Station, again for no reason other than that a common mythology about meeting there means that each thinks it to be the most likely location for the other to select. The outcome may be different again if they have a shared and personal memory attached to a location, but again the likely success of that particular point is not due to its innate qualities, but to each's expectation that the other might choose the same. As Schelling concludes in his introduction to the concept, finding these common-knowledge meeting places, these "focal points":

> may depend more on imagination than on logic, more on poetry or humor than on mathematics… how well people can concert in this fashion is something that, though hopefully amenable to systematic analysis, cannot be discovered by reasoning a priori. This corner of game theory is *inherently* dependent on empirical evidence.[41]

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[41] Schelling 1960 pp.97 This non-mathematical solution concept based on mutual-reasoning, labels and subtle cues has recently received attention in behavioural economics literature as a more accurate predictor

Like these games, the post-mutiny shift to indirect rule saw the birth of new empirical stances towards empire, from new sciences of ethnography and photography, to the privileging of officers with local knowledge of their subject peoples, and the hiring of local translators, clerks and codifiers of law tasked with explaining the facts of custom in order to better govern. The rallying complaint of customary rule was that the civilizing mission was an error–prone abstraction, and that rule needed to be based on local, highly specific evidence. Furthermore, it is the scope for interpretation, deceit, propaganda and ignorance (feigned or actual) in the knowledge creating projects of governance which opens space for colonized agents not only to participate in the finding of those focal points, but to actively create them.

As the next section will describe, access to technologies of publicity and public spectacle were crucial for creating this sort of truly common knowledge under customary rule. Publicity is not the only way to solve these dilemmas, however. As David Lewis has argued, coordination problems can be solved by communicating a small picture of another actor's own reasoning process: a narrative of their rationality which itself "generates higher–order expectations".[42] Essentially no one, Lewis argues, actually thinks through every level of recursion to solve a coordination problem: rather, we look for facts in a situation which we think should indicate to all parties what a likely coordination point may be. When we can do this with confidence, it is because we believe that another actor shares our "inductive standards and background information."[43] That is, we need to know what another player knows, and how they think. And to 'know how natives think' were the marching orders of a generation of colonial officials after the mutiny, and international institutions in the early 20th century.

Just as narratives of rationality can solve a coordination game — letting one actor predict another's responses without reliable signalling or endless recursion — narratives of native rationality guided colonial officials in guessing where to coordinate with native custom. Custom, after all, was imagined to be an inherently uncontested constant permeating the whole of native life and thought. The armies of experts hired to compile books of custom for colonial governments frequently made use of this assumption, narrating authoritative and absolute rules governing the way a member of their group would react to situations from land inheritance to homicide. These were billed to colonial authorities as simple recordings of ancient fact, carrying all the predictability of a direct window into the native mind.[44]

Native intermediaries did not have to sell this narrative to British officials so explicitly,

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of human play than equilibrium in certain games. See Crawford, Costa-Gomez, Iriberri (2013) "Structural Models of Nonequilibrium Strategic Thinking: Theory, Evidence, and Applications" *Journal of Economic Literature* 51:1 pp.5-62

[42] Lewis (1969) *Convention: A Philosophical Study*

[43] Lewis (1969) p.53

[44] See for example Chanock (1985) *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia.* as well as the discussion of customary appellate law at the Judicial Committee of the Privy Council in ch5.

however; rather than making arguments they often presented views of native life through descriptive writing and action, and encouraged the British to draw particular conclusions. During a succession controversy in Malaya, for instance, a group contesting the Sultan's throne stole the ceremonial regalia required for a coronation and initiated a river chase with British officials who were compelled by other Malay elites to recover it before they could install their own empire–friendly leader. In the course of this episode, locals managed to carve out a space of "custom and religion" which was off limits to the British Resident, teaching the British by demonstration what was and was not within their sphere of safe intervention.[45] This signalling worked in reverse too, as is in Privy Council rulings which rejected a claimed custom as "not altogether in harmony with Eastern notions", or because the claimant had "departed so far from the standard of orthodoxy" in his diet.[46] In the globally–communicative action of these rulings, colonized people are also being given a picture of imperial rationality, in the form of decision–making processes by which their claims are likely to be recognized or rejected by colonial power.

The key strategic dynamic at play in these examples is the fact that, in a coordination game, one's strategy is entirely dependent on the subjective impressions and expectations each has of the other player, knowledge of which is driven by interpreting the words and actions of that other. Schelling illustrated this dilemma by describing a simple game of territorial conquest, in which two players vie to place pieces on states within the map, each of which contains certain types of resources.[47] The pieces conquer where they land; they fight and are lost where they conflict. Each player has their own set of resource preferences, but is unable to speak (or at least not make any obviously true or binding statements). It is thus in the interest of either player to know the preferences of the other, but how? "Each must be alert to what the other is expressing in his maneuvers, and each must be inventive enough to convey his intentions *when he wants them conveyed.*"[48] Every player is both "spy and spied upon" as Schelling's collaborator Erving Goffman argued.[49] Each not only has control over their own knowledge creation process: they are aware that they are the subject of the other's, and can structure their actions with hopes either to indicate truth or to confuse.

Finally, however, this game helps us see that there are strategic uses of ignorance just as there are of knowledge. Consider what we might expect the outcome would be if the game in

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[45] Hussin (2007) "The Pursuit of the Perak Regalia: Islam, Law, and the Politics of Authority in the Colonial State"

[46] Consolidated Appeals v. The Midnapore Zamindari Company, Limited JCPC 26 Feb1904; Rhani Bagwan Kaur v. Bose and others JCPC 5 Aug 1903 p.7. Discussed in Ch5.

[47] Schelling (1960) pp.102-5

[48] Schelling (1960) p.104 emphasis mine.

[49] Goffman (1969) *Strategic Interaction.* A similar line of insights from Goffman on 'reputation management' is the basis of Zarakol's (2010) discussion of Turkish, Japanese and Russian interaction with international society.

Figure 5 were laid on the table in plain view between the two players whose preferences it represented.

		Player 2				
		i	*ii*	*iii*	*iv*	*v*
Player 1	*i*	1, 5	0, 0	0, 0	0, 0	0, 0
	ii	0, 0	2, 4	0, 0	0, 0	0, 0
	iii	0, 0	0, 0	3, 3	0, 0	0, 0
	iv	0, 0	0, 0	0, 0	4, 2	0, 0
	v	0, 0	0, 0	0, 0	0, 0	5, 1

Figure 5 Coordination with opposing preferences

In this, player 1 prefers *v* most, and player 2 prefers *i*, and if they each knew this completely about one another, *and knew that each other knew that they knew this* they might settle at *iii* every time given its clear salience as a middle choice, and the sense of fairness it might entail.[50] Yet, because neither party actually wants to settle in the middle, there are sound reasons not to know any of this, or at least to pretend not to. Just as there is an advantage to making your preferences unambiguous when you simply want agreement (visibly holding up one finger, perhaps, in *Fig. 1*, so you both pick "*i*"), there may be an advantage in making it clear that you do not know the other's preferences in a game in which they diverge. If I am player 2 in the above game (*Fig. 5*), do not know what your preferences are, you know this, and I know that you know this, there is a good chance that you will resign yourself to picking *i* on the basis that that is my most likely choice alone, and you still prefer 1 over 0.

This sort of higher order knowledge of ignorance is very often implicated in power relationships and the strategies of the weak to, as Scott says, "appeal to the expectations of the powerful."[51] To advance or survive in a subordinate role, I must not only know the mind of my superior, but I must also have a good handle on what he expects of me: what I know that he knows that I know (even if what he thinks I 'know' is wrong). It is this sort of calculation that is behind the "public transcript" behaviour of subordinates "accommodating power" by acting out a determined role in public, while not giving in to a complete hegemony of mind. Schelling himself recognized this as a quality of coordination games, noting that:

> even when one rational player realizes that the configuration of these details discriminates against him, he may also rationally recognize that he has no recourse - that the other player will rationally expect him to submit to the discipline of the suggestions that emanate

[50] For a perspective on why this "fair" equilibrium often does not occur, and ways of changing the game to make it so, see Brams & Taylor (1994) "Divide the Dollar: Three Solutions and Extensions" *Theory and Decision* 37 pp.211–231. and Anbarci (2001) "Divide the Dollar Game Revisted." *Theory and Decision* 50 pp.295–303. Ultimately for the case of customary rule, a middle ground between colonial and traditional elites would be in no meaningful sense "fair," and thus this otherwise interesting research program has little relevance to this thesis.

[51] Scott (1990) p.2

> from the game's concrete details and will take actions that, on pain of mutual damage, assume he will co-operate.[52]

He will do this because it is often in the interest of the powerful to maintain (or pretend) ignorance of the mind of the weak.

Ignorance, however, can also be a weapon of the weak.[53] Just as it may be beneficial for a colonial power to broadcast an overly simplistic view of native life (for instance, a commitment to interpreting the mutiny as fanaticism rather than politics), there were also incentives for aspirant native elites to beg an inability for their subjects to accommodate British ideals for cultural reasons. There is of course the already discussed advantage of a leader begging their people's fundamental inability to learn. Again, by declaring your only possible choice in advance, you compel your opponent to accede to it any time they prefer some agreement to failure and revolt. The "favorite proverb of Jamaican slaves" Scott offers — "play fool to catch wise" — thus potentially cuts two ways.[54] A performatively foolish colonial authority might command accommodation by dint of their social blindness, and the threat of violence a failure to accommodate that blindness might entail. Likewise, however, a local elite who pleads ignorance on behalf of their people may force some acquiescence from a colonial authority who is afraid of what happens when lines of traditional society are crossed. As I will show repeatedly, the increasingly formalized knowledge demands of "the ethnographic state" meant that the language empire used to understand its subjects could be co–opted and played back to it by those subjects themselves.[55] Beginning in the wake of the 1857 revolt, and continuing up through many first leaders of newly decolonized nation–states, 'auto–ethnography', self–description in power's terms, was a crucial tool in shaping the boundaries European powers would respect as legitimately owed to authentic local authority.

Rituals of Recognition and Languages of Claims

Finally, while the inscription of customary rule in game form helps us understand the agencies of those that played it, this is a thesis not only about order as a static thing, but rather about how orders emerge and change. Two key concepts — ritual and convention — offer solutions to coordination games that are more communal than individual, and are each avenues through which the individual strategic interactions of customary rule might give rise more generally to order.

First, ritual. As I will argue throughout, it is not enough to say that a new doctrine, norm, practice or 'game' is a response to events; rather, we need to specify the paths through which these

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[52] Schelling (1960) p.108
[53] Chwe (2013) *Jane Austen, Game Theorist.*
[54] Scott (1990) p.3
[55] The term is from Dirks (2011) *Castes of Mind.*

new approaches are communicated and adopted widely enough to take root. If a game is inscribed agency and not simply structure, then players need to know that they are playing. In coordination games, this question of how a game emerges is one of how common–knowledge is created. This can sometimes be done with formal education: indeed Mantena notes that Maine's theories of native society found their way into training for the Indian Civil Service, and I show in Chapter 5 that functionalist anthropology became a core subject for students in several branches of the Civil Service in general. As Quentin Bruneau has argued, there is a meaningful overlap between the ways that rationalist and practice approaches to IR explain change, which can usefully be studied by examining changes in education.[56] The problem with this approach for my question, however, is that education is at most a guide to the shared knowledge of those who hold sufficiently official positions to be formally trained.[57] As I will show in the chapters that follow, however, the position of intermediary was not a formal role so much as a strategic position, and was inhabited by colonizers and colonized alike with no formal role in the bureaucracy of empire, much less training in its shibboleths. It is also uncertain the extent to which syllabi create truly common, rather than personal knowledge: the difference being between knowledge one can act on, and knowledge one can trust others to act on, and to know that they will as well.

As Michael Suk–Young Chwe has argued, this difficult question of common knowledge creation is a key function social function of public rituals. In Chwe's account, "rituals and ceremonies" do not merely reflect or dramatize power, they "constitute power" in and of themselves.[58] This is because "submitting to social or political authority is a coordination problem" to the extent that revolting against it requires knowledge not only of one's own disaffection and intent to disobey, but also of others' (and their knowledge of yours, and yours of theirs).[59] When a person assembles to watch a regal procession, a public execution, or an inaugural address, she sees that others are seeing the same thing, and thus that the rules and ideas about authority embodied

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[56] Bruneau (forthcoming) "Converging paths: bounded rationality, practice theory and the study of change in historical international relations" *International Theory*

[57] I say at most because, as no academic reader will doubt, there is a gulf between knowing that something is on a syllabus, and knowing that it has been read and applied.

[58] Chwe (2013) *Rational Ritual* Princeton University Press, Princeton. p.2. Reus–Smit has recently held Chwe's study of ritual up as an example of scholarship that holds a rationalist view of culture. Chwe could potentially hold this view, but it is not quite what he is up to in *Rational Ritual*, which is not about culture, but rather about the ways in which rituals constitute power more generally. There may be types of power which could be meaningfully construed as cultural: in his discussion of beer advertisements for example, or religious ceremonies. But it is not clear that culture is what they are about, more so than growing market share or strengthening devotion. In his rereading of Bentham's panopticon there is even less clear of a case that this is "about" culture, unless we are committed to a meaning of culture that is so pervasive as to make it somewhat analytically useless. Likewise, while customary rule itself contained a view of culture, this project is not about whether that or any view of culture is correct, but rather about understanding what it was to live in politics defined by it. Indeed, as I argue in Chapter 5, the functionalist view of culture taken by customary rule was likely a key source of the outdated view of culture Reus–Smit takes IR to task for maintaining. (2018) *On Cultural Diversity: International Theory in a World of Difference*

[59] Ibid

in the event are a potentially reliable guide to the rules by which her peers will likely act. While in–person events are most obvious here, newspapers, television broadcasts and advertisements can all work the same way. In his work on the origins of post–imperial nationalism, for instance, Benedict Anderson makes a similar argument by describing the reading of a morning newspaper as "this extraordinary mass ceremony" because, although it is often done physically alone, it is an act that is made meaningful by the imagined simultaneity of a community experiencing the day's events from that same mass-printed page.[60]

As the next chapter will argue, the era of post–mutiny rule was inaugurated with just this sort of ceremony, a 'durbar' in which the social assumptions of imperial rule were dramatized and made public knowledge, using the assembled nobles of India as both audience and cast. In these ceremonies, everyone present could see one–another acting in ways that gained them political recognition under the new Raj, and each knew that their behaviour was visible in turn. Similarly, the creation of public institutions like the Judicial Committee of the Privy Council, and the mountains of precedents and publications which it generated, enabled legal contests from settler colonies to become not just public but common knowledge. When customary law was contested in these courts, evidence and reasoning about customary jurisdictional jockeying was circulated in law reports whose entire *raison d'être* was each reader's knowledge that other practitioners would be reading up on it as well. Because these judgements were not simply ideas, but were evidence of the reasoning judges would actually apply to cases, common knowledge of them could also be used as a guide to the practice of others in responding to legal claims from empire.

On its face, public ritual as a solution to coordination games might seem to reinforce the control of the powerful. It was after all Lord Lytton who planned the imperial Durbar of 1877, and various Privy Councillors who wrote the opinions which set precedent for an empire. Its very publicity, however, was also taken as an opportunity for several Indian elites to vie for a place in it, or even to publicly contest the new order as well. Waves of colonized elites leaving colonial employ to start newspapers and hold public rallies suggest a similar awareness that public communication was at least as crucial as private power. Even in spaces not intended for contesting colonial rule, furthermore, creating a public space is not the same as controlling it. From the beginning, colonized peoples found opportunities to use official public spaces as common-knowledge creating amplifiers, even as the British scrambled to shut down newspapers and gatherings outside their ownership. From public ceremonies, to courtrooms, and especially from official ethnographies, histories and customary lawbooks, "mechanisms of publicity [were] strategic resources in fights over how to coordinate. Thus we might expect that histories are also."[61]

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[60] (1983:2006) Imagined Communities p.35
[61] Chwe 2001 p.89

This is a key path through which new rules and strategies became commonly–known games. I also argue, however, that the repeated play of these games across continents and decades produced ordering effects that over–spilled customary legal disputes themselves. While ceremonies and newspapers can create common knowledge which helps coordinate in the near–term, the more durable solution to coordination games is convention. This term has both colloquial and technical meanings, but the two are meaningfully related.

The ideology of customary rule was a move, to invert Henry Maine's teleology, from contract to custom: from questions of 'what has been agreed' to those of 'what is normally done in this society?' In arenas governed under a more civilizing mission, emphasis was often placed on a people's capacity for legal reciprocity, with native peoples routinely stripped of contracted rights after Europeans claimed to find them incapable of legal agreement. In the post–mutiny era, however, colonized peoples increasingly brought claims against empire citing simply longstanding "habits" rather than any formal legal agreements. In fact, at several points actual contracts were nullified by colonial courts when local leaders successfully argued that they were incompatible with a group's custom and traditions. The force of habit and tradition was in this sense 'customary' in the simple sense of being legitimated not by utility or positive agreements, but rather as what has always been done.

At its simplest, a convention is a meeting point in a coordination game that offers no *a priori* benefit, but which players have come rationally to prefer simply because they believe it is their most likely point at which to meet one another. A player might believe it to be better because they have coordinated there before (precedent), because it has some relevant relation to knowledge they share with other players (salience), or even because it resembles a way they solved a previous problem that they believe to be similar (template transfer).[62] What is crucial here for order rather than simply agency is that, as Lewis argues, players of repeated coordination games "could never be given exactly the same problem twice," for the simple reason that they now have some prior experience to generalize from, which in turn shifts their beliefs about the likelihood of various meeting points.[63]

If a colonial power has previously experienced revolt after a specific type of new policy, for instance, they may shy away from crossing that line while pushing reform in a new place which they take to be similarly traditional.[64] In general, colonial authorities developed a paradoxical

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[62] On salience and precedent see Lewis (1969) p.36. For template transfer see Barrett and Skyrms (2017) "Self–assembling games" *British Journal of the Philosophy of Science* 68 pp.329–353, and discussion below.
[63] Lewis (1969) p.37
[64] See, for instance, discussion of the Aba Commission Inquiry after the 1929 Women's war in Ch5, especially fn67 infra. The converse type of learning also holds in this example, with Aba women learning to interpret the census as a signal of defection from equilibrium (via levying new taxes), and thus revolt to punish what they see as a betrayal. Notably in this example, the colonial government finds their interpretation of this signal reasonable, even while claiming that the conclusion the women drew was false.

belief in a more or less generalized idea of native–ness — a universal mode of particularity — that led them to import lessons from one "tribal" group into their interactions with others. Likewise, colonized peoples were able to learn from watching the experiences of one another and respond in ways which they had reason to expect would succeed at finding a coordination point between modern and traditional jurisdiction.

Crucially, once these expectations were established and known, they generated their own force even when the beliefs that underly them were patently untrue. For instance, if a district officer believed that every legitimate traditional ruler they have recognized has been male, they were unlikely to extend customary authority to a female ruler. Crucially, once this belief is known to others, it will shape the behaviour of local men and women as they assess the likelihood of coordinating with colonial authorities. This is similar to the observation in the previous section that the ignorance of the powerful generates its own sorts of incentives. What I mean to stress here, however, is that these learned accommodations and expectations are portable. As more situations are brought under the rubric of custom, parties will arrive at new situations with a bank of expectations learned from others that they identify as similar. Likewise, colonized peoples will face growing expectations to conform to a generally recognizable mode of self–presentation if they choose to play this particular game. This pressure to conform to expectations of a general class was sometimes explicit (as in a district officer nearly pleading with a chief to accept powers the former thought were "regular" for the latter's position), but many times latent (as in the record of claims accepted and denied at the League of Nations Mandates Commission, that future claimants could read and use to update their approach to match expectations).[65]

If the idea of a convention is a difficult way to imagine the politics of recognition which solidified from customary rule, we could also use the same framework to express it as a "language" of claims–making and recognition. Informally, this is the way Pedersen discusses the interplay of claims and responses in the League of Nations Mandates System, as "a language of trusteeship and indirect rule."[66] This is also the ultimate end of Lewis' argument in *Convention* which, while a book about coordination games and conventions, was conceived as an argument that human language as a whole could emerge as convention from signals in ongoing coordination games.[67]

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[65] Discussed in Ch's 4 and 5 infra.

[66] Pedersen (2015) p.292

[67] Briefly: a sender with knowledge of some state of the world sends from a set of signals to a receiver who is not able to observe that state of the world directly. The receiver then takes an action in response to that signal, and both are able to assess its fit with the state of the world. Over time a signalling system with the properties of language can develop from this "signaling game" even if the signals had no a–priori relationship to the states of the world they signal. The language is thus conventional, as what gives the signals usefulness is the two players' coordination on their use to represent the world, rather than any innate properties of signals themselves. This particularly resembles the development of a descriptive language for customary representation, given the belief amongst colonial officials that they do not have direct access to knowledge of the underlying custom of a given group, and thus must rely on the communicative action of intermediaries. Further research has demonstrated the potential of Lewis Signaling games for the

When Maria Birnbaum talks, for example, about the "legibility" of religion as a political category in Israel and Pakistan, and when Natasha Wheatley examines a new "language of legitimacy" governing recognition of the same, they are describing actors fielding their political claims in a language that fits the categories international law was prepared to recognize.[68] The point here is not that we can think of the ordering process of customary rule as convention *or* language, but rather simply Lewis' point that language can itself be conventional.[69] The languages of legal and political recognition used in various arenas, from imperial courts to the Permanent Mandates Commission of the League, were not handed down ascriptively, but rather worked out practically as a way to coordinate policy between various imperial powers and their colonized claimants. They were also not simply new words for old forms of politics, but were bringing new political selves into being at the same time as they were working to name and describe them.

Because I am trying to convey the game of customary rule as both a game of individuals and a process of ordering in general, I will finish with a last clarification in terms more familiar to political theory. In *Convention*, Lewis offers a useful contrast between this concept and that of social contract.[70] The two, Lewis argues, appear remarkably similar once established. Each looks like a general preference that members of a group conform to a certain regularity of behaviour, with the view that the group would be overall worse off if members were to stop conforming. The difference is in what conformity is preferred to, and in individuals' own incentives to conform. First, a social contract (Lewis has in mind the Hobbesian version) begins with the presumption that life under a social contract is preferable to life in a state of nature, and sets itself the problem of convincing or coercing every individual to consent to that state. Preference for a convention, on the other hand, simply arises from preference for *any* state of coordination over any other state of non–coordination. There is no a priori goodness to the convention arrived at, but rather that state generates its own incentives once established. Second, individuals living under a Leviathan benefit from the removal of a state of nature even if they do not personally conform, the benefits of coordination only accrue if a person also conforms. Incentives for individual defection from contracts are so pervasive that entire subfields of political science, international relations and

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development of signaling systems in both social situations, and even in artificial intelligence. See Argiento et al (2009) "Learning to signal: analysis of a micro–level reinforcement model" Stochastic Processes and Their Applications 119 pp.373–390; Barrett and Skyrms (2017); Crawford & Sobel (1982) "Strategic information transmission" *Econometrica* 50 pp.1431–1451

[68] Birnbaum (2020) "Recognizing Diversity: Establishing Religious Difference in Pakistan and Israel," in Phillips & Reus–Smit eds. *Culture and Order in World Politics* pp.250–270; Wheatley (2015) "Mandatory Interpretation: Legal Hermeneutics and the New International Order in Arab and Jewish Petitions to the League of Nations," *Past and Present* 227 pp.205–248 at p.207

[69] The stress here is not on language choice, but rather the emergence of languages full stop. David Laitin for instance has used coordination games in terms of political choices between literal languages, but I am using it in a more fundamental sense as the emergence of a new language to describe an emerging political reality. See Laitin (1994) "The Tower of Babel as a Coordination Game: Political Linguistics in Ghana." *American Political Science Review* 88:3 pp.622–634

[70] Lewis (1969) pp.88–96. He also explores the contrast between conventions and norms, pp.97–100.

economics are devoted to solving the free rider problems that result. Yet, if one is able to communicate and be recognized by other political actors, there is no incentive to switch languages and be misunderstood, or claim for recognition in a form that will not succeed, *even if there is a language you would personally prefer to coordinate on*. A social contract secures an externally desired good via compliance, whereas a convention creates that good by coordination itself. Order established by convention thus differs both from more liberal concepts of ordering that stress contracting, and from realist frameworks that assume structure is given.

In the end there is something fittingly Burkean here, inscribed by the coordination game and its conventional solution. Lewis' argument differentiating convention from social contract amounts to an argument that social conventions, once established, generate their own goodness that is not usefully judged from a universal point of remove. It is a state of affairs that is only knowable by virtue of having been lived in, and only stable by becoming habitual. Likewise for Burke, the imposition of institutions like majority legislatures (a numbers game, against which the authenticity game was often pitted), was "one of the most violent fictions of positive law," and should be countered with institutions that "must be the result of a very particular and special convention, confirmed… by long habits of obedience"[71]. Burke's general view, in Ian Hampsher–Monk's words, was that:

> Convention and artifice were not deductions from reason, nor the product of 'rude' nature, but they were, nevertheless, vital to us: in this sense 'art is man's nature.' States fortunate enough to have settled institutions, ruled by custom ad precedent, not coercion, would be foolish to undermine them through disadvantageous comparison with abstract principles.[72]

This is in part a moral statement, not like Lewis' a methodological one. Yet each is concerned with explaining our relationship to origins, whether language or political order. Likewise, while customary rule was often more a method than a moral goal, in laying the groundwork for new forms of political selfhood it also offered a certain notion of the good, to which some of its practitioners would come to subscribe. Ultimately it is appropriate — if games are the art of inscribed agency — that this game also inscribes something of the concept of history which gave

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[71] Burke (1791) *An Appeal from the New to the Old Whigs* J. Dodsley p.126, qtd in Hampshire–Monk "editor's introduction" (2014) *Burke: Revolutionary Writings* Cambridge p.*xxxv*

[72] Hampsher–Monk (2006) "British radicalism and the anti–Jacobins" in Goldie & Wokler eds. *The Cambridge History of Eighteenth–Century Political Thought.* p.675. Burke's statement quoted in part here, that "art is man's nature. We are as much, at least, in a state of nature in formed manhood, as in immature and helpless infancy," is perhaps his clearest rebuttal to a certain liberal internationalism, especially contrasted with Kant's statement that when "complete art again becomes nature" is "the ultimate aim of the moral destiny of the human race." For the latter, the goal of human institutions is a return to an a–priori good; for the former the good is and can only be something that emerges from human society, and time. Kant (1786:2006) "Conjectural Beginning of Human History" in Kleingeld ed. Colclasure trans. *Toward Perpetual Peace and other Writings on Politics, Peace and History*. Yale p.31

this sense of political agency its foundations.

In practical terms, if order as a language of recognition can emerge conventionally, from ongoing coordination games, this gives us two key insights about the ordering process I will describe. First, is that we should not expect the language of politics emerging from customary rule to be driven by any party's individual first preferences. Rather than looking for customary rule to win converts via ethical argumentation or ideological hegemony, we should look for ways in which it was taken up simply as a mode of claims–making which various parties expected to be successful, whether or not it best fit their situation. Likewise, we should expect the conventions of recognition adopted in customary rule to be somewhat persistent in the face of changing material preferences or ideas.[73] Conventions exhibit their own variety of path dependence, precisely because it is the fact of coordination itself which generates the incentive to adhere to them, rather than any external (and thus changeable) property of the convention point itself. We should thus look for the development of a language from strategies of coordination.

Games and History

> It was always more likely that the encoding of custom and the ascribing of status were cooperative ventures. Their terms were bound to derive from well–placed informants with a great deal at stake.[74]

If Schelling was correct, and this type of theory demands empirics more than deduction, then the methodological demands of this thesis are history rather than mathematics.[75] In particular, an approach that sees the knowledge work of empire under customary rule as strategic interaction demands sensitivity to the form of claims, counterclaims, official analyses and deliberation as much as their content.

When the politics at hand are a struggle over social ontology — the words used to map political reality, and to affirm or erase others' social maps by recognition — the form is often the content. Many episodes analysed herein are critical because of shifts in vocabulary or logic which have not been fully picked up by secondary literature asking different questions. When Nigerian rebels use the language of chiefdom but shift its policy import, when agents of the new India Office mock the philosophy of Mill in the guise of simply recounting history, when Japanese Mandates Commissioners invoke the language of British Colonial governors in order to be heard, and when future presidents of newly postcolonial states write functionalist ethnographies, we need a

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[73] Pierson (2004) *Politics in Time: History, Institutions, and Social Analysis* p.147
[74] Darwin (2010) "Empire & Ethnicity" *Nations and Nationalism* p.386
[75] There is scope in the signalling game component for a more deductive model in the future, exploring the ways in which asymmetric information led to pooling or splitting equilibria in the languages of legitimacy that emerged from empire.

granularity of focus that picks up on these shifts and choices. This demands an approach to explaining an individual's actions that follows Quentin Skinner's suggestion to "begin by focusing not on the individual action to be explained, but rather on the *conventions* surrounding the performance of the given type of social interaction in the given social situation."[76]

As it is this project's goal not to explain order but rather ordering, I need a sensitivity to the ways in which agents working within these conventions are able again to re–appropriate them in order to produce not only recognizable performances of politics, but also to shift even slightly the conventions that make those performances legible: enabling in turn the recognition of slightly different performances in the future. This draws us to the ways that words are ways of shifting power relationships, but it also demands I look beyond simply *linguistic* context. As Darwin says above, it is crucial to be aware of the ways in which the terms of order emerged interactively from "informants" rather than being imposed from on high, and it is just as important to understand what those informants had "at stake." As the 'best alternatives' aspect of coordination games pushes us to see, from the violence of 1857 to repression of the Mau–Mau, the ground that shifted around these speech acts was shaped by more than just illocutionary force. If it is crucial that we be sensitive to the truth in Tully's summation of Skinner, that "the pen is a mighty sword," then we must likewise be aware of the many times that, as Tarak Barkawi has argued, "the AK–47 was more significant than the pen."[77]

To this end, this thesis relies at key points on the primary exchanges which might explain changes in political language around them. While relying on the immense historiography of empire for context, each stage of this thesis involves inflection points in knowledge creation and order contestation that are best told with attention to the individual choices of the actors who drove them, choices that appear most clearly in primary sources. Often these sources are the official archives of empire, particularly the India Office Records at the British Library, the Colonial Office Records at the UK National Archives, judgements of the Judicial Committee of the Privy Council, and the published transcripts of official inquiries into revolts and crises.[78] These records are particularly useful in recording not only official conclusions, but also the sources relied upon in making them. These compendiums of empire's own primary sources allow us to trace not only the assumptions behind its knowledge collection, but also the many ways in which informants and intermediaries carved their own space in the imperial archive by offering testimony in ways

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[76] Skinner (1988) "'Social meaning' and social action" in Tully ed. *Meaning & Context: Quentin Skinner and his Critics.* p.94. Emphasis in the original.

[77] Tully (1988) "The pen is a mighty sword" *Meaning & Context* pp.7–25; Barkawi (2018) "From law to history: The politics of war and empire." *Global Constitutionalism* 7:3 pp.315–329 at p.317

[78] As such these archives are of course not neutral repositories of knowledge, but themselves a form of power, especially in ways relevant to a thesis on colonial knowledge itself. With an awareness of this, however, this fact can be an asset as much as a hindrance. I am not using these archives to determine "the way things were" in any neutral or absolute sense, but rather to study the sense–making practices of empire themselves. In this, their biases and silences are indispensable.

not asked for by authorities, but calibrated to shift policy when heard. These records are supplemented in some cases by the private correspondences of key figures — viceroys, district officers, anthropologists and 'agitators' — which allow us some small access to "private transcript behaviour." This does not enable me to make claims about supposedly true or false self–presentations, but rather to track strategies of presentation as they shift between audiences, contexts and eras, and to discern the negotiation of new languages and subjects of politics as they emerged.[79]

Given these methodological details, and the game framework that preceded them, I want to end by considering the potential oddity of games and this sort of discursive history as partners in explanation.[80] Specifically, I want to consider what happens when we embed a sense of social interaction as game–like within a search for contextual meaning in social action. As David Woodruff has argued, the main difficulty in bringing game theoretic concepts to bear on ethnographic political understanding is the problem of knowing the relationship in any given situation between rules, rationality, and behaviour.[81] The problem, as he puts it, is that:

> People can do the same thing—obey a rule, or enforce a rule, or violate a rule—for different reasons. The mere articulation of a rule that could allow formally rational action does not ensure that formal rationality governs in practice… The potential relevance of case-specific incentives to rules has important empirical implications, affecting how we conceive the processes that allow institutions to create order.[82]

In other words, simply having rules does not mean anyone responds to them. Moreover, simply responding to rules does not mean that someone is actually following them. Game theory, he

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[79] As Scott clarified, the difference between public and private transcripts is not simply that between "a realm of necessity and… a realm of freedom," but rather two different contexts *between which* we can make some guesses about the power dynamics and strategies at play. (1990) p.5

[80] I do not intend to address questions of rationalism vs. history or constructivism as such. In general, I subscribe to the "pragmatic" view of Fearon and Wendt: that approaches to explanation should be judged by what is done with them, rather than as warring camps, reducing explanations themselves to weapons in a paradigm war. The point of this thesis is to add to our understanding of actual political order, and if this chapter and the work that follows do not demonstrate the usefulness of a certain game conception of order in doing this, no general defence of rationalism or historical constructivism should either. Fearon & Wendt (2002) "Rationalism v. Constructivism: A Skeptical View." Handbook of International Relations. Sage Publications <http://www.sageereference.
com/hdbk_intlrelations/Article_n3.html>

[81] Woodruff (2006) "Understanding Rules and Institutions: Possibilities and Limits of Game Theory." *Qualitative Methods* 4:1Woodruff's remarks come from a *Qualitative Methods* Symposium on "Ethnography Meets Rational Choice: David Laitin, For Example." which followed a roundtable at *American Political Science Association* 2002 at which the only paper presented was Ted Hopf on "Being David Laitin: The Fearon Factor" (neither Laitin nor Fearon took part in the roundtable). The roundtable concludes that the combination is "well worth attempting," but provides several insightful critiques that help hone this sort of work going forward. Many general critiques of Laitin are not relevant to this thesis. Hopf's question of whether "sensitivity to contextual realities can be squared with the a priori simplifications necessitated by rational choice approaches," for example make little sense in a framework like that presented here, which proposes no a–priori outcomes of a given game. Woodruff's, however, is relevant and useful.

[82] Woodruff (2006) p.14

argues, "is only powerful when the real-world incentives for conforming to rules are clear."[83] Where there are weak enough incentives, or crucially, where rules are not broadly clear, to assume that the action we witness is rule–caused will likely hinder more than it helps. When we assume that institutions have created order by making rules (giving sets of payoffs over choices), then, we may be putting too much faith in the simplicity of the relationship between people and rules.

Two elements of Woodruff's critique are extremely helpful for this thesis. First, Woodruff clarifies that the relationship between rules and decisions is not just one of pairing rules to actions, but rather of the emergence of order from the interaction of both. Second, Woodruff divides order into two general categories: "cellular" and "broadcast" order. Cellular order pertains when responses to rules are highly individual and contextual: situations in which rules may appear to be followed, but the rule itself may for instance be pretext rather than motivation. Broadcast order, on the other hand, pertains when incentives to follow rules are more general. For the latter, Woodruff offers the example of driving on the appropriate side of the highway as one in which almost everyone has the same incentive to obey the rule, or at least sufficiently many that he sees the rule "we drive on the right" paired with the incentive "we don't want to die in a collision" to be general enough that the rule can meaningfully be said to explain the order amongst drivers that emerges.[84] These points are likewise helpful for two reasons; they clarify the class of rules that occur under a coordination game, and help make explicit that a key thread of the story in this thesis is a move from cellular to broadcast order.

Woodward is clear about the type of game he believes to produce general enough incentives to explain order in tandem with ethnographic work. Driving–sidedness, along with other problems like Laitin's work on language choice, "can be modeled easily and convincingly as a coordination game," meaning that incentives are general, public, and thus that "the power of game theory here has empirical, not just methodological, implications."[85] In part, Woodruff's critique helps clarify the boundary conditions for what works in the pairing of game and method in this thesis. His reasoning about why coordination games and the study of meaningful social action work together directs us in turn to be attentive to the ways in which order itself becomes broadcast and

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[83] Ibid

[84] Woodruff (2006) p.15

[85] Ibid. Coordination games in general are central to IR in a number of respects. Fearon has argued, for instance, that almost all instances of rule–following that IR scholars have studied as prisoners dilemmas are themselves occurring in the shadow of bargaining over what rules to agree on, and these bargains tend to some degree to be coordination games. (1998) "Bargaining, Enforcement, and International Cooperation" *International Organization* 52:2 pp.269–305. In part, Fearon is arguing along similar lines to those of this thesis: that questions of order–creation are as crucial as that of particular orders as such. Likewise scholars of institutions have argued that the information dynamics of communicating risk in climate change make acting upon it a CG. DeCanio and Fremstad (2013) "Game theory and climate diplomacy" *Ecological Economics* 85 pp.177–187. Even if Woodward is correct that these are some of the only instances in which Game Theory and interpretive analysis of social interaction can work helpfully together to explain order, in IR at least this would still leave a strong range of topics.

generalized, taking stock of the ongoing relationship between rules and order as it unfolds.

Even more crucially, Woodruff's distinction helps to specify that the ordering process of this thesis is itself a gradual move from cellular to broadcast order: from a diversity of scattered contextualisms to the general rules of a common language or recognition. "Conventions" of language, as Skinner uses them, exist in just this sort of in–between. They are general rules for intelligibility which are most interesting and informative when interpreted in context specific ways. Likewise the vague rules governing what could be recognized as customary are both most constitutive of order when they are generally powerful, and most compelling as the stuff of ordering when they are strategically reinterpreted in specific contexts. When these reinterpretations occur in public view of others, the common–knowledge they create thus has broadcast–ordering effects whether their individual attempts to remake language of rule are successful or not.

To borrow from a theorist of social–meaning and ethnography on whom Woodruff and Laitin both rely, this thesis begins from the view that elites, decision–makers and would–be rulers in this formative century of international relations were, as Geertz said of men, "suspended in webs of significance [they themselves] have spun." They were concerned with governing legitimately enough to continue doing so, were subject to conventions that legitimacy flowed from authentic cultural knowledge, and thus employed armies of interpreters to not only study these webs of meaning, but in doing so to spin stories of their own. Just as crucially, these webs were not spun unconsciously or only in private settings. Even the most passive student of the imperial mission or 'the native mind' produced a story which empowered certain agents, favoured certain sites of action, expected certain focal points to take. The more conscious spinners of tales could tell stories which highlighted certain courses of action as natural or authentic, with themselves or their interests a necessary part. Over time those who these stories treated as subjects were able to spin webs of meaning themselves, with consequences for order to follow. The webs Geertz described were webs that governed action and gave it intelligibility, but they were also sometimes webs for ensnaring one another as well. A person may sometimes spin webs because they know others are looking for them, and when interpretation is not just a game of social scientists, but a strategy of rule, the ability to guide the interpretations which become conventional is a form of agency within ordering all of its own.

3. Order from Mutiny

> You have lost the hope of ruling
> And have also lost all your wealth
> You have also mourned the loss of your courage
> And you do not have the wisdom of your elders
> Knowledge is all that is left to rely on
> For this is the only heritage of the old left.
>
> - Altaf Hussain Hali, friend and biographer of Syed Ahmed Khan, 1868[1]

> Read any of the Mutiny records; which, rather than the Bhagavad Gita, should be your Bible in this country.
>
> - Mr McBryde, fictional Chandrapore District Superintendent of Police[2]

The Indian Revolt of 1857 marked a historical pivot, around which the shift to a new system of global imperial governance turned.[3] That shift began locally, as a series of new policy orientations in the British government of India, drawing on older patterns of collaboration, and shifting emphasis as the East India Company gave way to the Raj. Over the next 50 years, this system would come to structure the domestic and international politics of millions across several continents. A century later it would help to set the terms in which the international system was born. Thanks to an official interpretation of the violence as caused by fanatical resentment at trampled custom, the cure was a new colonial sensibility — an entangled set of beliefs, rules, and practices — which based Indian and global rule on the management of cultural difference rather than utilitarian reform.[4] The shift to indirect rule was a shift in the rules about rule, the notions of legitimacy and representation which structured political authority and the practice of colonial power, all hanging on the interpretation of one cataclysmic event, and the determination never to endure it again.

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[1] Hali qtd in Rajah (2010) p.68 emphasis mine.
[2] Forster (1924:2015) *A Passage to India* p.150
[3] For Mantena (2012) the invention of indirect rule happened "largely in response" to the mutiny; for Mamdani (1996) it was the "dividing line" between the era of reform and that of conservation.
[4] The sense of 'sensibility' here is from Koskenniemi (2001) p.2

Yet the mutiny did not interpret itself. Events do not come packaged with their own analyses, ruptures in order do not automatically suggest their own remedy, and once settled upon new ideas of order do not magically impose themselves on a polity. The mutiny – or revolt, or war of independence, or civil war as it was called with various political implications – was interpreted by individuals and institutions with their own stake in the action and its consequences. The outcomes of that process of interpretation, furthermore did not order the world simply as ideas, but were made real by actors, practices and events. Whoever's voice rose to the top in the wake of revolt had a hand in ordering the world; so whose did? And how was that order made real?

This chapter argues that the understanding of 1857 as a mutiny of custom-bound fanaticism was not an automatic British reaction, but rather was due in large part to the careful interventions of Indian elites in the official interpretation process. Studying the ways in which these Indians — often employees of the East India Company (EIC) and the new Raj — influenced order by narrating crisis to power, this chapter then draws out qualities of their interventions which supports theories offered in the previous chapter of when local elites may prefer coordination to civilization dynamics, and prefigure the politics of intermediaries in general for the era that followed. Finally, this chapter closes with a discussion of the Delhi Durbar, and the strategic role of public rituals in creating common knowledge, and broadcasting the rules of a new game to a growing global empire.

I. Narrating Crisis

First Responses

The path of British interpretations of the mutiny (and their range) can be sketched in rough strokes by two editions of the *Times of London,* bookending the crisis and its political resolution. First was the coverage of the "National Day of Humiliation" declared by royal decree as the extent of the mutiny became clear. Out of an 11-page run that day, three and a half were devoted to sermons from London churches lamenting the moral and political failings which had led to the uprising.[5] From St. Magnus the Martyr in the City, the theme was the "impotence" of British power, and the need to double and redouble investment in the lives of "the humbler classes" through industry. From St. Andrew's in Holborn the motivation for the mutiny was purely political – aiming "to throw off our domination" – and the participants were military mutineers with professional grievances. From pulpit after pulpit, the depiction was simply of riotous violence and inhuman cruelty. The remedy, when one was offered, was uplift: either more industry, more soldiers, or

[5] *Times* 7 Oct. 1857 pp.5-9

more conversion. "The Gospel," declared the vicar of St. Matthew's "is the only medicine for India's deadly sickness."

Immediately following these sermons was a page of updates on "the Indian Mutinies" from "a lady," "a gentleman in the civil service," "a letter" (of unspecified origin) and "an officer of rank." The notes are fragmentary vignettes of terror, military detail, starvation and stiff upper lips. Only one attempts to explain the mutiny. "Let [the English] consider," the unnamed civil servant argues "and they will admit that it is their own fault."[6] A lack of European might and an over-employment of natives, in his view, made the revolt all but inevitable; the obvious solution then is to excise Indians from government and army, and flood the empire with direct English might. It is purity not hybridity, direct control not indirect collaboration, being called for here. No Indian voices are given or other possible reasons speculated upon.[7]

Two decades later, the Imperial Durbar in Delhi marked the coronation of Victoria as Empress, and the final change from pre–mutiny Company to post–mutiny Raj rule.[8] *The Times* again devoted pages to reprints, reproducing Viceroy Lytton's speech in full, and sharing three days of reports from the ceremony and surrounding events. Gone was the chaos of competing narratives; absent was any tenor of reform, conversion or a civilizing mission. Instead, an official pitch from a confident central authority billed the new project of Indian empire as one of conservation, based on the management and protection of difference. In the new Raj, Lytton proclaimed from the dais in Delhi and the pages of the *Times*:

> Under laws which impartially protect all races and all creeds, every subject of Her Majesty may peacefully enjoy his own. The toleration of the government permits each member of the community to follow without molestation the rules and rites of his religion. The strong hand of Imperial power is put forth, not to crush, but to protect and guide.[9]

The motion of this interpretation, the one which gave the world's largest empire a comprehensive new project of rule, stretched from chaos and calls for radical change, to univocal assurances of conservation and cultural stewardship. This message from Lytton was also a promise of peace, a claim that the "anarchy" of the past could be eradicated. In the pairing of peace and conservation we have the embodied interpretation of the 1857 revolt as an outburst of cultural outrage, sparked by a colonial power ignorant of the people's customs, and kindled in a people ignorant of empire's designs.

Others have explained the fanaticism interpretation of 1857 as simply a product of the British imperial mind: orientalist ignorance run amok. This interpretation jibes especially with

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[6] "Mirzapore" *Times* 7 Oct. 1857 p.10
[7] Ibid p.10
[8] The Durbar as the crowning act of the post-mutiny order is discussed in ch.3 §II.
[9] "The Assemblage" *Times* 1 Jan 1877

nationalist historiography of the mutiny, produced as the Congress Party rose to prominence in the early twentieth century and still largely maintained.[10] In this telling there are two essential ways of characterizing 1857: as India's first war of independence, or as the sepoy mutiny. In the first reading, 1857 was a grand and popular act of mass political resistance, both caused by and premised on communicating dissatisfaction with rights abuses and foreign rule. Conversely, the latter reading reduces the political force of the violence by casting it as the visceral outburst of "terrified fanaticism": anger at a rumor of pig and cow greased cartridges, rather than reasoned resistance to foreign rule.[11] The first reading is treated as that of good nationalists; the second that of ignorant imperialists.

The sheer variety of British interpretations of the violence weighs against this idea, however. Some commentators echoed the *Times'* civil servant in blaming British under-reach; some noted that low salaries for Indian employees would naturally lead to revolt.[12] London's *Fraser's Magazine* dismissed religious concerns as fanciful, and reminded readers that the recent slew of annexations of land and princely states would surely be cause for violent resistance anywhere.[13] These explanations are political, professional, material, and baldly utilitarian. They are far from emphasizing fanaticism, and notably rely as well on comparisons rather than contrasts with British cultural responses; the sepoy mutineers here are disgruntled employees and disenfranchised landowners, fearing for access to work, pay and property just as any British soldier or landlord might.

As news slowly made its way through telegram wires and shipping lanes back to Westminster, and it became clear that mere mutiny was now a widespread revolt, explanations shifted from military to popular themes.[14] Here religious notions did begin to emerge as explanation. Starved of concrete information, commentators fixated on the same background events — annexation, military defeat — but gave them a religious spin in explaining their link to revolt. For *The Illustrated London News*, the annexation of Awadh became "a signal for the Muslim conspiracy," a rallying point in collective-action. Likewise, the British defeat against Persia is treated as a sign of Muslim ascendance, a call for a politically dormant Islamic population to organise politically against British power.[15] While this "Muslim conspiracy" explanation does

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[10] Chaturvedi (2014) pp.75-81 Many influential accounts, such as Vinayak Savarkar (1909) were heavily influenced by European nationalist struggles, particularly by Mazzini. He shared this inspiration with earlier nationalist activists such as Surendranath Banerjee, who cited the Italian when forming The Indian National Association in 1876. Unlike Savarkar and later nationalists, however, Banerjee did not openly tout 1857 as a national revolt.

[11] Mantena (2010) repeatedly offers the latter phrase as the essence of the British Response. See pp.49, 153 especially.

[12] See Malik (2008) pp.37-40

[13] Malik (2008) p.40

[14] Merritt (2014) p.19

[15] Malik (2008) pp.126-28

invoke religion, however, it is mainly used as a stand-in for a nascent political community. Religion does not automatically entail custom, especially not the range of village-communal and historical assumptions on which customary rule was based. Religion also does not imply fanatical outbursts, but rather here refers to a calculated conspiracy by an organized group of co-believers with designs on political power. Tellingly, one commentator described these grievances as anger at Indian Muslims being "denationalised". The British imagination of the mutiny here is the struggle of one "politico-religio-economic" group against a rival, not at all of a mass of custom-bound natives furious at the destabilization of their cultural practices.[16]

Finally, contrary to the "simply a mutiny" theme, official sources continued to refer to 1857 as a civil war well through its pacification and the gradual return of stability. Victoria spoke of "a bloody civil war" when writing to then Prime Minister Lord Derby, requesting he draft the proclamation which would officially establish order under the Raj.[17] Nor did this description fade quickly with time. In the first census of Oude (Awadh) and the North-West Provinces after it was deemed safe and feasible for data-collectors to return, the preamble explains that census taking had been rendered impossible due to "a grievous civil war".[18] Given the centrality of the census to empire's knowledge and re-structuring of Indian society after 1857, it is striking to see the term used in this official capacity, rather than the eventually ascendant "mutiny".[19]

With this range of early explanations, it is difficult to argue that the eventual interpretation of 1857 as an outburst of fanaticism was in any way a natural or automatic response. If this reading of mutiny was a product of "the imperial mind" it was a particularly scattered mind which turned it out. In lieu of this assumption, Saluhadin Malik offers a simple method of mapping the responses which offers a way forward in tracing their conclusion as well. "Explanations for the uprising," he argues, "were offered either by vested interests seeking to direct responsibility away from themselves, or by secular and religious schools of thought endeavouring to justify their convictions."[20] Explanation followed interest, or at least passed blame. Evangelicals thus pointed the finger at government overreach, or obstruction in converting Muslims (Hindus, they argued, were less involved in the mutiny due to missionary contact). Conservatives, meanwhile, railed

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[16] W.W. Ireland qtd in Malik (2008) p.126

[17] *Letters* III p.379 She also spoke in that letter of reminding India of "the prosperity following in the train of civilisation", suggesting that at least Victoria had not yet given up on the civilizing mission, no matter how much her proclamation signalled the beginning of Indirect Rule and government-as-conservation.

[18] *Report of the Census of the N.W. Provinces for the Year 1865* p.1

[19] For the importance of the census in post-mutiny India, see Cohn (1996) p.8 Once the mutiny reading became established, however, it is probably a testament to its depth and longevity that David Armitage's (2017) *Civil Wars: A History in Ideas* omits any reference to 1857 in its chapter on the nineteenth-century legal origins of the concept, no matter what Victoria or census-takers called it at the time. While critiquing the boundaries of his study, pointing to global cases and non-elite sources, Linda Colley leaves 1857 out of the history as well. (2017) "What Gets Called a 'Civil War'?" *The New York Review of Books* 8 June. <http://www.nybooks.com/articles/2017/06/08/what-gets-called-civil-war/>

[20] Malik (2008) pp.1-2

against over-zealous conversion, either as disturbing natural Indian order, or as essentially wasted on backwards natives.[21] British elites aware of popular sentiment and wary of working-class revolts clearly had their own interests in interrupting any imagined commonality between rebelling masses abroad and the dispossessed poor at home.

The Storytellers

Malik's emphasis on competing interests in a precarious political field suggests that intra–imperial elite competition was a leading driver for interpreting disorder, and that the stories told of the mutiny were stories about the order that should follow, complete with suggestions of which groups should have power when it did. It is plainly the colonial administration which came out on top of this interpretive scuffle, with the cacophony of voices in the mid-mutiny press resolving down to the single voice of Lytton consecrating the new Raj by explaining the sins of its predecessor. It is not surprising that it was Viceroy Lytton, not the city of London or the Queen in Parliament who had the last word on the uprising. As John Darwin has argued, it was a network of "old India hands" who "largely informed public opinion on late-Victorian India".[22] The post-mutiny order was a bargain between Anglo-Indian "civilians" and Westminster. The imposition of the Raj was the price the India Office payed for the mutiny; the repudiation of liberalism in favour of "caste, religious or tribal identity" and the encircling of the new Secretary of State for India with a council of retired Indian officers was "the concession they won in return".[23]

This still demands questions, however. What lead the new India Office to justify itself as the best provider of good governance, based on an understanding of past strife as the result of cultural mis-understanding, and future glory as founded on cultural 'toleration' and customary authority? What drove these 'old India hands' to believe that the triumph of identity over liberalism was in their interest enough to bargain for it with Westminster? Who provided the script from which Lytton dictated new order?

The official interpretation did not first appear in Lytton's speeches, but in the form of a history, authored by top colonial officers, and containing the seeds of indirect rule to follow. *Kaye's and Malleson's History of the Indian Mutiny of 1857-8* was published in six volumes between 1864 and 1876. John Kaye succeeded John Stuart Mill as Secretary of the Politics and Secrets Department of the India Office in 1858, and immediately began collecting primary materials on the mutiny, preserving the private diaries of soldiers, calling for reports from governors on the disintegration and re-establishment of order, and soliciting the opinion of Indian collaborators. As an official

[21] Merritt (2014) pp.17-19
[22] Ibid p.90
[23] Darwin (2009) pp.188-90

history reflecting its sources, Kaye's account is often an un-editorialized recounting of military minutiae. When it does turn to explanations, however, it is bracingly critical of the old order.

From its title page, Kaye and Malleson's *History* is aimed more at criticism of rulers than of revolutionaries. It opens with an epigram from Francis Bacon, observing that "the causes and methods of sedition are innovations in religion, taxes, alteration of laws and customs, breaking of privileges, general oppression, and advancement of unworthy persons."[24] The authors then go on to bury the lede for half a volume, but turning to land reform in North India the vitriol begins. "While great principalities were thus being absorbed and ancient sovereignties extinguished, *a war of extermination no less fatal in its effects, but more noiseless in its operations, was being waged against the nobility and gentry of this country*."[25] Coming on the heels of an era of the civilizing mission, this is a starkly conservative critique. British forces of reform are here the aggressors, waging war on the presumably rightful nobility of India. Reform in this account is unmistakably on the side of chaos, nobility that of order.

Later, the *History* devotes an entire section to the "Sufferings of the Nobility".[26] Here, however, the conservatism becomes something more than reactionary fetish for social elites. Bemoaning the destruction of the nobility, Kaye and Malleson complain that "in India, the people have no potential voice. The *vox pupuli* indeed is little more than a silence."[27] The writers strike a populist note, but within a larger argument about abuse of noble privilege. In this momentarily strange combination, we see foundations for indirect rule being laid; a system whose justification is its true expression of the voice of the people, but one that seeks to do so by empowering a traditional elite to speak for them.

The *History* is also clear about the political ideas which lead to the chaos of 1857 and should be left behind in its wake. "Doubtless," they argue,

> we started upon a theory sound in the abstract, intent on promoting only the greatest good for the greatest number; but had we allowed ourselves to understand the genius and the institutions of the people, we should have respected the rights, natural and acquired, of all classes of the community instead of working out any abstract theory of our own.[28]

There is no ambiguity here in the attack on the era of Whig policy and Kaye's predecessor Mill; utilitarianism is directly and forcefully thrown under the bus. In doing so, Kaye and Malleson are also resurrecting and re-adjudicating an older fight about empire. In their repeated charge of abstraction obscuring local genius, they recall Burke's insistence that "government was a practical thing… not to furnish out a spectacle of uniformity, to gratify the schemes of visionary

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[24] Kaye and Malleson (1864) title page.
[25] Ibid p.111 emphasis mine.
[26] Kaye and Malleson (1867) p.418
[27] Ibid p.420
[28] Kaye and Malleson (1864) p.111-112

politicians."[29] While Burke's prosecution of Hastings fizzled out, the 1857 rebellion provided Kaye and Malleson the systemic shock to open elements of the case anew, and to assault supposed liberal reformism with more lasting success. In invoking "the genius and institutions of the people," they go beyond negative critique, and point ahead to an era of rule in which utilitarian calculation was avoided in favour of a search for the organic customary life of a people. Progress is not forgotten entirely here: profits still require reform. But never again, they warn, should progress be pursued with "unwholesome rapidity," but should respect the limits of natural rights and the fabric of customary society.[30]

If the *History of the Indian Mutiny* is the official account in which the post-mutiny consensus emerges, the sources from which it was drawn tell just as crucial a story. In the India Office Records, files H/724-727 are catalogued as "Sir John Kaye's Mutiny Papers", and their more than 2000 typed, translated, telegraphed and scrawled pages represent the primary materials from which the official account of the revolt was made. In general, Kaye's archive mirrors faithfully his product. It is taken up mainly with operational detail; yet when it steps back from the chaos to think, it does so in the terms and arguments of its Indian contributors. Together they tell a story of Indian input which introduced the decades of hard-negotiated indirect rule to follow.

Most accounts in the mutiny papers are from British voices. These, however, have very little to offer in explanation of the revolt as a whole. British accounts in Kaye's papers sort roughly into two genres, military dispatches *in media res*, and governors' reports on the breakdown and re-establishment of order in their cities and provinces. Of the latter, most seem to have been solicited by Kaye himself immediately upon taking up his new position. Most provide information in an older mode of knowledge, reporting on courtly intrigue and the material interests of princes. None venture larger explanations, though some hint darkly at conspiracies on which they cannot directly comment.

The soldierly narratives are more vivid, but they are also largely just that: narratives. They recount heroism and hardship, but offer little explanation. The sense of confusion conveyed, however, is itself telling. In one private diary, a Colonel G.M. Sherer describes fleeing haphazardly from rebels, and writes to himself that "we are desperate for authentic information".[31] The desperation for real information on the rebellion was a common theme. Musing before the first mutiny on the inscrutability of the Indian troops he instructed, one Lieutenant in Ambala wrote to a friend that "I see them on parade for say two hours daily, but what do I know of them for the other 22? What do they talk about in their lines?"[32]

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[29] Burke qtd in Welsh (1995) Edmund Burke and International Relations p.60
[30] Kaye and Malleson (1867) p.425
[31] "Private Diary of Col. G. M. Sherer (16th N.I., Commanding Native Infantry at Jalpaiguri) 26th June to 1st Sept. 1857, In the form of letters to Col. S. Corbett, Commanding at Lahore." IOR/H/727 p.5
[32] "E Martineau to J. Becher, 5 May 1857" IOR/H/725 qtd in Wagner (2017) p.20

One British narrator, however, did suggest some idea of the revolt's cause. Although he warns that "on the insurrection as a whole, it is most difficult to give an opinion," a Major Williams of Meerut, writing with the benefit of hindsight, offers three observations.[33] First, that he had heard rumblings from "old sepoys" that they had been passed over for promotion and pushed out by new British staff.[34] Second, that the idea of a popular revolt had no basis in fact, and that "the body of the people could not be against us."[35] Finally, he suggests that it should not be surprising that North Indians revolted, given that "the whole fabric of their social life and sacred institutions was in danger."[36] Here, almost uniquely, is a British account that centres prospects for participation and takes a culturally functionalist approach, concerned not with conspiracy or political intrigue, but with "the fabric of social life and institutions" and the violent response that comes from endangering them. Seeds of Kaye and Malleson's "genius and institutions" are plain here.

Major Williams' narrative is also notable being the only British source to enclose the account of an Indian employee with his own. Included with his narrative was the account of a Sikh member of the Bengal Police Battalion, Shaikh Hedayut Ali.[37] Ali, unlike Williams, does not recount a narrative, but rather immediately offers general observations about the revolt. First, he notes, the British caused resentment by asking Brahmin soldiers to eat before washing, and to travel beyond the borders of India.[38] Second, missionary insistence on things like female presence at circumcisions lead native troops to wonder "what next shall we be compelled to do against our customs and religion?"[39] Third, he argues that "the inhabitants of Hindoostan are uneducated and extremely bigoted," and that this lack of education leads them to "think anything new or anything they don't understand must be meant in some way or another to effect their religion." From this, he concludes, "all of this anarchy and ruin has come to pass."[40] Finally, he closes by arguing that exclusion of low-caste individuals from the army likely allowed fears and rumours to spread unchecked, making the revolt particularly catastrophic.[41] In these observations, he is presenting a clear argument about the revolt to British ears:

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[33] "Narrative of events connected with the outbreak in 1857 which fell under the observation of Major [G. W.] Williams [Commissioner of Military Police, N.W.P.] in the Meerut Division 15th Dec. 1858" IOR/H/727 pp.735-955
[34] Ibid p.737
[35] Ibid p.751
[36] Ibid p.752
[37] "A few words relative to the late Mutiny of the Bengal Army and the Rebellion in the Bengal Presidency by Shaik Hedayut Ali, Subadar and Sirdar Bahadoor, Bengal Sikh Police Battalion, commanded by Capt. T. Rattray, who has translated this paper from the original Oordoo 30th Jan. 1858" IOR/H/727 pp.759-68
[38] Ibid p.762 As Kim Wagner has argued, the strict insistence by soldiers on the danger of "losing caste" by traveling outside India was often a strategic narrative designed to secure deployments closer to home.
[39] Ibid
[40] Ibid p.763
[41] Ibid p.766

1. Many mutinied because they believed you to be abusing their "customs and religion" (though Ali distances himself from this as a loyal and educated officer).
2. They believe this because they are uneducated.
3. This is exacerbated by shutting them out from participation in government, and thus breaking communication between rulers and ruled.

This thread of custom, ignorance, education and participation lays clear groundwork for the information order and patterns of collaboration that followed. It was also a common theme throughout Indian accounts in Kaye's files.

Of the Indian explanations of the revolt in Kaye's papers, all but one were from individuals already in British employ. The one exception is an apparently found document "in the handwriting of Shaikh Said Rungin Rakam" (who is not identified further).[42] The miscellaneous nature of this piece might attest further to British desperation for native information. Whatever its source, it lacks the loyalist tone of all other Indian voices, offering a prayer for the victory of the revolt, and recounting the ways in which the British "broke faith" with their subjects. The author lists page after page of infractions, from unreasonable taxation, to British drinking, social misconduct and attempted conversion. These complaints run from political to cultural, but seem to foreground the just outrage of a morally and religiously wronged Indian populace.

The most direct explanation of the revolt from an Indian source in Kaye's papers is a letter from Munshi Mohan Lal to Adjutant-General Chamberlain, who apparently asked Lal personally for his opinion while still laying injured from the siege at Delhi.[43] An *"evolué"* munshi of the new professional mould, Lal was a longstanding "apostle of bureaucratic knowledge" for company administrators and "India's first modern anti-imperialist."[44] It is both sensible and still striking, then, that in a crisis British officials sought not just his service, but his insight too. Given Lal's "sustained assault on Company policy" in official reports, it is also evidence that strategically deployed criticism could in some cases bring an intermediary closer to power rather than drive them away, provided someone in authority found the criticism or the information it contained useful.[45]

Lal begins his account as Ali did, by distancing himself from the rebels, noting that his home in Delhi was burned and that he passed "secret intelligence" to the British through his

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[42] "Translation of 'Advice of the Royal Army,' a pamphlet in the handwriting of Shaikh Said Rungin Rakam 15th Sept. 1857, A justification of the Mutiny after the One Hundred Years rule of the English." IOR/H/727 pp.487-733
[43] "Munshi Mohan Lal to Brig. Chamberlain 11th Nov. 1857, with Account of the causes of the Mutiny 8th Nov. 1857" IOR/H/725 pp.389-422
[44] Bayly, C.A. (1996) p.230
[45] Ibid p.231-3

family.[46] After deriding other elites who believed they would be better off under native rule, and throwing specific blame on Muslims, Lal explains the uprising as having two general causes: slights of honour, and the ignorance of the people.

To the first point, Lal complains of the "contemptable manner with which [Indians] are treated by the generality of English gentlemen," arguing that this contempt prevents them from being able to "fill that place which God has given them in life."[47] While this complaint is less specifically custom-bound than Ali's, it is notable here that Lal moves the conversation from political or conspiratorial explanations, to one of honor, rightful place in society, and the o*bligations of the British* to understand and respect their native subjects. Lal's second point prefigures indirect rule and echoes other Indian collaborators more clearly. Rebellion, he argues, is caused by ignorance: ignorance in the sense of a lack of education, and ignorance also as incomprehension between ruler and ruled. The threat of rebellion, he argues, "can only be removed by the extension of English Knowledge throughout the every town and village in India."[48] In the absence of education and mutual understanding, this "state of ignorance" endangers any possibility of creating "respect, affection and awe in the hearts of the people."[49]

Here we see repeated the notion that mutual incomprehension was at the root of rebellion, and if continued there would be a never–ending risk of unrest. In the combination of a passionate call for education and a solemn invocation of the natural god–given order there is also the seed of the progressive-preservationist tone Kaye and Malleson's history. The line Lal implies the British must walk is one between backwards ignorance on one hand, and disruption of the social order on another, with rebellion waiting for a misstep.

The final explanatory Indian voice in Kaye's papers is not a mutiny account at all, but a private letter to Kaye from a "Syed Ahmed."[50] The note relates only obliquely to the revolt, dating from a decade after the mutiny had ended, and being mainly a reply to a question of Kaye's asking if Indian Muslims were inherently and perpetually rebellious. It was an important question for British-Muslim relations going forward, but its main importance here is that it points to the relationship between these two men, both former employees of the EIC and key figures in Raj-era India.

At the outbreak of the revolt, Syed Ahmed Khan was an employee of the East India Company in Aligarh, just over 100 kilometres southeast of Delhi. While fleeing the revolt,

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[46] Lal to Chamberlain IOR/H/725 pp.389-90
[47] Ibid pp.393,420
[48] Ibid p.393
[49] Ibid p.394
[50] "Sayed Ahmed to Sir J. Kaye 14th Dec. 1869 (Original), How far the Mutiny in the N.W.P. developed into a popular rebellion." IOR/H/725 pp.1011-6

watching his house burned in the process, he began to keep a meticulous diary of events.[51] This diary seems to have been intended from the outset to be published, anticipating at least the need to tell a personal story of loyalty when the dust of revolt settled. This diary became an extended pamphlet on *The Causes of the Indian Revolt* (*Asbab-e-Baghewat-e-Hind*), and was finished in the summer of 1858, as the revolt was dying out with the country still under British martial law. Five hundred copies were printed and distributed (in Urdu) directly to British officials, with many shipped to London.[52] The Secretary of State for India received his shortly after the Proclamation of 1858, with those in India having received theirs months earlier.[53] By December it had been discussed in Parliament and denounced by the Foreign Secretary as "a very seditionary essay", but only after being "accepted as a sincere and friendly report" by the Governor General Lord Canning.[54] Several personal translations were commissioned by MPs, and a general translation for the India Office was completed by 1860.[55]

In the text of *Causes*, Sir Syed begins with a point-by point refutation of common British explanations for the revolt, arguing alongside Ali and Col. Williams that "a conspiracy, or concerted league never existed in the army" or in the population at large, that "no one ever had the slightest hope that the King of Delhi would revive the [Mughal] Empire," and that no national revolt was imagined by the population at large.[56] Sir Syed then offers five "mistakes" of the government of India which lead to the revolt:

1. "Ignorance on the part of the people: by which I mean misapprehension of the intentions of Government."
2. "The passing of such laws and regulations and forms of procedure as jarred with the established customs and practice of Hindustan."
3. "Ignorance on the part of the Government of the condition of the people; of their modes of thought and of life and of the grievances through which their hearts were becoming estranged."
4. "The neglect on the part of our rulers of such points as were essential to the good Government of Hindustan."
5. "The bad management and disaffection of the army."[57]

Of these causes, the last was meant only to address the immediate spark of mutiny rather than the broader revolt. The fourth places Sir Syed's analysis into the reigning Company discourse of "good

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[51] Hali, Altaf Husain. Hayat-i-Javed : a biographical account of Sir Sayyid (1909:979) p.58
[52] Raja (2010) p.22
[53] Quraishi (2016) p.5
[54] Hali (1909) pp.96, 63
[55] Ibid p.64. The translation used here is that of Sir Syed's long-time friend, the British Colonel G.F.I. Graham, first published in London in 1873 (2016 edition).
[56] Khan (2016) pp.53-61
[57] Khan (2016) pp.65-6

governance" rather than justice or democracy.[58] The first three, however, provide a theory of the mutiny which prefigures the order to follow.

On one hand is the question of law–making. In Sir Syed's view, the key mistake of the government was to make bad laws, not understood as wrong through a moral or utilitarian lens, but because they were an ill–fit with the "customs and practice" of the people. Later in the text, Sir Syed makes clear that this was most significantly an issue in three areas: trying people of multiple faiths or traditions under a single court, rather than "in accordance with the religious practice" of the parties; not respecting traditions of land-holding and inheritance; and imposing new models of debt and revenue collection in a way that has ruined agricultural communities.[59] Each of these questions of religious jurisdiction, agricultural change and property inheritance would become a significant field of dispute over custom in the period of indirect rule. Furthermore, the commitment to fixing them — not only mapping the diversity of traditions, but codifying custom in order to implement diverse courts — would drive the ethnographic turn in empire for nearly a century.

Second, the first and third critiques each put information flow at the centre of the mutiny, and taken together propose a new theory of the colonial intermediary. In his third point, Sir Syed suggests something which many voices in Kaye's papers echoed: that the British did not understand their subjects, and that this was a dangerous failing. While the sheer surprise of the mutiny assured the British that there was *something* they had missed, by the time *Causes* was first received it is not clear that the British mind had settled on precisely what that something was. Conspiracies, palace intrigue, Muslim aspiration were all potential blind spots, but Sir Syed suggests that the information at the heart of this "information panic" was first and foremost information about the "modes of life" and "estrangement" of the people. Especially coming after point two, it is difficult to read these "modes of life" as anything other than custom and practice, or not to read that estrangement as something like the crisis of rapid modernisation discussed by Maine years later.

While the third critique points to an existing anxiety in the direction of custom, however, the first introduces a new idea entirely; the need not only for a colonizer to understand their subjects, but for the subjects to understand them as well. The information, he is arguing here, must flow in two directions. The result of the absence of this two-way representation, he argues, was that the people began to believe in wild theories about the desire of the British to convert them en masse, finally culminating in the rumour of greased cartridges which sparked the revolt.[60] And what would fix this anxious ignorance? The spiral into revolt, he argues, happened because:

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[58] Mantena (2010) p.22
[59] Khan (2016) pp.75-9
[60] Khan (2016) pp.66-68

> no one was at hand to correct the errors which [the Indian people] had adopted. And why? Because there was not one of their own member among the members of the Legislative Council.[61]

With this observation, almost as an aside, Sir Syed makes the case for a very specific kind of two-way representation. He avoids liberal notions of representation, even scoffing at the relevance of a free press.[62] Rather, "the purpose of the native representatives is to act as native informants who can 'teach' the government a better way of reaching the native populations," and then to carry the intentions of the government to those populations in turn.[63] The problem of the mutiny, as Sir Syed presented it, was "the problem of cultural translation," and a new type of intermediary, with a seat at the table and a place in the village, is needed to carry that translation out.

In the short term, Sir Syed got his wish of Indian representation on the Council just over two years later. Over the next decade, Kaye and Malleson's official history repeated for a wider English audience the claims of an aggrieved aristocracy to represent a custom-bound and impulsive people. In the longer view, the understanding of revolt as a problem of information espoused in various forms by Syed, Ali and Lal was taken deeply to heart by colonial rule from India outwards. The association of custom – backed up by apologetic insistence on the 'ignorance' of the people they represent – becomes the main barometer of danger used by generations of colonial officers attempting to pacify diverse populations by coercion and collaboration. The modus operendi of indirect rule seems to have been inspired in large part by what Raja has described as "the crux of Sir Sayyid's whole argument: the British need to create a native collaborator class upon which the whole edifice of the Raj can stand."[64]

Intermediaries and Emergencies

> There comes a Settlement Hákim to teach us to plough and to weed,
> (I sowed the cotton he gave me, but first I boiled the seed)
> He likes us humble farmers, and speaks so gracious and wise
> As he asks of our manners and customs; I tell him a parcel of lies.
> - Sir Alfred Lyall, "The Old Pindaree"

Sir Syed, Mohan Lal, Sheikh Hedayut Ali, and likely others helped to offer the British world a new class of intermediaries, translating globally between ruler and ruled, and steering rule sometimes in the direction of their (circumscribed) will. Their intervention in the aftermath of the mutiny, while it predates the system it helped create, offers us a prototype of the intermediary

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[61] Khan (2016) p.64
[62] Raja (2010) p.23; Khan (2016) pp.64-5
[63] Raja (2010) p.23
[64] Ibid

which can guide us going forward. The role of intermediary which they both sketched and inhabited had the following qualities.

First, *they speak from personal experience, but at a remove*. When refuting British theories of conspiracy or claiming that Indian anger arose from fear of conversion and abuse of custom, neither Sir Syed nor Mohan Lal cite any particular evidence. They speak primarily as Indians, and their positionality is their evidence. This works partially because of the hunger for on the ground information during the mutiny, but it also works on an ongoing basis because of metropolitan assumptions about the colonised person and the colonised mind. As Gayatri Spivak has argued, while "the coloniser as orientalist knower has all the problems of selfhood... the informant, the object of knowing, is authentic without a problem."[65] Colonial officers were hardly always this credulous of course, as Alfred Lyall's stanza above attests. In general, however, these intermediaries are at least speaking *for* subjects who are assumed to be authentic and simple, and in the game of coordination outlined in the previous chapter, the impression of naive simplicity confers an incredible advantage. Lyall aside, John Kaye and Lord Canning's acceptance of Sir Syed's explanations is a testament to the power of the intermediary's account of his own people's intractability. Likewise, in a coordination game, knowing the level of thought at which the coloniser assumes you have stopped confers a strategic advantage as well, and this is far easier if you can present a narrative as uncontrivedly true.

Next, they speak a language recognised by their counterpart, and achieve this by *studying the colonizer as much as he studies them.* The sections of their analyses in which these collaborator–critics refute theories of popular uprising or conspiracy are hardly as compelling as those in which they diagnose the mutiny, but they are a tellingly well-informed account of British fears and anxieties of the time. Similarly, Sir Syed's invocation of the language of good governance places his challenges to the details of British rule within a language he knows they find legitimate (and perhaps less threatening than questions of reform or justice). In the decade surrounding the revolt, Sir Syed became an avid reader of *The Edinburgh Review* and other politically-tinged British periodicals, eventually striking up a correspondence with the Duke of Argyll on politics and religion.[66] A few years later, while he was involved in founding a school to train Muslims for civil service, Sir Syed travelled to London for research (and to accompany his son to Cambridge).[67] In between speaking to engineering societies and receiving the Star of India from Kaye himself, Sir Syed also took time to visit the India Office museum and peruse collections of British ethnography of his own country.[68] There, he was shown the recently printed fourth volume of *The People of India*,

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[65] Spivak qtd in Codell (1998) p.13
[66] Graham (1885:1974)
[67] Hali (1909) p.108
[68] Hali (1909) pp.111-13; Lelyveld (1975) p.3

coincidentally the volume which surveyed Aligarh. Sir Syed took detailed notes for his curriculum on his return.[69]

This structuring of one's self-description into the categories you know are expected of you is what Anna Winterbottom, in the earlier Company–rule context, calls "auto–ethnography".[70] Its reasoning is straightforward; if and when the subaltern can speak, power still has selective hearing. As a reading of the actions of the weak, however, auto–ethnography introduces a host of problems for analysis; are we, for instance, witnessing a subject being forced into power's modes of thought, or appropriating them for her own ends? In the end, the difference between hegemony and strategy rests to a great degree on intent, which points to the next quality.

Intermediaries' *accounts are instrumental*. From the retrospective vantage of nationalist historiography, the great puzzle of Sir Syed's *Causes* is that he so got things so normatively wrong. Why did the man often now known as "the father of Pakistan" tell a story which jibed so well with British orientalist tropes, and so poorly with nationalist pride? While Hali is too close to Sir Syed to ask, and subsequent work splits often into hagiography or derision at his "collaboration," Sir Syed's biography offers the suggestion of an answer. In the wake of the mutiny, the British carried out an ongoing campaign of brutal reprisal against those they suspected of taking part, and under the Muslim conspiracy or national revolt schools of thought, this could include either all Muslims, or nearly everyone Sir Syed knew.[71] In many places, the violence was gruesome and public, with one soldier in Delhi writing home of "treating [the remains of the King's sons] with every indignity," and another that he could "never have revenge sufficient to satiate my thirst."[72] As late as July 1858, suspected mutineers were being executed by being fired from cannons, with the skull of at least one brought back the Britain as a trophy, to be found discarded but still labeled in a back room of a Kent pub in 1963. The atmosphere in which each of these men wrote their accounts was one of incredible danger from an angry and confused colonial power; each knew the understanding they helped create would shape not just governance but violence which they were witnessing in real time.

There is evidence in Kaye's papers, furthermore, that violence was indeed linked to interpretation. The governor of Banda, for instance, explicitly suggests that reprisals be carried out against lingering political dissidents he believes are waiting for another chance to cause an uprising.[73] If the mutiny was due to a misunderstanding rather than a plot or a national grievance, however, then open-ended reprisal seems less necessary. Peace could come not from waging brutal war against a rebellious element, but by employing "cultural translators" to mediate between

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[69] Lelyveld (1975) pp.4-8
[70] Winterbottom (2015)
[71] Hali (1909) pp.61-2
[72] Wagner (2017) p.219
[73] IOR/H/725 p.13

power and populace. This suggests at least that Sir Syed's approach to narrative was contextual, and that the push for a custom–focused order was potentially a response to violence. This is not to say that he did not mean what he said. Given his wavering a decade later on the question of religion and revolt, however, it is worth asking contextual questions about what he wished to achieve.[74]

These contextual questions support a fourth point: that *intermediaries are self-interested*. This does not mean that they are selfish. There certainly were base material interests at play, of course. Sir Syed, like other widely–read elite loyalists at the time, was deeply concerned with restoring his pension.[75] For all that Sir Syed argued in *Causes* that "Mohammedans seek honour, not money," he received "a robe to the value of one thousand rupees and a monthly pension which was to remain in effect for two generations" in recognition for his service.[76] On the other hand, Sir Syed's life's work was devoted to the Muslim community of North India, both to their lives at the time of the mutiny, and their life prospects at his founding of Muhammadan Anglo-Oriental College (MAO). Intermediaries care about the place of their communities and themselves in the power order of empire, and we should expect their actions and narratives to proceed from that concern. This also demands that we take a broader approach to the norms of "collaboration" and self-interest, and that we automatically associate neither with a lack of concern for community.

Finally, it is clear in the case of the mutiny that *intermediaries are enabled by crises which they shape, but do not necessarily create*. In Chapter 2, I stressed that a hallmark of the coordination-game framework is the fact that over-reach leads to disastrous consequences. It is this pervasive fear which lead colonial governments to seek out local explanations of how to avoid future revolt, as for instance General Chamberlain did by contacting Mohan Lal almost as soon as was possible. Crisis alone does not create new order, however; India had been racked by fairly continuous mutinies and revolts over the preceding decades, and yet the pre–1857 approach to rule continued more or less intact. It was the breadth of violence which brought 1857 to such public attention of course, but it was also the interpretation of this revolt as an "information panic" based in mutual incomprehension and tradition which gave it its paradigm-shifting traction. As we have seen in the contributions to Kaye's *History,* the emphasis on information, representation and custom came almost entirely from the Indian intermediaries who explained the crisis from a local position. While some histories of colonial resistance have stressed the ineffectuality of violence as compared to elite negotiation, then, this turning point makes it clear that violence and negotiation are often

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[74] In the letter in question, Sir Syed assures Kaye that 1857 was only a military mutiny, amplified somewhat by criminal elements. The context may have been his concern at the time with books arguing the inevitability of war between Muslims and Christians, and the need to soften associations between religion and violence. Khan 1869 (2016) p.121; Hali (1909) p.68

[75] Raja (2010) p.5

[76] Zachariah (2014) p.94; Hali (1909) p.55

mutually supporting. By routing the EIC from complacent hegemony, the sepoys and their supporters did more than push the British to the bargaining table; they convinced colonial power that it fundamentally did not understand the world it was governing, sending it on a search for answers which trusted native elites could then offer, with strategic purpose and wide ranging impact. If 1857 is a blueprint for one kind of agency of the colonized over colonial order, it suggests a recipe a that requires two ingredients: someone to cause the crisis, and someone to tell its story.

II. Broadcasting Order

The *History of the Indian Mutiny* marked the enunciation of a post–mutiny consensus as a full set of interpretations: of past authority's chaos serving as justification for new authority's order. Scholarship on this shift has mainly emphasized these ideas on their own as leaving a "legacy" which "did not consist in positive enactments, but in luminous ideas and comprehensive principles".[77] The consensus may have been more than a few official acts, but it was not simply a set of abstract ideas either; it did not change the world merely by being written down. The consensus was a new framework for governance, with new rules, new types of players, and new opportunities and costs for those who played. It was a new game, and a game is not a game if no one knows they are playing. If we believe this game mattered, then, we need to know how the Anglo-Indian world found out they had been collectively drafted into it, what the rules were, and how it could now be played.

The opening act of the new order was also the closing act of the revolt: Victoria's "Proclamation to the Princes, Chiefs and Peoples of India" on 1 November 1858. The proclamation declared publicly the effects of the Government of India Act two months before, dissolving the East India Company, transferring its powers and obligations to the British Crown, and creating both an Indian Civil Service and a council to advise the new Secretary of State for India. The proclamation thus announced the shift of power to new hands, but it was two promises made within that announcement which hinted at indirect rule to come. In broad terms, Victoria promises non-intervention in "the religious belief or worship" of any subject, tacitly suggesting acceptance of the narrative that religious conversion contributed to the outbreak of the mutiny. More specifically, the proclamation nods to anger at the seizure of native lands, and suggestively does so by promising "due regard" to "the ancient rights, usages, and customs of India," foreshadowing future battles over land rights framed in customary terms.

The second concrete move towards indirect rule was the Indian Councils Act 1861, designed to tweak the makeup and operation of the council created three years prior. First, the act took

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[77] Mantena (2010) p.152 here speaking specifically about the legacy of Maine.

steps towards decentralization of powers and the involvement of Indian subjects in policymaking. To achieve this, the Bombay and Madras presidencies were given authority to nominate Indian members of the Executive Council, giving colonial subjects (at least nominal) participation in legislative processes for the first time. Second, echoing the 1858 proclamation, the Councils Act re-affirmed religion's centrality to post–mutiny order. In establishing a range of legislative powers, the act specified four subjects of law which required Governor-General approval. Three seem like common concerns of executives; taxation and debt, discipline of British citizens, and relations with foreign government. Alongside these, however, was reserved any law related to "the religion or religious rites" of all Indian subjects. Religion and the practice thereof had, in the four years since the mutiny, become a concern of government to be treated with as much care as taxation and foreign affairs.

While these first two events are evidence of the rapid establishment of religion as a core concern of order for the British empire, as discussed above religion is not necessarily custom, and it was the latter about which indirect rule was most uniquely concerned.[78] Two further developments thus mark the enshrining of culture and custom in the post-mutiny order.

First, more process than event, was the unfolding of a new information order in British India. In the first half of the 19th century, the East India Company built an unprecedented intelligence network built upon two broad-stroke programs: understanding and influence of the court politics of Mughal and princely power, and knowledge of 'classical Indian civilization.' The former was achieved mainly through placing advisors and residents in high places in an attempt to "impose new controls on the fluidity of indigenous politics", the latter through the study of Sanskrit texts and Brahminical traditions in order to codify lost grandeur, and re-appropriate it to burnish the respectability of the Company and its associated rulers. After the mutiny, however, the information order was rebuilt along new assumptions, with new tools and new purpose in mind.

The first half of the 19th century saw the construction of "knowledgeable institutions: the army, the political services, the revenue, legal and educational establishments".[79] In the second half-century, these institutions expanded exponentially, propelled by information now flowing at the speed of telegraph and rail networks, "prodigious triumphs over time and space" which raised the tantalizing possibility of similar triumphs over culture and caste in their wake. With a change in scale came a change in the kind of information as well; the type of knowledge which was meant to sustain and protect those institutions took an overwhelming turn away from court politics and classical scholarship and towards custom and ethnography. Beginning in the early 1860s and

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[78] Mantena does briefly discuss the Proclamation in the context of religion, but collapses the range of political uses of religion into custom, entirely missing the religio-national reading so common at the time. (2010) p.49

[79] Bayly, C.A. (1996) p.143

culminating in comprehensive manuals of "criminal castes" in the 1890s, the primary information-gathering work of colonial officers became the accumulation and structuring of details about quotidian and group-based knowledge.

The most vivid early evidence of this shift was *The People of India*, an unprecedented photographic study of caste, region, vocation and culture commissioned by the Colonial Office in 1861, and published in eight volumes over the next decade.[80] John Kaye commissioned the study immediately on taking over the Politics and Secrets Division, seeing it as his new answer to the high-orientalism of Warren Hastings, who he had criticized as seeking knowledge of India "from books, not men".[81] Moving group by group, *People* presents portraits of individuals or groups paired with small ethnographic blurbs recounting their habits, customs, morality, employment, potential for nobility, criminality or revolt. Echoing the fanaticism understanding of the mutiny, the descriptions of Muslim tribes in the North–West note that "traditions and faith excite them to aggression", while other groups are called reliable collaborators or honest merchants.[82] The preface to the series makes the link of this project to the revolt explicit, giving as its raison d'être the fact that:

> The great convulsion of 1857-58, while it necessarily retarded for a time all scientific and artistic operations, imparted a new interest to the country which had been the scene of, and to the people who had been the actors in these remarkable events.[83]

From an inclination towards monolithic classicism, the knowledge which the imperial project saw as crucial had turned towards the peculiar, the day-to-day, and the diverse village and tribal life of a country of "little Indias... an agglomeration of small societies" to be known and governed with an eye to particularity, not unity.[84] Ethnography to manage diversity was the new project of rule.

The Assemblage

This new sociology of rule was publicly consecrated at the Delhi Durbar of 1877, at which Victoria was crowned Empress in absentia before the assembled and organised Indian aristocracy. The Durbar – "the crowning event of the nineteenth century" according to the official commemorative book – was meant to celebrate the fait accompli of the transfer of power from company to Raj.[85] While the fact of Raj rule had been settled for years, Victoria and a series of governments had spent the intervening decades on edge, watching carefully to gauge native response to the new

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[80] *The People of India. A Series of Photographic Illustrations with Descriptive Letterpress of the Races and Tribes of Hindustan.*(1868) Waston, J. Forbes; Kaye, John William, Allen and Co, London.
[81] Bayly, C.A. (1996) p.52
[82] *Peoples* v4 plate 48, v2 plate 10.
[83] *Peoples* v1 Foreward.
[84] Bayly, C.A. (1996) p.352
[85] Talboys Wheeler, James (1877) *History of the Imperial Assemblage at Delhi*. London: Longmans, Green, Reader, and Dyer. p.70

order. Now the time was right, they felt, to solidify the "hearty affection" of her newly orderly subjects, and to celebrate the strength of the newly forged order, and the truth of its reflection of the natural order of India itself.[86] "The goal of the assemblage" in Bernard Cohn's words, "was to make manifest and compelling the sociology of India".[87] To this end, the Durbar (a Mughal display of kingship, or at least a British approximation thereof) made clear and visible two key components of the post-mutiny order: the nature of Indian representation, and the notion of legitimacy on which it was thought to rest.

The Raj's conception of its own legitimacy was spelled out by Lord Lytton in his coronation address. After an elephant procession from the train station – accompanied by princely guards in Indianized tartan playing 'Home Sweet Home'[88] – Lytton took the dais and offered a triumphant argument for Raj rule in three parts. First, Lytton turned to the past to diagnose the ills which the Raj was meant to cure. In the previous century, he argued:

> Strife became chronic, and anarchy constantly recurrent. The weak were the prey of the strong, and the strong the victims of their own passions. Thus sapped by incessant bloodshed and shaken by internecine broils, the great House of Tamerlane crumbled to decay; and it fell at last because it had ceased to be conducive to the progress of the East.[89]

Generalized warfare was to Lytton the situation of pre-Raj India: warfare which was not only bad for the weak, but also for rulers who suffered from their own unchecked aggression. Unlike attitudes towards pre-colonial life elsewhere as *tabulae rasae,* however, Lytton does not describe this era as an abject void of authority, but rather a failed project of Mughal rule which demands a more capable successor. The very notion of India is to him implicitly "this great and ancient Empire", and the question of why empire is thus entirely sidestepped, replaced by the question of why *this* empire now.[90]

Lytton has begun to answer to that question already; to fix decay, and be conducive to progress. And how will the Raj accomplish what the Mughals and the East India Company did not? "Now," he assures the crowd in Delhi,

> … under laws which impartially protect all races and all creeds, every subject of Her Majesty may peacefully enjoy his own. The toleration of the government permits each member of the community to follow without molestation the rules and rites of his religion. The strong hand of Imperial power is put forth, not to crush, but to protect and guide.[91]

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[86] Cohn (1983) p.184
[87] Ibid p.189
[88] Wheeler (1877) p.103
[89] Ibid p.81
[90] Ibid p.80
[91] Ibid p.81

This is the paternalistic progress-through-conservation of Kaye, synthesized and re-broadcast publicly from a place of power. Toleration as the key to rule. Imperial power as a guarantor and preserver. A focus on the ruled as members of communities with rules and rites, rather than individuals with utilitarian drives for prosperity.

This was the new regime's official case for its own legitimacy, not just of its laws, but of the secondary rules by which those laws would continue to be judged. Lytton's words had been carefully pre-distributed to the press, and were reprinted verbatim in *The Times* that same day, read simultaneously in London and Delhi, and digested and discussed by elites in each.[92] The publicness of the event in London is obvious, and the role of newspapers in fostering simultaneous common knowledge as a foundation on which political imaginaries can be built is well established.[93] It was furthermore meant to be an international event with repercussions for global politics; Lytton specifically reassured Victoria that the Durbar would broadcast British India's administrative strength to "Europe, Central Asia and Russia."[94]

Strategic Spectacle

What was achieved in London and across Europe with print, however, was first achieved in Delhi with ceremony and organization. "*Si rationem requires, circumspice*" mused Lytton, seemingly to anyone who would listen: once on the dais, once in a backroom meeting with princes that evening, and twice again in his letters to the Foreign Secretary and Queen.[95] "If you seek a reason [for British rule], look around."

If one looked around that day, the overwhelming sight would have been the arranged clusters of Indian princes and their retinues. Around them were sat "native gentlemen, landlords, editors and journalists and representative men of various kinds".[96] These mini-societies in motion were arranged by some notion of cultural grouping; echoing the logic of "Little Indias" described by C.A. Bayly, the Durbar reflected the view of India as a "society which was fundamentally composed of communities." As in the heterogeneous ethnographic blurbs in *The People of India*, the definition of community had not yet settled, reflecting sometimes caste, sometimes religion, sometimes region, sometimes occupation, often class.[97] Key to their existence, however, was an imagined group of "natural leaders" as representatives who were able "to speak for, and who

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[92] "The Assemblage" (1 Jan 1877) *The Times* p.1
[93] Anderson (1983) Imagined Communities
[94] Lytton to Queen 15 November 1876
[95] Wheeler (1877) p.111; Lytton to Queen 1 Jan 1877; Lytton to Salisbury 1 Jan 1877. Lytton was clearly fond of his turn of phrase, and perhaps of the idea that his Durbar was a monument to the Raj on the order of St. Paul's for Wren a century and a half before, whose memorial inscription he echoes.
[96] Wheeler (1877) p.111
[97] Cohn (1983) p.190

could shape responses from their communities": educated enough to work within British goals, native enough to command authentic authority.[98] This, the Durbar made publicly clear, was what it looked like to command authority in British India.

The Durbar also made clear what this authenticity should look like if it was to be recognised by British eyes and laws. The image of British India was cultural diversity (of a kind), and that diversity was thought of fundamentally in terms of history. The Durbar then embodied a sense of India as "a living museum," with each communally-bounded unit in its proper space, defined by its past. Banners were made by the British, displaying great acts committed by the ancestors of each group in attendance (foreshadowing by five years Ernst Renan's formulation of "the essential conditions of being a people" as "having common glories in the past and a will to continue them in the present").[99] When appropriate, the great act depicted heroic loyalty to the British in 1857, justly rewarding participation in empire with authority and proud communal history.[100]

There were, of course, communities without useable histories. Boundaries were fluid, and the desire for groups to be traceable backwards into past greatness did not make it so. This did not deter the British; in these cases histories were simply made for them. Gold and silver medallions were also struck for each group, alongside coats of arms, all handed to them in a great procession before the representative of the new Empress. "It is significant," notes Cohn, "that the major present was a representation of the British version of the Indian rulers' pasts".[101] Significant because these were the "small societies" which British rulers had decided it was their job to manage, and here "the expectations of the powerful" were made clear; if you want to have a seat at the Durbar: have a people, have a character, have a history.

Finally, in the job of making order and expectations clear, there is something particular about a public ritual. The social expectations of the Durbar echo official ethnographies like *The Peoples of India*, but whereas *Peoples* is mainly evidence of a changing order, the Durbar was a key act in the ordering process itself. The Durbar was a communicative act on a grand and *public* scale. While publications like *Peoples* and Maine's *Ancient Law* were key in teaching the British rulers of India how to imagine it, the Durbar showed colonised elites how to respond to that rule.

In the previous chapter, I argued that the post-mutiny order was mainly a strategic shift - a new set of rules and opportunities which re–shaped the ways in which coloniser and colonised made political claims. To engage in strategic interaction, however, a person needs to have a reasonable idea of what the other wants, how they think, and how they might pursue their goals. Rules need to be common knowledge for order to work. I need to know not just what you want,

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[98] Cohn (1983) p.206
[99] Cohn (1983) p.192; Renan 1882 (1995) "What is a Nation"
[100] The official photo book also devotes a chapter to the histories and myths of the various peoples represented. Wheeler (1877) p.61
[101] Cohn (1983) p.204

but that you know I know it too, and that all other key players follow us through these steps of knowledge. As Chwe has argued, "progresses" — marches, public audiences, regal parades — "create common knowledge" by their visible visibility, the fact that everyone knows that everyone else is watching.[102] Rituals like the Durbar do not simply consecrate already-existing rule, they *are* power in a very direct sense, in that they allow one concept of order to cross that high threshold of common-knowledge. In other words, if the Durbar sounds mainly like a see-and-be-seen event for the socially connected, this is exactly the point.[103]

To look around and understand British rule, argued Lytton, was to see "an empire multitudinous in its traditions, as well as in its inhabitants, almost infinite in the variety of races which populate it, and of the creeds which have shaped their character".[104] Perhaps so. But if a prince or merchant looked around at the Durbar, most of what they saw of the empire were other Indian elites, sharing in the project of rule by carrying banners of history which were "Indian in content but appealing and acceptable to western tastes".[105] Because of the home–facing nature of the ceremony – Disraeli wanted a symbol of stability for the British public and photography obliged him[106] – many Indian elites also knew that their colonial rulers had committed to this notion of rule before two publics, and so could reasonably expect them to have a difficult time wavering from it.[107] Order is created when actors have common expectations of one another's actions. Expectations of power can be learned in small ways; C.A. Bayly, for instance, catalogues the dramatic uptick in data collection amongst Indian organisations after interacting with a newly statistical state.[108] Here, however, Indian elites did not simply learn what was expected of them by the British; they learned what game one another were playing as well.

This mutual-learning was not an unspoken thing; British accounts give prominent space to Indian elites very loudly *getting it* within earshot of key colonial figures. In his letter to Victoria, for instance, Lytton remembers Sir Oinkur Rao musing that:

> If any man would understand why it is that the English are, and must necessarily remain, the masters of India, he need only to go up to the Flagstaff tower and look down upon this marvelous camp. Let him notice the method, the order, the cleanliness, the discipline,

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[102] Chwe (2001) p.22
[103] It is exactly how a "Durbar" in general was described by one EIC employee as early as 1616, who defined it as "the place where the *Mogull* sits out daily, to entertaine strangers, to receiue Petitions and Presents, to giue commands, to see and to be seene." "Durbar" *Hobson Jobson* p.215; See also Masselos (2012) for the 1877 Durbar as the first large-scale meeting of the modern Indian "intelligentsia," and thus a formative event for their mutual awareness. p.185
[104] Qtd in Cohn (1983) p.194
[105] Cohn (1983) p.183
[106] Codell (2012)
[107] Cohn (1983) p.185
[108] Bayly, C. A. (1996) p.349

> the perfection of its whole organization, and he will recognize in it at once the epitome of every title to command and govern which one race can possess over others.[109]

Lytton also remembers Maharajah Holkar, governor of Indore, commenting on the historical movement from chaos to order implied in the assemblage. "India has been till now a vast heap of stones" he remarked. "Now the house is built, and from roof to basement each stone is in the right place."[110]

Rao here is flattering the English self-image as officious neateners of civilisations with perfect pitch, and Holkar their sense of the Raj as bringers of order to scattered ancient peoples. More than flattery is going on here, however. Each are not simply pledging allegiance to British rule, but rather signalling that they understand the *idea* of the Raj. This sort of public 'getting it' creates a foundation for mutual expectations, and is as key as any contract in establishing a reliable focal point for the ongoing series of coordinations that made up rule from the Durbar on.

Others went beyond simple agreement. Many used the occasion to signal their desire to participate more deeply in the new British order. As the celebrations ended, Lytton was approached by the Khan of a semi-sovereign princely state who demanded a crested banner be given to him as well. After it was explained that as a prince he could not be given a coat of arms "without compromising his independence," he replied sharply "but I am a feudatory of the Empress," and that if independence cost him recognition of that status then "I don't want to be an independent Prince and I do want to have my banner like the rest."[111] Again this is more than simply flattery. The Khan's request to trade a feudal Raj representation of his past for formal independence suggests a determination to begin playing the new game, leaving the old one behind if necessary. This is a calculation perhaps that the possible payoffs of entering into semi–feudal indirect rule with the Raj was better than the *best alternatives to negotiation* (BATNA) he expected to achieve by going it alone. This calculation likely had as much to do with the tightening British monopoly over land and force in India as it did with the attractiveness of Raj feudalism, but it was a signal all the same that for some the arithmetic was breaking towards collaboration.

On one level these collected moments are simply evidence that the message of the Durbar was heard. They are also, however, evidence of active participation by Indian elites in the reinforcing of that new system. The repetition of these interactions in letters and broadcasts home also suggests that they were fulfilling a pronounced British thirst for evidence of local legitimacy. Lytton was keen to assure the Queen and Salisbury that their message was both received and understood; *The Times* was eager to reassure its readers that far away subjects were participating in this new scheme of costly and expansive global rule. It is not clear whether these Indian nobles

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[109] Lytton to Victoria 1 Jan 1877
[110] Ibid
[111] Lytton to Salisbury 2 Jan 1877

were being genuine or canny in their admiration of Lytton's spectacle. The precision with which Lytton recounts these conversations on a day in which he spoke with hundreds, however, suggest either a serious weight given to these affirmations, a level of inventiveness on his part (filling a need for these touches of legitimacy), or likely a degree of both. Regardless, they show that it mattered not only that the Raj spoke publicly, but that everyone knew its collaborators understood.[112]

Finally, the publicness of the Durbar offered space for contention as much as support. One such moment looms large in Lytton's own account of the day. As the top stratum of Indian rulers paraded across the stage to pledge loyalty to and receive medals from the Viceroy, the Nizam of Hyderabad Sir Salar Jung intentionally substituted the words "friendship and alliance" for the original "loyalty and allegiance" in his pledge.[113] Lytton was caught off guard by this public renegotiation of the terms of the new hierarchy and, as he tells it, he later found Jung and "forced him later to submit written acknowledgement of the supremacy of your Majesty's Government."[114]

On the dais itself, however — in earshot of key British and Indian figures — Jung had made his point. Furthermore, while Lytton assures the Queen that he had tamed this miniature revolt, he admits in a letter the same day to the Foreign Secretary that he had agreed privately that to prevent future clashes they "cannot, and will not, allow the further employment of Europeans in Hyderabad."[115] Lytton also tells only Salisbury that Jung claimed he had been advised to alter these terms by the Prince of Wales and the Duke of Sutherland on a recent visit to Britain, demonstrating a fluency with internal divisions in British Rule and an intent to use them to his advantage.[116] Given the Duke was a Liberal MP and companion of the Prince on his previous visit to India, and given the determination with which Lytton kept his plans for Indian noble titles secret until Parliament was safely out of session, this prod at metropolitan political vulnerabilities likely found a sore spot in the Conservative-backed Viceroy.[117] Combined with Lytton's repetition of this episode, and his selective retelling of its real political consequences, it is reasonable to conclude that Sir Salar Jung had learned early what many would work out in time; that the public fora which were so valuable for creating and coordinating order were powerful spaces in which to contest it as well.

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[112] The general European anxiety that their message at the Durbar be well received is reflected in public hand-wringing that the Indian audience never once cheered. As the *Bombay Gazette* put it, "*The cheers were led by Europeans in the crowds of onlookers, and the East sat and watched, thinking its own thoughts*." The East here is monolithic and inscrutable, the British effusive and thirsty for recognition. Qtd in Masselos (2012) p.185

[113] Lytton to Victoria 2 Jan 1877. This after he had stood up at the Durbar and vocally offered his prince, the Nizam of Hyderbad's, congratulations and wishes of long reign to Victoria, making him one of the few Indian voices conveyed by newspaper coverage in Britain. *Times* 1 Jan 1877 p.5

[114] Ibid

[115] Lytton to Salisbury 2 Jan 1877

[116] Ibid

[117] Lytton to Disraeli 16 July 1876. The 3rd

4. The Diffusion of Customary Rule

> We seek, then, the authority which according to tribal tradition and usage has in the past regulated the affairs of each unit of native society, which the people of the present generation are willing to recognise and obey.
>
> - Donald Cameron, appointed Governor of Nigeria after 1929 Women's War[1]

> We want new Chiefs.
>
> - The Testimony of Akpamgbo, combatant in 1929 Women's War[2]

In 1868, while busy with the third volume of his *History of the Indian Mutiny,* John Kaye wrote to the Foreign Office about recognition, inheritance, and a patricide.[3] In the previous week, Syud Thoweynee the ruler of Muscat had died, leaving power to his son, Syud Selim. Almost immediately that son was recognized by the British Foreign Office. A year before, the India Office had brokered a deal between Syud Thoweynee and Syud Majid, his brother and Sultan of Zanzibar, in which the latter paid his brother 40,000 dollars a year from the treasury of Zanzibar. And at the time of Kaye's writing, Syud Majid was attempting to annul this agreement on two grounds: that it was an agreement between persons not states, one of whom was now dead; and that in any case the new ruler of Muscat was illegitimate, having likely murdered his father.

That day, the Secretary of the Politics and Secrets department of the India Office was writing to the Foreign Secretary to inform him that, in recognizing the new Sultan, they had tied British interests to a leader that anyone familiar with the region's politics would know was likely illegitimate, and certainly an epicentre of scandal.

The global context of this dispute was a diplomatic "triangular duel" between Zanzibar, Muscat and Persia. The more immediate context of Kaye's letter, however, was the jurisdictional

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[1] (1939) My Tanganyika Service and Some Nigeria p.97
[2] "Proceedings before the Commission of Inquiry into Disturbances in the Calabar and Owerri Provinces" In Falola (2011) *The Women's War of 1929: a history of anti–colonial resistance in Eastern Nigeria* p.273
[3] Kaye (1868) "Zanzibar, Muscat, and Persia. Memorandum by Political Secretary. India Foreign, 14th May, No. 81, 1868." IOR/L/PS/18/132 p.1

jockeying between the Indian and Foreign Offices over the right to appoint officials to, and make policy towards, the royal families of Zanzibar and Muscat. The letter's question is that of whose authority governs the concrete details of empire in the Indian Ocean; the ground of that fight is succession, recognition and legitimacy; the weapons of it, Kaye hopes, are granular local knowledge, and intimacy with the life of the colonized.

After sketching the facts as he saw them, Kaye launches a diatribe on the consequences for British policy of what he sees as the Foreign Office's mistake. "Recognition means responsibility" he scolds, "and, whatever may be the career of Syud Selim, he has been recognized by the British Government, and, therefore, we are as much bound to uphold the award as if he had been a better man."[4] Kaye goes on to warn that the consequences of this mistaken recognition ranged from frustrated efforts to replace slave labour with migrant workers from India, to a weakening of Britain's position in the Indian Ocean against Persia. He lands finally on the question of what this mistake should mean for future questions of recognition, and pins his argument on knowledge:

> Having reference to the fact that the India Department of Her Majesty's Government is the one most versed in Oriental usages and best acquainted with the Oriental Character, Sir Stafford Northcote may, perhaps, consider it more advisable to place the entire group of agencies, thus connected with each other, under the superintendence of the India Office.[5]

An attached memorandum from the India Office's Captain Eastwick concurs with Kaye's suggestion, emphasizing the Office's "more exact knowledge" and suggesting that the British Political Agent in Zanzibar "should no longer be permitted to correspond direct with the Foreign Office" but rather "should correspond direct with and receive his instructions only from the government of Bombay. His appointment should also rest with that government."[6]

This was a small episode in the context of imperial diplomacy: one behind the scenes squabble amongst many, which did not settle the question of recognition in a lasting way. What it offers, however, is a segue to intra–imperial politics in the run up to the scramble for Africa, from the ideas and practices of post–mutiny India. This exchange reminds us that the network of British Empire did not always radiate centrally from Britain, but drew personnel, practices and ideas from other more peripheral centres: that the empire in Africa and Malaya was less British than it was 'Anglo–Indian.' A few themes stand out here, which are generally important in the era of empire and customary rule to follow.

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[4] Ibid
[5] Ibid p.6
[6] "Memorandum by Captain Eastwick 13 July 1868" IOR/L/PS/18/132 p.7

First, this is an instance of jurisdictional jockeying, not between colonizer and colonized, but between two agencies of empire itself.[7] This is not to say that custom ceases in this period to be a weapon of resistance or domination, but rather to highlight the way in which custom became far more generalized as the language in which an actor contested global legitimacy and the right to rule. Second, this letter foregrounds recognition as a key political concern, and bases that recognition on possessing adequate knowledge to understand local standards of legitimacy. Kaye here jockeys for jurisdiction by attempting to shift the type of knowledge at stake in recognition, and while the word custom does not appear, there is a sense of Burkean legitimacy in the invocation of "usages" and "character" as the knowledge one most needs to govern an empire. Third, this letter highlights succession and inheritance as key sites for contesting global political authority, one which would not fade with the gradual demise of dynastic rule, but merely shifts its focus slightly from royal right to private property. Finally, this is one instance amongst many in which reconsiderations of jurisdiction, recognition, and the proper roots of political authority were a response to crisis, highlighting that violence and fear created opportunities to contest authority, and contextualized the types of knowledge which should rightly confer it.

This chapter will explore these themes in the diffusion of customary rule beyond India, in the half century framed by the scramble for Africa on one end, and the Second World War on the other. It will do so thematically rather than chronologically.

First, I will describe the concept of "Native Rule" in British colonial Africa, setting out its basic ideas, examining the ways in which it inherited ideas and practices directly from India, and the ways in which it was concretized in the everyday activity of rule.

Second, I will turn to the structural underpinnings of customary rule's diffusion, building on arguments advanced in Chapter 2 that customary rule as a coordination game took root where collaborators lacked strong best alternatives to negotiation. This means first that the early uptake of customary rule was driven by local elites who lacked strong extra–colonial bases to legitimate their authority, and often avoided by those who preferred existing alternatives to negotiation with colonial rule. It also means that the sales pitch for collaboration often promised a greater monopoly of authority for a single patriarchal ruler than some relatively polycentric pre–colonial political systems. Of course, the relative health of one's alternatives to colonial rule had as much to do with colonial state–building's destruction of old authority as its construction of new, and the colonial state's advance propelled a widening swath of dispossessed elites into bargaining for a place in customary rule.

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[7] It is also notable that Kaye's adversary here is the Foreign Office, which features in other IR work in this period as a key proponent of standards of civilization in Zanzibar. This reminds us that neither civilization or custom were monolithic 'British' positions, but rather bases for the authority of one group or another within empire.

Also as stressed in Chapter 2, this element of coordination games applies to all sides, and on the colonising side the lack of good alternatives took the shape mainly of fear: fear of revolt, fear of losing control, all pinned increasingly to fear of crossing a dimly drawn line of custom. While 'native rule' was not immediately implemented everywhere in British colonial Africa, it persisted in the array of policy choices and justifications available for officials in crisis, and was repeatedly called on in the shadow of revolt—real or imagined—as a philosophy and practice of social stability in the face of disorder. Carrying on from Chapter 3's discussion of customary rule's post-1857 origins, this chapter will detail the ways in which anti–colonial violence continued to be built–in to the idea of custom as the best form of global imperial rule.

Finally, this chapter will close by addressing two instances of revolt and crisis which did not produce turns to customary rule, but rather only hardened an emphasis on questions of civilization. These exceptions, I argue, highlight the fact that customary rule was not simply an automatic response to violence, but rather was turned to at times in which empire was specifically concerned with the violence of colonised peoples rather than colonizers, and thus foregrounded knowledge of native life.

I. Festina Lente: the Idea of Native Rule

In British colonial Africa, the post–mutiny consensus travelled from India as practice, precedent, and administrative common sense, and was put to work under the rubric of native rule. This mode of governance continued the belief in an unobservable layer of colonized life called custom, one which was crucial for political stability, knowable mainly through local intermediaries, and minimally elastic to 'modernization' on any immediate time scale, with the threat of revolt and crisis lurking if it were stretched too far. In practice, native rule was a combination of executive, legislative and judicial functions into one webbed architecture of native courts, itinerant District Officers, newly empowered 'traditional' chiefs, and 'expert' assessors—local and British—advising the whole apparatus on the authentic native life just out of sight.

As Mamdani has stressed, the project of British colonial rule in Africa could be usefully thought of not simply as the divide and rule of existing groups, but as the "define and rule" of amorphous polycentric peoples into governable ethno–tribal wholes.[8] This is to some degree an extension of modes of governance described in previous chapters. Thanks in part to the British assumption that African rulers were weaker than their Indian counterparts both materially and in terms of legitimacy — that Africa had no kingdoms and no history on which to build them — the fervour for chief making here took a more aggressive stance.

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[8] Mamdani (2012)

At the highest level, this often took the form of advisory councils in which chiefs performed a hybrid role somewhere between executive and informant. Colonial officials preferred these arrangements to elected legislatures, arguing that they possessed "the merit of building up rather than disintegrating African society as it still exists under immemorial law and custom" and the belief that they encouraged "a process of evolution guided and enlightened by knowledge of and sympathy with the history, traditions, religion and customs of its rulers, and their peoples."[9]

At a more granular level, this power manifested as the demand for colonized peoples to self–categorize, and the subsequent delimitation of rights, duties, life possibilities and even simple physical mobility in terms of these newly concretized social groupings. The thinking behind these "registration acts" was a particular mix of lofty civilizational goals, and more practical custom–focused means. In arguing the need for a Nigerian "Native Registration Act" with his superiors in the Colonial Office, Senior Commissioner Colonel Watkins illustrated this dual–approach, and linked it to an overarching concern with maintaining order in changing native life:

> Just as in the sphere of tribal administration the first step towards the education and control of a tribe must be to check nomadic tendencies and induce permanent and stable conditions, so in the mental development of the individual it is essential to develop a conception of individuality and stability before individual responsibility can be cultivated… In the native Social System the individual has his place and is kept in his tribal orbit by a belt of hostile tribes. Under the Pax Britannica he can wander anywhere, changing his name and his identity with each offense against the law, lest more than one be proved. To establish identity, and stabilise individuality is the real administrative problem which after various experiments in Kenya found its solution in a registration system.[10]

As with so many calls for customary rule, Watkins first offers a problem of disorder, follows by defining that disorder as caused by the unintended consequences of modernisation, and closes by insisting that the tried–and–true solution to this disorder is rule through an official embrace of native identity, and the stabilizing strictures of communal life. Notable as well here is the persistence of civilizational goals — developing individualism, elevating settled rather than nomadic life, and stressing the ability to contract — with the customary means of tribal identity and the stabilising forces of society in which each "has his place." As expressed in these policies, customary rule was not always a wholesale replacement of civilizational ideals, but rather a practical philosophy of governance which reoriented rule towards the formal recognition of communal belonging as a way of imposing order.

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[9] Richmond Palmer (1930) Report on Native Advisory Councils CO 583/173/7 p.14
[10] CO 533/698 pp.26–7

At higher levels, this approach to identity and order were expressed in explicit guides to governance. Whereas customary rule emerged piecemeal in India, from responses to revolt and fragments of legal philosophy, in British Africa it developed a clear set of canonical texts with explicit applications to governance. At the top of the syllabus of native rule was a set of *Political Memoranda* on the role of African political officers circulated internally by Frederick (later Lord) Lugard in 1913 after leaving his post as the Governor of Nigeria. Lugard had emerged as the paradigmatic colonial governor, in posts ranging from his birthplace in India to Hong Kong and Nigeria, and his *Memoranda* were regarded as 'the District Officer's bible' soon after their publication. He later would re–package these ideas on governance for a wider global audience in *The Dual Mandate in British Tropical Africa*, tailoring them for public consumption in a post–Versailles world in need of principles to direct its governance of quasi–colonies through the newfound League of Nations.

Lugard's philosophy of native rule took its cues from the post–mutiny Raj in which he was born and began his colonial service. He was one of a generation of colonial rulers raised on the gospel of local context, who nonetheless understood their roles anew in each context through the singular lens of Indian governance. This did not mean that Indian laws and institutions travelled fully-formed, but rather that the framing principles of indirect rule — conservation of social order by study of custom, rule of communal units through traditionally legitimated elites — served as a guide to where to look in new questions of governance. Africa was seen as less civilized than India, but to Lugard and his contemporaries this was a blessing in the form of a greater freedom to eschew dangerous modernity and rule through the expected safety of tradition. As Thomas Metcalf describes the image of India to Lugard and his ilk, "the Bengali 'babu,' with his book learning and his mastery of English, appeared in the fearful shape of a caricature Englishman." [11] When expanding rule to the Malay peninsula, then, it was believed that "progress surely had to come to Malaya, but the Malay was not to be reshaped in the image of the babu."[12] Far from a diluted mimicry of Indian customary rule then, expansion of indirect rule in the late 19th and early 20th centuries represented the opportunity for customary rule in purer form, in areas less spoiled by the dangers of Europeanization or modernity.

Lugard begins with the notion of civilised improvement as something to happen carefully, slowly, and through 'natural' or customary life rather than against it. "The British role here," he instructs on page one, "is to bring to the country all the gains of civilisation by applied science (whether in the development of material resources, or the eradiction [sic] of disease, &c.), with as little interference as possible with Native customs and modes of thought."[13] "Festina lente," hurry

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[11] Metcalf (2007) Imperial Connections : India in the Indian Ocean Arena, 1860- 1920 p.61
[12] Ibid
[13] Lugard (1919) Political Memoranda: Revision of Instructions to Political Officers on Subjects Chiefly Political and Administrative 1913–1919. Waterolow and Sons Limited, London. p.9

slowly, he coaches the District Officer, and change as little as possible.[14] Here Lugard re–enshrines Raj notions of order not simply by combining civilisation with custom, but by standing clear of civilising processes as any grand cultural thing, offering only material examples of progress, and warning against changes in customs or ideas.

Clarifying this role three years later for an international audience, he picks up strands of the Burkean and post–mutiny distrust of abstraction, and its concomitant attention to an imperial ideal of native institutions. He assures his audience that "there is no desire to impose on the people any theoretically suitable form of government, but rather to evolve from their own habits of thought, prejudices, and customs, the form of rule best suited to them."[15] Lugard's fixation on context also continues the functionalist, quasi–anthropological bent of post–mutiny thought. He warns District Officers, for example, that many practices and institutions which might seem "barbaric" from a European standpoint — secret societies, coming of age rituals — will turn out not only to be rational, but even conducive to peace and social order, if looked at within the full context of a native society.[16] There is that same element of an almost standpoint epistemology here as was present earlier in Kaye, Burke and others: the insistence that social meaning and social good only exist within organic wholes of societies, and thus that value judgements on the meaning of social practices should only been made from within a given society, not abstractly from without.

Lugard also echoes the post–mutiny emphasis on popular sovereignty from a certain point of view. As Sir Syed, Kaye and Mallesson bemoaned the silence of the Indian "vox populi" and prescribed traditional elites to give it sound, Lugard similarly calls modernizing direct rule mere "oligarchy" and stresses that the true popular legitimacy of native rule lies in the "consent of native custom."[17] In both cases, the author is taking a stand for the consent of the governed, at the same time as he rejects all of that notion's potential liberal trappings: ballot boxes, political parties, or modernization. Rather, it is the repeated enacting of consent through participation in custom and ritual which tells us whether a people consent: not as a numeric and momentary count, but as a historic social whole.

Again echoing Kaye and Mallesson, Lugard's urging for a degree of relativism comes with warnings that if this advice is not followed "we shall find that we have destroyed the natural institutions of the country, that we have sapped the foundations of native rule, and have taught them only the duty of obedience."[18] The echoes are here of the "war against the nobility" which the East India Company was accused of waging after the mutiny, and also of the "genius and institutions" it was the imperial governor's duty to discover and conserve.

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[14] Ibid p.10
[15] Lugard (1922) The Dual Mandate in British Tropical Africa p.219
[16] Ibid p.209
[17] Ibid p.197
[18] Ibid

Beyond its explicit philosophy, Lugard's work resembles Kaye and Mallesson's *History* in the tension between its tone and its intent. Both the *Memoranda* and *Dual Mandate* were prescription in description's clothes: political interventions in the form of narrative history and social observation. His *Memoranda* were offered "for the guidance of Administrative Officers" with the warning that "the procedure which they lay down will be adhered to, and no departure from it will be made without sanction."[19] They did not have this force, however, any more than the *History* directly regulated rule. Just as the *History* did not signal the end of imperial liberalism, Lugard's memos did not determine every act and policy of colonial government, and his segregationist school of thought, stressing fit between notions of legitimacy and socio–cultural circumstance, never entirely did away with a more modernizing understanding of the imperial mission.

What they did offer was a possibility. Lugard's instructions offered a latent approach to rule on both one level of highly theoretical justification (despite its stated scorn of abstraction), and another of detailed practical guidelines for rule (the 1913 *Memoranda* including sections raging from "Language" to "Necessity for Constant Traveling… Rest Houses… Poisons… Promotion of Coinage… Leper Settlements" and "Scale of Prices at Camping Stations").[20] As the next section will outline, native rule did not so much replace other forms of colonial rule by coercion or argument, but rather was selected from a range of approaches by actors in certain positions of need, and in places experiencing certain conditions of crisis. The power of thought like Lugard's — as with Sir Syed, Kaye and Malleson — was its availability as a tool in evolving and uncertain situations of rule. Every time that tool was taken up, to makes sense of new situations, to win disputes, to guide actions, or simply to justify those actions to superiors and public scrutiny, the language of native rule gained a degree of public currency as the common–sense or common–knowledge way to think about and enact legitimacy in Britain's global empire.

II. Structural Underpinnings: Who Joined Native Rule?

If native rule did not simply sweep across empire by the force of its arguments, what structured its uptake as a practice? As discussed in Chapter 2, to understand customary rule as a coordination game suggests that — as with all bargaining games — the decision to participate in customary rule will increase as the expected utility of participation surpasses the expected best alternatives to negotiated agreement. Crucially, this is a *relative* expectation. The expected outcome of collaborating in customary rule need not seem 'good' in any absolute sense; it merely needs to seem better than the alternatives. This means that the push towards participation should occur

[19] Lugard (1919) p.1
[20] Lugard (1919)

either when the expected benefit of collaboration in customary imperial state–building grows, or when the expected benefits of participation in other forms of rule diminishes. Put another way, while it is true that empire could not have coerced every collaborator without offering a benefit in return, the key to making that benefit attractive was often the widespread destruction of good alternatives.

This section will focus first on what the sales pitch of native rule looked like, looking both at explicit promises made to collaborators, and at general benefits offered by native rule over some extra–colonial forms of authority.[21] It will look second at the consistent pattern by which elites with impoverished opportunities for extra–colonial authority were quick to find a place within customary rule, while those with strong existing legitimacy often put off participation until their bases of authority were further eroded by the growth of the colonial state. Finally, this chapter will close with the flip–side of this logic of poor alternatives: examining the continued role of violence and revolt in turning British colonial officers to customary rule, and keeping them committed both to policing the jurisdictional boundaries between modernity and custom, and to upholding (with narrative, money and violence) the legitimacy of traditional authorities.

The Sales Pitch of Native Rule

Outside of major cities, the day-to-day face of British Rule was often a single District Officer (DO) and small entourage: a combined legal–executive figure meant to alternate his time between judge–jury–legislator in British 'native' courts and envoy on camelback, gathering information from villages and making clear when possible the goals of British rule. Ideally he was a two–way conduit for information, fluent in local languages and rooted more in the life of the countryside than the British clubs and offices: almost a 'translator' of the kind demanded by Mohan Lal and Syed Ahmed Khan, with of course the crucial difference of unmistakable foreignness. In actuality, he was often bored, depressed, flea–bitten, and prone to paranoid violence. It was nonetheless this figure whose job it was to pitch the role of collaborator to existing authorities in the areas he patrolled.

It is difficult to generalize the tone or content of these pitches, but we can start with some that we do have an account of, albeit only from one side. While "on trek" in Kordofan Sudan, a soon–to–be DO C.A.E. Lea wrote home to his fiancée after attempting to convince the most powerful leader of the region, Sheikh Ali El Tom of the Kababish people, to take on additional

[21] I say extra–colonial rather than pre–colonial here because, while the long march of colonization was an epochal change for colonized society, there never was a hard stop date to forms of legitimacy and authority outside of the colonial state which would allow us to break politics neatly into pre–colonial and colonial realities. African, Indian and East Asian life apart from colonial projects did not ever fully cease; sometimes the options they offered simply ceased to look promising to many leaders.

legal powers, and to "regularize" his tribe's place in the scheme of native rule.[22] Their conversation begins with Lea asking El Tom why he had resisted taking on the power of imprisonment, with the help of British funding and arms for prisons. After the Sheikh demurred, explaining that he had never needed this power in the past, Lea pressed, arguing that other chiefs "of lower stature" had accepted these powers, and that the British needed El Tom to retain his prestige by increasing his policing powers to match. Eventually "he said he would willingly accept whatever the government wished," and yet if this was the outcome Lea hoped for, the framing was not. "I tried to point out" he goes on "that it was not so much a question of that as of trying to regularise what he actually does now."[23] Lea is attempting to do two things here which El Tom understandably sees as contradictory: to give him new powers of imprisonment, and to call that empowerment 'regularization' of what already exists. What Lea wants from this exchange is the increase in public order he expects from new rights of imprisonment (as opposed to what he describes as more commonly used mechanisms of forcing parties in essentially civil suits to satisfy one another's demands according to their ability to pay). He only wants it, however, if it can be legitimated as simply the codification of existing practice. He seems scared of any appearance of invention or novelty.

Finally, El Tom 'gets it' for his District Officer, and describes a situation of order and mutual understanding that fits well within the scheme of customary rule. As Lea tells it:

> He agreed that the government, in its relations with the many tribes of the Sudan, is like a house of one design with many different rooms. If the Kababish remain outside the scheme of the whole they will be like a separate house and their close understanding and relations with the government and other tribes will be broken.[24]

There are echoes in this response (or rather re-telling of a response) of Maharajah Holkar's reply to Lytton at the Durbar, that "the house is built, and from roof to basement each stone is in the right place."[25] It suffers from the same limitation as the first, of course, that it is a local elite speaking the language of British power through the memory of a colonial official with skin in the game. It is, however, a private letter to a fiancée rather than an official one to a Queen. And to the extent that Lea craves the approval of his fiancée as much as Lytton does the Queen, it is again evidence that this is how a colonial official wants to be seen. "The government wants [El Tom's] position regularised so that all can know and understand" Lea writes in his own voice again. Regularity, here, is not simply order in and of itself, but rather order which allows comprehension and the formation of general knowledge: the word "all" might even suggest common knowledge. Why, to Lea, is common knowledge of Kababish social order necessary now? "Change must

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[22] Lea (1994) On Trek in Kordofan: The Diaries of a British District Officer in the Sudan 1931-1933.
[23] Ibid p.273
[24] Ibid p.275
[25] Lytton to Victoria 1 Jan 1877

come," he writes, and when it does, order can only be preserved by shoring up what Lea sees as the organization of Kordofan society by writing the arrangements down, making them visible, and giving them prisons with which to enforce it.[26]

Other interactions from Lea's letters make clear what else may have attracted local elites to the project of colonial state–building. Riding with another Sheikh, Lea meanders carefully around the question of revenue, and whether every bit of it comes back to the government treasury. Finally, he offers a word he has heard used to refer to keeping fines, and asks if local chiefs "eat" court revenue. The Sheikh laughs, "Eat? Of course they eat. But you confess to the government that you do… and only a little."[27] Pressing happily for genuine knowledge, Lea extracts from his confidant further explanation that sheikhs were careful never to "eat" taxes, only fines. Lea is ecstatic at this grain of insight into the society he is supposedly meant to "regularize" but often finds opaque, and it is a useful exchange for this discussion too. Here is a note of the material side to the somewhat abstract notion of codifying customary law, and what a local elite might have to gain from it. By taking from fines rather than taxes, this Sheikh directly gains from the increasing legalisation of life in Sudan under native rule. The legalisation of custom under native rule was all the things already said of it: the invention of tradition, definite and rule. It was also a revenue stream for local elites.

The push to formalize political arrangements under native law was used as a tool in political struggles between local parties as well, often because the British notion of chieftainship conferred far more absolute authority over 'traditional' jurisdiction than extra–colonial arrangements afforded. Lea again writes home about one "Sheikh Niama who, to avoid a quarrel with Sheikh Ali El Tom (who is his friend) over tribal lands in Wadi Hamin, wants me to delimit a boundary."[28] Here Sheikh Niama has seized on the coercive power of a third party to solve a problem by making concrete and explicit a territorial dispute that in previous political arrangements was fluid, indeterminate, and a potential cause of conflict. As Kristin Mann has argued in the case of Nigeria, the colonial impulse to concretize and give boundaries to land claims under supposedly traditional authority led to heavy use of native rule to re–craft land ownership away from contested situations and towards government–sponsored absolutism.[29]

Finally, a silence in Lea's account points to another promised absolutism in the scheme of native rule. Women are present in exactly two roles in his diary: the silent audience of his fiancée, and three times as slaves (once with a leering comment on the woman's physique). Non–adult males do not feature. Every person negotiated with, learned from, given orders to, or

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[26] Lea pp.275–6
[27] Ibid p.79
[28] Ibid p.26
[29] Mann (2011) "African and European Initiatives in the Transformation of Land Tenure in Colonial Lagos (West Africa), 1840–1920" in Belmessous *Native Claims: Indigenous Law against Empire, 1500–1920.* pp.223–242

collaborated with to build native rule is an adult man. This highlights another potential gain for participants in native rule; the reinforcement of patriarchal rule at the expense of gender and generation. This reinforcement of singularly adult male rule was in many places an intervention in a simultaneous fight against past plurality and future change.

To past plurality, a range of scholarship has documented the collaboration and contestation between male and female organizations of authority and labour in many extra– and pre–colonial African societies.[30] This does not mean that women never took up custom as a tool to negotiate their social position vis a vis men. In a case as late as 1947, for example, a woman whose lover killed her former husband's nephew as the latter forcefully attempted to stop the pair from eloping, argued that custom meant that her marriage was nullified by her very act of leaving, and thus that the killed man's attempts to stop them were without legal justification. Offering this testimony before the court, she argued that "our custom about divorce is that a woman will run away with a man and then the husband will divorce her… I did not seek my husband's consent to a divorce. It is not our custom to do so. I could please myself. I did not need to ask my husband's consent."[31] While the appeals court later asked why the original judge had not called any other assessors to review the woman's claims of custom, ultimately her testimony was accepted and her lover's sentence was reduced from murder to manslaughter.

The reinforcement of patriarchal rule under customary law was not due differences in use, but in structural assumptions amongst colonial officials about the nature of traditional life and institutions. As property laws under native rule were made more absolute, a British theory of pre–modern societies overwhelmingly assumed that only male ownership was appropriate, effectively freezing existing contestation over the right to own and exploit land, tools, space and the labour of one's group. Via shifting the legal status of land from communal use to household ownership (under a single male head of household), colonial notions of tradition created a situation in which the power of men became more absolute over time, as household concepts of ownership and patriarchal ideas of inheritance combined to steadily concentrate property and authority in only male hands.[32]

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[30] Matera et al. (2012) "Pre– and Early Colonial Igbo Worlds" for this in Nigeria; Hussin (2016) *The Politics of Islamic Law: Local Edlites, Colonial Authority, and the Making of the Muslim State* p.134 for the consolidation of men's interests under newly codified Egyptian "Islamic Law"; Booth (1992) "'European Courts Protect Women and Witches': Colonial Law Courts as Redistributors of Power in Swaziland 1920–1950" *Journal of Southern African Studies* 18:2 Assesses the ways in which individual women were sometimes the 'winners' of increasing customary legalization, though never in terms of the ownership of land or eligibility for formal political authority.

[31] *R v. Ndembera* (1947) 14 East Africa Court of Appeals 58 qtd in Gray (1958) "Opinions of Assessors in Criminal Trials in East Africa as to Native Custom." *Journal of African Law* 2:1 p.10

[32] Patricia Owens has described this as 'decentralized household despotism', amending Mamdani's formula to clarify the ways in which the 'traditional' was always assumed to be spoken by a male authority, and the 'communal' always to center on a patriarch. Owens (2015) *Economy of Force: Counterinsurgency and the Historical Rise of the Social.* Cambridge University Press p.149

This shoring up of patriarchal authority also represented a bulwark against the mobility and independence of younger generations with new access to income apart from communal obligation and family resources. As Martin Chanock argues:

> The production of commodities, which enabled dependants to have access to cash independently of elders, both accentuated the fragmentation of households and produced 'custom' as an ideological response to this fragmentation. 'Custom' was a weapon in the battle against the economic independence of dependants. But, as the former dependants established their own households, an accentuated and narrower version of 'custom' became a new weapon in the hands of married men, one with which to control the labour power of their immediate dependants.[33]

Chanock's argument here is useful for two points in our discussion of who signed on to the project of native rule, and under what conditions they did so. First is the reminder that the idea of custom was a tool, a "weapon" even, and that it could be wielded for intra– as well as inter–societal struggles for power. Second, that the scene of its use was mid–stream in ongoing social and political change: that the imperial notion of custom as a form of rule was offered in the midst of an upheaval caused, in large part, by that same empire. With this in mind, the next section will explore a few local groups who did sign on to this project of rule, a few who did not, and the implications of this pattern for the concept of customary rule as a negotiation and a game.

Poor Alternatives in Practice

These accounts offer an idea of the positive pitch of customary rule for local elites, but what mattered for its uptake was not only what it offered collaborators, but how parties expected it to compare to other strategies of legitimation, from extra–colonial bases of authority to more civilizing strategies of relating to encroaching British rule. In many areas of British colonial Africa, Malaya, and India, those who quickly sought places in customary rule were those either with few extra–colonial sources of authority, or later those whose authority was being actively disintegrated by the growth of the colonial state.

A first example of this process is visible in early 20th century Oyo, in what was then under Lugard becoming South West Nigeria. In the late 19th century, the political situation into which the British Empire inserted itself in this region was one in which the long standing socio–political importance of Oyo as an ancestral city to the identities, politics and economics of the Yoruba was being successfully challenged by a new model of political belonging under the growing Ibadan empire. Crucially, this gave rise to new criteria for authority, in which "military skill rather than

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[33] Chanock (1991) "A Peculiar Sharpness: an Essay on Property in the History of Customary Law in Colonial Africa" *Journal of African History 32* p.68

proper descent became the criterion for domination in the Ibadan quasi–empire."[34] Into this changing landscape of authority the British extended by economic and military force a regime of native rule and began looking for collaborators to provide desired legitimacy. Those they found were overwhelmingly the waning Oyo rather than the militarily rising Ibadan. As David Laitin puts it:

> The alliance between the British and the ancestral city kings was politically interesting. The kings maintained some legitimacy in Yorubaland, but lacked authority; the British had the coercive power for domination but lacked legitimacy… The Oyos, destitute in their refuge [from the Ibadan], were quick to see the advantages to them of submission.[35]

In the British elevation of Oyo kings, Laitin sees a strategic partnership in which the Oyo turn from poor alternatives in their losing battle with Ibadan, to the shoring up of their authority under British rule. The program of customary rule here is not simply inventing tradition whole cloth, but rather the bolstering of one set of criteria for recognition (ancestral, 'deep') for another (military, material, relatively new). The Ibadan, for their part, would hold out several more decades, until their military strength was violently dissipated, before attempting to actively carve a participatory place in the British Nigerian state.

On the other side of Ibadan from Oyo, Kirstin Mann's analysis of land rights tells a story about customary non–participation in Lagos which demonstrates similar dynamics. In Lagos, urban politics and the commercial power of the palm trade meant that customary rule did not take the form of a full–blown search for chiefs or an obsession with village rule. What it did mean was land reform: a hybrid system of enough private property to enable trade, but carried out with recognition of "traditional" ownership. To streamline this middle way, the government appointed a commission whose job it was to study existing land holding, codify it, and give it legal status with "crown grants." Like in Oyo, this process was thrust into a world of existing power competition and like in Oyo it was not the most already–empowered groups who first participated.

Briefly, the main axis of competition over land rights in Lagos was between the Oba (understood by the British as "king") Dosunmu who ceded Lagos to the British under duress in 1861, and the Idejo "white cap chiefs" who claimed descent from Lagos' first ruler, the Olofin. The Oba's claim to land was more centralized and state–like, forming an attractive and expedient option for military pressure and treaty–making, but the claims to actual land–holding and historical right of the Idejo was well understood by some British officials at the time of the 1861 treaty.[36]

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[34] Laitin (1986) Hegemony and Culture: Politics and Religious Change among the Yoruba p.114
[35] Laitin (1986) p.151 Laitin is drawing heavily here on Atanda (1973) *The New Oyo Empire*
[36] "The king and War-men hold no rights unless by grant from the White Capped chiefs." Freeman to Russell. 5 March 1862 CO 147/1

In the early 20th century, the British administration in Lagos established a commission to regularise land–holding with crown grants, empowering it to determine historical claims to land, and to legalize that customary holding with official property status. Idejo white cap chiefs opted largely not to bring land claims to the government to turn them into titles, partly in protest of the British and partly believing that their historical legitimacy was too strong to bother with this new process. Rather, it was those who received land from Oba Dosunmu, whose claims to land were historically far weaker than the Idejo descendants of the Olofin founder, who made most extensive use of the new land grant system. As the economic structure of colonial Africa changed, and the land grant system became far more important to the developing palm–growth and land–capital economy of Lagos, those who had turned to British modes of legitimation thrived while those who had relied on pre–colonial bases of authority were increasingly disenfranchised. While in Northern Nigeria it was the more peripheral chiefs who won authority under customary rule, and in Lagos it was the 'king' and his grantees who won above the chiefs, in each place participation in the British drive to know, record, and formalize an imagined conventional status–quo was driven by those with the weakest alternative bases of power. Similarly, in each place it was adult males who were looked to as potential property owners in these new absolute terms, the language of this search for the status–quo making explicit what in many places had been the case, but rarely in absolutely uncontested terms.

Similar strategic dynamics to those described here were on display in other custom–driven areas of empire. In India, for example, Mitra Sharafi has shown that the minority Parsi community made disproportionately frequent use of customary courts — as plaintiffs, judges and lawyers — in order to shore up their political and economic power in a system in which numerical representation threatened to marginalize them further.[37] In the time frame discussed in this chapter, Parsi lawyers, litigants, clerks and eventually legislators pushed heavily to establish a realm of law for "Parsi jurisprudence," covering inheritance, property ownership, marriage, dispute resolution, and the rights of patriarchs over large families. The socio–political situation of the Parsis, however, one of a numerical minority with little authority from the previous imperial era demanding definition from British rule (rather than being passively defined and ruled from above), fits with the strategic logic of other cases.

III. Revolt, Crisis and Fear

While for local elites in British colonial Africa and South Asia the poor alternatives which made negotiating custom worthwhile took the form of waning material authority, or intra–societal

[37] Sharafi (2014) Law and Identity in Colonial South Asia: Parsi Legal Culture

competition, for agents of the British empire it often took the form of revolt, disorder, or the riveting fear thereof. If customary rule travelled from Indian to African and Southeast Asian contexts as one approach amongst many, it was repeatedly brought to the forefront of colonial rhetoric and policy in the wake of revolt. The reactions to these moments of revolt and reconsideration — both British responses and local interpretation — reinforce the understanding of customary rule's frequent role as a perceivedly stable and practical second choice when civilization without negotiation began to look untenable. It also underscores the ongoing role of violence in colonized efforts to discipline their colonizers, re–framing imperial ideas of global order, law and progress with the lingering threat of social disintegration and revolt. It suggests, in effect, that the 1857 revolt's place at the root of British customary rule is not simply a fluke of timing or a convenient bounding date, but rather an integral and ongoing element of the philosophy and practice of native rule.

To begin back in Sudan: while I initially introduced Lea's push to "regularize" El Tom's customs simply to illustrate the opening bargain of native rule, the unspoken background motive of the shift he was pushing was the long political shadow of the 1919 Egyptian revolution. Under the "condominium" arrangement, Sudan had been governed under the theoretical dual–sovereignty of British and Egyptian power since 1898. While at the top levels of this arrangement British interests in Sudan were rarely contravened by Egyptian intervention, at the middle levels of actual colonial governance it was formally educated, urban Egyptian clerks and officials who kept much of the daily work of condominium running. After 1919, however, Colonial Office opinion turned hard against this urban Egyptian class, seeing in them the potential for nationalist radicalisation of the Sudanese.[38] Like every revolt discussed here, the violence itself opened space for interpretation via already–existing political and social ideas. Suspicion of educated urban elites found an easy home in the aforementioned 'Bengali babu' model of the native elite whose legitimacy was spoiled by modernity. Similarly, fears of nationalist revolt understood in terms of modern political populism made theories of social cohesion along traditional lines seem more relevant. As Sachs argues, "there had always been those within the government sympathetic to this view, but their work took on a newfound urgency in this period."[39] Violence did not create new ideas wholesale, but rather shifted the political calculation away from civilizing/modernizing modes of rule, and towards the stabilising promise of custom.

Further north in Sudan, more localized episodes of violence had this effect as well. As another DO Percy Coriat recounts in his pseudo–ethnographic field journal, the push to solidify chiefs to specific territories, populations, and policeable rules in his district came in response to a

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[38] Sachs (2013) "'Native Courts' and the Limits of the Law in Colonial Sudan" *Law & Social Inquiry* 38:4 pp.978–9
[39] Ibid p.979

series of wars amongst the Gwer people in his area. Coriat understood these wars as "blood feuds" over customary and honour–based offenses, and documents the "concentration orders" imposed to quell this sort of violence in the future. In these orders:

> The position of the chiefs was strengthened by the organisation of the smaller sections under their representative headmen and concentration of outlying families of a shieng [the smallest sub–unit of group life] with the parent section and under the chief and also the enrolment of additional chief's police. Chiefs were instructed to group their villages and dry season camps in the future and to forbid movement of small sections beyond their territory during camping season.[40]

As in Lea's case, men with chief–like positions were already part of the organization of colonial rule over the Nuer, but were pushed to acquire greater powers of policing, and to define themselves more stably along settled boundaries, continuing the process of converting chiefdoms to the territorial and legal–policing mode of authority which British colonial power increasingly sought to recognise. As with the Kordofan under Lea, this project of re–shaping chiefly authority was not the automatic or first option for the Sudan Political Service, but rather one they turned to as an order–building measure in the wake of violence. Notably, while Egyptian violence was believed to illustrate the potential disorders of over–modernization, the Gwer "blood feuds" represented the potential violence of customary life outside of the shaping forces of the state. These two turns to customary rule in the wake of very different forms of violence are illustrative of a colonial power that saw itself as caught between two disorders, with crisis awaiting both over and under–reach in governing a supposedly tradition–bound native society.

I am telling a particular story here about the persistent intertwining of violence and custom in the post–mutiny consensus, but I am hardly the only scholar to link early anti–colonial revolt with the less obviously violent politics of collaboration and independence which came later. Writing in 1968, during a swell of African independence from European empire, Terrance Ranger warned that scholars of African history had developed an incorrect and blinding dichotomy between "primary resistance" and "modern nationalism."[41] Too often, he argued, scholarship on colonial politics has treated the groups which first resisted colonization — with riots, raids, strikes, sabotage, messianic insurrections and wars of re–conquest — as reactionary traditionalists, or at the very least inevitable failures who lost the cause that tactful and nonviolent statesmen later revived. Instead of this dichotomy, Ranger argues for a synthesis of the two: a side-lining neither of politics nor violence, but an understanding of the way each made crucial space for, and sometimes determined the path of, the other. Whether or not international relations still suffers

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[40] Coriat (1993) Governing the Nuer: Documents by Percy Coriat on Nuer History and Ethnography 1922–1931 Johnson (ed). Document 33 p.129

[41] Ranger (1968) "Connexions between 'Primary Resistance' Movements and Modern Mass Nationalism in East and Central Africa. Part I." *The Journal of African History*. 9:3 pp.437–453

from the dichotomy he describes, the synthesis he suggests is useful for theorizing the role of violence in the spread of customary rule. His argument comes essentially in two parts.

The first pillar of Ranger's synthesis of armed resistance and later politics relies on the idea that many of the spaces in which later politics occurred were created either as goals of, or reactions to, armed resistance to empire. In some cases this space was literal, as in the Basuto Gun War of 1880–81, which forced the British to concede both the existence of a separate Basutoland protectorate and the right of the Basuto to carry arms with which they could threaten to defend that independence again in future negotiations. It was "this hard-won Protectorate" he argues, which "became the essential environment for all later Basuto political activity."[42] Other victories left territory alone, but created new spaces of jurisdiction and authority in which African peoples would later contest the terms of imperial rule. In 1893, for example, the Ndebele fought a war which nearly broke Cecil Rhodes' rule. Ranger's description of its impact rewards reading at length:

> Before 1896 the Ndebele state had been in ruins; its white rulers had broken up all its institutions; confiscated all Ndebele land and nearly all Ndebele cattle; disregarded every Ndebele political authority. The 1896 rising at least showed the whites that this had been unwise. The Ndebele were still a formidable military foe; it took many men and much money to defeat their rising; and even then it had not been convincingly defeated by the end of the 1896 dry season. Rhodes faced a long-drawn-out war of attrition in which the authority of the British South Africa Company might well have collapsed through bankruptcy or British political intervention. So he negotiated with the Ndebele. They thus won in 1896 what they had not had in 1893—a voice in the settlement. The policy of the British South Africa Company was now defined as being to restore to the Ndebele indunas as much of the powers they had possessed under Lobengula as was possible; they received official salaries. So was struck an alliance between the Ndebele chiefs and the Rhodesian administration which still has important political consequences today.[43]

Ranger's reading of this episode challenges certain assumptions from the outset by classing the conflict as a victory for the Ndebele; they neither drove Rhodes' company out of business nor out of Rhodesia, nor did they win formal territorial autonomy. What they did win was "a voice", or as he put it in another essay: "recognition of rebel leaders as salaried indunas and spokesmen for the people; an apparatus of complaint and redress," and "a regular system of native administration."[44] The victory of anti–colonial violence, then, was a victory of recognition, and the style of recognition that the Ndebele won was as institutionalized and salaried traditional

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[42] Ibid p.442
[43] Ibid
[44] Ranger (1969) "African reaction to the imposition of colonial rule" Fage ed. *A History of West Africa; An Introductory Survey* p.307

rulers, and speakers for a tribally–defined group under a system of native rule. Victory or not, the space for future political contests which the Ndebele rising made possible was very much a post–mutiny politics of a form that Syed Ahmed Khan and or John Kaye might recognise.

The second pillar of Ranger's synthesis is not an argument about what violence won for colonized peoples, but rather about its effect on colonial power. First, he reminds us that across Africa formal colonies were frequently heirs to commercial companies, and that the occasion for the creation of those formal colonies was often the collapse of the preceding company in the face of violent African resistance.[45] Like the Indian Raj then, formal colonization came with the possibility of armed resistance not merely as memory but as its founding fear. The creation of these polities in response to violence brought about a form of colonial rule whose primary concern was "order, not reform," and which structured itself as a series of "alliances between the colonial administration and co–operating African societies" (alliances with tribally defined societies which naturally flowed through traditionally–recognised elites).[46] The relationship of the colonial mission to time and social change shifted in response to revolt as well. Note, for instance, in the Ndebele case that the mission of the Company became one of "restoration" rather than change, an attitude of conservation rather than liberal reformation. This disciplining of colonial approaches to governing 'native' societies through revolt continued through internal processes of response to revolt, even within the careers of specific officials. In 1897, for instance, one Native Commissioner Staples who was responsible for a district that experienced revolts:

> was dismissed on the grounds that he was neglecting his African charges. 'He does not appear to have studied their interests to the extent which would prove conducive to the progress of the country, as for us, the native question is concerned. The importance of the native question is at present so great,' Staples was told, 'that the Government is able to retain only those officials who prove themselves fully qualified for the work.[47]

In this case, the work of a colonial official was knowledge work, and neglect of charges was neglect of knowing them. The response to revolt then, continued to exercise a selection force both on the ideas of colonial governance, and on the individual officials who were empowered to carry them out.

Thus, as with the Raj, the spectre of violence and the fear of disorder was built–in to both the mission and the structure of colonial government in Africa. Crucially, while we have partially understood this outcome simply from reading the accounts of men like Lugard, the focus on African resistance here pushes us not to see this orientation and form of rule simply as a belief in the minds and practices of British colonizers, but also as the hard–fought result of violent African

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[45] Ranger (1969) p.443
[46] Ibid pp.439,443
[47] Ranger (1968) p.319

resistance. By considering the changing conditions under which local elites and rebels entered these negotiations, furthermore, we can observe a positive feedback loop by which the encroaching of the colonial state leads to worsening conditions and thus revolt, which in turn pushes the colonial government towards greater institutionalisation of customary rule. Keeping in mind this two–sided understanding of the relationship between revolt and the ongoing politics of customary rule, I will examine one more example of a revolt that deepened the imperial commitment to customary rule, and two that did not, which might with their exception teach us something about the ones that did.

The Women's War

In November 1929, roughly ten thousand Igbo women travelled to the town of Oloko Nigeria from nearby districts, to protest a recent attempt to count and register women in villages and at markets. The women saw this counting as the first sign of new taxes to be levied on them and their business activities, and generally as a symptom of the growing burden on their lives of the colonial state, through the medium of the Warrant Chief system. Over the next month, groups of women marched en masse to Native Courts, district offices, factories, and the houses of chiefs. Women came with written demands regarding corruption and burdensome fines and fees, and frequently occupied official spaces in overwhelming numbers until officials met with them, fled, or fired on the crowds. In one such incident fifty women were killed. By the year's end, the women had burned ten Native Courts, looted at least two factories, and freed the inmates of at least one prison. Lord Hailey and Margery Perham's *Africa Survey* later put the geographic extent of the "riots" at roughly six thousand square miles[48]

In the first months after the women's protests were defeated, the army carried out violent reprisals throughout the area. By March 1930, however, a commission of inquiry was set up to travel the region calling witnesses from rebels, chiefs, clerks and colonial officials. By the next year, the governor had been removed from office, and Donald Cameron — former disciple of Lugard and exponent of native rule — was made governor of Nigeria. Furthermore, the war occasioned the reconsideration of indirect and direct rule in Nigeria, and ended with a strong official consensus that "no amount of makeshift reforms could harmonise the Warrant Chief System with the indigenous governmental ideas and practices of the Eastern Nigerian peoples, and that a

[48] Various sources from Hailey and Perham to Afigbo come up with roughly this number, relying on Nigerian legislative council sources from the period of the official inquiry. See Van Allen (1975) "Aba Riots or the Igbo Women's War? - Ideology, Stratification and the Invisibility of Women." *Ufahamu* 6:1 pp.11–39 at pp.12,31

totally different system had to be found."[49] The substance of this new system was essentially the old system — one of government recognized chiefs — with dramatically devolved powers of taxation, greatly increased flexibility to define and apply laws regarding property, inheritance and market economies (in the literal sense), and a greater sensitivity to (and perhaps fear of) complaints against chiefs by those they ruled.

This episode is crucial to understanding the path and politics of customary rule in several respects. First, and most simply, it is another instance in which violent revolt precipitated a fact–finding mission within empire, resulting eventually in the replacement of a high official, and a retreat from openly 'modernizing' practices in favour of a careful preservationist approach towards areas of 'traditional' life. In several respects, however, this episode is distinct from others whose records have survived. Most obviously, while most voices discussed so far in the waging and interpretation of revolt have been male elites negotiating for their own power, the Women's War offers a record of non–elite men and women who were engaged not simply in revolt against colonial power, but also against the chiefs who benefitted from their own place in it. It is also evidence of another instance in which colonized people explicitly took up arms against a knowledge apparatus of modernization, an idiom of revolt described for instance by Bayly in rebels' destruction of printing presses and official records in 1857, and repeated destructions of survey stations across north Indian hills in the decades leading up to the rebellion.[50] It is evidence that groups in colonized society were able to revolt simultaneously against both modernizing and traditional authorities they found oppressive: navigating this jurisdictional boundary first with their violence, then with their narration.

This episode is particularly useful because it produced an explicit archive of its own interpretation. In the course of the Aba Commission Inquiry, the government of Nigeria recorded verbatim accounts of hundreds of witness interviews. More remarkably, authors situated these testimonies within their own report, which cross–referenced official conclusions and policy recommendations with the actual demands and observations of participants themselves, in a far more direct way than Kaye and Malleson's *History* treated the initially secret reports that made up their mutiny papers (which were almost never reports of rebels themselves). The connections that emerge from this internal dialogue between testimony and interpretation illuminate the continued use of post–mutiny concepts of traditional society as an internally coherent, rule–bound and fragile entity, which could not be rushed into development or governed too overtly along modern lines. It also makes clear, however, that rebels themselves employed the language of chiefdom and

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[49] Afigbo (1967) "The Warrant Chief System in Eastern Nigeria" *Journal of the Historical Society of* Nigeria 3:4 p.699. See also Perham (1962) *West Africa* 2335 for a consideration of this shift long after the fact from the leading scholar on indirect rule in Nigeria, and on Lugard, of the late colonial period.
[50] Bayly, C.A. (1996) pp.325, 308

custom in their testimonies even while challenging actual chiefs: using the language of customary rule to contest and shape its practice.

Comparisons to 1857 began almost as soon as the fighting, with one British official writing to his wife that "all this took us by surprise, like the Indian Mutiny did," and invoking post–mutiny tropes of authentic natives spoiled by education and spurred to violence by shadowy de–tribalized intellectuals.[51] "The half–educated negro is a disgusting specimen," he complains, offering instead that "The real Pagan is the best of the lot" and asserting that "half–educated native intelligentsia acted as the motive force animating events".[52] These tropes are the same driving fears of post–revolution Egyptian officials, and of making "babus" of Malay men, the ones descended from the post–mutiny consensus that seeks peace in an imagined ideal of unspoiled native life, and fears modernization as a spur to violence.

With these explicit comparisons also came paths of assumption and interpretation that harkened back to 1857 as well. As with the Indian revolt, British responses to the Women's War began with shock and warnings of conspiracies, and ended with a focus on mutual understanding and conservation of traditional society. What eventually became known as "the Women's War" was at first identified simply as riots, and the cause was assumed to be a conspiracy of unseen male agitators.[53] The women were pawns or crazed "Amazons", not rebels with concrete grievances and political demands. Yet, while early commentators failed to mention women's agency whatsoever, the final Aba Commission report was explicit about the centrality of women and their concerns. Women, the report concluded, should be seen as independent and organized political actors: "In view of the women's movements of the past, the independent character of the recent movement, and the remarkable character of the recent movement, and the remarkable capacity for organization and leadership which some of the women displayed."[54] The women who actually made up the revolt have not only here shifted from silent pawns to "remarkable" organizers and leaders; they seem to have been put into some sort of context of their own history. This interpretive shift, the report makes explicit, was driven by the interventions and claims of participants in the revolt themselves.

The commission's official summary of evidence opens with a reflection on the riots as an information problem, acknowledging the "misunderstanding" of the women who believed that they were to be directly taxed. While the report denies that this was the official plan, however, it does not blame the women for the misunderstanding. Rather, it argues that:

> Every action in the matter of this re–assessment pointed to such an intention. The cumulative evidence from one area after another was overwhelming that women were

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[51] Matera et al. (2012) p.188
[52] Ibid p.189
[53] Ibid p.189
[54] Aba Commission Inquiry p.108

being counted, and in the eyes of the people counting was synonymous with taxing.[55]

There is a clear repetition here of the misunderstanding theme that emerged post–mutiny from intermediaries like Sir Syed and Mohan Lal, steering interpretations of violence away from the panicked fears of conspiracy, which in both cases legitimated bloody government reprisals, and towards a focus on reasonable misunderstanding which required not military pacification, but reform of communication apparatuses between rulers and ruled. Notably, though, in this instance the authors of the official interpretation are relying not only on the stories told by elite intermediaries, but on the voices of the rebels themselves.

This acknowledgement of the centrality of communicative action in the mutual understanding of colonial government and Nigerian women also demonstrates that the government of Nigeria knew (or was being taught by warring women and worried chiefs) what sort of game they were playing. As in Schelling's map game,[56] where players with differing goals must split a map between themselves by reading the intentions of one another through actions not words, the government of Nigeria believed itself to be engaged in an attempt to coordinate rule with a native population which could see and glean information from its every move, but not currently enter dialogue in an explicit and reliable way. A number of witnesses, primarily rebel women, local non–elite translators and clerks, dwelled on this two–way problem of interpreting communicative action. Many provided information leading to the conclusion above, that counting was seen widely and reasonably as the prelude to taxation. Others focused on interpreting the actions of the women themselves. Of these, British officials and Warrant Chiefs stressed the terrifying spectacle of thousands of enraged women marching to town, leaning into stock colonial themes of Amazon warrior women who could not be communicated with, and answered only to force. Many of these speakers seem to have been involved in firing on the women, and so had an interest in depicting the women as both terrifying and fundamentally unreasonable.[57]

Other witnesses, however, took pains to make the intentions of the women themselves legible through their actions. One in particular, Horace Sunge Bell–Gam, was employed as an interpreter at "Messrs G.B. Ollivant's," and carried his role as interpreter into his testimony, taking it as an opportunity to intermediate between the confusion of the government and the actions of the women as he saw them.[58] After introducing himself and the origins of his involvement with the District Officer during the violence, he gives an overview of his first encounter with women marching to town. As he recounts it:

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[55] Aba Commission Inquiry p.93
[56] Ch.2 supra
[57] See various accounts pp.1–10, and that of Chief Akpau Udo Lekpo arguing that "the women would have broken into that [government] compound" and thus that "they were just fired on in time to prevent the place being looted." Aba Commission Inquiry pp.19-20
[58] Ibid p.22

> Plenty Women were walking about near round the factory. Some were dressed as usual and some had palm leaves round their heads and grass round waists. In old time men put grass and palm leaves on their heads when they went to war. Some of the women had sticks with them but not all. They were singing. They were singing about death, they sang they were going to die. When I asked where they were going they said District Officer was going to see them, at his office. When I saw them with sticks and with the palm leaves I knew they were out for trouble and I advised them not to go.[59]

Bell–Gam's account contrasts immediately with descriptions of the rebels as crazed Amazons or unthinking pawns. He affirms their determination and preparations for violence, but he also makes plain that he was able to speak with them, and that they stated their determination first to speak with the District Officer, not simply to burn everything in their path.

Furthermore, in carefully describing how he, as a native man, understood the women's intentions through their dress, Bell–Gam works not only to give the commission one specific insight into the women's intentions, but to model for them a way that they could be reading native action in general: by reading the signals of non–verbal customary dress and interaction. And by linking his understanding of these actions to his knowledge of what happened "in old time," Bell Gam makes clear both that these practices are given meaning by reference to the past, and that his knowledge of that past is the key that lets him understand them. For a government convinced that its greatest fear — disorder — was partly caused by a failure to fully know colonized peoples, Bell Gam helps to model a way forward for information-based order based in knowing tradition and the past. This is an especially crucial intervention if, as Thomas Spear has argued, there are limits to the extent that tradition may be invented wholesale, and still do the legitimacy–work that colonial power demanded of it. "For tradition to be accepted as legitimate," he argues, quoting Patrick Harries, "it must bear a semblance of repetition… for an image to take on the sanctity of tradition, people must believe that it embodies an efficacy born of past experience."[60] Here, an interpreter is guiding a colonial government out of the fear of revolt by modelling the sort of legitimate knowledge a tradition–focused approach to knowing colonized peoples could attain.

Another lesson in the strategic position of those caught in between rebels and the colonial government is offered by the testimony of chiefs on their own position regarding new taxes and traditional market economies. Several chiefs complained that, while there may not have been a new tax on women forthcoming, there had been numerous instances in which the government did compel them to support economic reforms that they knew to be hugely unpopular in their regions. When it came to revolt, then, chiefs cited in the report described their own near–death

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[59] Ibid

[60] Harries (1993) "Imagery, symbolism and tradition in a South African Bantustan: Mangoshuthu Buthelezi, Inkatha and Zulu History" *History and Theory* p.106 qtd in Spear (2003) "Neo–Traditionalism and the Limits of Invention in British Colonial Africa." *The Journal of African History* 44:1 p.7

experiences at the hands of women who held them personally responsible for the counting and perspective increased taxation, and refused to believe them when they said that a new tax was not being planned.[61] Essentially, the chiefs' testimonies described an impossible position of maintaining two–sided legitimacy with little to no autonomy to move between competing claims. The commission took this argument to heart, concluding that the chiefs "were on the horns of a dilemma. If they supported the Government in introducing the tax they earned unpopularity with their people; if they supported their people in resisting the tax they felt that their disloyalty to Government would jeopardise their position."[62]

The official remedy for this, post-revolt, was to give the chiefs wider autonomy in how revenue was raised in their areas, and to invite greater leeway for traditional exceptions. Here, the chiefs won space for themselves by insisting that their hands were tied in matters of changing local custom, detailing the violent response that would follow if they were used too strongly for modernizing ends. By communicating this dynamic to the colonial government they have not simply here won a single policy change, but laid the groundwork for future successful strategies. It is helpful here to recall another argument of Schelling's, this time about what precisely constitutes a threat. "The distinctive character of a threat" he argues:

> is that one asserts that he will do, in a contingency, what he would manifestly prefer not to do if the contingency occurred, the contingency being governed by the second player's behaviour. Like the ordinary commitment, the threat is a surrender of choice, a renunciation of alternatives.[63]

As discussed previously, anti–colonial and anti–modernizing revolt can function as its own built–in threat for chiefs: the persistent prospect of events which they can credibly say they would prefer to avoid (by detailing their fear in the revolt, in the same way Sir Syed and Mohan Lal detailed their own losses), but just as credibly promise that they cannot themselves prevent if the government pushes its subjects too far. As Ranger argued, this is not a one–time strategy after actual revolt, but one that continues to create political space for chiefs by being incorporated into colonial decision–making. Even in more formal institutions, chiefs continued to claimed that they were bound by "unwritten laws of custom which no Emir is free to override or ignore."[64] Again as Schelling puts it: "the threat and the commitment are both motivated by the possibility that a rational second player can be constrained by his knowledge that the first player has altered his

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[61] See, for example, Testimony of Mark Pepel Ja Ja, Mayor of Opobo Town in *The Women's War* pp.169–70

[62] Aba Commission Inquiry p.100

[63] Schelling (1960) p.123

[64] CO 583/173/7 p.13 The local governor, writing in the same report, reinforces the Emir's position by describing the area as inhabited by "populations which for the most part are ill–informed or half–informed concerning the outside world and the purpose or policy of government." The combination of inviolable custom, traditional elites, and popular ignorance of empire is pitch–perfect Mohan Lal.

own incentive structure."[65] The system of negotiation between colonial governments and colonized elites which was empire is restructured after revolt by the rational expectation that chiefs are needed to rule, but cannot themselves prevent dangerous reactions to modernization even if they believably want to.

Finally, for this dynamic to take root the threat at its core must be credible, and this credibility rests as much on the words of rebelling women themselves as on the chiefs who capitalized off the inability to control them. If comparisons to 1857 abounded in official responses to the Women's War, there was at least none of the former's disagreement over causes in witness accounts; every woman who testified confirmed that their revolt was a response to the threat of counting and taxation. Beyond the immediate cause, the testimony of women who came before the inquiry — whether compelled to do so, or by volunteering their perspective — justified their revolt with appeal to two major themes: the increasing unaffordability of basic market goods, and the increasing corruption of government–appointed chiefs. Both of these complaints began from the basic unacceptability of any direct taxation of women and each was levelled within, rather than against, the concept of rule through customary chiefs.

In a number of cases, women who participated in the revolt came to give testimony of their own volition, seemingly motivated by the opportunity to influence the official interpretive process, and to make claims of their own against the evolving system of native government. In identifying themselves to the commission, and thus presumedly establishing their authority to offer interpretations, a number of women self–identified by stating their relationship to areas of market commerce they specifically associated with female labour. Adeaha Ekpo and Emena Okpopop, for instance, identified themselves as petty traders and palm oil makers, and described rising individualized taxes on households as not only unbearable, but absurd: not reflecting the largely cashless and property–less life of most dependent women.[66] This frustration of mismatch between the underlying assumptions of direct taxation and the realities of gendered communal property was referenced repeatedly, with one rebel — Nwanyoji —remembering shouting at her chief "I am only a woman; what have I to count?"[67]

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[65] Ibid

[66] Aba Commission Inquiry pp.42–3

[67] The Testimony of Nwanyoji in *The Women's War* p.280 The idea that a rush from a cashless to cash–based economy could be a driver of social deterioration would have pricked the ears of any administrators educated in the so–called Punjab school of colonial administration prevailing after 1857. In an 1886 book which became hugely influential in the post–mutiny consensus, Punjab colonial administrator Septimus Thorburn argued heatedly against the idea of letting economic liberalism recast communal land held by traditional landlords as individual property which could be bought, sold and borrowed against. He evoked tropes of European antisemitism to warn against the perils to society of allowing moneylenders to operate in the Punjab, and argued that supporting "the patriarchal system of administration" against the free market development minded approach favored by city interests was the only way to ensure social stability in North India. After beginning with an economic argument, Thorburn offers "native custom" rather than economic rationality or imported English law as the solution to arbitrating any economic conflicts which might arise

After hearing details of this altercation between woman and chief, the Chairman of the Inquiry then pressed Nwanyoji about her views on chieftainship in general, and the conversation shifted to the corruption and lack of accountability endemic to current chiefs.[68] She concluded by agreeing that she would like to "get rid of the old chiefs," but at no point launches a critique of chieftainship itself, instead describing current office–holders as unfit for the position.[69] This critique of individuals without critiquing institutions is more explicit in other testimony. After identifying herself and describing the unsatisfying prices women had begun receiving from factories for their goods, another rebel woman — Akpamgbo — shifts her critique of prices immediately to a critique of chiefs. The key exchange:

> WITNESS: … We don't want chiefs any longer, and in saying this I am voicing the sentiments for all the women present in this hall.
>
> THE CHAIRMAN: You don't want Chiefs any longer?
>
> WITNESS: I mean the old Chiefs. Don't you all (addressing the women in the hall) agree with me as to deposition of all the Chiefs? (In reply, all the women in the hall shouted "e–e" (yes) in approval of the witness's statement.)
>
> THE CHAIRMAN (to witness): What do you want instead?
>
> WITNESS: We want new chiefs.[70]

Akpamgbo begins here with something that sounds very much like a wholesale rejection of chiefdom, but quickly narrows her critique to current office holders, and a demand to renew the office of chief rather than replace it with a different institution.

Finally, Akpamgbo's testimony gives this critique a temporal dimension, situating these problem chiefs within a larger understanding of corruption, British influence, and time. By critiquing "the old Chiefs", she has invited the impression that her revolt — which targeted symbols of chiefly power as much as factories and government buildings — was in some way a revolution against traditional or longer–standing forms of authority. She dispels this in further questioning, however, by speaking of recent times in history in which chiefs did not take bribes or abuse their power. She receives some heckling at this point, with Crown Counsel prodding her about the dates of this "golden age".[71] She persists, however, narrowing the time to her earlier adulthood, specifically before the intervention of British District Officers:

> CROWN CONSEL: What made the [corruption] start sudden?
>
> WITNESS: We asked them [the chiefs] and they replied that the District Officer said so, and we were afraid of them.

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in the course of governing India. Thorburn (1886) *Musalmans and money-lenders in the Punjab* Edinburgh: Blackwood. at pp. 186–7,

[68] Ibid pp.281–2

[69] Ibid p.282

[70] The Testimony of Akpamgbo in *The Women's War* p.273

[71] Ibid p.278

CROWN COUNSEL: Everything was perfect before, and then some bad District Officer came and all this bribery began?

WITNESS: Yes.[72]

Whatever the scorn in Counsel's tone, Akpamgbo has succeeded in sketching a narrative of legitimacy (with a chorus of other rebel women in the court behind her) in which chiefdom itself is legitimate and respect–commanding, but in which individual chiefs have now been poisoned by association with British authority, and thousands of women have violently revolted to restore authority to new chiefs with old legitimacy. And it is not crucial here whether her British interlocutors believe her narrative of a pre–colonial golden age; what matters is that they believe that she and the assembled women believe it, thus stamping it as a useable guide to what has caused a catastrophic revolt, and what might prevent one in the future.

The Aba Commission's final recommendations reflected these narratives explicitly. They are addressed at two reforms — of native authorities and District Officers — which together add up to a reconsideration of the bases of British authority in Nigeria. As discussed above, the position of chief was given greater leeway to define rules of communal property, and thus of land use, inheritance, and crucially taxation. Furthermore, the Commission considered mechanisms of popular accountability including election at town meetings and term limits, and considered this reasonable "in cases where persons, who by virtue of well–defined custom hold executive or religious office, are not suitable" or "for such members as do not owe their appointment to their natural position".[73] The message this bounded accountability sends to native authorities is clearly that having a position naturally or "by well–defined custom" is to have it far more absolutely than to have authority openly constructed by colonial government.

Having put chiefdom on more seemingly traditional and absolute footing, the report considers the legitimacy of British colonial officers. Noting testimony describing District Officers as fearful abstractions or interfering forces of destabilization, the report demands that administrative officers be given more time and freedom to interact with and "win the confidence of" their subjects.[74] They stress, furthermore, that knowledge and experience are key, voicing their shock that a number of "senior officers in the disturbed areas of the Oweri Province were in charge of Divisions to which they were almost entirely strange" and reminding readers "in the words of Sir Frederick (now Lord) Lugard", that "continuity… sympathy, and understanding" are the crucial qualities of any colonial officer.[75] Invoking Lugard as an authority, the Inquiry report's authors wade into a battle between civilizing and segregationist modes of rule, and find their amassed narratives of revolt to weigh strongly for the latter as a solution to the failures of the

[72] Ibid
[73] Aba Commission Inquiry p.100
[74] Ibid p.107
[75] Ibid p.108

former. The report closes on this note, with Chairman G. Graham Paul echoing both Lugard and Kaye. "I agree," he argues "that we are inclined to go too fast with these peoples..."

> To sum up, I think that the disturbances would not have happened at all, and certainly would never have become anything like as serious as they did, if only the Government had waited patiently till the necessary preparatory work of discovering and recognising the natural rulers or leaders of the people had been completed.[76]

Measured reform, and the patient work of discovery and recognition — all focused on natural concepts of rule — are again offered as the solution to crisis, violence and revolt.

Collectively, the self–narratives of the Women's War describe a crisis caused by society and actors caught in–between: between former and future legitimacy, between pre–factory prices and post–modernization individual property. By their own words and actions, they waged a war both against British power and local patriarchal authority. They catalysed a shift in order, by their actions and narration, and by providing the threat of force that future chiefs could leverage to police native jurisdiction against modernizing projects of the colonial state. They described vividly their impression that encroaching British rule had polluted local authority and provided guideposts for treading this territory carefully in the future. In the diffusion of customary rule then, this history of revolt makes clear that while law may have been "stronger than the maxim gun" it was the rioter, the agitator, the fears they created and the narratives they offered, which framed out the structure and limits of that law as it was created.[77]

Crises Without Custom

While I am arguing here that violent revolt was a consistent factor in the adoption or deepening of customary rule, this does not mean that custom was the automatic response either to violence or the crises of rule it occasioned. It was not brute fact of violence, but rather structural pressures and narrative choices surrounding some violence which drove the adoption of custom as a response to crisis. To further illustrate the centrality of these strategic dynamics to the adoption of customary rule post–crisis, I will briefly consider two instances — the rebellion in Morant Bay, Jamaica, and the massacre at Amritsar, India — in which violence caused a crisis of empire and yet, rather than driving a turn to custom, lead to a deepening of civilizational approaches to rule.

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[76] Ibid p.131

[77] Adewoye (1977) p.6 qtd in Ibhawoh (2002) "Stronger than the Maxim Gun Law, Human Rights and British Colonial Hegemony in Nigeria" *Africa* 72:1 pp.55–83. Ibawoh and Adewoye each argue that law was at least as crucial to imperial control as violent coercion. While I do not dispute this, my argument is that it was often violence which created the space for law then to occupy and control, and more specifically that the type of that violence and the process of its interpretation then steered the type and functioning of law it made space for.

In October 1865, a group of a few hundred Jamaicans marched to the courthouse at Morant Bay to protest the government's role in the crushing poverty, starvation and disease experienced by black subjects of the Jamaica colony, many of whom were effectively barred from voting, holding office, or owning property therein. When a small white militia fired on the group, killing seven, the crowd rushed the courthouse, burning the building, and beginning a confrontation that left 25 dead. The weeks that followed saw first a series of peasant uprisings, and soon the brutal imposition of martial law by Governor John Eyre. Eyre's violent reprisals, justified with open references to 1857 and assurances that he was preventing another mutiny, culminated in the summary execution of prominent 'coloured' landowner and member of the Jamaican legislature George William Gordon. When news of the violence of martial law reached England, symbolized by the execution of the respectable and sympathetic Gordon, a public inquiry into Eyre's conduct was launched that would pull in such household names as Mill, Carlyle, Darwin and Dickens, and a crisis of confidence in empire was triggered that would demand the attention of parliament and the public for years.

On its face, this episode has all the elements that should group it with a range of other crises resulting in calls for customary rule: fears of anti–colonial rebellion, outright allusions to the memory of 1857, public shock at violence, a philosophical clash between liberal utilitarians and conservatives over the morality of empire, broad legalisation of a military and political crisis, and a commission of inquiry designed to understand and to judge the violence. It has certainly featured in the literature on the shift to customary rule, with Mamdani using Morant Bay to bookend the "crisis of mission and justification" which began with 1857, and Mantena citing it as a key defeat of imperial liberalism.[78] Yet the outcome for Jamaica was not the establishment of rule through local elites, nor was the language of tempering progress or conserving indigenous society invoked on either side of the debate. Instead, the most concrete political result was the transformation of Jamaica into a formal Crown Colony, imposing more direct rule through a Crown–appointed governor, with no attempts to recognise or empower any form of local rule.

The key difference between Morant Bay *as a crisis* and the crises discussed above is not the extent of the violence that occurred, nor the depth of public soul–searching it caused, but rather the focus of that search, and the types of information it demanded. In 1857 India, 1929 Nigeria, 1893 Ndebele and many others, the focus of public and institutional fear was overwhelmingly the violence of colonised peoples, and thus subsequent inquiries were focused on demanding knowledge about the life and motivations of the colonized. This demand for local knowledge was both itself a cornerstone of the philosophy of customary rule, and a structural

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[78] Mamdani (2012) "What is a Tribe?" *London Review of Books* 34:17; Mantena (2010) p.37 While Mamdani specifically includes Morant Bay in the shift to "indirect rule", Mantena simply includes it as a defeat of imperial liberalism, without specifying which particular alternative philosophy triumphed over it.

factor which created space for colonized elites and others to wield knowledge as intermediaries, and to carve out roles in a form of rule based in part on their own agency.

"The Eyre controversy," as it became known, was never mainly about the colonized, or at least not about their violence or politics. The crisis first took shape in the form of the Jamaica Committee, a public prosecution pieced together from existing evangelical, abolitionist and social reform groups with a smattering of London intellectual celebrity.[79] As their case solidified, it became clear that it was not the rebellion itself that caused doubts about empire, but rather the brutal actions of Governor Eyre. As the *Times* put it "it was not now black insurgents who were on trial, it is Mr. Eyre… and the other officers, military and naval, who were engaged against the negroes, or who sat on the courts martial."[80] While the Eyre controversy mobilized deep political rifts in British politics, there was clearly a "broad agreement on one key point: that the crucial implications of the Jamaica Affair related to the inviolability of English laws not of Jamaican Blacks."[81] Just as centring Indian or African violence had the effect of centring Indian and African society in subsequent post–crisis searches for knowledge, the focus on the violence of a white British man in the wake of the Morant Bay Rebellion had the effect of centring questions of white British society on its own knowledge politics of crisis. This is not to say that colonized people were never heard from or discussed in the course of the Eyre controversy; the prosecution made thorough use of Gordon's heart-breaking final letter, and the defence was careful to evoke the unruly violence of the Jamaican mob. Testimonies were collected both from Gordon's friends and a range of the disenfranchised black Jamaicans he represented.[82] Whether meant for sympathy or terror, however, these materials were tools for judging the proper behaviour of Eyre, rather than voices meant to offer insight into the actions of colonized peoples. The problem raised by the Morant Bay Rebellion, as the Jamaica Commission defined it, was not how best to coordinate with Jamaican society, but how best to choose, control and empower a strong British agent. The solution was thus more direct control of that agent from the principal power in Britain, and stronger assurances that he would be judged by the standards of civilized British justice.

Beyond clarifying that the perceived agent of violence drove subsequent demands for information, the Eyre controversy helps clarify another key claim of this project: that swings between civilizing and customary forms of imperial rule were not simply reducible to reflections of political conflict between liberals and conservatives back home. At the level of party politics, the election in June 1866 saw a Conservative government take over the case from Liberal predecessors, and yet the Conservative cabinet found continuing prior policy on Jamaica and Eyre

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[79] Kostal (2005) pp.40–55
[80] 2 December 1865 pp.8–9, qtd in Kostal (2005) A Jurisprudence of Power: Victorian Power and the Rule of Law p.38
[81] Kostal (2005) p.31
[82] Gopal (2019) Insurgent Empire: Anticolonial Resistance and British Dissent Verso p.101

"a deceptively easy task."[83] This agreement between governments was not on display in clashes between liberal and conservative public intellectuals. The debate, best illustrated in an ongoing public conversation between arch–utilitarian J.S. Mill and conservative Thomas Carlyle, saw Mill taking a predictably paternalistic and reformist stance on Eyre's treatment of black Jamaicans. Carlyle's conservativism, however, lacked any trace of concern for native society, custom, or even the practicalities of rule through local elites. Where for Kaye and Lugard the point of understanding social developmental difference was to bring stability through customary rule, the point of difference for Carlyle — who continued to argue for the reinstatement of chattel slavery as a kindness to 'inferior' peoples — was purely racial. Many of Carlyle's arguments for the rightness of white rule skew almost civilizing (the view that territory should go to "those who got the best from the land — the Saxon-British"), and his views on the proper response to rebellion were openly genocidal.[84] While Carlyle's disdain for utilitarianism (he famously coined the phrase "dismal science" to describe it) does resonate with the post–mutiny consensus, any positive project of his conservatism shared little with the ideas of customary rule. It is telling that we fail to find custom–focused thought in British conservative response to crisis when the response to that crisis is domesticated: that is, when focused on British life and English culture rather than imperial governance.[85] It reinforces both the idea that to trace this approach to global governance we need to look beyond canonical thinkers and look to thought about practice, as well as the fact that the ideas and practices of customary rule were not simply *about* imperial governance, but emergent from it.

Half a century later, soldiers under the command of General Dyer enforced a ban on public gatherings by firing without warning into a crowd at the Jallianwala Bagh gardens in Amritsar, blocking all routes of escape and killing roughly 400 before leaving the scene without tending to the dead and wounded.[86] Dyer followed this by declaring martial law and issuing humiliating orders for Indians in the area to crawl rather than walk. Like Eyre's declaration of martial law and execution of Gordon, this event touched off official inquiries and public moral outrage. Also like the Eyre controversy, this crisis was played out in civilizational rather than

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[83] Knox (1976) "The British Government and the Governor Eyre Controversy" *The Historical Journal* 19:4 pp.877–900 at p.877 The position, shared by successive Colonial Secretaries, was essentially to publicly defend against outside or even parliamentary inquiries, while internally denying Eyre administrative protection and clarifying that his actions were unacceptable for future governors.

[84] Hall (1989) "The Case of Governor Eyre" *White, Male and Middle Class: Explorations in Feminism and History* Polity at p.271. On his openly genocidal attitude see for example, his musing that "If Eyre had shot the whole Nigger population and flung them into the sea, would it probably have been much harm to them, not to speak of us?" p.283

[85] For discussion of the uses of 'Blackness' in Carlyle and Mill's constructions of Englishness see Gikandi (1996) *Maps of Englishness : writing identity in the culture of colonialism* Columbia University Press pp.57–69

[86] The officially reported number of killed was 379, while Dyer reported between 200 and 300, and the Indian National Congress later counted 1,000.

customary terms, and was almost entirely focused on the violence of a white British authority rather than any revolt of colonized people.

It would be tempting to say that the focus on British violence in this case was pre–determined. After all, this time there was no rebellion; the people gathered in Jallianwala Bagh were largely there to celebrate the spring Vaisaki festival, with a few peacefully organized to call for the repeal of the Rowlatt Act. And yet imperial paranoia did not always require the fuel of an actual material threat. To a fearful government, plentiful ingredients were laid out for mass unrest: monsoon, famine, a million dead to Spanish influenza in Amritsar alone, unpopular new income taxes, and the Khalifat and Arya Samaj movements giving Muslim and Hindu groups political bases for anti–colonial organization.[87] If anything, fear was the official public stance of the Raj at this point, with the recent Rowlatt Sedition Committee report being commissioned to convince the Indian public of the need to continue wartime emergency powers into peacetime rule.[88] The first paragraph of the report even singles out annual religious festivals as likely flashpoints for "revolutionary conspiracies."[89]

Yet in spite of this ongoing fear of revolt, official inquiries and public outcries after the massacre were focused almost solely on Dyer, Britishness and the behaviour of civilized government. Within the military, the matter was handled as an issue of the appropriate use of force, and administrative concerns about how to quietly fire a General with minimal scandal. In parliament, the debate was largely an opportunity to use Dyer's actions to further political positions about the soul and future of British politics.[90] The prevailing condemnations of Dyer aimed not to criticize a system of rule, as Kaye and Mallesson had done, but rather to set one man's crimes apart from that system. The Earl of Middleton, formerly Secretary of State for War and for India, called it "a monstrous event, which stood out in singular and sinister isolation."[91] Winston Churchill implausibly condemned Dyer's violence by arguing that it was un–British: describing Dyer's actions as "frightful" and arguing that "frightfulness is not a remedy known to the British pharmacopœia."[92]

As in the wake of 1857, when men like Sir Syed worked to establish the violence of the revolt as exceptional rather than endemic to Indians and Muslims, the loudest voices of Dyer's day worked to establish his violence at Amritsar as similarly exceptional from Britishness. Each worked to define the nature of Indian or British political life in the process. And just as when the

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[87] Wagner (2019) Amritsar 1919: An Empire of Fear and the Making of a Massacre Yale University Press pp.35–6
[88] McQuade (2017) *Terrorism, Law, and Sovereignty in India and the League of Nations, 1897-1945* (Doctoral Thesis) University of Cambridge https://doi.org/10.17863/CAM.13806 pp.86–93
[89] Rowlatt (1918) *Sedition Committee 1918 Report.* Superintendent Government Printing India p.1
[90] Wagner (2019) pp.239–42
[91] Punjab Disturbances: The Case of General Dyer. HL Deb 19 July 1920 vol 41 c.249
[92] Army Council and General Dyer. HC Deb 08 July 1920 vol 131 c.1728

Raj spoke of native life in crisis it increasingly spoke in terms of custom, when parliament spoke about Britishness it did so in the language of civilization. In the Commons one MP decried Dyer as having "violated every canon of civilised government."[93] In the Lords, Baron Sinha, the first Indian to serve on the Viceroy's Council and at that time the Under Secretary for India, argued that Dyer had defied "the standards of propriety and humanity which the inhabitants not only of India but of the civilised world have a right to demand from those set in authority over them."[94] As with Eyre, whose case was directly referred to in debates on Dyer, the question at hand was not how to coordinate British rule with native life, but how to control a key agent of that rule according to standards of civilization. This focus on Dyer and on Britishness left no demand for knowledge about Indian life, despite the deep reserve of Indian intellectuals, politicians and other collaborators available to offer it. Poignantly, while 1857 created the space for Sir Syed to receive a knighthood for his services to empire, the massacre at Jallianwala Bagh lead Rabindranath Tagore to repudiate his.

I argued in the previous chapter that advent of customary rule required two components: a crisis and a storyteller. What the brief contrast of these two cases reinforces is that while violence consistently created crises demanding narratives, the narratives and narrative–makers who were called upon depended heavily on the type of violence a crisis was understood to address. The carving out of jurisdictional space for customary rule was not linked to violence in general, but rather was occasioned by the foregrounding of the violence (perceived or actual) of the colonized themselves. Rather than some intrinsic link between white violence and liberalism, or colonized violence and custom, the mechanism at play here draws us back to the interpretive process more than the simple facts of violence itself. A crisis of British violence occasioned a search for information on British motivations, British thoughts and British justice. A crisis of the violence of the colonized occasioned a search for information on the politics, beliefs and practices of the colonized, and could be used to carve space for their claims on (or to) power more broadly.

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[93] Ibid (Commons) c.1744
[94] Punjab Disturbances: The Case of General Dyer. HL Deb 19 July 1920 vol 41 c.238

5. Sources of the International Self

> It may seem presumptuous that we, Chiefs of the Protectorate, should urge that South–West Africa be not transferred to the Union of South Africa, but we, as Africa Peoples, are not uninterested. There are presently living in our country displaced persons, Hereros and others, who were persecuted and driven out of their country by the Germans. In addition to those mentioned, a number of South–West Africa natives have since taken refuge in the Bechuanaland Protectorate during the Union's Mandate through fear of the Union's Native Policy, and all of these would return to their native lands in South–West Africa if the purpose of the Mandate were being duly fulfilled.
>
> - "The Case for Bechuanaland" 1946[1]

In June 1945, in the diplomatic afterglow of the San Francisco Conference and the establishment of the new United Nations (UN), South African prime minister Jan Smuts and Bechuanaland regent Tshekedi Khama made use of this new public forum to duel over sovereignty. Smuts had taken the moment to push for the ending of the South West Africa mandate, and its full incorporation into his state. Tshekedi, though regent of an area not directly at issue in Smuts' proposal, leveraged the visibility of the UN to advance arguments for the preservation of semi–sovereign status held over from the League mandates system in general. Thus, as Mark Mazower has described it, "for the first time in modern history, one African political leader lobbied internationally on behalf of another dependency, and it was the forum provided by the new world organization that made this possible."[2]

If the historic weight Mazower gives this moment is justified, the shine of novelty is less so. While the fanfare of a new international organization makes it tempting to view the action surrounding it as fundamentally changed, both the stakes and the terms of this debate between Tshekedi and Smuts had a history well beyond the era of modern formal international organizations. Mazower knows this of course; his work is a classic study of the continuities between

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[1] "The Case for Bechuanaland" (1946) RHO 626 s. 155:4
[2] Mazower (2009) *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* p.156.

the UN and the League that preceded it, and has been instrumental in establishing the links between imperial and international forms of world governance.[3] Yet, because of a focus on the high politics of Euro–American diplomacy rather than those of native administration (a focus he shares with much of IR), Mazower does not look beyond Smuts and Wilson to the dynamics of intra–imperial contestation of which those two men occupied just one part. Though hailed as "brilliant," Tshekedi features only this once in Mazower's narrative, as a nod to the contestation over empire which was possible in these organizations, alongside the reinforcement of it through figures like Smuts.

Before he was a belligerent with Smuts at the UN, however, Tshekedi Khama was a chief under customary rule, a plaintiff in the highest court of empire, and an agitator in the court of international public opinion. In his half–century of increasingly global clashes over recognition, he carved jurisdictional space for traditional rule against a much larger regional power, and after his death it was that space in which later Namibian nationalism took hold. In this series of arenas he not only honed a particular strategic language of customary claims on a global stage, but refined a particular type of subjecthood from which to pursue recognition in politics and law. In this he was not unique, but rather emblematic of more general 20th century continuities between customary and international politics.

This chapter addresses the ways in which the ideas and practices of customary rule were generalised in the inter–war period — how this type of order was broadcast — into a common language for making claims for recognition in a changing international system. Just as the official Raj interpretation of the 1857 revolt did not itself create new order without being embedded in communication and practice, the widespread dissemination of native rule as idea and practice did not reframe global approaches to governance and legitimacy simply by their wide application. Rather, as new spaces for contestation were opened which offered increasingly global audiences, the language and ideas of native rule shifted from a way of administering local empire, to a way of recognising a party's right to make claims on an international community, and in turn a way for the world at large to recognise who was speaking, for what type of polity, and on what grounds they claimed legitimacy to do so.

In the inter–war period, as self-determination moved from the register of aspiration to the realm of practical politics, this demanded two questions of recognition: who these international selves were, and how their determination was meant to be known. Customary rule, as a way of knowing the world in order to govern it, offered its own answers to both. As Mazower, Getachew, Pedersen and others have argued, modern self–determination did not spring whole from the head

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[3] For the revival of League scholarship, which puts the League back into context of both imperial and international orders, see Pedersen (2007) "Back to the League of Nations" *American Historical Review* 112: 4 pp.1091–1117.

of Woodrow Wilson, but was rather drawn piecemeal from a range of sources, the segregationist imperialism of Jan Smuts prime among them.[4] By linking the history of customary rule to the era of self-determination, I take this contextualisation farther, in effect contextualising Smuts and the ideas he often represents within a larger system of customary rule ideas and practices of which he was only one part.

The path from customary rule to self-determination happened both intimately in individual lives and careers, and publicly via new institutions, which through globally visible contestation turned the actions and ideas of those individuals into common knowledge, and thus order. As a way of illustrating this interaction, this chapter begins where Mazower and others have left off: at the edge of Jan Smuts' story, and in the longer background of his first rival at the UN.

I. Tshekedi Khama

Tshekedi Khama first learned his adversarial international politics as a chief in a system of customary rule. As Regent, Tshekedi's goal was "to prevent the British from encroaching in any way on the powers of the Bamangwato chieftaincy, which he was determined to hand over intact to his nephew Seretse." Which is to say, jurisdictional jockeying: policing the boundaries of colonial authority, using "the techniques of contemporary African nationalists with consummate skill to defend his traditional rights."[5] It is clear that the power of chieftaincy for Tshekedi was not simply a privileged position for carrying out the ends of empire, but rather the freedom to determine them: not just to wield authority but to decide the purposes towards which it was put. In one instance, Tshekedi refused a £500 grant from the colonial administration for water storage during a drought, arguing that it was not his role to be deputized by the administration, but rather to rule fully within sphere carved out by traditional rule. The chief's letter to the High Commissioner "argued that having rendered up to Caesar what was Caesar's, he did not expect to become Caesar's agent for its disbursement."[6] While the word agent is from biographer Michael Crowder, not the chief himself, the refusal to play a game of mere agenthood even while being compelled to pay tax to a colonial authority illuminates the extent to which even the constrained agency of traditional rule could be seen as preferable to better funded legitimation in an alien power's terms.[7]

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[4] Getachew (2019) *Worldmaking after Empire: The Rise and Fall of Self–Determination Princeton*; Pedersen (2015) *The Guardians: The League of Nations and the Crisis of Empire* Oxford

[5] Crowder (1985) "Tshekedi Khama and Opposition to the British Administration of the Bechuanaland Protectorate, 1926–1936" *The Journal of African History* 26:2 pp.19–214 at p.196

[6] Ibid

[7] Ibid p.200

Likewise, when the High Commissioner proposed a state–appointed governing council, and announced that "instead of the people having ultimate choice of their chiefs, this would depend on approval, recognition and confirmation by the Administration," Tshekedi not only fought back, but did so by citing Lugard and Donald Cameron as support.[8] Tshekedi's concept of "the people" and their right to choose rulers was in keeping with traditions of Sir Syed, Kaye and Lugard: not a liberal electoral one, but rather the people's will expressed through their time–honoured customs of obedience to the rulers, for whom he served as regent. Taking the issue to court — both formally in Bechuanaland and publicly again in the British press — Tshekedi argued that the new procedures for legislative appointment of chiefs "were of no legal force in that they did not respect native laws and customs."[9]

Tshekedi did not only guard his sphere of rule with bureaucracy, but several times with violence. Twice he successfully defended his legitimate right to do so on an international stage. One conflict arose when the Tshekedi sentenced a white British man to be flogged after the latter assaulted a native man, though as the Regent he had no formal right to try or sentence a European, much less to flog one.[10] To the British Governor this was "the culmination of eight years' 'trouble with a swollen headed youth whose openly expressed desire and ambition has been to be the ruler of an independent sovereign nation.'"[11] The governor took this opportunity to depose of Tshekedi, his longstanding opponent, with the support of the High Commissioner. Yet, within a month Tshekedi had used contacts in the British press to build a large enough murmur of condemnation in Parliament that he was quickly reinstated to his position.

Tshekedi's other use of an international arena to legitimate his right to protect his rule with violence took his case not to Parliament but to the Judicial Committee of the Privy Council (JCPC). This time the violence was intended to protect his authority from local challengers, though the eventual effect was also a hardening of his traditional authority against British questioning or oversight.[12] Tshekedi's main rival in Bechuanaland was the Ratshosa family, who were educated, wealthy, senior to the young Regent, and supportive of the idea of a British legislative council as a check on the power of the chief. In April 1926, three months after Tshekedi was made Regent, a dispute with the Ratshosa escalated to the point that members of that family fired on Tshekedi, wounding him. The Regent responded by sending armed regiments to burn the Ratshosa's houses. After the Ratshosa sued, and the case was appealed to the JCPC, the court ruled first that shooting Tshekedi was not private violence but rather "an act of war" and "an armed rebellion," and

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[8] Ibid pp.209–10
[9] Ibid p.211 For full discussion of the conflict see Otlhogile (1993) "Tshekedi Khama and ANO vs. High Commissioner: The Making of the Court" *Botswana Notes and Records* 25 pp.29–38
[10] Ibid p.207
[11] Rey qtd in Crowder (1985) p.208
[12] Bennett & Wallace (2012) "Khama v Ratshosa Revisited: The Privy Council Ruling of 1931 on House-burning" *Botswana Notes and Records* 44 pp.25–33 cit p.44

second that "the burning of the houses and huts of the three plaintiffs, and their contents, was in accordance with the custom of the tribe."[13] Furthermore, a focus on the facts of the case obscures the idea that the final JCPC decision did not turn on the content of custom, but rather the finding that the local British magistrates who originally heard the case lacked any jurisdiction to rule on Tshekedi's actions.[14] What Tshekedi won was not simply his right to burn the huts of rebels, but the reinforcement of a jurisdictional boundary of custom, within which his violence was legitimate and his word was final. The key here is something that was repeated throughout these 20th century forums for contesting rule. While customary cases often seemed to turn on the minutiae of habit and practice, their effect was often to reify a world of split jurisdiction more broadly: a world of universal law on one level, operating to shelter and reinforce a hundred semi–sovereignties of custom below.

Finally, when Smuts moved to annex its South West Africa Mandate under the new United Nations, the fight was one over recognition and international legitimacy from the beginning. As a "Class–C" Mandate, South West Africa was in the view of many a colony in all but name, and it was acknowledged that Smuts could have militarily annexed the Mandate at any point in the war. But "Smuts wanted full sovereignty over South West Africa and only the United Nations General Assembly could grant him this in a way that would be internationally recognized."[15] Tshekedi, for his part, was determined to prevent that recognition for fear that it establish a precedent that would soon be applied to his own Bechuanaland and others. Two issues took centre stage in the debate: Tshekedi's standing to lobby on South West Africa's behalf, and what it might mean to determine the will of South West Africa in questions of how and by whom they would be ruled.

Tshekedi's main statement in this debate was a pamphlet — "The Case for Bechuanaland" — addressed to the British High Commissioner and the Trusteeship Committee of the UN (the successor to the League's Mandates Commission). It begins by addressing the question of standing within the Trusteeship system, and for a ruler who had built a career on customary claims, "The Case" appears at first to be a register shift. Reminding his audience that the South West Africa Mandate was founded to "promote to the utmost the material and moral well–being and the social progress of the inhabitants", Tshekedi declares the desire of his co–signed chiefs "to voice our feelings as a People who, by virtue of their present stage of progress, are not yet able to stand by themselves and therefore whose well–being and development form a

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[13] *Chief Tshekedi Khama v Ratshosa and another* (1931) JCPC 4. The court's understanding of this custom seems to have come from the testimony of neighbouring chiefs as assessors, suggesting both the power of auto–ethnography in imperial appellate law (these chiefs were shoring up their own power by describing it), and an instance of solidarity between customary rulers that predates his defence of South West Africa.
[14] Bennett & Wallace (2012) p.28
[15] Crowder (1987) "Tshekedi Khama, Smuts, and South West Africa" *The Journal of Modern African Studies* 25:1 pp.25–42 at p.26

sacred trust of civilisation."[16] He is using the language of civilisation here, not to argue that he or those he represents have met that standard for independent statehood, but rather to remind the holders of mandates on what grounds their own authority was based. Simultaneously, he is self-identifying as a ruler of a not-yet-developed people, and using that as a general category of solidarity from which he and his fellow chiefs should be recognised as legitimately contesting Smuts' move to annex a fellow undeveloped mandate.

Later in the pamphlet he ties this undeveloped state specifically to South African interference with the ability of the inhabitants of South West Africa to live "according to their own laws and customs" and to appoint leaders according to "Ancestral Law."[17] He focuses specifically on the plight of the Herero people, refugees of which had fled to his own Bechuanaland after fighting a rebellion against the German imperial government. "Before their contact with the Europeans," he argues, "they were a well organised tribe. They had developed their own civilization. In attempting to preserve this they came into conflict with stronger powers and they were mercilessly broken up and scattered."[18] Here Tshekedi contrasts preservation with disorder and the "scattering" effects of forceful colonisation. He highlights cultural "contact" as a concern of social order in much the same way as Margery Perham, Bronislaw Malinowski and other of his personal contacts were doing in the increasingly formal anthropological arm of British colonial government.[19] He also plays on the British Empire's own self–imagination as an empire of cultural preservation and indirect rule, specifically highlighting the Germanic approach of South Africa in violently disturbing the traditional life of native tribes.[20] Finally, Tshekedi uses this customary framing to argue for the invalidity of Smuts' contention — a crucial one in the age of self–determination — that a majority of South West Africans consented to annexation. As always, customary rule contained both an idea of who a people was, and of how to know their political will. As in his fight against a British–appointed council in Bechuanaland, Tshekedi's notion of how

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[16] "The Case for Bechuanaland" (1946) RHO 626 s. 155:4 p.3 Tshekedi's submission was signed by five other rulers, all identifying themselves in the document as "Chief of the [respective] Tribe". Only two relevant chiefs were not represented here; Crowder puts the absence of one down to relatively greater political exposure to Smuts, Tshekedi himself explained the other's absence as the result of a personal rivalry between them. (1978) p.31

[17] Ibid pp.7–8

[18] Ibid p.8

[19] Perham personally reached out to the British government on Tshekedi and South West Africa's behalf. Crowder (1987) p.39 In the same year his fight with Smuts began, Tshekedi had secured his nephew Seretse a place at Oxford under the supervision of the anti–slavery advocate and imperial historian Reginald Copeland, as well as invitations to the home of Perham and others who were then doing the knowledge work of empire. A decade later, when fighting the next battle against annexation, it was Perham and her collaborator Malinowski that Seretse reached out to for legal and public support in Britain. Along with Bechuanaland chieftaincy itself, what Tshekedi had handed off to Seretse (and other leaders like Swaziland's Subhuza II) was a knowledge network, and a sense of how to leverage it for recognition. For Seretse at Oxford, see Parsons, Tlou & Henderson (1995) *Seretse Khama 1921–1980* Macmillan. at pp. 61–80

[20] Having a sense of Smuts' status as a war hero in Britain, Tshekedi works here to break South African imperialism loose from British identity, associating it with German imperialism and appealing frequently to British ideals which he argues to be "identical with" his own understanding of the Mandate system.

a people's will was determined was a patriarchal and customary one. Consent was adherence to tradition, and this was an issue on which he hoped audiences in London would view Smuts as having no authentic authority.[21]

The particular combination of civilizing and customary frames in Tshekedi's overall argument also links it to the longer history of customary rule of which it was a part. As in responses to the massacres at Amritsar or Morant Bay, Tshekedi deploys the language of civilisation as a guide to the proper behaviour of European colonial powers, while questions of the 'native' politics are defined by historic, customary, or 'ancestral' ideas. It is evidence too that civilizational and customary approaches to politics were not simply abstract ideas or political orientations, but registers of argument and legitimation, to be strategically shifted between depending on the forum and audience. For Tshekedi the UN was less a revolution in international politics, than an adaptation of the politics of contestation he and fellow chiefs had been engaged in for at least two generations. There is no moment in "The Case for Bechuanaland" when he speaks to the UN as a guarantor of new rights or a promise of new politics; rather he lobbies it explicitly from the outset as the next guardian of older commitments, reminding it of its obligations to words laid out for the League. If there was a distinction to the UN it may have been its visibility and the formal power it gave that public discussion, but it is likely that in a life spent fighting these battles, one more theatre for the performance of this particular fight represented more a continuation than a paradigm shift.

Tshekedi was in many ways exceptional, combining in one career mastery in a tremendous array of political theatres. But he was also exemplary, and his path is a key of sorts to linking customary and modern international politics which goes beyond any one personal story. The remainder of this chapter will proceed through stages that echo Tshekedi Khama: up through customary rule to international organisations and self-determination. It begins with a discussion of imperial appellate law, and the ways in which the Judicial Committee of the Privy Council served as an organ for generating global common knowledge about customary claims. It looks second at the Permanent Mandates Commission of the League of Nations, tracing the ways in which its founders saw it as an instrument of world governance along the same lines as customary rule, and also those in which the practice of claims–making in the Commission reinforced and publicised the same new international subject-hoods as imperial law and rule. In conclusion, it addresses the conventions of customary recognition that persisted outside of these formal arenas, and which shaped the formation of independent nation–states. It does so first by discussing the

[21] There were reasons to doubt Smuts' numbers on their own terms, especially after he barred not only the South African Institute of Race Relations, but also Lord Hailey from visiting South–West Africa to take a survey of their own. Of course, given Hailey's position as an exponent of the post–mutiny "Punjab School" of indirect rule, and his work in the knowledge mission of African empire alongside Malinowski and Perham, this move is note easily disentangle–able from the opposition between authentic and foreign knowledge Tshekedi is attempting to illustrate.

partition of India into two (and soon three) nation states, examining the ways that modes of recognising and claiming for groups under empire became had constrained the ways in which groups could be recognised as sovereign states. Lastly, it addresses the shifting knowledge–work of empire from informal habits of governance to increasingly systematised ideas of anthropology, and the ways in which this directly shaped the strategies of leaders like Jan Smuts and Jomo Kenyatta alike as they positioned themselves for a post–imperial world.

II. Broadcasting Order through Imperial Law

> Nobody can appreciate the power and the ramifications of the British Empire until he visits the book–lined room of the Privy Council which is something between the British Museum and a Police Court… All the queer cases that occur in strange lands beyond the seas are settled by judges in this library. All the quaint laws and customs governing old world people, from primitive tribes to ancient civilizations are settled in these quiet rooms. For everything there is a book. Ushers spend their lives climbing ladders and bringing down books for the Law Lords who are the umpires of empire.[22]

The Judicial Committee of the Privy Council (JCPC) was the final court of appeal for the British Empire. While appellate courts fit case to law, it is also often their role to decide standing and jurisdiction in the first place, and it is under the heading of this question that notions of customary law became central to JCPC jurisprudence in the imperial 20th century, allowing appellants and defendants from around the world to argue not simply over what law applied to their case, but whose law as well. As a final court of appeal generating precedents for the whole of the empire, the JCPC was a force of legal homogenization. However, it was the homogenization of a certain notion of difference, one which was seen by participants as marking out the core of a uniquely British mode of rule as a force for the creation and preservation of diversity. As "something between the British Museum and a Police Court," the Judicial Committee enacted the particular combination of anthropological and legal modes of governing difference which was becoming so key to British imperial order in the age of customary rule.

Furthermore, one did not actually need to visit that book–lined room to understand the "centripetal" force of its work.[23] As a court which published rulings on the results of hundreds of claims on imperial power, and circulated those rulings to thousands of subjects on nearly every continent, the JCPC was an organ for converting claims to common knowledge. Each ruling allowed parties to update their expectations not only of the core's response to peripheral claims, but also to learn from the strategies of other claimants both when they succeeded and when they

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[22] R.E. Corder (1928) "Umpires of Empire: The Privy Council Judges at Work" *The Singapore Free Press and Mercantile Advertiser* 13 June, p.3, qtd in Ibhawoh (2013) p.6
[23] Sharafi (2014)

failed. Crucially, these expectations and precedents were not simply handed down from on high, but were produced continually by colonized peoples' own engagement with the court.[24] Imperial justice in the JCPC was a tool not only for the imposition of imperial structures, but also for colonized peoples to "influence colonial constructions of native difference."[25] The standards used to deny or grant standing to bring claims against empire generated both expectation and precedent, and in doing so shaped the way actors treated newly emerging boundaries of the international.

None of the role of law in ordering global rule was lost on its practitioners. As one Justice of the JCPC, Lord Shaw, put it in 1923, the law was the "link of empire": the connective force through which a plurality of polities were able to contribute to the knowledge, order and material progress of one another.[26] Crucially, Shaw argued, while all historical empires had used law to order their politics, the relationship of this imperial law to the various traditions and societies it governed was the most crucial axis of difference between the British empire and those which preceded it. In previous Roman and Germanic empires the law was universal and monolithic: "a system of force, proud, centralized, imposed from above."[27] "Think of how different our ideas are" he urges in contrast:

> Every land contributes its own crop as per its own climate; it shows forth its own needs, and these vary as from arctic to equatorial conditions; and so all the lands thus contributing and co–operating move forward in those channels of custom, to destroy which is to lay society in ruins. To recognize these customs, to acknowledge frankly the right of self–government, to respect liberty, to respect history, that is the English–speaking system.[28]

It should be clear at this point the resonance this conception of British global justice has with organicist conservative notions of British global order: the posing of abstract universalism as an outdated and inferior ideal; the focus on local "conditions" in a quasi–naturalist vein, but one concerned with holism rather than dynamic progress in its allusions to nature; the linking of self–government with custom rather than modernity, and the fear of societal ruin if custom is disturbed. This was not simply a private insight into one law Lord's legal philosophy; this treatise on the role of law in empire was published across the first two volumes of the Canadian Bar Association's new

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[24] Ibahwoh (2013) *Imperial Justice* p.5
[25] Ibid p.7
[26] The Right Hon. Lord Shaw of Dunfermline (2010) "Law as a Link of Empire" *The Canadian Bar Review* 1:2 pp.116–131 Shaw, who served as Lord Advocate of Scotland before his peerage and Privy Council role, was a lifelong Liberal, described by many as a radical. His proselytizing of the organicist Burkean mode of empire, then, is further evidence that its rise and persistence as a mode of global rule cannot simply be reduced to the politics of those in power in Britain at a given time.
[27] Ibid p.117
[28] Ibid

journal, and is clearly intended as a legitimacy–crafting exercise for the court, securing its place in imperial politics to a colonial audience. Judges of the court, Rohit De argues, "jealously guarded the jurisdiction of the court, and behaved strategically to maximize its institutional authority and legitimacy, promoting certain kinds of legal mobility."[29] Even for a liberal like Shaw, then, this customary language of legitimacy was a strategically useful tool with which to jockey for jurisdiction.

Shaw offered these arguments to audiences in the white–settler dominated colony of Canada, and it would be tempting to reduce his language of diversity and freedom to a system of tolerant diversity for the white world and gentle civilizing for the colonized. He was adamant, however, that the legitimacy of British imperial law — and thus of British empire — was the diversity of claims and causes deriving from the court's geographic and political breadth. In particular, he argued:

> I know no country, except India, where the words of Burke are so verified to the letter, and in a sense even wider than he conceived. His wonderful diction, you remember, describes Jurisprudence as a science, and he thus describes it:— "The science of jurisprudence, the pride of the human intellect, which, with all its defects, redundancies and errors, is the collected reason of ages, combining the principles of original justice with the infinite variety of human concerns."[30]

To Shaw, here, the JCPC is not simply Burkean because of its own embrasure of the diversity of others; rather India itself is held up as a model of Burkean "reason of ages" and "infinite variety" for the British Empire itself.

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[29] De (2014) "'A Peripatetic World Court' Cosmopolitan Courts, Nationalist Judges and the Indian Appeal to the Privy Council" *Law and History Review* 32:4 p.824
[30] Ibid p.120

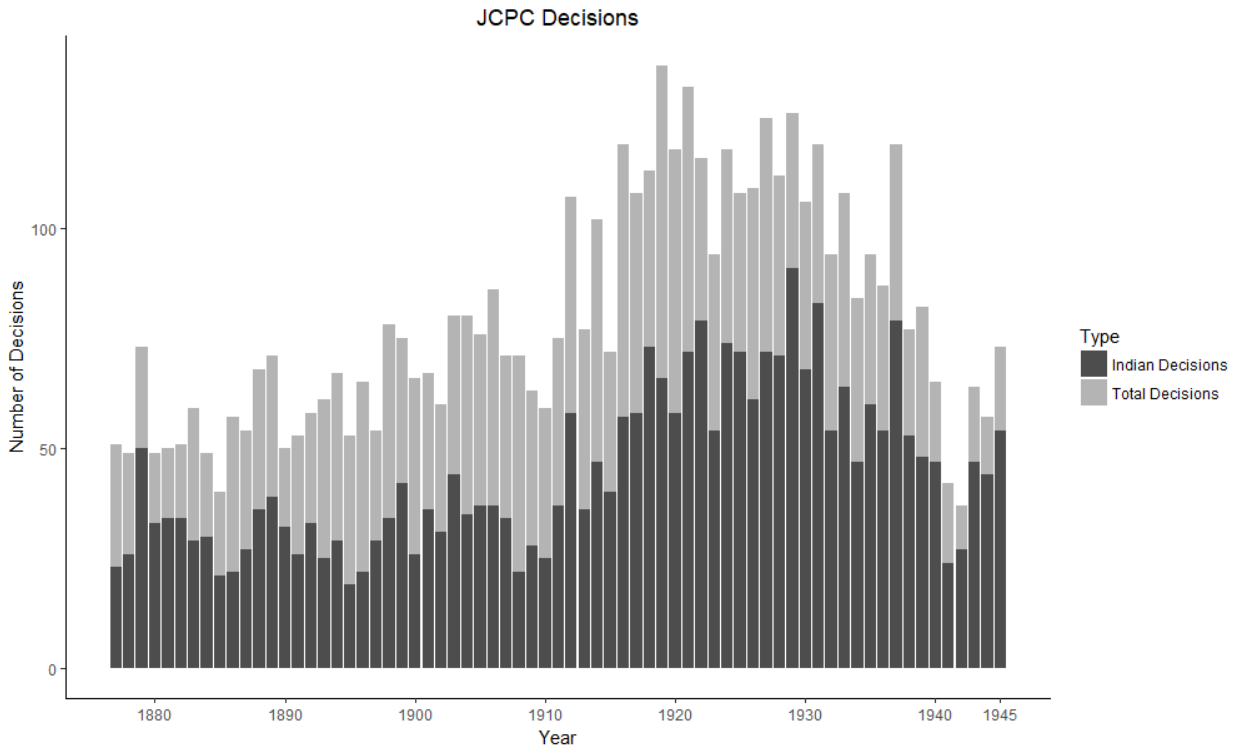

Figure 6 JCPC Decisions. Data compiled by author.

Shaw's sense of the fundamentally Indian nature of imperial jurisprudence was not a rhetorical flourish or a political fancy, but based in fact. For the century between 1857 and partition, cases from India made up 56% of the total cases decided by the JCPC, and in no year were less than 45% (see *Figure 6)*. As the caseload of the JCPC increased further — 130% by the outbreak of the Second World War — the Indian share of that load increased even more rapidly. In the post–war slump of decisions, as appeals from Canada and Australia all but disappeared, Indian cases made up over 75% of the JCPC's decisions.

In a crucial era for the growth of international law, then, the dramatically increasing legalization of the British Empire was founded on colonized peoples' use of its legal system to make claims on empire, and on one another via empire's venues, concepts and rules. This meant that the days of the highest jurists in Britain for a century were more than half spent thinking about Indian claims, arguments and evidence. Men like Lord Shaw did not come spontaneously to their Burkeanism–via–India as the legitimating story of imperial law, but rather were reinforced in the belief by concrete claims and disputes arising from colonial politics on the ground. Also, crucially, more than half of the increasingly public records of these globally relevant decisions created general precedent from Indian and African particularities and arguments. The wide circulation of JCPC decisions is well documented, and certain key cases had impacts that can be measured in part by their later use as precedent.

The JCPC thus was a common–knowledge creation organ for the globalization of customary rule as an approach to recognizing and governing the British imperial world. The Indian–driven legalization of the empire documented here provides the background for that process. It was ultimately, however, not only the sheer number of colonized claims heard in the JCPC which drove this role, but the content and language of those claims: their conception of what one could want from imperial governance, how one could be recognized as a legitimate subject of imperial rule, what evidence of that legitimacy looked like, and in what language all of this should be expressed.

Broadening the Context of Customary Claims

While customary rule as a form of administration was most applicable to exurban groups and traditionally styled patriarchs — decentralized despots, in Mamdani's terminology — the transposition of custom into imperial appellate law increasingly offered a venue for urban middle classes families and even British business owners to use the tools of custom alongside traditional chiefs and radical agitators.

An illustrative early instance of this broadening came from the High Courts of Zanzibar, in a 1901 case in which a British firm and the colonial government clashed over the ownership of a length of railway. The company, Charlesworth Piling & Co., had leased land to the government, which the latter subsequently built a railway on, and at the lease's end the company argued that English law meant that it should retake possession not only of the land, but of the railway.[31] Rather than disputing the facts, the British government of Zanzibar disputed the law. The government contended that even though both parties were British subjects, the fact that the land in question was in Zanzibar meant that the transaction should be governed by Islamic law, which it further argued meant that the railway could not be transferred without payment. Lord Haldane, representing the company, accepted this jurisdictional move, but argued that Islamic Law did not differ from English on this issue. The assembled judges reminded Haldane that they could not be expected to know relevant Islamic Law and asked him for proof of this similarity. As Bonny Ibhawoh retells it:

> Haldane replied, 'I am addressing your Lordships, not as seven English Judges who require to have foreign law proved to them, but as seven *Cadis* of the Mohammedan religion who are presumed to know the Koran.' At that point, presiding Lord Chancellor Halsbury picked up a copy of the Qur'an available nearby and searched it on the spot. He discovered a crucial text, as Haldane later recalled, the text stated: 'if anybody plants

[31] *Secretary of State for Foreign Affairs v Charlesworth Piling & Co* [1901] AC 373

> a plane tree on his neighbour's land the neighbour shall not claim the plane tree without making proper compensation.' It was proof, ascertained by the Lords of the JCPC themselves, that the Islamic land law on the subject of litigation was, indeed, different from English law.[32]

Custom in this instance was transparently a tool: not a deeply held element of either party's identity, but a jurisdictional move in a battle over land and property. The principles the decision enshrined however — that 'English Law' was less a universal set of substantive principles, than a secondary rule that "incidents of land are governed by the law of its site" — overstepped either party's immediate concerns, and went on to be cited in decades of land disputes.[33] By territorialising a type of jurisdiction which had most often been based on a litigant's social group, *Charlesworth* is an early sign of the remaking of customary law as a law of the land.

The information dynamic in this exchange is also instructive. Neither the government or Charlesworth Piling & Co. seem to have prepared extensive briefs on relevant Islamic Law, in Zanzibar or elsewhere. Haldane seems willing to rely on a play–acting gamble, asking the judges to imagine themselves knowledgeable, and in that imagined knowledge find his argument valid. His gamble failed, but the vagueness he expected in the actual process of determining custom is not far-fetched; a ruling on custom was often made based on little more than the words of one party, and he was making a strategic choice that the language of custom could be valuable for its flexibility, no matter from whom it came. What we see here is the lawyer for a British company acknowledging the instrumental force of customary claims and experimenting with what can successfully be claimed under them, and with what evidence. Even his failure produced evidence of the court's expectations that others could respond to.

The majority of cases involving customary claims, however, did not directly involve a British party on either side, but rather emerged from disputes between colonized people themselves. Like *Charlesworth*, however, these cases increasingly used customary language to litigate disputes over private businesses and middle–class family property, away from solely tribes, chiefs and "village community." In hundreds of cases, families contested wills with one side arguing the applicability of communal or religious law, and another the relevance of general codes. In 1933, for example, a family in Patna fought the acquisition of their factory on the grounds that under an "ancient grant from the Emperor at Delhi" it could not be used to produce lard.[34] Appeals to custom had always been a tool, from Sir Syed to Lea and Tshekedi Khama. What was changing via the vehicle of appellate law was a widening of the parties for whom that tool seemed reasonable

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[32] Ibhawoh (2013) p.121 The court quoted a slightly different passage in its ruling, but ultimately did decide that the text of the Qur'an could be applied directly as law governing this situation. Charlesworth [1901] p.9

[33] Charlesworth [1901]

[34] Sir Seth Hukrum Chand and others v Maharaj Bahadur Singh and others [1933] UKPC 43

and useful. In doing so, however, these cases raised more urgently the question of how to recognize authentic claims to customary law in the absence of subjects who themselves were defined by traditional life.

Knowing Custom

In theory, standards for recognizing a valid custom were demanding. In his Tagore Law Lectures of 1911, Sripati Roy argued that "a custom to have the force of law must be shown to have existed from time immemorial," that "evidence should be such as to prove the uniformity and continuity of the usage," and that judicial decisions are "the most satisfactory evidence for a custom's existence ad legal force".[35] While this standard was useful rhetoric for the idea of customary law in general, it was hardly ever demanded by judges or met by parties in actual legal disputes. Decisions of the JCPC are brimming with reliance on testimony about custom which amounts to the assertions of one or two "native assessors" — called in effect as expert witnesses, where their expertise derived from group membership — and often evidence of parties to the case themselves.[36]

One decision from the Gold Coast seems to satisfy Roy's claims, opening with the assertion that, "as is the case with all customary law, it has to be proved in the first instance by calling witnesses acquainted with native customs until the particular customs have, by frequent proof in the Courts, become so notorious that the Courts take judicial notice of them."[37] Quickly, however, the judges in this case find that they cannot identify the range of "witnesses" called in the original case (many of whom were not witnesses to any acts at issue, but rather parties called to give evidence about customs in general), naming only a linguist for a signatory to the document at issue in the case. In other cases, judges would grow frustrated with conflicting accounts of a group's customs and simply offer their own potted history of the group's identity, based on memory and a few books that could be brought to hand.[38] Still another judge simply stated that "a savour of religious endowment… taken in conjunction with the conduct of the family" was enough to decide that religious rather than general law applied to the execution of a will.[39] This ambiguity meant that there was significant power in narrating one's own customs to the court — jurisdictional auto–ethnography in effect — and a significant body of law and practice grew up around who was empowered to offer this narration, and by what standards they would be judged.

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[35] Roy (1911) Customs and Customary Law in British India Hare Press, Calcutta pp.578–80
[36] See Gray (1958) "Opinions of Assessors in Criminal Trials in East Africa as to Native Custom." Journal of African Law 2:1 for a colonial judge's later account of the use of assessors in British East Africa.
[37] Kobina Angu v Cudjoe Attah [1916] UKPC 53 p.1
[38] Petit v. Jijibhai [1909] This case, discussed below, was foundational to the idea of Parsis as a jurisdictionally distinct community defined by religious identity rather than merely descent.
[39] Vinayak Waman Joshi v Gopal Hari Joshi Rayarikar and Others [1903]

In cases in which the JCPC ruled specifically on the testimony of assessors and their place in imperial jurisprudence, its rulings generated and broadcast expectations about the necessity of that testimony, and its expectations of their authenticity. In terms of procedure, the court was mainly concerned that their evidence was heard both in the courtroom and publicly, and that the treatment of this evidence approached uniformity across the empire, even while the content of customs never would. In a key case in which a colonial authority attempted to curtail an assessor's right to give testimony in open court, the Privy Council struck down local limitations in order to protect what it saw as "a guarantee to the native population that their own customs and habits of life are not misunderstood."[40] What was at stake, furthermore, was not simply the right of a person to give testimony as to the content of their customs, but the right of that testimony to be heard and recorded publicly. The court in *Dhalamini* argued that "from this point of view," that of avoiding cultural misunderstanding in the law, "the importance of publicity is manifest."[41] A later case, citing *Dhalamini* would argue that "justice must not only be done but must manifestly be seen to be done."[42] The post-mutiny fear of "misunderstood" custom was here turned by the court into a demand for public reasoning about the content and legitimacy of customary claims. Given that it was decided explicitly with reference to legal procedure from India, Nigeria and the Gold Coast, *Dhalamini* is also evidence of appellate law generating pressure to standardize approaches to legal difference. Just as Lugard and others brought a universally applicable understanding of particularity and difference from India to Africa, the JCPC produced its own institutional pressures to reinforce a system for using universal standards to protect local particularities.

This importation from India brought to imperial law several of the same fears and assumptions about authenticity that it brought to imperial administration. In a tone reminiscent of general suspicion of the educated 'babu' for instance, one Kenyan judge:

> complained about the 'poor quality of urbanized assessors' who dressed in European clothes, spoke English and knew little about tribal customs that were recruited to his courts. Colonial judges and administrators preferred 'traditional' men thought to be well versed in customary law, over 'modern' Africans, whom they believed to be more inclined to being 'corrupted in modern ways'[43]

Legal authority, then, was expected to be a performance of authenticity. As always, this image of authenticity was subject to the imagination and prejudice of British authorities, and litigants were incentivised to play to and reinforce these expectations as far as they were able. This did not mean, however, that litigants or assessors had no scope to reshape ideas of authenticity. In the *Ndembera*

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[40] Mahlikilili Dhalamini and Ors v The King [1942] p.4
[41] Ibid
[42] Tumahole Bereng v The King qtd in Ibhawoh (2013) p.77
[43] Ibhawoh (2013) p.70

case discussed previously — in which a woman gave evidence that under her custom a wife leaving a man had automatically divorced him — the original trial judge had taken the word of two male assessors over hers, writing her testimony off as merely "a progressive woman's conception of what a woman's right ought to be."[44] On appeal, however, the East African Court of Appeals "seemed keenly aware of the possibility of patriarchal and generational biases in the opinions of the male assessors."[45] The JCPC upheld this caution, and found that there was no reason within the testimony itself to doubt the woman's word.

Perhaps ironically, it seems to have been another British generalisation about native life that often led the court to carefully weigh assessments of custom even when they departed from written law. To most British authorities on customary law, where the mission of English law was to see justice correctly applied, the goal of "African justice" was reconciliation between parties, and the restoration of social harmony as a result.[46] This emphasis on "harmony" dovetailed well with customary rule's focus on maintaining social order over applying codified law. To a judge, the practical use of an alleged custom was less dependent on its roots in written custom, and more to do with its use in achieving peaceful resolution to disputes. Knowing this, parties making claims to or via imperial law increasingly had incentives to claim customary law applied to their case, and to perform the role of authentic native subject to increase the likelihood of the court recognising their right to that claim.

Often litigants arguing a customary line came straight out and declared something customary, but those without clear positions outside of a more universal colonial modernity — who nonetheless wanted to claim a jurisdictional boundary between it and themselves — reached for further language to signal their jurisdictional place. In these cases, custom could be signalled as much by the type of evidence given, as the individuals empowered to give it. Records of habits, prayer, family tradition and village sayings abounded. One of the most common categories of this sort of evidence was testimony about food.

In a case referred from Calcutta in 1868, for instance, the JCPC decided that an inheritance case could be resolved under what it accepted to be "Hindu law" after hearing evidence that a group could be understood as a nuclear Hindu family if they were "joint in food, worship and estate."[47] Similarly there was the aforementioned Patna family who contested land law and government acquisition by arguing that their property could not be used to produce lard.[48] This sort of boundary cut both ways, serving as a criteria for exclusion as much as inclusion in customary law. In 1903, for instance, a son's claim to inherit his father's estates under Hindu

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[44] Rex v Ndembera [1947]
[45] Ibhawoh (2013) p.79
[46] Chanock (1998) Law, Custom and Social Order in Malawi…
[47] Soorendronauth Roy v Mussumat Heeromonee (Burmonee and others) [1868] UKPC 9
[48] Sir Seth Hukrum Chand and others v Maharaj Bahadur Singh and others [1933] UKPC 43

law (rather than them passing to the state under British) was denied when it was argued that "in matters of diet and ceremonial observance the testator had departed so far from the standard of orthodoxy binding upon him as a Hindu or Sikh as to exclude him from the term Hindu in the act in question."[49] Testament about diet seems to have been given by both parties in this case, reinforcing the idea that decisions about the division between public and private property hinged on a care for "securing ancient law" by "such customs as they might be able to prove."[50] Conversely, in 1913 a son was able to recover "several villages" for his family estate, in spite of allegations that his father "ate food in English hotels and railway refreshment rooms, drank gin and kept fowl and pigs."[51] Other cases sent justices diving deep into holy books for authority on whether eating meals in combination rendered a group a legal family unit under "Burmese–Buddist law."[52]

In all these cases, diet is invoked as a boundary marker between modern and traditional life, with religious or customary habits of eating being used to signal that a person and their case belonged to laws on the other side of the boundary from the colonial state. This invocation played on longer–held associations of eating with group life, especially for the Raj. When Mirza Ghalib bemoaned in *Dastanbuuy*, his bestselling diary of the 1857 revolt, that the rebelling sepoys were "faithless to their salt," for instance, he invoked aristocratic and near–feudal images of table and custom, to solidify a notion of his own people as trustworthy and the rebels as deviant.[53] When Sir Syed made his case that Indian Muslims could "befriend" the British, he observed that unlike Indian Hindus "we can eat with them."[54]

As well as signalling community, this language played on the joining of cultural difference and violent threat that followed 1857. It was, after all, feared to have been pig or cow grease which touched off the mutiny, and coded messages in chapati that fanned it into a national revolt. For the Raj, diet belonged to the realm of irrational or incomprehensible belief, and this was the realm from which violence came. This memory was recorded and disseminated through the official knowledge projects that followed. In *The Peoples of India*, upwards of 45% of entries mentioned diet in their miniature ethnography of a group: noting vegetarianism to signal orthodoxy, alcohol use to denote distance from it, or a catalogue of foraged items for "wild tribes." In codifying so–called martial races, one author describes the "Khas or Khus" as reliable soldiers specifically because of their lack of dietary customs, arguing that "they laugh at the pharsical rigour of our (Bengal) Sepoys, who must bathe from head to foot and make puja ere they begin to dress their dinner,

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[49] Rani Bhagwan Kaur v Bose and others [1903] UKPC 58 p.7
[50] Ibid pp.2,5
[51] Bhaiya Sher Bahadur (Appeal No. 25 of 1912) v Bhaiya Ganga Bakhsh Singh and others (Oudh) 1913 UKPC 68 (10 December 1913) p.5
[52] Kirkwood (alias) Ma Thein and others v Maung Sin and another [1924] UKPC 68
[53] Qtd in Raja (2010) *Constructing Pakistan: Foundational Texts and the Rise of Muslim National Identity* p.9
[54] Qtd in Devji (2013) p.54

must eat nearly naked in the coldest weather, and cannot be in marching trim again in less than three hours."[55] In other words, intensity of dietary custom marked the rebellious sepoys as dangerously custom–bound, and its lack marked the Khus as reliable, practical, more easily used.

It is probably not provable that litigants signalling custom before imperial law had these specific precedents in mind when they offered evidence about diet. It is clear, however, that many exposed to contemporary Urdu literature, Northern Indian politics or the governing perspective of Raj ethnography would be aware of these background assumptions about the workings of custom, and the power of its association with danger in the colonial imagination. It is likewise clear that as these cases were decided, published, and cited, this awareness would only become more common.

This pattern is visible beyond evidence about diet. In a range of cases, testimony about custom was accepted if it appealed to British background assumptions about native life that were increasingly being formalized and disseminated as anthropology. In one instance, a murder defendant before the East African Court of Appeals secured his acquittal by arguing that while he was present at a group assassination, he did not participate in the traditional cleansing ceremony afterwards, and so should not be understood as having participated in the murder itself.[56] Writing about the sensibility of this evidence after the fact, former Chief Justice of Zanzibar John Gray remarks that "as readers of Frazier's *Golden Bough* will remember, [the purification ceremony] is deemed essential after a case of homicide."[57] Given the practical impossibility of verifying a custom's existence "from time immemorial," this high court judge has reached for a canonical British work of comparative religion and myth instead and, seeing something he recognizes, pronounces it admissible and legitimate. In doing so publicly, he reinforces a convention of recognition.

Intermediaries & Agitators

In addition to appealing to the colonial world's understanding of culture, litigants at the JCPC played on its fear of disorder. While a great deal turned on the presentation of customary evidence and authentic self in court, many cases were also fought outside of the court through the careful use of so–called 'agitators' and public representatives. These ranged from British academics and activists (often one and the same), to African lawyers and journalists. Together, customary litigants and their allies enacted a similar two–step to the pairing of rebel and intermediary present

[55] People v.ii plate 70
[56] R v Fabiano Kinene (1941) 8 EACA 96 cit in Gray (1958)
[57] Gray (1958) "Opinions of Assessors in Criminal Trials in East Africa as to Native Custom" Journal of African Law 21 pp.5–18 at p.7

throughout customary rule; simultaneously reminding imperial authorities of potential disorder, and offering them a solution in the form of customary authority.

This was already described in the case of Tshekedi Khama, who used his British lawyer and allied chiefs to triangulate pressure on colonial authorities. His arguments through several courts were accompanied by careful lobbying outside of the law proper, as well as threatening pressure at home from allied chiefs. He found British journalists to describe him to the public simultaneously as "romantic" in his traditionalism, and "a new–style chief… liable to deal with the white man on an equality."[58] After his trial and punishment of a white British man, Margery Perham published an essay explaining his actions in historical terms, describing him as "the autocratic puritan," and attempting to frame for readers the context for his forceful defence of traditional rule.[59] The anti–slavery campaigner Sir John Harris made the British public case for him as "a great African ruler" and described his proposals for greater policy autonomy in glowing terms.[60] This same loose group mobilised in his case before the UN, both as signatories to his submission and as a network that carried his case to newspapers and members of the government.

Two foundational rulings on land law and chiefly legitimacy highlight this ongoing connection more broadly, linked as they were not only by context, but by a man colonial authorities saw as an 'agitator'. These cases are first worth introducing on their own, as key inter–war instances of African leaders claiming customary rights against British authority.

In 1919 Amadou Tijani, Chief Oluwa of the Apapa community in Lagos, successfully sued the colonial government for compensation for lands that the latter had taken and set aside for British trade.[61] This case emerged from the dispute between the authority of King Docemo and Yoruba chiefs discussed in the previous chapter, the land having been ceded by the King without the consent of chiefs. Both sides of the case asserted customary law in opposing veins; the state arguing that an individual chief could not sue because customary land was held in common, and Chief Oluwa agreeing that the land for which he was seeking compensation was held in

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[58] *The Guardian* (3 April 1930) London p.10. Tshekedi's battle over his right to exclude European mining from Bechuanaland was covered at least 11 times by *The Guardian*, twice including substantial excerpts from his own speeches on the issue. He remained in at least some of the public's mind enough that he was mentioned in arguments for hosting "African Chiefs" at the coronation of George VI, alongside "Sir Ofori Atta, of the Gold Coast… and King David, of Uganda" along with a passing mention of "chiefs from Malaya" in general. *The Guardian* (2 January 1937) p.8 He was subsequently written about at least 21 times during his conflict with Smuts.

[59] She balances customary and civilising tone in the piece, at once arguing for the need to understand Tshekedi's politics on his people's own terms, and closing with an argument on race and civilization. "In this perplexing business of the relations of colour—white and black—perhaps *the* problem of the future, it is brought home to us, as the South African has been quick to see, that while on the one side there may be some white men who are very uncivilised, on the other there may be some black who, for all their mistakes, are not semi-savages but interesting, intelligent and intensely human people." Perham (1933) "Significance of the Tshekedi Incident" *The Listener.* London 247 p.504

[60] *The Guardian* (18 July 1938) p.11

[61] *Amadou Tijani v The Secretary of Southern Nigeria* [1921] UKPC 80 For this he relied on the authority of the the 1898 *Report on Land Tenure in West Africa*.

common, but contending that the community to which that land belonged was the Yoruba, not Lagos as a whole, and that he was empowered to act on behalf of the former. Lord Haldane, arguing this time from the bench, "asserted that a 'pure native custom' of communal land tenure existed across communities along the entire length of the West African coast, and that the exceptional incidents of individual land ownership in Lagos."[62] Given this, he found that while the King had an abstract right to sell land in Lagos, this was itself a private sale which did not affect the Apapa's "usufructuary title". Oluwa won his appeal, and was awarded four and a half times the compensation he was originally offered.

The *Tijani* ruling became "Empire–wide precedent" for cases involving communal land claims, both against colonial governments and between rival native claimants.[63] In 1931 it was invoked not simply in compensation for land, but in the question of the colonial government's right to depose a chief. Eshugbayi Docemo, formally Chief Eleko, carved a path through imperial rule similar to Tshekedi Khama's, using multiple levels of law and bureaucracy to reach above the heads of immediate colonial officials, and fight to retain his authority. In 1915, Chief Eleko enraged the governor by declining to institute a new direct tax. In 1925 he was formally deposed from his position as paramount chief of Lagos, and formally deported, arrested, and exiled from Lagos to Oyo. He subsequently spent six years appealing for a writ of *habeas corpus* to reverse his exile and deposition. He was backed up in his efforts by mass public turnout to his hearings, and a team of African lawyers filing dizzying number of appeals with each judge in every court they could reasonably approach.[64] Once again the court looked for evidence of the Eleko's customary claims outside the courtroom, believing that "it was the assent of the native community that gave a custom its validity, and therefore, barbarous or mild, it had to be proven to be recognized by the native community whose conduct it was supposed to regulate."[65] When he was finally restored to his post in 1931, it was because the JCPC had taken a dim view of the case's "unfortunate history," accepted his application for appeal, and thus indirectly pressured the incoming governor Donald Cameron to reinstate him to his post.[66]

Even the court acknowledged that its ruling did not come in a political vacuum, and Donald Cameron's reinstatement dispersed any sense that this watershed victory for traditional elites was a purely legal one. The most obvious political change contextualizing the Eleko's reinstatement was the same that had lead to Cameron's governorship: that in the intervening years the women of Aba had dramatically changed the landscape of native rule, and raised the perceived

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[62] Qtd in Ibhawoh (2013) p.130
[63] By 1950 it had been cited in 16 JCPC decisions on land cases, and several times as many from regional imperial courts.
[64] Ibhawoh (2013) pp.140–141
[65] Ibhawoh (2013) p.143
[66] Eshugbayi Eleko v The Officer Administrating the Government of Nigeria and another [1931] UKPC 37 p.1

stakes of disturbing traditional elites (the Eleko's first fight with the administration, after all, was a refusal to enforce new taxation). More directly, however, the Eleko's legal battles were underpinned from the beginning by public argument in the British and Nigerian public eye. The provocation that pushed the administration to depose and deport the Eleko was not anything he did himself, but rather a comment made to a British newspaper by a member of Chief Oluwa's party while in London arguing his own case. Speaking to the *Daily Mail* about Oluwa's concerns, Herbert Macaulay set about describing the indignity of British treatment of native elites in general, and in doing so described another chief, the Eleko, as "acclaimed by the 17 million Nigerians as the titular King of Lagos."[67] For colonial authorities this inflation of the Eleko's title was a challenge too far to the regime they had built on the back of their mass land acquisition from the prior "King." Macaulay had arranged the publicity campaign for Chief Oluwa during his trial, building up a public picture of him as a wronged traditional ruler in lavish terms, and after securing victory in the *Tijani* case he shifted to a multi–national publicity campaign for the Eleko in a controversy that he himself had fanned.[68]

Herbert Macaulay was a new iteration of the longer–standing figure of the intermediary. He "could speak the white man language with poise and authority" while making a two–sided public case: for the dignity of tradition in London, and for the necessity of revolution in Lagos.[69] He was well–versed in the bureaucratic language of colonial land governance, having worked as a surveyor and "the first indigenous civil engineer in Nigeria" for the colonial government. He thus spoke the language of imperial governance in more registers than simply English, and was able to apply this language of rule through the range of nationalist newspapers he both published and wrote for.

That Macaulay evoked the threatening spectre of native modernization is reflected in the way he was spoken of in Colonial Office communications at the time. One administrator involved in the Eleko's case wrote that "Macaulay also is an educated and able man, but that ability is becoming dangerous to the public in so far as he is inciting un-educated and disillusioned ignorant

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[67] "A King's Pay: Chief Oluwa of Lagos Grumbles" *Daily Mail.* (8 July 1920) p.6. The *Mail* had covered the Oluwa's visit extensively, and in lavishly exotic terms, relating his appearance to his customary authority. One issue described his appearance before the Privy Council "dressed in a damask cardinal silk robe decked with flowers" and "the white silk cap of his rank with silver braid and a silver tassel, which by local law and custom he must never be seen without. His eldest son held over him the highly decorated state umbrella, and his secretary carried before him as he entered the state ebony and silver-mounted staff." A picture of this trio appeared on the paper's photo page, alongside images of the King and Queen leaving the gathering of the Order of the Thistly, and of British troops being quartered in Dublin. "Gorgeous Chief: African State Umbrella in Court" *Daily Maill* (6 July 1920) p.5

[68] The strategic nature of this ritual presentation of Chief Oluwa was acknowledged privately by the Colonial Office, with officials complaining that "Macaulay had 'contrived' to have Chief Oluwa presented to the King, in order to give an 'exaggerated idea' of the importance of Chief Oluwa and his Privy Council appeal to the British Public." CO 583/173/10 qtd in Ibhawoh (2013) p.135

[69] Ibhawoh p.134.

natives."[70] Birell Gray, author of the first report on the Women's War which saw it as simply the outburst of "frenzied" natives, described Macaulay as on one hand preying on "illiterate Native Chiefs", and on the other as "a public agitator for the people's so-called rights."[71] At the time, and in successive political histories, Macaulay has been held up as a foil to his bitter political opponent Henry Carr. Carr was at that time the Resident of the Colony, the first black African to serve in that role, and he vocally abhorred both Macaulay's nationalism and his advocacy of traditional rulers: describing the former as a disease, and the latter as mired in backwardness and ignorance.[72] To Carr, Macaulay was "a desperate enemy of society" and the Eleko was at best his ignorant pawn.[73] Carr attempted to intervene in the Eleko case, writing that the *Tijani* precedent had no bearing because the Eleko was only a private individual with no true public role. Macaulay, in this view, had no authentic political positions, simply strategic stances for his own ends.

If this was the case, it was a strategic position Macaulay played effectively. Rather than refuting the idea that agitation and unrest were a public danger, he leaned in to the idea of social precariousness surrounding the case. In a letter to Lord Passfield, he defends chiefs as "these natural rulers of the country" and argues that their deposition is:

> contrary to all the fundamental principles of Native Law and traditional custom as known, observed and practiced from time immemorial throughout the length and breadth of this Yoruba Country… Thus began the great upheaval in the social fabric of the entire Native Community of Lagos in 1920, through the official machinations of Mr Henry Carr.[74]

Here he draws a neat line from the Eleko's dismissal through a typical linking of timeless custom to social stability. His imagery of torn "social fabric" mirrors Burke, Kaye, Hedayut Ali, and Lugard.[75] He presents himself as opposed to the genteel progressive modernizer Carr, who he accuses of sowing true disorder. He also, however, provides strategic space for the Eleko, who write to Passfield arguing that Macaulay was not formally employed by him, and agreeing with government criticism of Macaulay's nationalist sentiments in the press, but largely agreeing with the narrative that disturbed custom is the true source of social threat. Macaulay presents himself

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[70] CO 583/173/10 p.72

[71] CO 583/173/10 pp.63–4 For Gray's role in the interpretation of the Women's War see Matera et al. (2011) p.193

[72] Cole (1975) *Modern and Traditional Elites in the Politics of Lagos* pp.109–116, and throughout.

[73] Ibid p.113

[74] Macaulay to Passfield (Jan 13 1930) CO 583/173/10 pp.25–47 at p.30, 47. He also argues at length with Carr's personal criticisms, including assertions that he was fired from government service. At this point some reader of his letter has written "he was dismissed" in the margin.

[75] Lugard, for example, argued that "Education should be adapted to the mentality, aptitudes, occupations and traditions of the various peoples, conserving as far as possible all sound and healthy elements in the fabric of their social life." (1930) *Education in Tropical Africa* qtd in Perham (1960) p.661. Burke uses this imagery from the first page of his first published work. "We laid open the Foundations of Society; and you feared, that the Curiosity of this Search might endanger the Ruin of the whole Fabrick." "A Vindication of Natural Philosophy." in (1998) *A Philosophical Enquiry into the Sublime and Beautiful.* p.7

as very much the modern urban African that colonial governors were trained to abhor, while re–centring the conversation on the ground of the Eleko's traditional claims. He is the figure of modern disorder, to the Oluwa and the Eleko's reassuring (if still unwelcome) traditionalism. In the space create by Macaulay's 'agitation' the Eleko was able to walk a careful line: benefitting from Macaulay's discourse–shifting towards custom while distancing himself from his agitation.

The work of intermediaries and agitators in these cases illustrates both the public–ness of these cases, and the ongoing role that fears of disorder played in their adjudication. In a loose network of academics, lawyers, politicians and journalists, the image of native legitimacy was built in the public eye via a narrative of imperial justice. This publicity in turn, accompanied by periodically violent crises throughout the empire, and the lingering fear of them in the Colonial Office, strengthened claims of African elites over land and authority on an increasingly global stage.

Defining Groups by Jurisdiction

Because a litigant's customary claims often succeeded or failed on grounds of standing or group membership, rather than on proving the existence of a specific custom, cases about group rights inevitably produced legal reasoning about the nature and boundaries of groups themselves. This arose both from intra–group and inter–group disputes over boundaries, each demanding that the court attempt to furnish judicial standards for recognizing members of social groups in general, as well as for determining the differences between groups based on race, religion, caste, tribe and other markers.

In 1924, for example, the JCPC ruled on a case from Burma, of a young orphan named Bella who was adopted by a Parsi family, but was later barred by others from her community from using the local temple.[76] The case turned on the question of whether the group entitled to access to the temple (which was more than a building of worship, but also a key source of community support) was defined by race or religion. While Bella had been raised as a Zoroastrian "in accordance with the rites prescribed by that religion", the appellants argued that temple membership was based not on being "admitted into the Zoroastrian religion" but being "a member of the Parsdinsi population."[77] The JCPC accepted this definition of the nature and boundaries of the Parsi community, relying on an earlier ruling in the High Court of Bombay. In *Petit v Jijibhai,* it was a French woman who had married into a wealthy Bombay Parsi family who was claiming the right to use Parsi communal property in the form of a "panchayat".[78] In *Petit*,

[76] DRK Saklat and others v Bella [1925] UKPC 88
[77] Saklat v Bella [1925] pp.6, 2 The argument veers between the term 'race' and 'population', and eschews the idea of caste p.9
[78] Sir Dinsha Manekji Petit, Bart. and others v Sir Jamsetji Jijibhai, Bart., and others [1909] ILR 33:509

the court rejected the idea that the Parsi community was defined by the Zoroastrian religion, with the panchayat horizontally constituted by believers, and substituted a tribal and patriarchal understanding instead. The miniature history of Parsis offered in the ruling is illuminating. As the Court told it:

> They were foreigners, and they came from Persia. Enough then to describe them as Parsis. Among the Parsis themselves the case was altogether different. They had no reason to be proud of their place of origin, they had nothing to look for from Persia. But they had their religion. They were the first and last Zoroastrians, irrespective of the fact that persecution had driven Zoroastrianism out of Persia. As time went on, no doubt the tribal sentiment grew and throve, and there was super-imposed upon the first simple bond of a common religion, the bond of a common tribal descent. So that, as the community prospered and acquired wealth and importance, it accepted the popular name of Parsis, as though it really were a national or tribal distinction.[79]

The transmutation of a displaced religious community into a "national or tribal" one is a story that chimes with the increasingly pervasive recognition of social groups in a customary frame. Like much of customary rule, it re–imagines a mobile group with heterogenous ideas of membership as a community defined by fixed historic norms, governed by a single patriarchal hierarchy. The judge who authored this decision, furthermore, was himself a prominent orthodox Parsi, the first to serve on the Bombay High Court.[80] His ruling that rather than being "a self-constituted body… the essential element of a panchayat is the delegation of authority by the people of a community to its chosen headmen[81]" was not simply the imposition of an outside frame on Parsi community, but the use of colonial law as a tool in an intra–communal power struggle. While the JCPC ruling in *Petit v Jijibahai* was penned and decided by a panel of British Privy Councillors, the history and definition of what it was to be Parsi on which it relied (and subsequently broadcast) was produced by a Parsi judge using British law to solidify notions of authority in his own community.

Indian and African judges on high courts also used their positions to carefully police intrusions of "English Law" into spheres of customary life, even outside of their own particular groups. Sir Syed's son Syed Mahmood, for instance, worked as High Court Judge for the North West Provinces, and argued that the default stance towards matters of marriage and family should be that it is governed by relevant religious or customary law, whether that meant Muslim, Hindu or any other tradition the case required.[82] When the case reached the JCPC, judges concurred

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[79] Petit v Jijibahai 362
[80] Sharafi (2014) p.22
[81] *Petit v Jijibahai* 21
[82] See for example Guenther (2004) *Syed Mahmood and the Transformation of Muslim Law in British India* (PhD thesis) Institute of Islamic Studies, McGill University, Montreal pp.218–19 for discussion of Indian Law

that the application of English law to a Muslim marriage was "opposed to the whole policy of the law in British India."[83] In several key cases, and in a way that prefigured Lord Haldane's strategy in *Charlesworth*, he leveraged the expectations of the Indian Evidence Act to argue that higher courts should defer to his knowledge as he "by fortuitous chance happened to be the only Muhammadan Judge throughout British India" and thus deserved "to take my time over consulting books of Muhammadan ecclesiastical law."[84] In case after case, he carefully defines a sphere of situations and spaces in which a Muslim judge's reading of Muslim law was of greater evidentiary value than a British judge consulting more general law. This approach was generalised by fellow appellate judges into a broader principle of religious and communal law, in which areas of life marked as spiritual or "intimate" were governed by separate law, and that law was known through separate sources, authorities and ways of reasoning.

By policing the intrusion of English law into areas of custom, Syed Mahmood and others waged a battle against any presumed universality of English norms and principles. Like his father, Syed Mahmood's anti–universalist interventions had the effect of reifying social groups into internationally recognizable categories first of governance, then of law. Where Sir Syed had his personal and professional relationship to British governors of India, his son wielded the added resources of a Cambridge legal education and the publicity–generating mechanisms of imperial appellate law.[85] In general, where customary jurisdiction was asserted, arguments about standing were also arguments about the ontology of global politics. They were attempts to work out, in the language of custom, what made a group recognizable as a group in the sense both of having justiciable boundaries, and conferring rights on its members by virtue of their place on either side of those lines.

III. The League of Nations as Customary Rule

That the League of Nations was as much a continuation of empire as it was a new mode of world governance is well established. This is partly due to recent revisions of the idea that the League was mainly focused on liberal multilateralism and a new post–Vienna approach to peace between powers, rather than on generalising imperial administration as themselves an approach to post–

Reports, 8 All. 149 (21 Jan. 1886) Abdul Kadir v. Salima, The Indian Law Reports 13 All. 126 (7 May 1890) *Binda v. Kaunsilia*

[83] *Indian Law Reports*, 8 All. 149 (21 Jan. 1886) *Abdul Kadir v. Salima*, p.153 qtd at p.219

[84] Syed Mahmood qtd in Guenther (2004) p.222

[85] The success of men like Syed Mahmood in wielding custom as a tool clarifies that the suspicion of 'educated natives' referred less to education itself than to performances of identity and place. To worried Englishmen, 'education' as corrupter was less a matter of degrees earned than of race and class–transcending airs assumed.

war order. A focus on historiography, however, can obscure the fact that the idea of an imperial League would have been entirely recognisable to many of the key figures of its creation. Lloyd George, for instance, opined that "In fact the League of Nations has already begun," in that "the British Empire is a league of nations."[86] Jan Smuts, in his influential *The League of Nations; a Practical Suggestion*, argued that in the world's search for post–war order "the British Empire was the nearest approach to the League of Nations."[87] Although this debate was heavily Anglosphere–dominated, other victorious powers were in practice equally keen to use the League as a new tool for imperial rule.

Ultimately, however, a debate premised on whether the League should be understood as the end of empires or their continuation risks missing the question of *which forms of empire* were embedded in the ideas and practices of the League, and in what ways these specific forms were key to the reshaping of mid-century international relations through new organisations. Here too, a great deal of the literature has focused on modernization and standards of civilization in the League, both in the rhetoric of its self–description, and in its approach to governance of the non–European world. When examined in light of the history of customary rule that both preceded and outlasted it, however, the League evinces a familiar combination of lofty civilizational goals and carefully moderated customary means. This was true both in the ideas of the individuals who shaped the League's approach to world governance, and in the practices of trusteeship and administration through which that governance was applied to much of the imperial world. In embedding these ideas in its practice of governance, the League had the effect both of re–inscribing ideas of imperial administration into new developmental and governance contexts, and of socialising powerful and subordinate parties alike into a language of claims–making and legitimation based in part on notions of customary rule. In doing so, it contributed to the shaping of new international subjecthood by reinforcing the legal personality of some claimants, and refusing to recognise others.

The Ideas of the League's Framers

Just as the ideas of customary rule spread from India to Africa via the assumptions and practical common–sense of administrators — the social world they expected to find, and the administrative tools they brought as response to crisis — this tradition was first brought into international organisations by the individuals who helped to create them.

While working to demonstrate the linkages between empire and international organisation, recent literature has settled firmly around the figures of Woodrow Wilson and Jan Smuts. The

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[86] Qtd in Mazower (2012) *Governing the World: The History of an Idea* p.128
[87] Smuts (1918) *The League of Nations; a Practical Suggestion* p.29

analytical value of Wilson as a target of critique is obvious. As either the spiritual author of the peace through his fourteen points, or the symbolic figure of self–determination in the so–called Wilsonian Moment, he stands in metonymically for the new order. To show that he rooted his politics in ideas of segregationist racial/cultural order and the legitimation of European dominance is thus to show that the projects he often stands in for must reckon with those legacies as well.

The place of Smuts in this picture is more diffuse, but possibly also deeper. He is necessary to Wilsonian histories of the era in the outsize influence he seems to have had on the American's thinking: offering a brand of experienced governance to the leader of a powerful state that had nonetheless remained somewhat isolated from European politics.[88] His impact went beyond merely a relationship to Wilson, however. His pamphlet on *The League of Nations; a Practical Suggestion* was one of the earliest specific explorations of the purpose, ideals and workings a new international organisation, and was enormously influential in the actual League that followed. As a delegate to the peace at Versailles, he was particularly active in the creation of the mandates system, which in practical terms was the body that determined what 'self–determination' meant for communities denied the recognition of full statehood. His involvement in inter–war order, furthermore, spanned the entire period between the League and the United Nations, having been both a key drafter of the preamble to the UN charter, and one of the first subjects of its oversight in his attempt to annex South West Africa.

The influence of Wilson and Smuts is often associated with civilizational ideas of order. Wilson in particular espoused a liberal notion of racial hierarchy, believing wholeheartedly in the value of "tutelary empire" to uplift non-white peoples, which was at least partially enshrined in the "trusteeship" principle of the mandates system.[89] Smuts was clear in his *Practical Suggestion* that any new organisation should reflect "elements of our European civilisation," and that those responsible for this new order were "the civilised world."[90] Both men believed clearly in the superiority of some notion of white civilisation or culture and, to the extent that they believed non–white peoples were capable of attaining 'higher' civilisation, believed that it was the role of new international organisations to guide them to it.

There are key ways, however, in which the description of this Wilson–Smuts intellectual nexus as liberal imperialism fails to fit. To begin with, these men were each avowed segregationists:

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[88] The warm friendship and deep intellectual influence between the two are detailed in Curry (1961) "Woodrow Wilson, Jan Smuts and the Versailles Settlement." *The American Historical Review* 66:4 pp.968–986.

[89] Skowronek (2006) "The Reassociation of Ideas and Purposes: Racism, Liberalism, and the American Political Tradition." *The American Political Science Review*. p.394. His domestic critics in particular argued that the League as he designed it would serve more to repress budding independence under European power than to liberate them. p.392

[90] Smuts (1918) pp.11, 46

individual conduits of the cross–pollination of American Jim Crow and what would later become South African Apartheid policies of racial separation. As such, their political programs were as predicated on inherent differences as on aspirations for universality. While each rejected strong accounts of universal civilisation, their ways of doing so differed.

As Getachew describes it, for Wilson "the self was on the one hand qualified by reference to capacity and development and on the other hand limited to those of Anglo–Saxon inheritance."[91] The right to international selfhood was thus predicated both on a colour bar and a standard of civilization, understood as a measure of material development. Getachew further draws attention to Wilson's admiration of Edmund Burke, and there are certainly several overlaps with a generally Burkean scepticism of progress. Domestically, Wilson's attitudes towards black emancipation and education chimed with post–mutiny worries about the rapidity of westernisation, describing reconstruction as "nothing more than a host of dusky children untimely put out of school."[92] Likewise he echoed Burke's belief in the necessity of diverse approaches to imperial administration and law, arguing that there exists "no universal form or method" to be applied in all cases.[93] Interestingly, this assertion seems to contradict Wilson's earlier scholarly views on administration as a subfield of political science, in which he invited Americanists to draw conclusions from direct analogies to European states' development on the basis of an understanding that "all governments have a strong structural likeness."[94] This seeming contradiction is resolved, however, if we read it as applying an assumption of universalism to white and European societies, and an assumption of difference to colonized and non-white peoples. This dual standard — of civilisation for white authority and difference for colonial development — suggests that Wilson's worldview may have shared as much with contemporary British imperial thought as with Burke himself. As a scholar of American government with little to no experience with colonial administration, however, Wilson stopped short of espousing a detailed theory of how to govern difference beyond universalism.

Being more familiar with the administrative realities of colonial governance, Smuts took these ideas further. Like Wilson, Smuts espoused a Burkean scepticism of universalism. "Against the civilizing mission's aims of assimilation," as Getachew again puts it, "Smuts argued that colonial policy on the [African] continent should have the aim of preservation" and equated an "attachment to universals with Jacobinism."[95] Smuts' emphasis on preservation here deals more

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[91] Getachew (2019) *Worldmaking After Empire* p.45
[92] Qtd in O'Reilly (1997) "The Jim Crow Policies of Woodrow Wilson" *The Journal of Blacks in Higher Education* 17 p.117. It is tempting to read Wilson, a devotee of Shakespeare, as alluding to Macduff here. If so, it suggests a vein of biological racism along with the paternal/educational thrust of his comment.
[93] Getachew (2019) p.48
[94] Qtd in Schmidt (1998) *The Political Discourse of Anarchy: A Disciplinary History of International Relations* State University of New York Press p.135
[95] Getachew (2019) pp.47–8

explicitly with the role of imperial authority beyond a civilising mode, and his equation of universalism with Jacobinism has clear similarities to post–mutiny links between developmental abstraction and social chaos. Whereas Wilson's rhetoric continually emphasised progress and development towards modern European standards as requirements for international selfhood, Smuts was more inclined to view segregation itself as a stable, if not eternal, social order.

It is helpful to ask what precisely a Burkean approach to order at the League might mean. It does not simply signal conservatism. In Britain the idea of Burke as an emblematic "C/conservative" (both partisan and philosophical) had only just been popularised at the outbreak of the First World War, and the repurposing of him as a natural law conservative by the Cold War United States was still a half century and another world war away.[96] Nor does it signal 'imperialist', given that there is no ground on which Burke himself was any more in favour of imperial government than the many liberals that Wilson and Smuts could have read and used to underpin a mission of civilization and uplift through empire and the League.

The clearest point of contact here is the notion of "trusteeship" for non–sovereign peoples, enacted through the institution of the mandates system. Mandates, Roger Louis has argued, were themselves "an amplification and precision" of Burkean notions of trusteeship previously at play in the scramble for Africa.[97] Some treatments of Burkean trusteeship in IR have rooted it in a sense of authority "exercised for the benefit of persons subject to it," thus relating it mainly to the liberal developmentalist language of the League, and later to neoconservative interventionism.[98] If the League both broadcast and refined a Burkean notion of trusteeship, however, it must also have been an understanding of political self–hood based not a Lockean summation of individual choices to consent, but rather "a product of historical choice" made substantial by tradition and long–term conformity.[99] Thus, while trusteeship is held for the good of a community, a Burkean idea of that community is likely to define its good as custom, cohesion and convention more so than as modernization.

The comparison of decontextualized development to Jacobinism also fits with this conception of social order. Burke's rejection of the French Revolution was not simply reactionary in the sense

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[96] For the establishment of Burke as a figure of the British "C/conservative" tradition see Jones (2017) *Edmund Burke & the Invention of Modern Conservatism, 1830–1914.* For his c20 reception in the United States see Maciag (2013) *Edmund Burke in America: The Contested Career of the Father of Modern Conservatism.* Cornell University Press

[97] Louis (1965) "African Origins of the Mandates Idea" *International Organization* pp.22,31

[98] Bain (2003) *Between Anarchy and Society: Trusteeship and the Obligations of Power* Oxford University Press p.161 Bain recognizes Lugard's emphasis on custom and tradition in his reading of the "Dual Mandate" and indirect rule, but does not describe this as a more general quality of Burkean trusteeship in international relations. p.59; He addresses Burkean legacies in the scramble for Africa more specifically in a later article, but again groups this notion under a rubric of civilizing missions, and does not address either customary particularity and Burkean notions of diversity on the one hand, or associations of imperial liberalism with disorder and Jacobinism on the other. (2012) "Repaying the National Debt to Africa': Trusteeship, Property and Empire" *Theoria* 59:133 pp.1–20, especially at p.9

[99] Welsh (1995) p.52

of opposing change, but more specifically was rooted in his view that abstract universal rights "could only be realised through the utter destruction of society, which rests instead on painfully acquired conventions, a kind of continuing social contract 'between those who are living, those who are dead, and those who are to be born'."[100] For Smuts especially, a segregationist and preservationist understanding of self-determination *required* a reticence towards the universalising tendencies of development, even if the League used progress to justify its authority to other European powers. While the primary reason for this requirement may have been a fear of disorder, built within it was also a substantive view of communal political subjecthood, and a way in which consent to life within that subjectivity should be determined.

While Burke provides a useful philosophical context for Smuts, however, these ideas fit within a larger constellation of the South African leader's thought. More explicitly than he was a Burkean, for instance, Smuts was a self–described "Holist". In a 1926 book on *Holism and Evolution,* Smuts attempted to lay out an all–encompassing metaphysics which rejected "the old mechanical viewpoint" of atomised and individual cause–effect relationships in favour of a world of whole entities, which must be analysed as such rather than reduced to their constituent parts.[101] Although significant portions of the work addressing physical sciences have no clear relation to international politics, the social ontology he takes them to imply does. In particular, Smuts' comprehensive holism leads him to view biological races themselves as indivisible wholes needing to be understood and dealt with as such.[102] Further, he argues that social wholes are not held together only by biological descent, but that with sufficient cultural development "the load is mainly shifted on to the ampler shoulders of the social tradition," and thus that "language, customs, writing, literature, history, knowledge and empirical practice are all storehouses of traditional information."[103] This cultural modifier to biological race is not suggested as a liberal interventionist tool for uplift from outside, however, but rather as the naturally arising structures of distinct peoples, emerging intrinsically and over time. In this especially, his view of human social evolution shares more with post–mutiny organicism than with civilizing developmentalism, or the biological race–reductionism on which the latter often relied. It is unclear how widely Smuts' book was read, though it was at least known to Bertrand Russell, who cited it in passing in his *History of Western Philosophy*.[104] Whatever its reception, the work gives insight both into Smuts' rejection of mechanised views of causation and social change, and the collectivism of his ideas of political

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[100] Hampsher–Monk (2007) "British radicalism and the anti–Jacobins" Goldie and Wokler eds *The Cambridge History of Eighteenth–Century Political Thought* Cambridge University Press p.674
[101] Smuts (1926) *Holism and Evolution* Macmillan inc. South Africa
[102] Ibid p.201
[103] Ibid pp.251–2
[104] Russell (1946) *History of Western Philosophy* George Allen and Unwin Ltd, London p.771 The mention falls at the end of his chapter on Hegel.

groups, which very much ran counter to notions of self-determination based upon individualised rights, choices or contracts.

Finally, many somewhat Burkean elements of Smuts' thought seem to have arisen simply from interaction with imperial rule and native administration. While his *Practical Suggestion* fails to directly mention custom, his three Rhodes Memorial lectures in 1929 expounded a customary theory of native rule to packed Oxford audiences.

> 'For the natives', he declared, 'Religion, law, natural science, social customs and institutions, all form one blended whole, which enshrines their views of the world and the forces governing it. Attack this complex system at any single point, and the whole is endangered.'[105]

Smuts' biographer describes this philosophy either "idealistically… as parallel institutions; indirect rule; administrative separation," or more "controversially" as simply "segregation."[106] It is as neat a statement that Africa should be ruled as a series of customarily defined communities that one could look for from a framer of inter–war internationalism. It also transposes the general fears of war that animated the League back to a post–mutiny register of the fear of native social breakdown, and ensuing revolt. In another lecture, when he does turn to questions of "development," he argues that it "can only mean the progress and civilization of these backward peoples in accordance with their own institutions, customs, and ideas."[107]

To the extent that Smuts failed to mention these ideas in his initial proposals for the League, it is likely because he assumed that they would simply be left as matters of imperial administration. By the time he was working on the preamble for the League's replacement institution, however, he had no illusion that questions of colonial administration were not also questions of international organisations. In an early draft of the UN preamble, Smuts suggested as the second of four points that "We believe in the practice of tolerance, in the equal rights of individuals and of individual nations large and small, as well as in their inherent right to govern themselves without outside interference, in accordance with their own customs and way of life."[108]

In the context of his experience as a colonial authority in British Africa, it is clear from what sources Smuts drew these ideas. In his Rhodes lectures he refers continuously to concrete administrative questions of native law, chiefly rule, and village tradition. He quotes as well from Lugard's *Dual Mandate* which, if citation is a guide to inspiration, here wins out over Burke two–

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[105] Qtd in Hancock (1962) *Smuts v2: The Fields of Force* Cambridge University Press p.226
[106] Ibid
[107] Smuts (1930) *Africa and some World Problems: including the Rhodes Memorial Lectures delivered in Michaelmas Term, 1929* Oxford, Clarendon Press p.89
[108] Qtd in Heyns and Gravett (2017) "'To Save Succeeding Generations from the Scourge of War': Jan Smuts and the Ideological Foundations of the United Nations." *Human Rights Quarterly* 39:3 pp.574–605 at p.590

nil.[109] He seems not to have personally known Lugard before his lectures, but made his acquaintance over dinner while in Oxford, where the two found a broad agreement on questions of African administration.[110] Just as Louis argues that the League's ideas of trusteeship were not imported whole–cloth from Burke, but rather adapted from the practice of European empire in Africa, Smuts' thought was adapted from ongoing experience in British imperial Africa, in which notions of customary rule were only gaining ground throughout the inter–war years. And to the extent that customary rule was created by the ongoing participation and contestation of colonized and colonizers alike, Smuts' ideas of customary subjecthood were shaped by these processes and interventions as well.

He was not the only proponent of customary rule to shape the practice of self–determination through the League, however. Lugard's role as the central theorist of indirect rule has already been discussed in the context of his work as an administrator and the content of *The Dual Mandate.* But it was the practice of the League, as much as the ideas that inspired it, which had the power to "refine and amplify" Lugard's ideas. As the two British delegates to the Permanent Mandates Commission for the majority of the inter–war years, Lugard and his colleague Malcolm Hailey were in the position to shape new practices of international governance along the lines of their experience in the political, legal, and knowledge work of indirect rule. In doing so, they would build conventions around customary standards of recognition and international selfhood from the new broadcast point of the League.

The Practice of the Mandates and the Lugardian Lens

When the League of Nations was founded to order a system of recognised sovereign states, the mandates system was the legal organ devised to order that system's remainders. Formally it was a three–tiered system of semi-sovereignty, placing former German and Ottoman colonies under the administration of an allied victor.[111] It expressed the ideal of protecting "peoples not yet able to stand by themselves under the strenuous conditions of the modern world" from formal annexation, and held that "the best method of giving practical effect to this principle is that the

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[109] Smuts (1930) pp.57, 96

[110] Hancock (1962) p.228

[111] Lugard (1923) "The Mandate System" *The Edinburgh Review* Oct 1 pp.398–408 provided anglophone publics an overview of the idea of the system as a whole as it had begun to operate, and the distinctions between class A, B and C Mandates. In broad strokes, these mandates made up a three–tiered scale of material progress, size, and "remoteness from the centres of civilisation," and correspondingly assigned different levels of administrative control to the mandatory power in each case. pp.402–3. Commenting in passing on the origin of the Mandates idea, he cites only Pitman Potter in *American Political Science Review,* who in 1922 credited the idea to Roosevelt, and the practicalities to Wilson. He attributes the American origin of this idea in particular to that country's experience with its "'negro problem'," and "her experience of administrative problems in the Philippines." p.408

tutelage of such peoples should be entrusted to advanced nations."[112] To the extent that the League was an organ for defining modern international selves by recognising them, the mandates system was conceived as a waiting room for recognition, and a training ground for sovereign selves–in–waiting.

The modern paternalism of this approach has from the outset been cited to place the mandates system firmly in the civilising column. Liberal legal theorists like Hersch Lauterpacht argued at the time that "the Mandates system… contrasts sharply with previous colonial systems" by binding a mandatory power both above and below: from below by committing it to the benefit of its subject population, and from above by new accountability to a community of powers through the League.[113] The concept of what benefit the Mandate was meant to bring was similarly liberal, committing powers to "a sacred trust of civilisation," or in French simply a *mission civilisatrice*, and committing them to the "tutelage" of an established power.[114] Several contemporary histories which take issue both with an earlier non–colonial vision of the League and its narrow legalism nonetheless agree with a civilizing assessment of the underlying ideas at work.

While the abstract hopes for the League grew out of longer–standing international law traditions, and the letter of the covenant prescribed "international law as the actual rule of conduct among Governments," the practical working of the league was often the "eclipse" of legal approaches to order.[115] In its actual operation, Stephen Wertheim argues, the League was "forged from an anti–formalistic ethos — one that slowed the momentum of international law and portended the rise of global governance."[116] Anthony Anghie sees a similar anti–formalism in the mandates system, describing what emerged as "a sociological jurisprudence."[117] By anti–formalism, Wertheim, Anghie, Rajagopal and others mean an inherently empirical mode of governance, in contrast to one driven by the application of abstract rules.[118] This dovetails both with Wilson and Smuts' antagonism towards universal rights based approaches, and with post–mutiny practices of colonial administration. The sociology Anghie has in mind, however, is a modern and universalising one. As he describes it:

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[112] League of Nations (1919) "Article 22" *The Covenant of the League of Nations*

[113] Lauterpacht (1977) "The Mandate Under International Law in the Covenant of the League of Nations" E. Lauterpacht ed. *International Law: Collected Paper 3.* Cambridge University Press p.37. This article is the translated form of Lauterpacht's doctoral dissertation, submitted in 1922. It is thus an artefact of hopes for the mandates system's purpose, rather than an analysis of its practice.

[114] League of Nations (1919) "Article 22"

[115] League of Nations (1919) "Preamble"; Wertheim (2012) "The League of Nations: a retreat from international law?" *Journal of Global History* 7 pp.210–232 at p.211.

[116] Wertheim (2012) p.210

[117] Anghie (2005) p.128

[118] Even in the Permanent Court of International Justice, Rajagopal points out, the court itself held that "The Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law." *Mavrommatis Palestine Concessions Case,* PCIJ Series A, No.2, 34. qtd in Rajagopal (2003)

> The new 'science of colonial administration' that the mandates brought into being is, in its most important elements, the new 'science of development' which provides the legitimating foundation of contemporary development institutions such as the [World] Bank. It is in the Mandate System that a centralised authority is established for the task of collecting massive amounts of information from the peripheries, analysing and processing this information by a universal discipline such as economics, and constructing an ostensibly universal science, a science by which all societies may be assessed and advised on how to achieve the goal of economic development.[119]

This is a useful excavation of the origins of some contemporary modes of governance, and it sits well alongside the work of scholars like Getachew, interested in the other possible worlds that post–war economic governance foreclosed.[120] It is not, however, a full rendering of the 'science of colonial administration' that shaped international governance both through the League, and outside of it in colonial empires that very much continued in strength past 1919. In focusing on the ways that the League laid foundations for violence and destruction of communities "in the process of transforming 'traditional' or 'peasant' economies into 'modern' economies,'" this line of analysis misses the ways in which colonial notions of 'traditional' life and politics remained central to the politics of the mandates system: both in the "science of colonial administration" that underpinned it, and in the categories of dissent and subjecthood which it recognised and thus legitimated.[121]

When in 1922 Frederick Lugard was made the British appointee to the Permanent Mandates Commission (PMC), he offered it both an approach to governance and an air of authority.[122] Over 14 years the two would become mutually reinforcing, with the heavily publicised "British way of empire" being wielded as a self–legitimation strategy by a Commission charged to oversee entities with far more material power than themselves.[123] Unsurprisingly, Lugard's approach to the PMC's role of mutual oversight was to evaluate non–British administration by the standards and social assumptions of customary rule. In terms of justice, this meant an insistence on split jurisdictions, with native tribunals operating "without the presence of Europeans," and according

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[119] Anghie (2005) p.264
[120] cf Getachew (2019) Chapter Five "The Welfare World of the New International Economic Order" pp.142–175
[121] Rajagopal (1999) "International Law and the Development Encounter: Violence and Resistance at the Margins." *Proceedings of the Annual Meeting (American Society of International Law)* 93 pp.16–27 at p.16; For another look at this theme which engages more directly with the League's strenuous emphasis on group rights, see Weitz (2008) "From the Vienna to the Paris System: International Politics and the Entangled Histories of Human Rights, Forced Deportations, and Civilizing Missions" *American Historical Review* 113:5 pp.1313–1343
[122] He was the second such appointee, taking over after William Ormsby–Gore who served for the first year.
[123] Pedersen (2006) "The Meaning of the Mandates System: An Argument" *Geschichte und Gesellschaft* 32:4 pp.560–582 at p.569; Pedersen (2015) p.138

to "native law and custom" including the use of native assessors.[124] Similarly, he approached land tenure from an assumption that both public and private land ownership halted at the boundary of traditional claims, and that determination of these claims should be done by relying on the expertise both of native authorities and administrators with long experience in a particular era. To the extent that statistical knowledge was invoked in these discussions, it was often more with the interest in fixing tribal communities in place (along the lines of various native registration acts) rather than assessing their material progress. When details of these arrangements were absent from reports of other mandatory powers, Lugard was not shy in requesting information about them in the future.

This Lugardian approach was carried on by his successor Malcolm Hailey, former governor of the Punjab, twice member of the Viceroy's Council, and product of the "Punjab School" of imperial administration from which Lugard's own approach in Nigeria was descended. When presented with Palestinian questions, for instance, Hailey "naturally understood [them] as a manifestation of a problem with which he was very familiar: communalism."[125] This view clearly drove his reflexive ontology of the questions that came to him, leading him to scan for claims to group–hood and about the boundaries thereof. It also shaped the type of knowledge he was most likely to look for in assessing reports (overwhelmingly the PMC's main work). As an Indian Civil Service officer, he was trained to produce and digest "detailed studies of Indian districts — local history, anthropology, demography, analysis of agriculture, and so on" in order to settle disputes and answer routine questions of governance.[126]

While Anghie and others focus on statistical forms of knowledge, the knowledge mode of governance with which Lugard and Hailey were most familiar was narrative and ethnographic, based on contextualised qualities as well as generalised counts. While the proto–developmental mode was certainly popular with non–governmental petitioners to the PMC, they were not always the approach of Commission members themselves to understanding and judging questions of colonial governance.

This would be interesting if it merely represented the personal approaches of the British delegation to the PMC for almost the entire inter–war period. But as Susan Pedersen has argued, this outlook became a "Lugardian lens" through which the PMC as a whole began to assess and respond to petitions and reports generally.

An early application of this approach came, as did many swings towards indirect rule before and after, in the wake of violence. The third session of the PMC in 1923 was dominated by the need to respond to the "Bondelzwarts Rebellion" of the previous year, in which the South African

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[124] (1923) *Permanent Mandates Commission: Annexes to the Minutes of the Third Session held at Geneva from July 20th to August 10th.* p.39
[125] Cell (1992) *Hailey: A Study in British Imperialism 1872–1969* Cambirdge University Press p.228
[126] Cell (1992) p.10

mandatory administration had responded violently to one group's resistance to new taxation and prosecution of some of its members, using aerial bombardment and ground forces to kill at least one hundred.[127] The Commission brought together both Smuts and Lugard, as well as the full cast of other representatives and the local authorities responsible for violently suppressing the rebellion. Unlike other post–rebellion inquiries, the PMC's deliberation here was an example of an inter– rather than intra–imperial contest over post–violence legitimacy. Likewise, it differed from other investigations into colonial rebellions in its comparative lack of opportunities for colonized peoples themselves to speak into the record. Yet, through the presence of Lugard and other British administrators, combined with a focus on native rather than European violence that presaged Aba more than it echoed Amritsar, PMC discussion quickly moved to understand the Bondelzwarts Rebellion in customary terms.

As the PMC understood it, the Bondelzwarts were fighting at least partially for recognition under a traditional chief, but the legitimacy of this claim was limited by the fact that local "tribes had been broken up by the previous government."[128] Having quickly established this as the key question, the PMC's 'fact finding' duty became not to discern whether the Bondelzwarts were advanced enough to claim recognition and self-determination on civilized grounds, but rather whether they were sufficiently in touch with their communal past to claim it on customary ones.[129] When some members suggested these groups might be supported in re–attaining some former social cohesion, "Major Herbst said it was not possible for Europeans by their own acts to restore a tribe to its primitive condition. Such a restoration was not possible as regards the Hottentots, and the broken tribes in the south."[130] Here Herbst leverages customary ideas favouring endogenous social growth over outside community–building, along with notions that some social institutions are too 'broken' by colonial contact and violence to be mended. He is arguing against Lugard at this point, who seems to have been leaning toward a customary–restorationist approach to resolving the conflict. And yet, in opposing Lugard's policies, Herbst reaffirms his social ontology.

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[127] While the administration claimed it was acting mainly against armed rebels, only about 40 weapons were recovered from the group, and many of those killed were admitted to be non-combatants.

[128] Qtd in Crawford (2002) p.278

[129] The PMC explicitly saw its knowledge work as local and contextual here, and challenged South Africa's ability to administer the territory on grounds of their lack of local knowledge. "M. Van Rees," for instance, "said that the Mandates Commission had been told that the officials of the Union knew nothing of local condition in the mandated territory, and that for this reason the [South African] Commission of Enquiry had been described as incompetent." This echoes standards cited in the previous chapter by which individual administrators were removed from office. Here, however, what is being challenged is not one administrator's career, but one state's right to claim semi–sovereign rule over another. (1923) *Permanent Mandates Commission: Annexes to the Minutes of the Third Session held at Geneva from July 20th to August 10th* p.128

[130] (1923) *Permanent Mandates Commission: Annexes to the Minutes of the Third Session held at Geneva from July 20th to August 10th.* p.128 Later Herbst affirms other customary rule truisms, admitting for instance that "it was very difficult for a native chief to act against the advice of his councillors and people" when considering the culpability of local leaders. p.133

There is an open acceptance here that something like "native sovereign power" exists, as well as "lands belonging to native inhabitants or to native communities by virtue of custom or tradition, but in respect of which no written title deeds existed."[131] Conversely, however, there is the beginning of a precedent that this power can be so dispersed by social change and violence as to lose an actual claim on legitimately traditional authority. Customary rule thus gains traction both as a way to claim group rights, and a basis on which to deny them. As in the JCPC — running in historical parallel to the PMC — these contradictory uses of customary framing both to support colonised claims and to deny them had the effect of deepening its use in practice as background rules of engagement. As Neta Crawford has argued, while the PMC response to the rebellion was somewhat toothless in immediate material terms, it is illustrative of the mandates system's power to publicly shape ideas about "normative beliefs and legitimacy."[132] By its dramatically public visibility, furthermore, the ethical and practical arguments within the PMC generated public pressure to conform or respond that drew power from beyond the small Commission itself. This in turn shaped the arguments made within the PMC itself, every member of which knew that while they spoke to each other, their audience was an increasingly global public.

By the Fifth Session of the PMC in 1924, these customary ideals were already being applied and contested in mandates with no direct relationship to British rule. In early discussions, the Japanese member assured the PMC that in the South Sea Islands it "had been obliged to take local customs into account and to modify accordingly Japanese legislation as it applied to the islands."[133] Later in this session the French M. d'Andrade attempted to push back on the growing vogue for indirect rule through chiefs, arguing that:

> After all, mandated territories were entrusted to the care of mandatory Powers because their populations were not capable of governing themselves. As the welfare and development of these populations constituted a sacred mission of civilisation, their administration was entrusted to the mandatory Powers, who should guide them, advise them, supervise them and keep them from wrong-doing. He thought that the principle of organising native administration on native lines and with native customs, without adequate control, might be dangerous.[134]

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[131] (1923) *Permanent Mandates Commission: Annexes to the Minutes of the Third Session held at Geneva from July 20th to August 10th.* p.31 This taken from a broader discussion of whether the Mandatory could private ownership of unclaimed land, and represents M. Van Rees arguing that none of the land in question is actually unclaimed. The French (M Duchêne) attempt to make a distinction between "Totoland, where there were no great chiefs, and the Cameroons, where there were powerful sultans."
[132] Crawford (2002) p.275
[133] Sugimura qtd in (1924) *Permanent Mandates Commission: Minutes of the Fifth Session (Extraordinary) held at Geneva from October 23rd to November 6th.* p.13
[134] D'Andrade in Ibid p.18

Lugard and Rappard were the first to point out that the language of the mandate in question (Cameroon) included explicit provisions for local authority to be worked with. But it was Tomlinson, then the Assistant Secretary for Native Affairs in Nigeria and attending the session as an advisor, who interjected a longer defence of indirect rule on two counts. First, Tomlinson reminded the commission both that the mandates system was designed to build institutions of responsible government, and that this was hardly possible if all native authority and law were destroyed in favour of foreign rulers and ideas. Second, he argued that civil order required knowledge, and that "it was important, also, to make use of the chiefs' knowledge of their own people," in addition to employing district officers with enough contextual knowledge to make use of chiefly networks and expertise.[135]

Here Tomlinson meets the more universalising French approach, and turns the question of progress from civilization to responsibility. This is brought home when the chairman reminds the group that "to know what had been done to improve the material and moral welfare of the natives and to bring about an improvement in their civilisation" was "the essential object of the mandates system."[136] Tomlinson replies that surely increased support for and creation of native institutions was itself progress, that these institutions would have "considerable education influence" in the country at large, and that in any event the "primitive state of development" makes other more measures of progress either unknowable or unhelpful.[137] The chairman acknowledges finally that they do not yet have any specific quantitative reports to work from, and that when these do arrive what they will most be interested in is levels of investment in institutions, rather than material benchmarks about the governed population themselves.

The PMC as much as any other organ of governance was invested in building and reinforcing its own legitimacy. I have argued previously that the difficulty of reliably knowing the underlying material civilization of colonial populations often weakened its utility as a legitimation strategy. This difficulty then became a key factor in the adoption of customary rule, defined as it is by a search for chiefs through whom to claim legitimate governance over a presumedly unknowable traditional society. Crucially, the above exchange does not hinge on an attempt of one party to rationally persuade another of the inherent rightness of either their social ontology or their theory of social good. Rather, arguments about Lugardian indirect rule tended to hinge on arguments about practicality: specifically, on the practicality of certain kinds of rule, and certain ways of knowing. As much as it is crucial to understand in Smuts and Wilson's Burkeanism that trusteeship does not imply universalising ideas of the good, this argument is evidence that language about

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[135] Tomlinson in Ibid
[136] Theodoli in Ibid p.19
[137] Tomlinson in Ibid

improvement or tutelage is not necessarily evidence of universalising rather than customary forms of knowledge and rule.

Beyond single arguments, the effect of the Lugardian lens was both the socialisation of other authorities into customary ideas of rule, and the preferential selection of petitioners claiming rights within a customary framework over those claiming advancement on civilizational grounds. Theodoli, the Italian chairman in the above exchange, was no automatic ally of Lugard, and "usually did what he could to embarrass Britain and France."[138] Yet, even he evinced a readiness to adopt Lugardian language in order to defend his position when needed, advertising that he had "read his Lugard" by quoting from the *Dual Mandate* when it suited his aims (even, or especially, when those aims were simply his own continued legitimacy as chair rather than specific Italian policy). Behind his Lugardian rhetoric, the push to convince Theodoli and other authorities of the legitimacy of customary rule was not always left to accident. In 1935, the year that Italy invaded Ethiopia, Theodoli was brought to South West Africa for three weeks to visit farms, meet chiefs, shoot game, "and—the *pièce de résistance*—attend 'tribal' ceremonies in the company of the area's Native Commissioner, Major C. H. L. Hahn."[139] His trip was artfully stage–managed in an attempt to "construct the space of Ovamboland as intensely African" while "outside the frame" he was provided with European food and luxuries "to produce that performance of European civilization."[140] As litigants at the JCPC used subtle performances of tradition and civilisation to reinforce a sociolegal divide between modern and traditional politics, the campaign to socialise the chairman of the PMC into this customary view was careful to map these distinctions with social performances as well as in written rules.

Others seem to have responded less to deliberate socialisation, and more to the perceived advantages of custom as a legitimation strategy. In one instance, the Belgian representative argued that they had not violated the terms of their Congo Mandate because "the Belgians were not *themselves* imposing labour taxes… They simply made arrangements with the local 'native chief' who took 'the necessary steps to carry out the scheme.'"[141] Similarly, by 1830 the next French representative could be found discussing the intricacies of codifying customary jurisprudence, in

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[138] Pedersen (2012) "Samoa on the World Stage: Petitions and Peoples before the Mandates Commission of the League of Nations" *The Journal of Imperial and Commonwealth History* 40:2 pp.231-261 at p.235
[139] Pedersen (2015) p.319
[140] Pedersen (2015) p.320
[141] Pedersen (2015) p.242 Pedersen argues here that the Belgians had some form of pre–existing indirect rule: specifically by empowering one local group, the Tutsis, to rule over another, the Hutu. p.240. This, however, was a racialised hierarchy of one group ruling another, rather than a preservationist attempt to put elites in charge only of members of their own co–traditionalists. As such, it is more illustrative of the analytical vagueness of "indirect rule" when applied simply as rule through local groups, rather than as fully fledged preservationist customary rule. Lugard himself seems to have pushed back on the idea that coercing a chief into carrying out a mandatory's will was actually legitimate indirect rule. In this his logic agrees in part with Tshekedi Khama's refusal to be a mere agent of a mandatory power.

what had clearly become a common language.[142] This reframing of the international language of rule, Pedersen argues, arose both from "a desire to be seen as applying a version of indirect rule," as well as simply "cheapness."[143] The latter motive tracks the classic Robinson and Gallagher story of the spread of indirect rule to support empire on a shoestring (though tracking it beyond solely British practice). The first, however, is something else: not an individually rational expedient for cash and coercion–poor empires, but a socially rational (that is, strategic) coordination around a language of legitimate rule. More than simply finding an expedient model of empire, this was the process by which European powers "learned to play the trusteeship game."[144] It was a notion of trusteeship with Burkean underpinnings, and a game with Lugardian rules.

Finally, the ideas that underpinned information and debate at the PMC did not only guide the work of members themselves, but also came to structure the claims made on them from the outside. A key pillar of recent revisions to League scholarship had been the recognition of the role that petitioners to the PMC played in guiding the League's governance. From inside mandatory territories, minority groups called on the League to hold mandatory powers accountable to rules of trusteeship.[145] From outside mandates themselves, an explosion of independent groups petitioned the PMC on everything from anti–slavery and disarmament to native labour rights and the rights of women. They sought redress for perceived breaches of the moral and political promises of the League, not always through formal legal sanction or direct coercion, but rather through public political pressure. The PMC was an organ of oversight, but it performed this role less as an executive or a judicial body, than as a public forum for competing claims. As Pedersen describes it, "the League became less a tool for managing empire or (as its own self–congratulatory rhetoric would have it) a school for training dependent peoples in the responsibilities of statehood than the arena in which a variety of claims and schemes for ordering the world emerged and clashed."[146] From these clashes, forces of learning and selection gradually shaped the landscape of international claims–making, and with it shaped new legal and political subjects to populate the new terrain.

A first layer of selection occurred with the decision of which petitions were legitimately "receivable" in the first place. Unfortunately as with the JCPC and many such adjudicative bodies,

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[142] Bonnecarrère in (1930) "Judicial Organisation" *Permanent Mandates Commission: Minutes of the Eighteenth Session held at Geneva from June 18th to July 1st* pp.95–6

[143] (2015) p.240

[144] Pedersen (2017) p.122

[145] See for example Wheatley (2015) "Mandatory Interpretation: Legal Hermeneutics and the New International Order in Arab and Jewish Petitions to the League of Nations" *Past & Present* 227:1 pp.205–248; Dedering (2006) "Petitioning Geneva: Transnational Aspects of Protest and Resistance in South West Africa/Namibia after the First World War" *Journal of Southern African Studies* 35:4 pp.785-801; Pedersen (2012) "Samoa on the World Stage: Petitions and Peoples before the Mandates Commission of the League of Nations." *The Journal of Imperial and Commonwealth History* 40:2 pp.231–261

[146] Pedersen (2017) "Empires, States and the League of Nations" in Sluga and Clavin eds *Internationalisms: A Twentieth–Century History* Cambridge University Press pp.113–138 at p.115

we do not have a complete record of what claims were rejected by the PMC, much less those which were quashed by the mandatory power itself. What we do have is the PMC's published standards for the "receivability" of petitions, and to the extent that learning and strategic adjustment of claims is a conscious process of responding to the expectations of the powerful, these standards illustrate some of expectations around which petitioners shaped their claims.

> To be 'receivable', a petition could not stem from an anonymous source, call the terms of the mandate itself into question, cover ground already gone over by another petition or—since the Commission was not a court nor the petition a legal document—ask for intervention into matters justiciable in law in the mandate itself.[147]

As with customary law, the vagaries of this standard provided strategic wiggle room, particularly around what constituted a challenge to "the terms of the mandate itself."[148] This was exploited at times by members of the Commission itself, for instance by Theodoli who seems to have allowed petitions questioning British and French mandates as a way to embarrass them publicly.[149] It was also key to the rhetorical strategies of petitioners themselves, the most successful of whom became deft at presenting critiques of the system's practice within the language of its ideal, making productive use of the ill–fit between ideals and actualities as "a space in which political subjectivities were formed."[150]

Active fit–making with mandatory and imperial ideas was already evident in Tshekedi Khama's *Case for Bechuanaland*. In his case, the learning process that honed his rhetorical strategies was internal to customary rule: coming to the question of mandates from a history with questions of chiefs, tribes, and the knowledge demands of district officers and imperial courts. Others learned within the League system itself. As Natasha Wheatley has explored in detail, the Arab Executive — the "most important claim–making body of the 1920s" — filed hundreds of petitions to different audiences within the League, and thus "tested different argumentative strategies" to hone its approach to arguing legitimacy and seeking sovereignty.[151] They did this partly by playing separate organs of the League off one another, testing for instance to see whether the PMC or the Secretariat would best recognise the types of claims they were working to make. In all of its claims the Arab Executive tested ways to re-appropriate the "grammar of 'legitimate' power" contained in the League's deliberations.[152] Slowly, with the accumulation of hundreds of claims and

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[147] Pedersen (2012) p.235
[148] Sachs (2013) for instance argues in the case of British colonial Sudan that a persistent "strategic ambiguity" was not a hindrance to the formation of new state–like entities, but "was actually productive of sovereignty, and not an obstacle."
[149] Ibid
[150] Wheatley (2015) p.248
[151] Wheatley (2015) p.217
[152] Ibid p.221

responses, it built up a practice of successfully engaging with this power that was in turn visible to, and useable by, other claimants and other powers.

Wheatley notes that many of the more impactful of these interventions came at moments of crisis — riots, protests, scandals, threatened war — in which "hermeneutic anxieties gripped the PMC," leaving demands for knowledge and interpretation that careful petitioners could partly fill.[153] This phrase has an affinity with C. A. Bayly's notion of "information panics," and the interpretive openings those panics generated occupy the same space in this narrative. In each case a fundamentally knowledge–driven governing body was faced with crisis, gripped by epistemic uncertainty, and in its anxiety opened space for intermediaries to offer their own interpretations. As in the Raj and various instances of native rule, the interpretations provided by these claims often went on to guide practice.

New standards were not only made when claims succeeded. As in the JCPC, failed claims before the PMC could be as formative as successful ones, and the claims that overwhelmingly failed were those premised on appeals to standards of civilzsation. When these petitions came from groups outside of the mandates in question, they could easily be dismissed as outside agitators. In the third session, for instance, M. Duchêne argued successfully that the liberal education–focused African diaspora group "African Progress Union" should be banned from the French Cameroons on the basis that "its objects were not compatible with public order."[154] In other cases, these petitioners could simply be dismissed as insufficiently knowledgeable about local conditions within mandates themselves. This again demonstrates the double–edged nature of customary rule's epistemic localism, which could be used to delegitimate both mandatory powers and anti–colonial activists. When petitions came from within mandates, they faced similar scepticism. Echoing the Lugardian marginalisation of visibly modern members of colonized groups, "Educated and 'detribalized' natives were particularly suspect and routinely saw their petitions dismissed and their motives impugned."[155]

Given the sheer public visibility of PMC deliberation, each round of petitions, hearings, reasoning and decision produced public displays both of official reasoning and of oppositional strategy. Some of this contestation happened outside of the PMC itself, as when colonised elites with no personal standing to bring petitions nonetheless used the PMC's own publications as starting points for public debates on the validity of a mandatory power's view of the peoples it ruled.[156] Even technical failure at the League could be counted as a broader success if the PMC offered a platform from which to contest formal rulings via informal means. Given that public

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[153] Wheatley (2015) p.233
[154] (1923) *Permanent Mandates Commission: Annexes to the Minutes of the Third Session held at Geneva from July 20th to August 10th.* p.32
[155] Pedersen (2006) p.93
[156] Pedersen (2017) p.122

legitimacy was one of the PMC's strongest mechanisms to discipline its own members, we should assign significant weight to a public relations victory which began at the PMC even if it did not formally end there. Seizing the value of this over time, political groups in mandated territories "honed their organisational skills and built up international and publicity networks through petitioning."[157]

Finally, this iterative experimentation and learning process had the effect not only of shifting the language of claims, but of shaping claimants themselves. Wheatley describes the strategic negotiation of the proper subject matter of international and domestic jurisdiction at the PMC as "rezoning," but it shares clear conceptual and practical overlap with Benton's jurisdictional jockeying.[158] And as I have argued with a century of jurisdictional jockeying, Wheatley argues that this strategic rezoning did not simply produce novel types of interaction, but "new subjects in international law and order." To play the game of receivability at the PMC was to present oneself in a recognizable way as making hearable claims from the status of a native or minority people, and thus "to emerge as a political–legal unit with standing in its own right."[159] As at the JCPC, strategies of standing were also strategies of self–presentation, and thus strategies of selfhood with increasingly global consequences. And as with the shaping of inheritance claims before the JCPC, or the carrying of new–made banners at the Durbar, this reshaping of legal and political selves was practical and strategic, rather than evidence of a deep–seated hegemonic idea. Also like the Durbar, these strategic practices were inextricably visible and public: capable of shaping common expectations. It was this practice of claims–making and of demonstrating standing, as much as any underlying philosophy, that generalised a new type of political subject, itself reproduced by future claims. As Wheatley puts it, "the League was methodology, not ideology."[160] While there are clear formal differences between the JCPC and the PMC, neither was as governed by formal legalism as they might seem at first glance. Rather, together they can be seen as major inter–war institutions for claiming and contesting international selfhood on an increasingly public global stage. To the extent that each was deeply shaped by customary ideas of selfhood, furthermore, they represented the creation of conventions around what it was to claim recognition in an emerging international system.

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[157] Pedersen (2006) p.94
[158] "Their arguments were, of course, strategic: if petitioners could find a way of zoning their grievances and political objectives within the ostensible parameters of the League's competence, they gained the chance of an international hearing." Wheatley (2017) "New Subjects in International Law and Order" p.275
[159] Wheatley (2017) p.281
[160] Wheatley (2017) p.277

6. Coda: Conventional Subjects after Customary Rule

> In fairness to Mr. Kenyatta, and as a matter of wisdom in any co–operation between Europeans of goodwill and Africans who have suffered the injury of higher education, we have to recognize the fact that an African who looks at things from the tribal point of view and at the same time from that of Western civilization, experiences the tragedy of the modern world in an especially acute manner. For to quote William James, 'Progress is a terrible thing.' It is terrible to those of us who half a century ago were born into a world of peace and order; who cherished legitimate hopes of stability and gradual development; and who now have to live through the dishonesty and immorality of the very historical happenings.
>
> - Bronislaw Malinowski[1]

> … I am glad to be of service. At the same time, I am well aware that I could not do justice to the subject without offending those 'professional friends of the African' who are prepared to maintain their friendship for eternity as a sacred duty, provided only that the African will continue to play the part of an ignorant savage so that they can monopolise the office of interpreting his mind and speaking for him. To such people, any African who writes a study of this kind is encroaching on their preserves. He is a rabbit turned poacher.
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> - Jomo Kenyatta[2]

If the inter–war politics of governance and recognition were Durbar–like, this means that the conventions of recognition they made shaped order beyond merely their immediate formalities. It also means that these conventions were both constraints on the forms of selfhood claimants could express, and tools which some claimants could wield to shape their place in this order. Like Salar Jung at the Durbar, these new subjects were commonly aware of a new language of subjecthood through which they were expected to be recognize, but were also able to work within the confines of convention, and to leverage their experience with its language as a tool. Like Ali El Tum, they learned that indulging a global language of precedent for domestic political novelties might be necessary to retain legitimacy in a foreign system, even if it offered no clear advantages in extra–colonial politics. Like litigants before the JCPC and petitioners to the PMC, those claiming sovereign nationhood for their peoples increasingly turned to a language of custom that appealed to them not because of any inherently traditional politics of their own, but because of its

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[1] "Introduction" in Kenyatta (1956) *Facing Mount Kenya* Secker and Warburg p.ix
[2] Ibid p.xvii

ubiquity as a language of legitimacy writ large. If this language of recognition emerged in the form of a convention, we should expect claimants to pursue the language of custom, history and habit not because it is in their interest in any absolute sense, but because it is the language others have already begun to speak, and thus in which they are most likely to be heard.

Having traced customary rule's path from mutiny to international governance, the full afterlife of this conventional language of claims–making and recognition is the subject for another work. I will close, however, with accounts of two individuals crafting international selves for their emerging nation–states — Muhammad Ali Jinnah and Jomo Kenyatta — and the ways in which this conventional language of recognition shaped their self–making, both as a constraint and as a tool. If Tshekedi Khama was illustrative of the path linking customary chiefdom through to international organizations, these are paths through which the politics of imperial law and the mandates system are brought into the politics of national recognition for an era of decolonization.

I. Partition

Reflecting on "nationalism and the imagination," Gayatri Spivak remembers as a young but "precocious" child in Kolkata that the defining experience of new nationhood was, for her, not independence but partition.[3] Anti–colonialism had existed long before the event, as had community, locality, family, religion and a host of other affinities and belongings. The event of nation–creation as she experienced it then and throughout her life was not the simple realisation of any of these, but rather the transformation of them into something altogether new. As she puts it, the question she was left with was:

> When and how does the love of mother tongue, the love of my little corner of ground become the nation thing? I say nation thing rather than nationalism because something like nations, collectivities bound by birth, that allowed in strangers gingerly, have been in existence long before nationalism came around.[4]

This "nation thing" is the subject of international recognition that through decolonization grew to global ubiquity. It is what became of the 'self' that achieved some form of self–determination as the dual contingency of the nation state resolved down to the singular necessity of the international order.

Spivak's memory is a reminder that neither the absence of empire nor the fact of belonging itself explains the emergence of this new "nation thing", or the international order that recognised it. While the long–fought–for removal of British rule was an epochal shift, the form that an India–

[3] Spivak (2009) *Nationalism and the Imagination*
[4] Ibid

without–Britain would take was underdetermined by global and local forces alike. Globally, it was not clear that the lack of imperial overrule led inevitably to a religious–communal division of nation states.[5] Locally, while clearly new nationalisms drew on earlier group affinities for its mobilising force, it is a mistake to assume that religiously legitimated, territorially partitioned states was a necessary or even much desired endpoint for "communal politics," whether in the formal arena of parties or the lived experience of everyday life.[6]

To conclude that the division of India into Hindu and Muslim majority states was determined by communal politics is to take the event's justification for its cause. Rather than repeating this line, the question demanded by it is *why* this was the framework which made sense of the otherwise hasty creation of two new nations out of one empire. As Maria Birnbaum has put it, the question is what made religion "legible" as a form of international selfhood demanding the legal and political trappings that followed recognition as a state.[7] In similar terms to those I've employed throughout, Birnbaum notes that "subjects in global politics… do not only exist by virtue of being recognized, but do so 'in a prior sense, by being recognizable'.[8] To understand the existence of these new religiously defined subjects of international law, we thus need to understand the processes that rendered them a priori recognizable. To do so, Birnbaum points to the epistemological politics of imperial governance, noting the ways in which the census and the politics of representative government in an empire of peoples without states rendered religion legible as a category of governance, and thus by which "the epistemological politics of religion finally ended up in international law."[9] Given the politics of recognition enacted in the PMC and JCPC in the decades before partition, I would amend the "finally" here; the expectations and ideas that made this new nation legible extended directly from the knowledge–expectations of customary rule. What is notable, however, is that in this period a logic of recognition for legal claimants, chiefs and mandatory powers became a condition of legibility for claims to sovereign statehood itself. While the ability to name oneself within a new language of recognition conferred authority, the demand to declare a selfhood intelligible to that language came with its own

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[5] As Mantena puts it, to ask meaningful questions about the form that sovereignty took in decolonisation, we need first to avoid "the problem of teleology" that assumes the nation–state system we arrived at was either the goal towards which anti–colonialism was always working, or the structural necessity for which it was always bound. (2016) p.300

[6] What Ayesha Jalal calls "the cardinal historiographical error of treating the end result of the 1947 partition as the ultimate goal not only of Muslim politics but also of larger historical trends subsumed under the theme of communalism. (1985) *The Sole Spokesman: Jinnah, the Muslim League and the Demand for Pakistan* Cambridge University Press p.xiv

[7] Birnbaum (2020) "Establishing Religious Difference in Pakistan and Israel" Reus Smit and Phillips eds. *Culture and Order in World Politics* Cambridge University Press pp.250–270

[8] Birnbaum (2020) p.255 here quoting Butler (1997) *Excitable Speech: A Politics of the Performative.* Routledge p.5

[9] Birnbaum (2020) p.262

constraints. As Wheatley puts it, "being ascribed a name in international law could be a prison of its own."[10]

The process of self–determination created not one India free of colonial rule, but two nations speaking for peoples defined by religion. Of the two questions to which nationhood was meant to be the answer, the question of Pakistani and Indian selfhood clearly preceded the process of determining what form those selves would take. Nonetheless, the mechanics of this determination — the relationship of the partition decision to the actual votes of Indian Muslims, the politics of boundary–drawing by the Boundary Commission, and the contextually shifting language of Pakistani nationhood by Jinnah himself — offer clear reflections of the epistemological politics of customary rule that preceded them, and in part made them possible.

First, the local processes of determining consent to create an independent Pakistan at all was not a process of majoritarian counts. Certainly the act of committing to partition involved public consultation, even voting. As Stephen Cohen has noted, however, support for an independent Pakistan was highest amongst Muslims in parts of North India in which they were a minority, and failed to draw a majority in the Muslim majority areas in which Pakistan itself would eventually be established.[11] This was also true at the elite level, with the most legislative votes for partition coming from legislators in Congress Party controlled areas, and was rejected by legislators in provinces that would become Pakistan itself.[12] The determination of what state North Indian Muslims would live under, then, was not made with a popular territorial sense of self–hood, but rather by presuming first that the group with the right to determine this question was a religious one, even if the result of their determination was territorial.

As Faisal Devji has argued, the fact that the logic of representation and community expressed in partition was not a majoritarian logic of numbers is entirely in keeping with the political tradition of post–mutiny Muslim politics descended from Sir Syed and Aligarh. It is striking that this is true even after the direct political power of Sir Syed's Aligarh movement had waned, along with the political capital of the Northern landowners it often represented.[13] That post–mutiny concepts of representation shaped the creation of two new nations is not down to a lineage of

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[10] Wheatley (2017) p.285

[11] Cohen (2004) *The Idea of Pakistan* p.36 cited in Dubnov and Robson (2019)

[12] Bose and Jalal (2011) *Modern South Asia: History, Culture, Political Economy* Routledge pp.152–3 cited in Dubnov and Robson (2019) Ibid

[13] See Devji (2013) pp.55–56, 63 This was also a period in which the mainstream of Indian Muslim politics shifted away from the intellectual centre of Aligarh: domestically, with the League's leadership shifting from the aristocratic Northern landowners who largely made up Sir Syed's legacy, and internationally by distancing themselves from Aligarh's ongoing associations with conservative politics in the metropole. Prasad offers a Congress perspective on the ongoing connections between Aligarh and conservative politics, though he also associates it with an era of anglicised Indian elites, and thus somewhat out of fashion in the era of independence. (1946:2010) *India Divided* p.204 Aligarh academics submitted a plan to the Muslim League proposing a division of India into three states with two Muslim majority states "to constitute two 'Independent dominions in direct relationship with Great Britain'." Jalal (1994) p.55

specific political interests. As I began to show through the JCPC, the establishment of a certain language of claims–making as conventional, and thus legitimate, has the effect of broadening the pool of those who will use it, whether or not they would choose to in an ideal world.

The second side of this epistemology of self–determination which made Pakistan and India legible and recognizable was the Commission which determined their territorial reality. The Boundary Commission was a group of five lawyers: two each appointed by Congress and the Muslim League, and headed by the British Sir Cyril Radcliffe. It was formed with 31 days to determine the geographical substance of the fait accompli of two new religiously–defined states. In contrast to the anti–legalism of PMC and the granular context–obsession of British rule, the legal abstraction of the group is striking. The message seems to have been that there was nothing much left to learn, nor new cases or claims to be made. Britain had washed its hands of the politics of difference it had overseen the making of; the political paramountcy of religion that marked Victoria's proclamation of 1858 was now baked in to the background assumptions of political representation, and all that was left was to draw lines.

The line the commission made failed to reflect any coherent set of local boundaries, effectively criminalizing the day–to–day habits, economies, family ties and geographies of millions. It did not even manage consistency in terms of brute geography, being tacked to rivers which dried, flooded and meandered, and which any case were marked incorrectly on Radcliffe's primary map.[14] At least half a million died in mass migrations, deprivation and violence that followed the award. This process of knowing India and Pakistan in order to create them was plagued by failures of knowledge in its communication as well, failing to be announced at all for two days, and not effectively communicated either to those living near the border or those meant to enforce it. Radcliffe refused his promised payment and quietly left the subcontinent forever.

The stunning amateurishness of Radcliffe's commission has made the epistemological failure of the commission and its horrifying consequences easy to call a failure of process rather than necessarily one of mission. As Joya Chatterji argues, however, too close a focus on the failings of Radcliffe himself risks losing sight of the epistemological blindness and fundamental un–realities of the demand for a line to begin with. Yes, we could imagine many better–informed boundary–drawers of South Asian peoples. Malcolm Hailey, for instance, was allegedly floated for Radcliffe's job. Yet by its very nature, Chatterji argues, this sort of line could likely never be a true reflection of the peoples it grouped and separated, because it was not from those peoples that the demand for it truly came. "If we look to yet another level," she argues, "to the everyday operation of the Radcliffe line—it becomes clear that no such Award could ever have been just or rational in the way that it impinged upon the lives of the people."[15] Radcliffe failed entirely to know the reality

[14] Chatterji (1985) p.222
[15] Chatterji (1985) p.225

of life on either side of his line not because he was uniquely inept, but because the information demands of this boundary process were not demands of the day to day transactions, migrations, affinities, familiarities or even creeds. They were demanded by an international concept of national legitimacy that recognised two religions as already ontologically separate social entities, and looked for legitimacy in a political language that demanded the separation in politics that it already believed to be real in religion and social life.

The misfocus on one man, and its assumption of certain concepts of difference and legitimacy, is illustrated by the opening quatrain of Auden's later poem satirizing the unprepared Cyril Radcliffe:

> Unbiased at least he was when he arrived on his mission,
> Having never set eyes on this land he was called to partition
> Between two peoples fanatically at odds,
> With their different diets and incompatible gods.[16]

The elements that make Radcliffe an object of ridicule in Auden's lines — detached judgement and lack of familiarity with local context — could be the firing notice of a Nigerian officer after the Women's War.[17] The diagnosis of the reasons for partition — fanaticism, diets, gods — is the stuff of JCPC determinations of custom, and of post–mutiny ethnography. It presupposes a certain ontology of cultural difference, one demanded by an international search for jurisdictional boundaries rather than local imperatives of community or belief. Yet, this determination was already a closed question by the time the formal boundary was drawn. In this limited sense, Radcliffe knew everything he needed to satisfy an international language of communal representation which was no longer moored to the politics of local power, but had become a conventional way to render claims to self–determination legible. This is what a counterfactual longing for a Malcolm Hailey, Lugard or other intrepid district officer–figure misses: that while customary rule's language of legitimacy governed the framing of these new demands for demarcation, they were no longer driven by the specific goals and interests of local elite politics, but rather a governing convention. And the demands generated by conventions outlive the specific games they were established to resolve. As Muhammad Ali Jinnah put it, the "problem in India… is not of an inter–communal character, but manifestly an international one, and it must be treated as such."[18]

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[16] Auden (1966) *Partition*
[17] Later in the Poem Auden also taunts that "The maps at his disposal were out of date / and the Census Returns almost certainly incorrect, / But there was no time to check them, no time to inspect / Contested areas."
[18] Qtd in Birnbaum (2020) p.261

Finally, the logic of self–determination made concrete through partition pointed outwards, and this was nowhere more clear than in the shifting language of legitimacy and nationhood employed by the Quaid–i–Azam himself. The 'legibility' of Pakistan required a conception of the new state as representing a nation defined in religious, communal and even historical terms. Yet Devji makes the convincing case that Jinnah's own understanding of nationhood was neither mere mimicry of European nationalism, nor the custom and history–bound Muslim identity of Sir Syed and Aligarh. The dilemma Jinnah was faced with domestically was how to legitimate a nominally Muslim nation out of groups with varied regional histories, relationships to current and previous empires, and political and class positions. There was also the problem of legitimating a Muslim state which made no attempt to speak for all Muslims everywhere, especially considering the political relevance of the the overtly transnational and pan–islamist Khilafat Movement. His response was to craft an understanding of Pakistan as representing "a people without a history."[19] Jinnah's understanding of what it meant to found a new nation was the least Burkean thing possible, a politics "imagined in terms of a social contract, in which all that had been inherited from the past could be abandoned so as to begin afresh."[20] He rejected a necessary link between blood, soil, and a nation's selfhood. He ignored tropes of diet and table that featured so heavily in previous political thought and jurisprudence on group belonging.[21]

Jinnah's personal identity as well was visibly as at odds with an 'authentically' Muslim politics as his ideas of nationhood were with their recent history in North India. His family descended from a Gujarati merchant group often considered fringe by Indian Muslims. In his legal practice he had no specific affinity for Muslim clients, frequently representing individuals of other faiths in customary or religious–law tinged cases. His linguistic abilities were stronger in at least three languages than they were in Urdu. Rumours abounded about him eating pork and drinking whiskey which, whether true or not, marked a certain social awareness of his belonging on the wrong side of authentic customary divides. In his dress he was more Herbert Macaulay

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[19] Devj (2013) Ch3, pp.89–122

[20] Devji (2013) p.97

[21] Jinnah was not alone in working to few new forms of nationalism/belonging beyond liberalism. As Shruti Kapila has argued, historical glosses that describe Indian anti–colonial thinkers as "liberal" simply because they were reform–minded miss a flourishing and radical experimentation with notions of selfhood occurring in c20 India. Gandhi's thought in particular, she argues, was based on "a subordination of the political to the moral" and a regenerative "belief in the power of the social order" which needed to be rescued from "cultural loss." But, just as Devji cautions us against reading Jinnah as simply a nationalist in the European mould, Gandhi's politics of self–rule was "not merely a search for cultural authenticity" in a way that would let us read him as a simple product of customary politics. Just as the conservative ideas of Carlyle and others in Britain did not automatically entail customary rule, the range of illiberal and even recognizably conservative understandings of the social and political self at play in c20 Indian politics overspilled the bounds of customary rule and European political thought alike. (2007) "Self, Spencer and Swaraj: Nationalist Thought and Critiques of Liberalism." *Modern Intellectual History* 4:1 pp.109–127, 120, 114

than Chief Eleko, famously cutting a dandy figure in English suits no matter the climate. Little of this was accidental; Jinnah was highly attuned to his standing in the political "theatre of appearances."[22] Rather, Jinnah's self–presentation was "a high–risk strategy of pushing the margins of respectability, and therefore situating himself at their edges."[23]

On the whole, Jinnah was personally uninterested in performing a role as the perfectly authentic Muslim subject, and philosophically committed not to recapitulating either Sir Syed or Garibaldi. Yet, while this seems true of his private beliefs and persona, he voiced quite the opposite accounts to key international and domestic audiences when making the pitch for Pakistan. At a speech in the United States in December 1946, he declared that:

> Hindu and Muslim India must be separated, because the two nations are entirely distinct and different, and in some matters antagonistic to each other. Let me tell you some of the differences. We differ in our history, culture, language, architecture, music, laws, jurisprudence, calendar, and our entire social fabric and code of life.

Whatever domestic political breaks he may have made with the interests of Aligarh, philosophical breaks he may have made with customary rule's notions of community, or personal distance he may have put between himself and the politics of authenticity, this is a catalogue of political group–differentiation pulled perfectly from the past century of jurisdictional jockeying. Beyond simply a list, his bundling of differences under the rubric of "social fabric and code of life" certainly invokes the legacies of Mohan Lal and Sir Syed's attempts to carve semi–autonomous zones of cultural governance. While it is useful to hear these words expressed to key international audiences, these were not one–off thoughts. In essence, they are a repetition of his address at the meeting of the Muslim League six ye ars earlier, at which the 'Lahore resolution' for an independent Pakistan was first adopted by the League. As he argued then:

> It is extremely difficult to appreciate why our Hindu friends fail to understand the real nature of Islam and Hinduism. They are not religions in the strict sense of the word, but are, in fact, different and distinct social orders; and it is a dream that the Hindus and Muslims can ever evolve a common nationality; and this misconception of one Indian nation has gone far beyond the limits and is the cause of more of our troubles and will lead India to destruction if we fail to revise our notions in time. The Hindus and Muslims belong to two different religious philosophies, social customs, and literatures. They neither intermarry nor interdine together, and indeed they belong to two different civilisations

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[22] Devji (2013b) "Jinnah and the Theatre of Politics" *Asiatische Studien / Études Asiatiques.* LXVII:4 pp.1179–1203 at p.
[23] Ibid (2013b) p.1185

> which are based mainly on conflicting ideas and conceptions. Their aspects on life, and of life, are different. It is quite clear that Hindus and Mussalmans derive their inspiration from different sources of history. They have different epics, their heroes are different, and different episodes. Very often the hero of one is a foe of the other, and likewise their victories and defeats overlap. To yoke together two such nations under a single state, one as a numerical minority and the other as a majority, must lead to growing discontent, and final destruction of any fabric that may be so built up for the government of such a state.

Jinnah's list is again pulled straight from the language of customary jurisdiction and legitimacy: the invoking of customs, literatures, marriage and even dining: the transformation of civilization (a universal standard) into civilizations (a plurality of societies each with their own internally–referential ideas of dignity and value). Already in 1940 it is less the list than the idea of international life he takes it to imply that marks his rhetoric's place in the linguistic arena of customary rule. He begins with an answer to the legibility question: that is, what one should read as being meant by religion when it is used as the basis for a claim to nationhood. As I argued in regards to Victoria's proclamation after the 1857 revolt, religion in and of itself is not a customary nor national category. Its use as a standard of recognition and bounding here employs religion as a name for a social entity that is defined not by creed, but in a scheme of "distinct social orders". There are, after all, no clear points of theology in this summary of difference: no mono versus polytheism, no attitudes towards eternal life, divinely sanctioned authority or laws. Rather, there is a mapping of social difference based on a functionalist anthropological notion of societies as distinct internally–defined wholes, and an insistence that the new mapping of international sovereign statehood likewise conform to this scheme.

Devji notes that in this Lahore declaration even here in invoking custom Jinnah needs to deny history, specifically the long and overt history of intertwining between the customs and habits of two groups who now needed to be extricated from one another into whole and bounded blocks.[24] It also denied the lived entanglements of Hindus and Muslims in North India, a denial which could not actually erase these connections in fact before the brute separation of partition. On this point, however, Jinnah is not terribly different from players at customary rule who came before. As I argued in the previous chapter, the overwhelming point of articulating a concrete view of customary life was often to erase historical complications, and to refine political power down to a single adjudicator of authentic tradition. If Jinnah's tightrope–walk between languages of radical ahistoricism and authenticity are viewed as strategic, they are far less puzzling.

Devji has called Jinnah a chess player, an actor, and crucially a lawyer. He performed the appropriate selfhood in the situations that needed it, for the clients — here a new nation — that

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[24] Devji (2013) p.97

required it of him. As Ayesha Jalal argues in regards to his various languages of advocacy, "Jinnah's appeal to religion was always ambiguous; certainly it was not characteristic of his political style before 1937, and evidence suggests that his use of the communal factor was a political tactic, not an ideological commitment."[25] There is prior evidence of this willingness; Jinnah's lawyering was not simply a preparation for the strategic performances of politics, but a grounding in certain languages of legal communal difference he would go on to invoke. In London, he argued repeatedly before the Judicial Committee of the Privy Council. His cases were not classics of customary jurisprudence, but many involved claims to inheritance which relied on the careful separation of jurisdictions by religious tradition, and the very normalcy with which he wielded appeals to customary law is relevant.[26] The epistemological trappings of decisions in his cases, their methods of determination, reflected the classics of customary rule: elaborate family trees, catalogues of religious observance.[27] And he pulled lessons from his legal experience into his politics long before partition. Indeed, 15 years before his Lahore declaration, Jinnah called for a separate supreme court for Muslim and Hindu law, operating independently from the JCPC. Jurisdictional separation then, for Jinnah, long preceded his call for an independent Pakistan, and likely shaped the language he would use when that call finally seemed unavoidable.

That Jinnah's rare language of blood, soil and custom nationhood was both strategic and directed at international audiences is not only inferrable now from his rhetorical choices, but was commented upon by his contemporaries. As Devji notes, for example, Congress Party's Rajendra Prasad described the Lahore Resolution as employing "an alien but also international vocabulary" to identify the substance of a proposed Muslim homeland, rather than a host of more common Indian terms for people and place.[28] "Nothing could have been easier," Prasad argued, "than to use these well–known and well–understood expressions, if clarity, intelligibility and definiteness were intended rather than obscurity, vagueness and ambiguity."[29] From Prasad's perspective this was perhaps a marker of Jinnah's illegitimacy, but legitimacy is always contextual, and authenticity is always performed for a particular audience. As Devji notes, the Jinnah Prasad is critiquing is Jinnah discussing "partition in strictly legalistic terms."[30] This is not Jinnah communicating to his people the meaning of their new state, nor privately working out the

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[25] Jalal (1994) *The Sole Spokesman: Jinnah, the Muslim League and the Demand for Pakistan* Cambridge University Press p.5

[26] He is mentioned by name in at least three judgements, all referencing his skill at narrating relevant facts to aid appellate judges' jurisdictional decisions. See *Kumar Gopika Raman Roy v Nagendra Nath Chowdhury and others* [1931] UKPC 21; *Abdul Majid Khan and another v Saraswatibai and others* [1933] UKPC 72; *Babu Ramasray Prasad Choudhary and another v Babuyee Radhika Devi and others* [1935] UKPC 58.

[27] See for example *Babu Ramasray Prasad Choudhary and another v Babuyee Radhika Devi and others* [1935] UKPC 58

[28] Devji(2013) p.26

[29] Prasad (1946:2010) *India Divided* p.273 qtd in Ibid

[30] Devji p.26

meaning of Muslim nationalism, but Jinnah the lawyer arguing his people's case in the terms most likely to win their goal. His legal experience had taught him the conventional language of authenticity expected by the current international system, a language of outwards authenticity which had always often put intermediaries on difficult ground with those they worked to represent.

In terms of his ideas, Jinnah was a radically new kind of political leader, seeking nationhood in his own terms. In his dress and personal presentation, he was a dandy: refusing to compromise his careful English tailoring either for a performance of authentic nativehood or even for South Asian heat.[31] But in terms of his politics at the moment of partition, Jinnah was an intermediary, crafting the necessary story of self for those he represented in order for them to be recognised by global powers on whom their claims to selfhood relied. That he did so outside of any formal court or situation of international mandatory oversight, and without the direct support of those who had originally benefitted from that language in North India, speaks to the degree that this language had become conventional, and thus to some extent unavoidable if one wanted to be legible, recognised and heard. That the epistemological politics of self–determination produced a country justified in customary terms, terms which were almost no–one involved's first choice, is a testament to the embeddedness of convention over social contract in the politics of self–determination which Pakistan needed to negotiate. That Jinnah's own rhetoric walked this line of Burke and Sir Syed when need be, then, is a testament that the founder of Pakistan knew what game he needed to play. If Jinnah neither embodied nor believed in one single real history of Indian Muslims, then in the moments when he offered a perfunctory list of customs, histories and attributes to international audiences he was the perfect heir to the political order of 1877: a representative carrying a banner depicting a newly minted historical identity, tailor–made to satisfy a system of recognition that demanded to see all political innovations as mere confirmations of old regularities.[32]

II. The Anthropologists

If the partition of India and Pakistan demonstrated the conventional force of customary language stripped of both its local politics and knowledge foundations, the emerging discipline of functionalist social anthropology represented the continuation of those knowledge forms beyond the confines of specific areas of governance. Likewise, and more personally, if Jinnah's negotiation

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[31] Devji (2013b) p.1185

[32] Partition as pioneered with Pakistan and exported thereafter, Dubnov and Robson argue, was essentially a tool of denying history in order to remake social orders into "viable ethno–national states" as "the default mode of of political organisation." (2019) "Introduction: Drawing the Line, Writing Beyond it, Toward a Transnational History of Partitions." *Partitions: A Transnational History of Twentieth-Century Territorial Separatism.* Stanford University Press.

of partition demonstrated the constraints of convention, Jomo Kenyatta's use of anthropology to argue for the social and political integrity of African societies demonstrates its ongoing potential for appropriation and resistance.

Some diffuse sense of anthropological theory had pervaded colonial administration since at least the late 19th century, with Maine and Frazer's broad–brush theories of social development supplementing administrative common sense in an effort to organise the raw data of colonial experience.[33] Beginning in 1906 however, with the appointment of Northcote Thomas in Nigeria, spaces were carved out in colonial administration for trained anthropologists, whose job at first was mainly to check colonial officers' work.[34] Lugard himself expressed scepticism that anthropologists themselves were a meaningful improvement on district officers, who he believed were already best qualified to produce "researches into native law and custom."[35] While the blending of administration and anthropology was never quite resolved, in the wake of the Women's War, Donald Cameron and the Colonial Office made a concerted effort to deploy more officers with formal anthropological training. Tellingly, this is also the moment that Lucy Mair would later cite as the beginning of genuine indirect rule in Nigeria, suggesting that the two were intimately linked in the mind of at least one key scholar of both.[36]

As the ideas and knowledge work of the colonial "ethnographic state" were formalized into an academic discipline, and re–deployed in new trainees, a gravitational centre formed around the emerging field of functionalist social anthropology at the London School of Economics. Grouped loosely around its leading light in Bronislaw Malinowski, a seminar group emerged comprising academic experts such as Margery Perham and Lucy Mair, a revolving host of colonial administrators including frequent appearances by Lugard and Hailey, and the intermittent presence of non–European students, from the unnamed "African" in many seminars, to the future first leader of an independent Kenya, Jomo Kenyatta.[37]

This group has recently been mentioned obliquely by IR scholars: referenced by Patricia Owens in her work on women in the history of international thought, and Robbie Shilliam in his discussion of the deeper legacies of Rhodes in the UK academy. The disciplinary implications of

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[33] Dirks argues that the beginning of anthropology in India is difficult to pin down, having been present in some forms of official knowledge from the beginning of the East India Company, but dates "the anthropologization of colonial knowledge" as I do, from the late 19th century. (2001) pp.154,150; Roger Owen more or less concurs, seeing Lyall as the conduit for Maine's thought in Indian practice (1973) "Anthropology and Imperial Administration: Sir Alfred Lyall and the Official Use of Theories of Social Change Developed in India After 1957" in Asad ed. *Anthropology and the Colonial Encounter.*

[34] Northcote's first work, a catalogue of "the Ibo–speaking peoples of Nigeria" including their law, languages and proverbs, shares an undeniable overlap with post–mutiny knowledge work. Lackner (1973) "Colonial Administration and Social Anthropology: Eastern Nigeria 1920–1940" Asad ed. *Anthropology and the Colonial Encounter.* pp.123–151 at p.133.

[35] Ibid p.134

[36] Mair (1962) "Indirect Rule in Ibo Land" *West Africa.* 2335. 3 March

[37] Seminar minutes were kept sporadically, but see for instance Malinowski/6/7 for a characteristic meeting between Malinowski, three of his students, Lugard, and Perham.

these connections for IR's approach to order and ordering will be addressed in the conclusion. Each hints, however, at their place in this story. As Shilliam identifies it, the central organising concern of functionalist anthropology, captured by, Malinowski's *The Dyanmics of Culture Change* was "the disorderly potential of colonial development" and the "fragility" of native society in the face of cultural change.[38] That is to say, the worries of Kaye and Mallesson, and the *Festina Lente* of Lugard, given scientific bolstering in an academic discipline.[39]

For Owens, Lucy Mair specifically features as a foundational figure in "the consolidation of international relations" as its own discipline. Anthropology features here mainly as Mair's career destination after leaving IR, due both to the increased separation of colonial administration into its own discipline, and simply to her greater interest in teaching and researching that subject. Disciplinary history aside, Owens' crucial observation is that Mair's academic project was to produce a body of work on the "relations between 'communities' that are 'highly organised politically'."[40] The units of Mair's analysis were the units of colonial governance — cultural–functionalist wholes — and her research aimed to understand the interactions and changes between them in instances of "culture contact" not as something entirely to fear, but rather to understand and control. In an era not only of continued colonial administration, but of the League of Nations's generalising of the 'Lugardian Lens', Mair and this group may not have been 'International Relations' scholars, but they were certainly scholars (and practitioners) of international relations. The cast of figures that moved through these seminars gives a sense of the essentially absent boundaries between academic thought and colonial practice that defined the discipline.

Malinowski himself was the mainstay, holding the group both theoretically and institutionally within anthropology, though others lacked neither intellectual credentials nor institutional clout. Three elements of his work as 'the father of social anthropology' stand out here. First is the already–noted similarity of his "functional theory of culture" to post–mutiny imaginations of societies as cohesive and balanced wholes. Second is the methodology he takes this theory to demand, namely a focus on contemporary fieldwork as a truly "scientific" approach to cultural knowledge, as opposed to the "classical" and "antiquarian" mode which he argues has obscured knowledge of the actual working of native societies.[41] The resemblance here to Kaye's chiding of Hastings for seeking knowledge "from books, not men" is inescapable.[42] Third is Malinowski's

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[38] Shilliam (2019) "Behind the Rhodes statue: Black competency and the imperial academy." *History of the Human Sciences*

[39] As Shilliam argues, this focus on native social order is also combined with a vision of "native psychology" that reified the colour bar, however much Perham and others wrote publicly against what they saw as its most unjust institutional forms.

[40] Owens (2018) p.478

[41] Malinowski (1929) "Practical Anthropology" *Africa* 2:1 pp.22–38 at p.25

[42] Qtd in Bayly, C. A. (1996) p.52

commitment to studying not just culture, but culture change. In doing so he and his collaborators both offer a scientific defence of "indirect rule" as a more sound practice not only of government but of development, and open the language of anthropology up to "westernized" colonial subjects without clear claim to untouched authenticity of immemorial tradition.[43]

Alongside Malinowski and Mair, Margery Perham was both the most prominent British scholar of colonial administration of her time, and the most visible public intellectual of the group. She held a readership in the subject at Oxford, where she guided the education both of new colonial officers and elite Africans like Seretse Khama.[44] As an area specialist, she produced detailed studies of African governments for the Foreign Office (at least when she was not barred from archives for being too frank on government policy in the press). She was likely the actual author of several chapters in Hailey's *Africa Survey* devoted to colonial administration, along with Mair who likely wrote several sections on land. She straddled a period of professionalization that took her from scribbling trek diaries on a Rhodes–funded tour to being elected the first President of the African Studies Association in 1963, and was a leading contributor to essentially every stage of the transformation of that work from colonial practice to social–scientific theory.

Lugard and Hailey need no further introduction, except to say that they were neither bystanders to the academic discussions of this era, nor simply token mouthpieces of experience juxtaposed to the formally appointed academics around them. Indeed, while Lugard published little in this period, it is worth remembering that his reflections on government and society in the *Dual Mandate* — which amounted to a theoretical work whatever his protestations to the contrary — predated much of modern British social anthropology by at least a decade. Upon first reading Lugard's work in 1927, Malinowski remarked that:

> If he [Lugard] had wanted to control Scientific Anthrop[ology], so as to fit into his Imp[erial] idea… he couldn't have done anything but to create Functional School. L.L.'S Indirect Rule is a Complete Surrender to the Functional Point of View.[45]

Given the long history of these ideas in the practice of post–mutiny colonial administration, it seems equally fair to conclude as John Cell does that "the surrender" went the other way.[46]

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[43] Malinowski offers this defence of indirect rule in the 1929 article in which he was also proposing what he thought of as a radical new project for anthropology. As he puts it: "The real difference between 'direct rule' and 'indirect or dependent rule' consists in the fact that direct rule assumes that you can create at one go an entirely new order, that you can transform into semi-civilized pseudo-European citizens within a few years. Indirect rule, on the other hand, recognizes that no such transformation can take place, that in reality all social is development is very slow, and that it is infinitely preferable to achieve and gradual change coming from within." p.23

[44] For an overview of her work, see Oliver (1991) "Prologue: The Two Miss Perhams" *Journal of Imperial and Commonwealth History* 9:3 pp.21–26

[45] Qtd in Cell (1989) "Lord Hailey and the Making of the African Survey" *African Affairs* 88:353 p.483

[46] Ibid

Hailey continued his knowledge–production well through this period and alongside this group. It was in these years that he produced his expansive *Africa Survey*, and he did so with the research and writing help of Margery Perham, and the grant–writing clout of Malinowski and the institutional advocacy of Joseph Oldham's International Institute of African Languages and Cultures, bringing missionary money and networks into the alliance of academic anthropology and colonial governance.[47] Hailey brought anthropology a Punjab tradition of the post–mutiny school, and took both on the shape the information demands of the PMC. His uptake of functionalism as an outlook was something more than instrumental, however. After a full career immersed in the practice of "culture contact," he had decided that:

> Clearly something other than religion underlay what Plato had defined as The Good. Hailey's own belief was in the moral codes societies had developed at each stage of their evolution — from family to clan to tribe to nation — that reached their full expression in the rule of law. Anthropologists agreed that such codes held all so–called primitive societies together. He himself had seen the slow, painful process in which new nations adapted old moral guidelines and constructed new ones. He left implicit the ideal of his own life's work: an instrument dedicated to enabling societies under the extreme stress of rapid change to steady themselves, examine alternatives, and realize their potential.[48]

Here in Hailey, the Burkean spark of Kaye and Mallesson is something more than a pragmatic reaction to governance on a shoestring. It resembles rather the conservative theory of social dignity through life embedded in a social fabric of rules and habits, like that suggested by Sir Syed, Mohan Lal and others. The notion of "sources of the self" in this thesis has referred mainly to the practices and ideas from which new national selves of self–determination were drawn: both the practical precursors of this mode of recognition, and literally the evidential sources drawn upon to make these determinations. Here though, it approaches in a collective sense to what Taylor meant in his book of that name: a theory of selfhood which is oriented towards "what it is good to be" rather than simply what it is right or effective to do.[49] It is a philosophy of what there is in the world — families, clans, tribes and finally nations — that is both a pragmatic political ontology for the purpose of governing the world most stably, and a normative outlook for how the world could be governed best. While for Malinowski the goal of "practical anthropology" was most frequently expressed in terms of scientific knowledge, for many involved it was also a tool for bringing about the world they wanted to see.

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[47] This group, sometimes under the banner of The International African Institute, "thus became a triple alliance of gifted entrepreneurs, each with his own agenda: Oldham's of modernizing Christianity in Africa, Lugard's of promoting his own definitions of indirect rule and trusteeship, Malinowski's of obtaining support for his research students." Ibid

[48] Cell (1992) p.304

[49] Taylor (1989) *Sources of the Self: The Making of the Modern Identity.*

Apart from the individual roles of its members, the most formal interaction between this group and governance was Malinowski's responsibility for overseeing the teaching and assessment of anthropology for aspiring civil servants, and Lucy Mair's for a range of topics in colonial administration. Topics covered ranged from granular questions of village economy and marriage payments, to broader ideas of social stability and change over time. Several topics seem designed to naturalise customary rule as simply an outgrowth of colonized society. For instance "How far do primitive societies distinguish between the function of the law[–]giver and the judge?" from the 1935 exam takes the policy question of a the chief and district officer's combination of executive and judicial functions, and renders it a scholarly question of a society's primitiveness. Rather than a question of political philosophy or constitutional theory, then, civil servants were here trained to think of legitimacy and governmental organisation as a question of social fit, loosely indexed to stage of development. If the post–mutiny consensus was, as Mantena put it, "the triumph of anthropology over politics," here that consensus has been rendered quite literal, and embedded in training for imperial and foreign affairs.

It is clear from the lengthy back and forth between Malinowski and those setting civil service exams that this was not simply a case of an academic imposing pet projects on civil servants; on at least one occasion, the latter wrote to Malinowski asking that he include "Effects of contact between European and indigenous cultures. The influence of modern developments of anthropological theory upon field work, upon practical problems and upon the understanding of racial and cultural differences."[50] This was not simply an education requirement for a narrow group of colonial officers, but a course offered to officers in at least six departments of foreign and domestic civil service.[51] As judicial invocations of Frazer and the earlier popularity of Henry Maine made clear, colonial civil servants had long reached for various conceptual tools to structure the chaotic data of everyday experiences of difference. In a practical sense, cultural anthropology was the outcome of this constant cohabitation of abstract theory and a gradually refined science of 'fieldwork,' the field of which was almost always a colonial one.

This group had connections to African politics as well, and cast themselves in various roles as intermediaries for African perspectives and interests. At times this took the form of public–facing work to popularise first–hand accounts of contemporary African individuals with detailed lives, careers and voices. In 1936, for example, Perham published *Ten Africans*, a book of memoir–esque vignettes: four written by the subjects, six "recorded" by fieldwork assistants, but ostensibly

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[50] Civil Service Commission to Malinowski "General Anthropology Administrative Group. Draft syllabus" (6 July 1935) Malinowski/26/18

[51] The 1935 Syllabus is offered "for appointment to the following services:— Indian Civil Service, Junior Grade of the Administrative Class in the Home Civil Service, Ceylon Civil Service, Foreign Office and Diplomatic Service, Consular Service and Intelligence Officer Grade in the Department of Overseas Trade." Administrative Group of Competitions "Syllabus" Malinowski/26/18

recounted in the voices of the subjects themselves.[52] The book, published for popular audiences by Faber, was intended by Perham to overcome lack of understanding born of distance, both physical and developmental (in the economic rather than physical sense).[53] It was also Perham who narrated Tshekedi's side of the story after his controversial punishment of a British man, framing his actions in the context of Bechuanaland society and political order.[54]

Other acts of intermediation were less public, and more obviously political. In 1938, for instance, Malinowski and Mair were contacted by a King Sobhuza II of Swaziland, representing a group of chiefs representing various protectorates of South Africa, all being threatened with annexation.[55] After circulating both anthropological background on the protectorates and Colonial Office documents seeming to defend the South African Union's case, Malinowski attempted to place articles of tentative support (for Sobhuza) in the *Times* and the *Manchester Guardian,* as well as writing to well–placed acquaintances about possible angles of approach to relevant ministers.[56] The solution, at least to the immediate crisis, was the intervention of several Parliamentarians, including prominent Labour Lord Baron Allen of Hurtwood and the former Resident Commissioner of Swaziland, to keep the issue out of Parliament in return for quieter work keeping Parliament from taking the Union's side.

Amidst the back and forth, this episode also caused the group to reflect on its own position in global politics.[57] Its reflection begins with the proposition that it is "concerned with expert advice not politics." Yet a near–syllogism follows that comes close to contradicting this position. First, the South African Union has committed "To consult the opinion of the natives concerned." Second, it is likely that "A clear and passionate public opinion — tribal, regional, and pan–African — is rapidly developing," of which the tribal portion at least is "presumably hostile to transfer." And finally thus that "The Anthropologist can define the formation, spread, and character of this public opinion, which is partly conservative and tribal, partly a by–product of education as well as increased communications and non–tribal work." In a well–established tradition of customary

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[52] (1936:1963) *Ten Africans* She claims that "The stories are almost untouched except that, for reasons of space, one or two of them have lost a few of their less significant passages." p.15

[53] The problem, as she diagnosed it, was that: "Cut off, as most of us are, from any contact with Africans as individuals, we think of them or deal with them in the mass, according to our various standpoints, as 'natives', or the 'native problem'; as 'the heathen'; as 'hut and poll tax–payers', or as 'native labour'. We see the strange, stupid or cruel things they do and, ignorant of their motives, forgetting what we ourselves did yesterday, what, alas! Christian nations are doing today, think them relatively more stupid and cruel than they are. We allow black skin and negro features to shut Africans off from those perceptions which we turn upon members of our own race." p.9

[54] Perham (1933) "Significance of the Tshekedi Incident" *The Listener.* London 247 p.504

[55] The original correspondence from Sobhuza does not appear in Malinowski's files, nor those of Mair from this period which are largely grouped with his. The episode in general is documented in Malinowski/10/6

[56] Malinowski to Lady Unwin 9 May 1938 Malinowski/10/6 Unwin writes back with concern that "there seems to be no one to represent the natives?" Unwin to Malinowski 11 May 1938. Malinowski also arranges legal representation for Sobhuza, and handles payment for his legal fees.

[57] "Applied Anthropology Committee Deputation RE Protectorates" 5 May 1938 Malinowski/10/6

rule, this group of anthropologists carefully defines themselves as apolitical by dent of providing only information, while simultaneously defining that information as indispensable for questions of sovereignty. The episode is a lesson in the still–thin boundaries between 'academic' imperial knowledge work and politics, and also those in which some African elites turned to colonial knowledge workers as intermediaries for their own interests, and the success they could have in doing so.

Finally, while some African elites made use of these anthropologists as intermediaries, many of a younger generation took up the language and scientific legitimacy of imperial academia more directly.[58] While Jinnah and and Syed Mahmood studied law, African and Caribbean students were increasingly drawn to history, economics and anthropology as fields likewise tied to colonial governance, and in which they could potentially seek power in power's language.[59] This was the period in which Eric Williams completed his foundational work on *Capitalism and Slavery* under imperial historian Vincent Harlow, before going on to become Prime Minister of Trinidad and Tobago. Prince Nyabongo of Uganda likewise turned his Oxford anthropology DPhil into *The Story of an African Chief,* which was republished in the UK as *Africa Speaks Back.* Eighteen years before he become Prime Minister of Ghana, Kofi Busia published a thesis on *The Position of the Chief in the Modern Political System of Ashanti.*[60] As Mark Matera argues, a history of these fields as tools of empire must reckon as well with "the ways in which intellectuals from the colonies found it enabling."[61]

Kenyatta the Ethnographer

The complexity of these re–appropriations by the independence generation is perhaps clearest in Jomo Kenyatta: as a student in Malinowski's seminars, and as the author of a published ethnography of his Kikuyu people. Kenyatta first enrolled at the LSE in 1932, after stints at University College London, the School of Oriental and African Studies and a sojourn in Moscow with communist activists he had met in London. He had by then already spent three years writing for various anti–colonial causes, and this varied context is crucial for understanding the ways in which the political language of anthropology was a tool of Kenyatta's, rather than the other way around. As Lonsdale and Berman have put it, Kenyatta saw his personal mission within broader anti–colonial movements as the call to "imagine and represent" his people, pursuing "the reconciliation of Kikuyu and Western culture within what he visualized as a renovated 'house of

[58] For an overview see Matera (2010) "Black Intellectuals and the Development of Colonial Studies in Britain" *Journal of British Studies* 49:2 pp.388–418
[59] Kwame Nkrumah, having begun a PhD in Anthropology at the LSE but transferred to legal studies at Gray's Inn and Philosophy at UCL, at which he began but never completed a dissertation on "Knowledge and Logical Positivism." Matera (2010) p.395
[60] Ibid. Between his thesis and his return to Ghana, Busia was elected the first Ghanaian professor at Oxford.
[61] Matera (2010) p.396

custom'."[62] In 1928, while serving as general secretary of the Kikuyu Central Association (KCA), Kenyatta launched a new journal for the association named *Muigwithania*: "the reconciler."[63] The word most directly connoted an elder who promoted "internal reconciliation", pushing Kikuyu to recognise who they were as a group, but the anti–colonial focus of this group self–making suggests that Muigwithania should be read as reconciling the Kikuyu with the world as well. The term itself appeared in Kikuyu translations of the New Testament, bringing missionary texts into conversation with oral traditions by "visualizing Christ as Muigwithania between God and mankind."[64] The central question of Kenyatta's writing in this period — "who Kikuyu were and how they proved it" — was of course also the key formula of self–determination in a world of national recognition.

Where did Malinowski's functionalist anthropology fit within this project? It was not a spur to new belief or political positions, but rather "an attractive vehicle of representation."[65] It was a candidate "unanswerable argument" against European scepticism of Kikuyu self–governance, one that used the language of social science to establish that "the house of Kikuyu custom was a coherent system… in no way inferior to that of their British rulers, just different" and whose "scientific authority might transform his advocacy from partisanship to expertise."[66] The very in–between nature of his position in colonial politics was, within the scientific idiom of ethnography, a basis for authority. Here "Kenyatta's duality and marginality, between European and Kikuyu, became his main academic qualification."[67] There is little record of Kenyatta's exact contributions to Malinowski's seminars, but he presented at least on Kikuyu land traditions and "Girls' Initiation Ceremonies."[68] What does survive is his 1938 book *Facing Mount Kenya: The Tribal Life of the Gikuyu*, an ethnography of Kikuyu life which he developed from his LSE thesis.

Facing Mount Kenya was an ethnography, not a political treatise. Yet it should be read as a political intervention not in spite of its form, but because of it. In a system of political recognition based in part on one's credible claim to speak for a culturally bounded group with a demonstrable history, customs and ways of life, an ethnography is a claim for recognition. Indeed, the necessary condition for not considering this to be an intervention in international politics is the success in

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[62] Berman and Lonsdale (1998) "The Labors of *Muigwithania*: Jomo Kenyatta as Author, 1928–45. *Research in African Literatures* 29:1 pp.16–42 at p.16
[63] Ibid p.17
[64] Ibid p.20
[65] Ibid p.30
[66] Ibid
[67] Ibid
[68] "Functional Anthropology Seminars at L.S.E. – Papers." Malinowski 6/12. Notes from his presentation on initiation ceremonies exist, and are a classic presentation of the function of female circumcision as a boundary marker enforcing necessary coherence between child and adult groups in Kikuyu culture. It also grapples with missionary attempts to ban the practice, leading to Malinowski concluding that "Christian modifications often bring immorality instead of morality because such innovations break through a finely built up ethical system." Kenyatta on Initiation Ceremonies 14 November 1935.

part of its own goals: the elaboration of a people's way of life and social cohesion as a necessarily *internal* matter. By achieving that standard customary rule aim of erecting a boundary between communal domesticity and international governance, across which it is dangerous to move, this work and others like it erase themselves from the field in which they first existed.[69] For Kenyatta — no less than for Sir Syed, Kaye, Tshekedi and Malinowski's Applied Anthropology Committee — drawing boundaries around certain areas of action as apolitical, even as those areas are definitive of world governance, is itself a powerful political move.

Furthermore, as Kenyatta states explicitly in his forward, his authorship of the work matters too. It is a given here that descriptions of African life are a tool for exercising power: in a very real and direct way, as this thesis has shown. By eroding the white monopoly on that tool's use, Kenyatta knows that he is retaking some of that narrative power, to be used in a manner for which it may not have been intended. In discussing Sir Syed's *Causes of the Indian Revolt*, I called his political intervention in the form of self–description in power's terms 'auto–ethnography'. His was the prototype for a generation of narrative agency, whether in the form of diaries, interviews, witness testimony, or codified custom. At the end of that arc, or at least of its formally imperial era, the man who would later become the first leader of an independent Kenya engaged in this same strategic self–description with auto–ethnography in a far more literal sense. As with the post–mutiny storytellers, he is aware that by offering a narrative he is not simply offering content, but claiming the authority to narrate political reality in the first place. This is essentially what all intermediaries have been up to in this history; not merely steering interpretation of native life towards points they preferred, but claiming the competence to offer those interpretations in the first place. Where earlier intermediaries used this space to claim chiefdoms, protect aristocratic privilege, or to stem imperial violence, Kenyatta is setting up his authority to self–describe in order eventually to claim a new nation–state. He is not the first one with this ambition; Tshekedi Khama after all was described disdainfully, but likely not inaccurately, as seeking an independent state. What has changed here is not ambition, but the political possibilities which surround it. Remarkably, through that shift, both this language and the strategic situation it implies have remained.

This focus on the general radicalism of the work is not to say that there are no moments of *Facing Mount Kenya* with specifically political content. The chapters on coming of age ceremonies, land tenure, kinship systems and tribal education practices cannot help but be politically topical. The former section often resonates concern from Lugard's *Dual Mandate* about supposedly barbaric practices, and like Lugard demands that they be seen as contributing to peace and social cohesion, though of course with more specific relevance to the Gikuyu. Much of the chapter on

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[69] Theories of IR that treat the state as a black–box are, after all, no less reliant than Kenyatta's "house of custom" on a metaphor of domesticity to do the work of shoring up global politics as inter–national.

land tenure is an implicit rebuke of colonial intervention in communal relationships to land and production. Of these moments in which the content of *Facing Mount Kenya* is as radical as its form, the passage which closes this chapter is particularly profound.

It is presented as a folktale. "The relation between the Gikuyu and the Europeans," Kenyatta opens, "can well be illustrated by a Gikuyu story which says: That once upon a time an elephant made a friendship with a man."[70] During a thunderstorm, an elephant asks a man if the man would share enough of his hut for the elephant to keep his trunk dry. After the man agrees, the elephant squirms his entire body into the hut, finally asking the man to wait outside, as he is better suited to the rain than the elephant's delicate skin. When the man complains, the Lion, "who wanted to have 'peace and tranquillity' in his kingdom" calls a Commission of Enquiry to investigate. The commission, entirely made up of jungle animals "chosen by God to look after the interests of races less adequately endowed with teeth and claws," hears the elephant's testimony that the man was not using his hut to its fullest potential by leaving so much space unused. The commission concludes that "as it is clearly for your good that the space should be put to its most economic use, and as you yourself have not yet reached the stage of expansion which would enable you to fill it" the hut would be taken by the elephant, and the man would be allowed to search for a smaller site. The man moves, builds new huts, and loses them again to animal occupation. Seeing his multiple huts falling into disrepair from overcrowding animals, all "disputing about their rights of penetration," the man reminds himself "*Ng'enda thi ndegaga motegi*… you can fool people for a time, but not for ever." In the end, as the animals squabbled amongst themselves, "the man set the hut on fire and burnt it to the ground, jungle lords and all. Then he went home, saying: 'Peace is costly, but it's worth the expense,' and lived happily ever after."

The critiques of the civilizing mission, of ideologies of development, and of European standards of justice contained in the story are too obvious to require explanation. The choice of form, however, is meaningful. Coming at the end of a chapter on the functional integrity and stability of Kikuyu land ownership, Kenyatta then presents his critique of European mismanagement and injustice as a folktale: a piece of common–knowledge amongst a people expressed in deliberately foreign terms, terms in which he is able to claim authority. His repetition of the word peace, first from the hypocritical mouth of the Lion judge, second from the man who has burned everything down and walked away, calls up the drive for cultural stability in the face of outside interference that had animated customary rule for eighty years. This passage is openly a threat. As with the pairing of Sir Syed and the rebels of 1857, Kenyatta offers both peace and the threat of disorder. By rooting his threat in simply "a Gikuyu story" he gives the threat of disorder enough distance from his own agency, and his scientific position as an ethnographer, to imply that it may be as unavoidable as past revolts had been for past chiefs.

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[70] Kenyatta (1938) pp.47–52

If we think of auto–ethnography in Scott's terms as "public transcript" behaviour — that is, speech strategically designed to appeal to the expectations of the powerful — the clarity of threat implied in this passage is striking. Consider that in introducing the concept of hidden transcripts, Scott tells the story of a slave on an American plantation who waits silently as her daughter is beaten by their master, only to erupt in an eloquent prayer for bloody biblical vengeance on white slaveowners as soon as their master leaves the room.[71] This is her "hidden" behaviour, expressed in language of resistance and threat in contrast to the stark silence of her public behaviour moments before. In this passage from *Facing Mount Kenya*, however, Kenyatta uses the official language of colonial anthropology to issue a threat directly to his colonial rulers' faces.

There is almost a bluff–call in this use of the language of ethnography, invoking the authority of native 'simplicity' to critique European governance in an idiom most often used to dissect non–European society. He is intimately aware that a good deal of international society has supposedly committed itself to taking claims in the language of native self–knowledge seriously: to value authentic auto–ethnography as true, at least in a situated and pragmatic sense. And he uses this language of power not just to reject European rule, but to critique its pretence of justice, and to depict its rule as that of animals. He was clearly aware that this would not be taken well. But, as he makes clear in his foreword, he has no illusions that auto–ethnography itself is not a political and threatening act. Kenyatta is playing a game laid out for him by empire and its forms of knowledge. But in that game he is also, as he says, "a rabbit turned poacher."

This brief reflection on two new national–selves in the making has offered a glimpse into the constraints and opportunities provided by conventions of recognition, carried forward from customary rule. In both cases, the contingency of the relationship between nation, ideology, and community is on full display, and in each it is navigated strategically, with an eye to intelligibility.

As Spivak asked how her love of people and place became "the nation thing," John Lonsdale makes sense of this process in postcolonial Africa by asking how "patriotism" becomes nationalism: looking at the array of possible communalisms and political selves that could have emerged, and asking "when and how are patriotic pasts chosen south of the Sahara?"[72] This question, he says:

> Depends on a distinction between patriotism and nationalism. By 'patriotism', a slippery term, I mean what Obafemi Awolowo called, in terms Orwell would recognize, a

[71] Scott (1990) *Domination and the Arts of Resistance* p.5
[72] Lonsdale (2013) "Anti–Colonial Nationalism and Patriotism in Sub–Saharan Africa" Breuilly ed. *The Oxford Handbook of the History of Nationalism*. P.319

> 'searching… self–examination' to ensure that self–rule respects the rights historically won by citizens, typically household heads in Africa. Each sub–Saharan colony comprised many previously self–governing localities, what Léopold Senghor of Senegal called *patries*. Modern African patriotisms were bound to be local before 'national'. If as Ernest Renan thought, nations need to get their history wrong, so too do Africa's localities, since they too, in a continent forever on the move, have plural pasts.[73]

That Devji and Lonsdale each reach for Renan is a reminder that, in the refinement of political and social complexity down to one nationalism, other possible societies and politics are always left behind. This is true of all nationalisms however; what is specific in these examples is not the selection from multiple layered *patries* and loves of little corners of ground, but the way that these pasts are chosen. While the reasons guiding this choice necessarily differ between contexts, for Jinnah and Kenyatta the choice of pasts and the language in which they were communicated was driven by the need to be recognized and understood. For each of these leaders the language in which they could be recognized had emerged from customary rule. The game they were able to play with recognition as its goal was one left embedded in order by convention: neither's deeply held first choice for political selfhood, but the language of selfhood settled upon as the result of a century of bargains between culturally–defined peoples and global power, and finally embedded in international governance as common sense: as convention.

Recall here David Lewis' differentiation of convention from social contract. An order based on contract is a move to coalesce others around an outcome you prefer. The desire for an outcome precedes the process of social contracting, which is simply the means by which you achieve it. An order based on convention is driven not by a preference for one state of the world or another, but by a need to coordinate, to be understood. Definitively, Pakistan was not Jinnah's first choice. It was not an a–priori preferable state to a range of others which Jinnah then campaigned for others to join. Rather, the tension between his personal identity and convictions, and his eventual public pursual of Pakistan, casts that new state's selfhood as a strategic choice, a meeting place with global ideas of recognition and sovereign selfhood. Likewise, the Kenyatta who found companionship in international socialism and the radicalism of the Kikuyu Central Association was not simply a primordialist, determined to return to a romantic past. He was a fierce advocate for independence and a "reconciler" between Kikuyu and the world, translating each to one another, and re–assembling usable pasts to be recognizable in an idiom of self–determination drawn in part from imperial politics of customary rule.

When Lewis argued that language could emerge as the solution to a series of coordination games, solidifying into a convention, he meant human language as a whole. Here I mean

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[73] Ibid p.319

something more modest. The solution to repeated coordination games of imperial rule had been a meeting place between local elites defined as spokespeople for communally defined peoples, and the interests of an international system which would define and enforce rules ending at the boundaries of recognized cultural communities. At first, most of those who chose to play this particular game did so for reasons deriving from more particular incentives, relating to their own alternatives. Over time, as this language of legitimacy and claims–making was broadcast through increasingly public and global institutions, the rationality of using these claims shifted from particular to general. Jinnah and Kenyatta were each aware of this language of legitimacy, having participated in it as lawyers, politicians, agitators, students and auto–ethnographers. They had played the game and knew the rules. They had even in some part made them. But once established as common knowledge, a solution is sticky; it fades into the background of the action and generates its own reasons for coordination, quite apart from the individual contexts of individuals. In each of these cases, the first head of a post–colonial state did not seek recognition for a new state in their ideal terms; they did so in a language which, through nearly a century of bargains and coordinations, had been arrived at as convention.

Conclusion: Customary order, conventional ordering, and narrative agency.

> 'Man is not only a social animal… he is essentially a national animal.'[1]
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> — Syed Ahmed Khan, 1862

This thesis has offered a critique, and a corrective history. I began with the observation that international relations scholars have fixated too closely on an idea of European empire as a business of liberalism, civilizing missions, and projects of universal progress. There is no doubt that this line of questioning has helped to produce essential insights into historical and contemporary patterns of power, helping us to see the links between key ideas — of progress, universalism, modernity — and the systems of domination our current order replaced or remade. In our intensity of focus, however, we have missed the extent to which the actual governance of vast swaths of the world was understood as a project of conservation: of the discernment and shoring–up of supposedly traditional social orders under the rubric of "indirect", "native", or simply what I have called customary rule. Most empire involved collaboration, but the ways in which collaborators were recognized shifted in the 19th–century British Empire from questions of material progress to those of authentic representation and timeless custom.

In part, this thesis has simply worked to bring knowledge of this system from colonial history, anthropology, and history of political thought into international relations. Beyond this, however, I have built on these literatures and proposed that we should not approach this system of rule only as a set of ideas, or even as a static regime, but rather as a coordination game. By doing so, we are able to see the ways in which customary rule was not imposed from above, but rather constituted from the

[1] Syed Ahmed–Khan (1862) *'Insan wa Haywan' Tahdhib al–Akhlaq*. qtd in Malik (1968) "Sir Sayyid Ahmad Khan's Doctrines of Muslim Nationalism and National Progress." *Modern Asian Studies.* 2:3 pp.221–224. at p.226

inside–out by the ongoing strategic interaction of intermediaries, chiefs, rebels, colonial authorities and knowledge workers of empire. Furthermore, by understanding the particular type of game being played through the jurisdictional jockeying and knowledge work of customary rule, we are able to better understand the type of order that emerged from these smaller interactions, building up to a new conventional language of recognition at a more global scale.

I began this thesis with the aftermath of the 1857 Indian Rebellion, which has been used as a rough inflection point in the British turn to customary rule. By examining the sources used by the India Office to construct their narrative of the mutiny as a rebuke to empire's trampling of custom and tradition, rather than a political war to overthrow British rule, I show that this interpretation flowed in key ways from the intervention of Indian intermediaries themselves. These individuals used their positions as intermediaries to assuage the "information panic" left in 1857's wake, and to narrate crisis to power in ways that shaped rule around their authority as cultural translators, and conduits of necessary mutual comprehension. I showed as well that this new order was established via public rituals, which gave the rules of the new game the status of common–knowledge, and set up a system of mutual expectations and performance that in turn shaped the practice of rule.

From India, I next examined how this game travelled, and was repurposed in British colonial Africa as native rule. This approach to rule imported a range of post–mutiny convictions: a distrust of "modernized" subjects, a fixation on casting reform and state–building as regularization of already existing social forms, and a terror of the violence that might follow attempts at externally–driven social change. Through individual interactions between officials and local elites in Sudan, I built an idea of the absolutism that customary jurisdiction offered local elites which was less available in extra–colonial forms of authority. Through histories of parallel land systems for local authorities inside and out of colonial rule in Nigeria, I found that it was less powerful elites who opted first to recast their authority in customary terms, and that others held out until their extra–colonial bases of authority had been destroyed by colonial state–building before joining the bargaining game of custom. Finally, through studying the push for customary rule in the wake of various revolts, I showed that for colonizers it was less an ideological first choice than a practical response to violence, and that for colonised peoples it was often a way to win post–conflict jurisdictional space: space in which later anti–colonial politics were built. I closed by reflecting on two colonial crises that did not cause a shift to customary rule, but rather a deepening commitment to languages of universalism and civilization. These exceptions demonstrated the persistence of civilization as a way of thinking about European violence, while honing the rule that customary politics emerged from attempts to explain the resistance and social order of colonized peoples themselves.

After describing the way customary rule travelled across continents, I next examined the ways that this system of imperial rule was broadcast globally, and transposed into a system of recognition beyond empire. Through rulings of the Judicial Committee of the Privy Council, I demonstrated that the language of customary claims became generalised beyond a small set of traditionally–defined chiefs, and was taken up by a range of claimants from urbanised middle class Indians to British corporations. In this period, Indian and African claims often dominated the rulings of the JCPC, and in doing so they generated information about the official reasoning processes of imperial law: knowledge that could in turn be used by other claimants in the future. In the same period, I looked at ways in which customary rule was embedded in the ideas and practices of the League of Nations. Looking at the ideas of its framers, I argued that while civilizational rhetoric was used to sell the mission of the League to European audiences, the notions of global rule that underpinned them were remarkably customary. In the practice of the League, I described the ways that information demands of the Permanent Mandates Commission were shaped by a "Lugardian Lens." By hearing reports and claims from much of the non–European world in a customary light, the PMC shaped an ethnographic approach to legitimacy and oversight. This in turn crafted new subjects in international governance, as the strategies of both rulers and ruled shifted to make use of this language. Both the JCPC and the PMC were organs for the conversion of claims to common knowledge, and thus each remade order in part by guiding the types of claims that were made within it, and the types of subjects that could be recognised as making them.

Finally, I closed with two leaders who traversed the movement from colonial to international systems, and did so in a language of customary rule. In Muhammad Ali Jinnah and the partition of India and Pakistan, I described a new nation–state that was made neither as a reflection of local communalism nor the political ideals of its leader, but rather simply in terms that were legible to global expectations. In Jomo Kenyatta, I showed a radical anti–imperialist at an earlier stage of his political career than Jinnah, and with his nation–state still decades away. Around Kenyatta, I described the ways that the ideas and practice of customary rule were embodied & given academic authority in British functionalist anthropology, which in turn was used both by imperial administrators like Hailey and anti–colonialists like Kenyatta to fight political battles in the terms of cultural information. If Jinnah was more constrained by the conventions of custom, for Kenyatta in the 1930's they were still actively a tool. In neither case, however, was this language of customary selfhood a first choice. As each entered an age of self–determination, this language of selfhood was in both cases a tool, used to carve political space in a language in which they could be heard.

From its 19th–century origins, this thesis shows that a customary form of order persisted into the 20th century, and helped to shape the language of recognition and legitimation by which new

international organizations mapped the new political globe. Beyond its value as history of ordering, bringing this alternative concept of rule back into IR's understanding of global order should help us to see three things more clearly. First, that an order built on recognizing culturally defined nation–states has its roots in ideas and practices of recognition that starkly opposed universalizing liberalism and modernizing development. Second, that orders built as convention arise in slightly different ways from those made by contract or hegemony, and may work differently in the future. And finally, that while agency in these processes may look neither like liberation nor command, it is still agency in a way that IR benefits from understanding.

Order beyond liberalism

For the cover of his latest book on liberal order, John Ikenberry has chosen Herbert Mason's iconic blitz photograph of St Paul's Cathedral, dome rising from the smoke of bombardment, beleaguered but intact.[2] It is a good image for his intended viewpoint: a monument at the heart of the City of London, financial centre of an empire of liberal capital, turned at that moment into a symbol of patriotism in what would be memorialized as a global struggle for freedom against tyranny. He uses roughly the same cropping as the *Daily Mail* did on the 31st of December 1940, when the photo first ran.[3] The image centres the cathedral with just enough smoke to evoke danger, tightening from the original's view of surrounding buildings burnt to their frames. The uncropped photograph would soon be used to tell a different story, run in the German press as evidence of the bombing campaign's effectiveness.[4] If we could imagine a slightly wider field of view, other stories would emerge. If the photographer turned in that spot, a sixteen minute walk down Fleet St. and the Strand would bring him to Malinowski's offices at the LSE. A bus ride further along that route would take him to 95 Cambridge Street, where Jomo Kenyatta had lived until three months earlier when he found agricultural work to avoid conscription into an imperial war. Halfway through that trip, Mason would have passed the India Office, which now as part of the Foreign and Commonwealth Office still finds use for the India Office Council Chamber, and holds receptions in what is still known as Durbar Court.[5]

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[2] Ikenberry (2020) *A World Safe for Democracy: Liberal Internationalism and the Crises of Global Order.*

[3] "War's Greatest Picture: St. Paul's Stands Unharmed in the Midst of the Burning City." *Daily Mail.* (41 December 1940)

[4] Prints of the original are held in the Imperial War Museum, London. See Allbeson (2015) "Visualizing Wartime Destruction and Postwar Reconstruction: Herbert Mason's Photograph of St. Paul's Reevaluated." *Journal of Modern History.* 87 pp.532–578. Discussion of German uses of the image at p.549

[5] At that time the Office was newly run by Leopold Amery, previously of the Colonial Office, and quoted in this thesis' introduction describing native administrative governments as locally evolved products of their

Ikenberry has acknowledged that his story of liberalism is not the only story of contemporary order.[6] He aims his book squarely at "revisionist critiques of liberal internationalism that implicate the liberal project in the racist, imperial, and militarist features of Western power."[7] While this thesis has dealt both with liberalism and empire, however, it is not an entry in that debate. The contribution of this thesis is not to support or falsify these notions of what liberalism made of order, but rather to shift perspective enough to foreground other stories as well. *A World Safe for Democracy*, for instance, opens with Wilson in 1917. While my discussion of Wilson included information that has been used to critique his liberalism, Wilson for this thesis was neither a symbol of liberalism nor truly a focal point. He was in large part a signpost, pointing to other ways of ordering the world of which he and his ideas were only a part. These shifts of perspective are what this thesis has worked to achieve by looking for instance beyond Wilson to Smuts, beyond Smuts to Tshekedi Khama, and beyond Tshekedi to a system of ordering the world through customary rule. Ultimately, what emerges from these shifts are not simply context or critique, with figures like Wilson still at the centre, but whole adjacent worlds of politics from which we can build new understandings of order. The first takeaway from this thesis is thus an additive one: a push to study other patterns of order not as they could or should be, but as they have actually existed.

That actual orders beyond liberalism could exist is the subject of a recent profusion of research, and this work has greatly enriched the scope of possibilities visible in global politics. We have been reminded that fundamentally different orders have existed historically, that other worlds were imagined and worked for even as our current order was made, and even that there have existed other disciplines of international relations, reflecting far different visions of world politics than the inter–state frame of Cold–War American IR.[8]

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environments.

[6] He acknowledges on one hand that "The Western–centred modern world order is built on an amalgam of organizational logics and forms. In looking at today's international order, it is best not to think of it as a single 'order,' with a unified and coherent set of organizational principles. It is an amalgam of orders." While there may be security, regional, or functional "projects" and "realms" that do not reduce to liberalism, however, it seems clear to Ikenberry that the diversity regime at the heart of contemporary order is solidly a liberal one: in fact a "more universalistic" descendent of Wilsonian "civilizational thinking." (2020) "Liberal Internationalism and Cultural Diversity." in Phillips & Reus–Smit *Culture and Order in World Politics.* pp.137, 140–141.

[7] Ikenberry (2020) p.xiv

[8] See Crawford (2017) "Native Americans and the Making of International Society" in Dunne & Reus–Smit eds. *The Globalization of International Society*; Phillips & Sharman (2020) *Outsourcing Empire: How Company–States Made the Modern World*; Costa Lopez (2020) "Political Authority in International Relations: Revisiting the Medieval Debate." *International Organization*; Getachew (2019) *Worldmaking After Empire*; Rosenboim (2017) *The Emergence of Globalism*; Vitalis (2015) *White World Order, Black Power Politics*; Owens (2018) "Women and the History of International Thought" *International Studies Quarterly* 62:3 pp.467–481.

That order beyond liberalism *does* exist, as an integral part of the contemporary international system, is less frequently argued.[9] The most visible current debates on order are conversations about contestation: about challengers, threats, changes to or retreats from liberalism.[10] Yet, if our language of international selfhood was at key moments not taken from liberalism, but rather from practices that directly repudiated it, we need to re-evaluate our understanding of challenges to liberal order that we see now. By focusing on the newness or externality of challenges, it seems as if we are recapitulating Bull, Watson and Jackson: worrying over a revolt when what we are witnessing may be a re-emergence, a shift to the surface of a foundational piece of the system. On other fronts, scholars like Beate Jahn have argued that economic fissures in liberal order are not external but have been built in from the beginning. Likewise, that the remapping of the world into culturally–defined peoples without respect to material development or universal standards of civilization was key to contemporary self–determination suggests that we should respond sceptically to claims that paint identitarian modes of politics as new and external challengers to the current order.

Particularly when they take this identity–focused form, much of the alarm stirred by challenges to a liberal system seems only sustained by a half picture of what went into that system in the first place. In a Foreign Affairs piece published alongside his book *Identity*, Francis Fukuyama used the title "Against Identity Politics: The New Tribalism and the Crisis of Democracy."[11] Tribalism is wielded here as a marker of something historically murky and distastefully premodern, certainly not as a particular political form that was essential to the origins of the current order. In purely historical terms, this is the same sort of oversight as that in Buzan and Lawson's *The Global Transformation*, discussing communalist politics of authenticity and recognition only as a reaction against empire and its heirs, rather than a long–running element of them. While the omission is shared, the normative and political import is altogether different. Buzan and Lawson are not warning against a destabilizing force in an order they have signed on to defend. Explicitly liberal theorists cannot quite claim this refuge.

In many of these narratives, a force working against liberalism is treated definitionally as a force working against the current order. Yet, these may not always be usefully employed as the same

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[9] Again I do not mean here any of the many critiques that the liberalism of the current order is "illiberal" in a normative sense, is hypocritical, or has failed, but rather work that sees elements of order as simply not centrally about liberalism at all. A recent exception is Acharya (2018) "Provincializing Westphalia" *Constructing Global Order.* Here he focuses on Bandung and surrounding post–colonial contestation of order not as simply challenges, but as "positive contributions to the construction of the post–war order." p.71

[10] See for example the *Foreign Affairs* special issue "Ordering the World? Liberal Internationalism in Theory and Practice." (2018) *International Affairs* 94:1.

[11] (2018) Foreign Affairs, September/October 2018 <https://www.foreignaffairs.com/articles/americas/2018-08-14/against-identity-politics-tribalism-francis-fukuyama>

thing. Again, the point is not simply that communal or identitarian challenges to liberal universalism have long existed. The point rather is that anti–liberal notions of communal and cultural legitimacy were themselves key parts of the contemporary order when it was made. "Tribal" politics were key to the politics of international selfhood in the founding era of self–determination. They may be challenges to liberalism, but they are not in any meaningful sense challengers to order. They are one of the things international order was made from.

In this thesis, I have navigated some of the blind alleys of interpretation that occur when we insist on centring liberalism and civilization in politics to which it was not central. I will leave for future work the ways that these spaces may have persisted in the world after 1947. This project has benefitted from specificities of voice and context in history, and would not benefit from discarding them in the present.[12] What this thesis has also offered, however, is a theory of the ways ordering occurred in these political spaces beyond liberalism, and it is this to which I will next turn.

Ordering as Convention.

Beyond noting another pattern of order at play in 19th and 20th–century international politics of recognition, this thesis has suggested a mechanism through which the individual strategic interactions of customary rule gave rise to a new language of recognition in the form of a convention. This is first a way of understanding the links between action, ideas, language and change in global rule. It is also an answer in part to the puzzle posed by Phillips and Sharman, of how in the global shift to a near–homogenous system of nation–states:

> Rather than the gradual, cumulative product of growing interaction, this transformation was a radical, discontinuous and unprecedented simplification of the regional international system. For different reasons, local governments and outside commentators quickly acquired habits of thought and practice that denied the preceding centuries of heteronomy… and instead sought to project the novel sovereign state system far back into history.[13]

I have argued throughout that, in form at least, this shift was not as radical, discontinuous or without precedent as it has been treated. From the plurality that marked earlier jurisdictional jockeying, I have described a path through which the international system began to take on the language of a single

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[12] The point is also to avoid "leapfrogging legacies," a problem to which Frederick Cooper argues Mamdani falls prey in drawing "a direct causal connection between a colonial policy—important in the 1920s and 1930s… and the brittle politics of authoritarianism and ethnicity in Africa in the 1980s and 1990s." (2005) *Colonialism in Question.* p.17

[13] Phillips & Sharman (2015) *International Order in Diversity* p.203

commanding divide: the line marking the inside from the outside of bounded and culturally defined units, claiming the right to make law according to local history and custom. A "self" determined by claims in a language of cultural selfhood.

In the apparent homogeny of this system, however, Phillips and Sharman are right that there is something more particular. Yes, customary rule was predicated on a master divide between exogenous modernity and internal domesticity, history and culture. But as an idea of imperial rule, it was not consistently an aspiration for a universal system of politics. And as Sir Syed's interest in Mazzini attests, this was hardly the only prior model on which an eventual world of nationalisms could draw. Ultimately the problem of explaining this order is not the problem of explaining one thing, but of a particular configuration amongst several: a "distinctive modern package of sovereignty, territoriality, nationalism, and great power rights" as Buzan puts it.[14]

The specific piece of that configuration that this thesis helps us to understand is not the rise of territorial thinking, nor even the internal remoulding of people into populations and populations into nations that occurred in Europe in a similar period. Rather, what emerges from this history is less nationalism, than the global expectation thereof, and the resulting work of claimants to recognition to meet that expectation. This is only one piece of the configuration, but it is a crucial one. As Andrew Hurrell argues,

> If state sovereignty has provided the basic institutional framework of the society of states, it was national self–determination that came ever more to provide the political power and the moral meaning to the idea of an international society. The assumed naturalness of living in a world of states derives in large part from the notion that nation–states represent meaningful political communities.[15]

There is likely no single causal or historical story that captures the whole making of an inter–national world order.[16] This thesis has picked up a single thread of this history, emerging from a single (if

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[14] Buzan (2017) "Universal Sovereignty" in Dunne & Reus–Smit eds. The Globalization of International Society. p.233

[15] Hurrell (2007) On Global Order: Power, Values, and the Constitution of International Society. p.121

[16] As this thesis relates to theories of nationalism, it shares more with John Breuilly's elite political explanations, rather than the industrial–age functionalism of Gellner, or the primordialism of Smith. While Breuilly's stories of elite calculation are largely local, however, involving contests for domestic support, my account is aimed at a more global level of explanation. As noted in Chapter 2, Anderson's approach to the route by which nations become commonly imagined through "print capitalism" shares my focus both on language and common knowledge. But the language that emerges in this thesis is globally political, not national, and again what this thesis accomplishes is not to explain nations or nationalism, but rather the global expectation of each. Likewise, while I agree with Partha Chatterjee that "the universality of reason" is a key player in the generalisation of nationalist politics, it is nearly the opposite type of reason I refer to: not the brute material reason of capitalism, but the individual deployment of reason to measure, match, and remake the languages of power through which the politics of recognition occurred. Breuilly (1982) Nationalism and

extensive and influential) empire. What it has shown, however, is a way that the contingencies of self–hood that could have emerged in decolonization were refined by a process of strategic interaction and convention–making down to a language of recognition: one that looked for claims in a language of cultural representation. It is one strand of "the process by which national self–determination moved from being a political principle to an international political norm".[17] It is also one answer to the question of what gave the 'self' of self-determination its particular form.

In cases from 19th–century concretisations of chiefly power, to the partitioning of India and Pakistan, I have shown that the question of why a group sought recognition in a certain form was not determined by the ideas or material lives of its inhabitants, but rather by the strategic choices of its leaders, navigating various frameworks through which to seek legitimacy. In turn, however, I have shown that the strategies of these leaders did not simply respond to global expectations, but remade them. The result was not a unidirectional imposition of Burke or Herder on the world, but the arrival at a practical language of recognition hammered out in a century of bargains over who might claim legitimate rights over a political community, and of what form that community could legibly take.

In terms of IR theories of ordering, this mechanism of convention falls somewhat between existing accounts. It differs from theories that see ordering as the product of intention: liberal explanations, seeing attempts to align values or interests in agreements chasing Pareto improvements. It differs as well from theories of order as hegemony, whether Gramscian or great power. It is certainly not an argument that order arises from natural necessity, whether from structural realist ideas of anarchy or Marxist material dialectics. It is not an argument *against* those theories themselves, as this thesis seeks to explain only one process of ordering, in one time. In this one rather impactful story, however, the path from individual action to new language was not via intention, contract, hegemony, persuasion or necessity, but arose as convention. It emerged from interaction, and the necessity of being recognisable and understood.

This account of ordering does have key overlaps with some constructivist accounts of norm circulation and contestation. Like Acharya's theory of norm subsidiarity, for instance, the norms of legitimacy embedded in customary rule were not invented wholesale elsewhere and imported to local contexts, but rather were in large part created by the interaction of global and local levels of governance.[18] Unlike frameworks of pure "localization," both this work and mine see normative

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The State; Gellner (1983) Nations and Nationalism; Smith (1986) The Ethnic Origins of Nations; Anderson (1983) Imagined Communities; Chatterjee (1986) Nationalist Thought and the Colonial World: A Derivative Discourse.

[17] Hurrell (2007) *On Global Order: Power, Values, and the Constitution of International Society*. p.122

[18] Acharya (2018) *Constructing Global Order: Agency and Change in World Politics.* pp.52–5

frameworks as emergent from interaction, rather than simply modified by it. Similarly, this thesis' accounts of revolt and other more active interventions in ordering also accords with recent work on "behavioural contestation," noting that actors can shape norms by actions as much as words.[19] Ultimately, my account of a move from individual coordination games to more general incentives to use a new language share a concern with Finnemore and Sikkink's classic tipping point understanding of norm life cycles.[20] While the politics of customary rule are not well represented by norms alone, many of the underlying concepts of change of this norms–focused scholarship are relevant to this work, in the general sense that all are about the social reconstruction of international relations.[21]

If a norm of recognition is a convention, however, this not only specifies the mechanism by which individual interactions tip into general broadcast order, but also suggests how we should think of that convention's continued ordering power. A convention survives not because of preferences for a certain state of affairs, but rather because of the preference for coordination inherent in a need to share a common political language. If a key element of our national recognition order has been built on just such a demand, then our understanding of this order should not be built on studies of shifting preferences over where to coordinate, but rather of the forces incentivising coordination in general. The future of a language rests less on specific preferences over what terms it contains, than on the continued will to use it.

Finally, if the foundation of order as convention is a drive for intelligibility, this account of ordering might also be recognised by some of those who lived it. I noted in Chapter 2 that, in what distinguishes it from contractual orders, Lewis' theory of convention was remarkably Burkean.[22] While Burke provides useful ways of understanding social orders as conventional, and abstract utopias as dangerous, the foundations of this ordering process might be captured not by Burke, but by Syed Ahmed Khan. To Sir Syed, what it meant that man was "a national animal" was not that humans were naturally divided into primordial groups, but rather that it was through the sociability of

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[19] Stimmer & Wisken (2019) "The dynamics of dissent: when actions are louder than words" *International Affairs* 95:3 pp.515–533.
[20] Finnemore & Sikkink (1998) "International Norm Dynamics and Political Change" *International Organization* 52:4 pp.887–917.
[21] For recent debates over the limits of norms in this arena, see Evers (2020) "Just the facts: why norms remain relevant in an age of practice." *International Theory*. 12:2 pp.220–230.
[22] That there might be elements of this notion of order shared between the values of agents in this thesis and the game framework I have used to explain it, should not be strange to IR. Liberalism as a theory of international politics has long existed on the slippery ground between Kantian ideals of order–builders and the aspiringly value–free analysis of interests and institutions. As Gerry Simpson has argued, the attempt of the latter to escape the former has not been wholly successful. In fact many theorists of liberal order see the connection as a feature. (2008) "The Ethics of the New Liberalism." Reus–Smit & Snidal eds.The Oxford Handbook of International Relations. pp.255–266.

encountering others within and between groups that we became meaningfully human.[23] If man is national, it is because he is "a social animal" as well. Sir Syed's diagnosis of human nature and nationalism nods to Aristotle, but it also foreshadows a Ernst Gellner, who would argue 102 years later that nationalism arises because "the essence of man is not that he is a rational, or a political, or a sinful, or a thinking animal, but that he is an industrial animal."[24] Gellner was interested in explaining nationalisms as they arose in place, and change in society as driven by changes to material life. For Sir Syed, however, progress in human society was the result of social hybridity not material change, and happened definitionally across boundaries, not within them. As he argued enduringly in 1858, change could come too quickly, or fail by ignoring the social fabric that gave lives meaning. When change did come, however, it would come not as the expansion of one society over another, but as hybridity: new order hammered out in interaction, even conflict, and driven by a need for mutual legibility.

Agency as Narration

Lastly, if this project argues that order emerges from the interactions of individuals, what sort of power did those individuals have to shape it? The outcome of ordering was hybrid, but it was not neutral middle ground. It was the result of struggles in highly unequal situations of power, and while hybridity asks us to step back from authorship in the most absolute sense of *whose* ideas matter, it does demand we ask after agency.

This thesis has argued that, to find agency in hybrid processes of ordering, we should look not to power centres but to intermediaries. By nurturing the information panics of power–holders, and by narrating new order to repair fear and crisis, intermediaries spun theories of order which then were put into practice. As Stacie Goddard has argued, "political entrepreneurs" are often empowered not by their official institutional positions, but by their place in networks.[25] In such situations, intermediaries may not seem to possess the power we expect from those at the top of organisations, but nonetheless exercise considerable influence over change. "Networks are constraining," she argues, "limiting actors' material and cultural resources. But these networks are also enabling: they provide entrepreneurs with resources to remake structures, and produce political change.[26]

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[23] Malik (1968) "Sir Sayyid Ahmad Khan's Doctrines of Muslim Nationalism and National Progress." see especially pp.234–244 for his theory of progress as rooted in the interaction of cultures.
[24] Gellner (1964) *Thought and Change* p.35
[25] Goddard (2009) "Brokering change: networks and entrepreneurs in international politics" *International Theory.* 1:2 pp.249–281
[26] Goddard (2009) p.249

This focus on intermediation demands that we relinquish certain liberal attachments to the idea of agency. In the politics described in this thesis at least, agency is not liberation, and agency is not command. As Saba Mahmood has argued, a liberal insistence on seeing agency only where it is used to liberate an individual from oppressive structures has blinded us to agency in a fuller and less historically bounded sense.[27] As she demonstrates in the context of Islamic women's movements, a focus on agency only where an individual subject is liberated from structures leads us to miss the ways in which those in oppressive situations nonetheless engage and succeed in remaking their world, and their own subjecthood within it. Likewise in customary rule, there is no sense that intermediaries fully liberated themselves and their communities from empire. The political ambiguity around the idea of 'collaboration' attests to this, as does the fact that for Mamdani the history of customary rule is mainly important for the ways that it laid foundations for future despotism. If intermediaries were not simply agents of liberation, however, neither were they docile. Neither Mohan Lal, Kenyatta or Akpamgbo shied away from threatening power with violence — theirs or others' — to create space for their narratives, and to give them force.

Once we step back from an insistence on liberty or absolute command, furthermore, it is clear that this sort of agency was not only true of colonized people in this story. While it is tempting to place a thinker like Burke or a Henry Maine at the root of political change, it is apparent in the actual practice of rule that no one on the European side could simply commanded the world to change. John Kaye relied on the ideas of his informants to shift practice from utilitarian reform to conservation, and Lytton relied on participants at the Durbar to make it more than a coronation in absentia on an expensive dais. Lord Lugard and the entire PMC gained authority and legitimacy by adjudicating the claims of colonized peoples against colonial powers. Donald Cameron likely owed his position in Nigeria, and all the reforms he then made, to the women of Aba.

Rather than liberation or command, the narrative agency in this story is ontology.[28] Agency within this game framework is not doing whatever one wishes at the level of discrete choices; indeed the game approach helps us keep in view the ways in which these immediate choices are constrained. Rather, this approach shows us the ways in which agency (both in the sense of what type of agency one inhabits, and what one does) happens through shifts in the structure of the game rather than simply in the moving of its pieces. If "politics is the terrain of competing ontologies," this approach

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[27] Mahmood (2004) *Politics of Piety: The Islamic Revival and the Feminist Subject*. It is also an unhelpful idea of agency for any theory of ordering, given that this "liberatory subject" is presumed to precede any acts of agency, and thus simply to be released from structures by agency, rather than made within them.

[28] As Colin Wight argues, "the agent–structure problem is essentially an ontological problem." Wight (2006) *Agents, Structures and International Relations: Politics as Ontology* Cambridge University Press p.3

helps us to clarify both which alternate ontologies are at issue in these political moments, and the actual dynamics of competition between them.[29] This is worldmaking, in Getachew's terminology, embedded in the connection–points of networks that bring those worlds into being.

There are reasons to wish that this separation of agency and liberation were not so; exercises of narrative agency, in this history at least, were often tragic. If Sir Syed's narration of a world of communities was a partial triumph, Jinnah's hesitant performance of customary shibboleths, and the ensuing suffering of partition, is a lesson in the unintended pains of agency that offers neither full liberty nor complete control. It is still agency, however, in a way that we cannot avoid if we care about order and change. Writing on African politics after empire, Lonsdale and Berman refer to the built–up layers of meaning and social structure in which they occur as "a palimpsest of contradictions."[30] The history of global ordering through customary rule might be this as well: built–up, partially erased and re–purposed narratives, each using the last as its base materials. A re–used game board, with new conventions of how to play it, and what pieces can be used. In this sense, it seems possible to say that in contemporary international order we live in Sir Syed's world: if not the one he wanted, then the one he described. It is clear as well that we live in Akpamgbo's world, remade by violence and narrations of possible peace. By playing a certain game, and repurposing its rules for their own ends, the people in this history left a slightly new game, with new pieces, for the next players to pick up. To the extent that we care about this particular corner of the new sovereignty game, we will benefit from caring about this choice, and this play as well.

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[29] ibid p.2. For those interested in the more technical game–theoretic side of this thesis' argument, the idea of agency–as–ontology tracks with Lewis' grounding of his conventional theory of language in his modal realism. In essence, Lewis' argument as Brian Weatherson summarises it holds:

(a) "That a population P speaks a language L if and only if there is a convention of speaking truthfully in L that persists amongst P. The parties to the co–ordination problem (and the convention that solves it) are the different people who want to communicate in P. They solve their problem by speaking truthfully (on the whole) in L."

(b) And that "the truth condition of an indicative sentence is the set of possible worlds in which it is true."

Thus the strategic convention of language is a convention to describe the world truthfully in the language that has been arrived at, and to speak truthfully in this language is to indicate that you are in a world in which your statement is true. To use L then affirms that you are in a world in which statements in L hold true. To bring this back into international ordering, a language of describing political reality, arrived at conventionally, is not just a set of statements about politics, but an affirmation of the type of political world you live in. Thus, the more deeply constructivist import of the outcome of strategic interactions over how to describe political reality.
Weatherson (2016) "David Lewis", The Stanford Encyclopedia of Philosophy Winter 2016 Edition, Zalta ed. <https://plato.stanford.edu/archives/win2016/entries/david-lewis/>.

[30] Berman (2004) "'A Palimpsest of Contradictions': Ethnicity, Class, and Politics in Africa." *The International Journal of African Historical Studies*. 37:1 pp.13–31.

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